In the recent past, Republican Presidents have made 15 of the last 17 nominations to the Supreme Court.

The Republican stamp on the current Court is undeniable, and clearly the prospects of the Court becoming more moderate in the near future are unlikely.

Upon this backdrop, I have evaluated the decisions and writings of Judge Alito, closely watched the nomination hearing in the Senate Judiciary Committee, and listened to the statements of many colleagues on his nomination.

I have come away from this review with a number of concerns.

First, Judge Alito did not provide complete answers on many important topics the way now Chief Justice Roberts did during his nomination hearing. These included many critical issues such as: Is Roe settled law? What are the limits of the executive branch's power?

Second, Judge Alito failed to distance himself from the radical views he expressed in his earlier writings on the supremacy of executive power.

Third, Judge Alito's record includes troubling decisions on vital issues such as search and seizure, reproductive rights, the power of Congress, civil rights, and affirmative action.

Because of these facts, I have concluded that the addition of Judge Alito to the Supreme Court would unacceptably shift the balance of the Court on many critical questions facing our county, such as:

Are there limits on the power of the presidency?

Can the Congress regulate the activities of the states?

How expansive is the right to privacy?

What deference should be given to legislative acts of the Congress?

How the Court addresses these questions goes to the heart of what we stand for as a country, which is why this nomination is so important.

While many of my colleagues will disagree with my assessment of Judge Alito, this will be a lifetime appointment and a lifetime is too long to be wrong.

I yield the floor.

EXECUTIVE SESSION

NOMINATION OF SAMUEL A. ALITO, JR., TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session and resume consideration of Calendar No. 490, which the clerk will report.

The assistant legislative clerk read the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States.

The ACTING PRESIDENT pro tempore. Under the previous order, the time from 10 to 11 shall be under the control of the Democratic side.

The Chair recognizes the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, today at 4:30, Members of this body will be casting an extremely important vote, the implications of which are going to be felt not only in the next several months but for a great number of years, not only for this generation but for the next generation and the following. It is on a nomination for the Supreme Court of the United States and whether we are going to move ahead and have a final vote tomorrow.

There is nothing more important than the votes we cast on nominations to the Supreme Court, except sending young Americans to war. The implications of this vote are far reaching. As one who has followed the courts of this country as they moved us to a fairer and more just nation, this nomination has enormous consequences and importance. I doubt if we will cast another such vote, unless it would be for a Supreme Court nominee, any time in the near future.

I remember the beginning of the great march towards progress this Nation made with the Fifth Circuit in the 1950s, the great heroes, Judge Wisdom, Judge Tuttle, Judge Johnson, and many others who awakened the Nation to its greatness in terms of having America be America by knocking down walls of discrimination and prejudice. Our Founding Fathers didn't get it right on that as we know. They effectively wrote slavery into the Constitution. We fought a Civil War that didn't resolve it or solve it. Though, obviously, with President Lincoln and other extraordinary leaders, we began to move the process forward to knock down the walls of discrimination.

It was really as a result of the extraordinary leadership of Dr. King, his allies and associates in the late 1950s, that America began to think about what this country was all about, recognizing the stains of discrimination. We had the beginning of the movement to knock down the walls of discrimination in the Public Accommodation Act of 1964, the Voting Rights Act of 1965, the Civil Rights Act of 1967, housing in 1968, title XIV in 1973. In 1965, we knocked down the walls of discrimination in our immigration laws, the national origin quota system. The Asian-Pacific triangle discriminated against Asians. The national origin quota system discriminated against groups of countries.

We have made enormous progress, not that laws themselves are going to solve these problems. We had laws that were passed, supported by Democrats and Republicans during this time, and we became a fairer and more just nation. Still there are important areas we have to move toward to complete the march. The stains of discrimination are still out there, not nearly as obvious as they were in the earlier part of the last century, but they are still out there. They are evident. All of us at one time or another still see them. It is not limited to a region of the Nation. It exists in my part of the country as well.

The question is, Are we moving forward to knock down the walls of discrimination? That has always been a pretty basic test for me in terms of reaching a judgment on the Supreme Court.

I remember the case of Tennessee v. Lane that was decided not long ago. It involved a woman in a wheelchair, a single mom with two children, trained as a court reporter. The State was Tennessee. About 60 percent of all the courtrooms in Tennessee for some reason are on the second floor. The question involved the Americans with Disabilities Act. I welcomed the opportunity to work closely with my colleague from Iowa, Senator HARKIN, on that program. By the time we came to the floor, we had bipartisan support for that legislation. President Bush 1 indicated it was the piece of legislation of which he was most proud. It wasn't always easy in terms of dealing with the disabled.

I can remember when we had 4 million children who were kept in closets rather than being able to go to school. We had bipartisanship on the IDEA, the Individuals with Disabilities Education Act, and we made enormous progress during that time.

Then we had Tennessee v. Lane. The question was whether that courthouse was going to make reasonable accommodations to let that single mother, who was trained as a court reporter, avoid being carried up a flight of stairs, avoid being carried into the ladies room, avoid other humiliating circumstances because of her disability, was that courthouse going to have to make those reasonable accommodations.

Four Justices on the Supreme Court said no, no, we don't have to make those accommodations. But five said yes. Sandra Day O'Connor said yes on that and they made those accommodations. That mother was able to gain entrance into the courthouse and has had a successful career. She appeared before our committee with tears in her eyes. If that decision had gone 5 to 4 the other way, all 50 States would have had to have passed disability rights acts—not the Americans With Disability Act, but a Massachusetts disabilities act, or Connecticut, or Rhode Island. But we had the Americans With Disabilities Act, so 42 million fellow citizens with physical and mental disabilities are now part of the American family today. Just as we have knocked down the walls of discrimination on race, religion, ethnicity, and gender, we have done so with disability. We have also made some progress in terms of gay and lesbian issues as well.

We have made this march toward progress. The question is whether we

are going to have a justice who believes in that march of progress, or whether we are going to have somebody who is going to be a roadblock in that march toward progress. I express my opposition to Judge Alito because I think he is the wrong judge at the wrong time on the wrong court. I don't believe he is going to be part of the whole movement and march toward progress in this country. It is a delicate balance. We have seen at times in American history where Executives have led the way in making this a fairer country and where Congress has led the way and, certainly, we have seen that with Executive power in terms of the adoption of the Medicare Programs and Medicaid. We had Presidential leadership for a while in the early sixties, and finally we passed those. As a result, we are a fairer country. Ask our elderly people if we didn't have the Medicare or the Social Security programs where we would be as a nation. That is the issue.

I accepted the challenge of Judge Alito, who said, let's read my cases. I am reminded of the fact that to understand a nominee, one has to read their dissenting opinions. Ruth Bader Ginsburg and Robert Bork agreed 91 percent of the time. Isn't that extraordinary about two individuals with dramatically different judicial philosophies? They agreed 91 percent of the time. Where you found their differences were in their dissents.

That is where I looked with regard to this nominee. That is why I came to the conclusion this nominee was not going to be friendly to the average worker, friendly on women's rights, friendly on the issues of race, friendly on the issues of the environment, and would no doubt be willing to accede to a more expansive Executive power.

I remember the time when the President announced the nomination of Judge Alito. It was in the early morning. I happened to be up in Massachusetts and I knew the announcement would be made. I didn't know Judge Alito. Certainly the representation was that there is a wide open kind of net that has been spread out across the country to try to find the very best in our Nation who would be a good nominee. I have voted for seven Republican nominees for the Supreme Court. We have had a great many of those nominees who were virtually unanimous in this body—Democrats and Republicans voting together for nominees—and that is what I think all of us were hoping for. We had seen the fiasco that had taken place with Harriet Miers. We saw groups in this country that were prepared to exercise a veto. We have seen groups in our Nation that were prepared to exercise a litmus test. We have seen groups that have said absolutely, no, we are not going to have Harriet Miers. These are the same groups that indicated for so long that nominees are entitled to a vote up or down.

We ought to be able to look at a nominee's judicial philosophy and all the rest. All of those issues went right out the window when Harriet Miers was nominated. The reason was because Harriet Miers didn't pass a litmus test. Now we have Judge Alito. Before the announcement ended, we see this extraordinary wave of favorability that has come over in terms of support for this nominee. I wonder how people could be so opposed to Harriet Miers and, as soon as Judge Alito was announced, how they could be so overwhelmingly for him. What did they know? Who knew?

One of the things I think of is what our Founding Fathers wanted. What did the Constitution say on this issue? The Founding Fathers, in debating the Constitution, considered the issue of appointment of judges four different times. On three occasions they gave all the authority to this body here, the Senate, to recommend and appoint. The last important decision at the Constitutional Convention—10 days before the end—was to share the power, with the Executive having the power to appoint and the Senate having the power to give advice and consent. You cannot read the debates, which I have read, and not understand that it was a shared responsibility—not this idea that the Senate is supposed to be a rubberstamp. I know it suits their interests, but our Founding Fathers wanted the shared responsibility. Remember the checks and balances, the essential aspect of the Constitution of the United States? When they give authority and power in one place, they give authority and power to the other—the Commander in Chief, Executive, making of war; with the Congress, the power of the purse, and the rest of the issues we all are familiar with.

This is a shared responsibility, and we in this Senate have a very important constitutional obligation to review the recommendation. The real question for us now when we have a nominee is to find out—not for ourselves, but as instruments for the American people—what the beliefs of this nominee are; what are the real beliefs are of the nominee for the Supreme Court of the United States; do we have the assurances that this individual is the best of the best. We have seen that. President Reagan gave us Sandra Day O'Connor, who was the best of the best. The list went on. We have had extraordinary jurists in the past.

We approached this to try to find out these things on the Judiciary Committee. We have a pretty good sense that the executive branch knows the philosophy of this nominee. They have made the recommendation and obviously they have inquired of this nominee, so they know where he is.

I was absolutely startled this morning when I picked up the New York Times and saw in Mr. Kirkpatrick's article on the front page exactly how this nominee was selected, who selected him, and what the process was. All during this period of time, that was something those of us on Judiciary Committee had no mind of. Maybe our friends on the other side knew about it. But this is on the front page of the New York Times: Paving the Way For Alito Began In Reagan Era.

It goes on extensively, continuing on page A18. I ask unanimous consent that the article be printed in the RECORD.

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

IN ALITO, G.O.P. REAPS HARVEST PLANTED IN '82

(By David D. Kirkpatrick)

Last February, as rumors swirled about the failing health of Chief Justice William H. Rehnquist, a team of conservative grassroots organizers, public relations specialists and legal strategists met to prepare a battle plan to ensure any vacancies were filled by likeminded jurists.

The team recruited conservative lawyers to study the records of 18 potential nominees including Judges John G. Roberts Jr. and Samuel A. Alito Jr.—and trained more than three dozen lawyers across the country to respond to news reports on the president's eventual pick.

''We boxed them in,'' one lawyer present during the strategy meetings said with pride in an interview over the weekend. This lawyer and others present who described the meeting were granted anonymity because the meetings were confidential and because the team had told its allies not to exult publicly until the confirmation vote was cast.

Now, on the eve of what is expected to be the Senate confirmation of Judge Alito to the Supreme Court, coming four months after Chief Justice Roberts was installed, those planners stand on the brink of a watershed for the conservative movement.

In 1982, the year after Mr. Alito first joined the Reagan administration, that movement was little more than the handful of legal scholars who gathered at Yale for the first meeting of the Federalist Society, a newly formed conservative legal group.

Judge Alito's ascent to join Chief Justice Roberts on the court ''would have been beyond our best expectations,'' said Spencer Abraham, one of the society's founders, a former Secretary of Energy under President Bush and now the chairman of the Committee for Justice, one of many conservative organizations set up to support judicial nominees.

He added, ''I don't think we would have put a lot of money on it in a friendly wager.''

Judge Alito's confirmation is also the culmination of a disciplined campaign begun by the Reagan administration to seed the lower federal judiciary with like-minded jurists who could reorient the federal courts toward a view of the Constitution much closer to its 18th-century authors' intent, including a much less expansive view of its application to individual rights and federal power. It was a philosophy promulgated by Edwin Meese III, attorney general in the Reagan administration, that became the gospel of the Federalist Society and the nascent conservative legal movement.

Both Mr. Roberts and Mr. Alito were among the cadre of young conservative lawyers attracted to the Reagan administration's Justice Department. And both advanced to the pool of promising young jurists whom strategists like C. Boyden Gray, White House counsel in the first Bush administration and an adviser to the current White House, sought to place throughout the federal judiciary to groom for the highest court.

''It is a Reagan personnel officer's dream come true,'' said Douglas W. Kmiec, a law

professor at Pepperdine University who worked with Mr. Alito and Mr. Roberts in the Reagan administration. ''It is a graduation. These individuals have been in study and preparation for these roles all their professional lives.''

As each progressed in legal stature, others were laying the infrastructure of the movement. After the 1987 defeat of the Supreme Court nomination of Judge Robert H. Bork conservatives vowed to build a counterweight to the liberal forces that had mobilized to stop him.

With grants from major conservative donors like the John M. Olin Foundation, the Federalist Society functioned as a kind of shadow conservative bar association, planting chapters in law schools around the country that served as a pipeline to prestigious judicial clerkships.

During their narrow and politically costly victory in the 1991 confirmation of Justice Clarence Thomas, the Federalist Society lawyers forged new ties with the increasingly sophisticated network of grass-roots conservative Christian groups like Focus on the Family in Colorado Springs and the American Family Association in Tupelo, Miss. Many conservative Christian pastors and broadcasters had railed for decades against Supreme Court decisions that outlawed school prayer and endorsed abortion rights.

During the Clinton administration, Federalist Society members and allies had come to dominate the membership and staff of the Judiciary Committee, which turned back many of the administration's nominees. ''There was a Republican majority of the Senate, and it tempered the nature of the nominations being made,'' said Mr. Abraham, the Federalist Society founder who was a senator on the Judiciary Committee at the time.

By 2000, the decades of organizing and battles had fueled a deep demand in the Republican base for change on the court. Mr. Bush tapped into that demand by promising to name jurists in the mold of conservative Justices Thomas and Scalia.

When Mr. Bush named Harriet E. Miers, the White House counsel, as the successor to Justice O'Connor, he faced a revolt from his conservative base, which complained about her dearth of qualifications and ideological bona fides.

''It was a striking example of the grass roots having strong opinions that ran counter to the party leaders about what was attainable,'' said Stephen G. Calabresi, a law professor at Northwestern University and another founding member of the Federalist Society.

But in October, when President Bush withdrew Ms. Miers's nomination and named Judge Alito, the same network quickly mobilized behind him.

Conservatives had begun planning for a nomination fight as long ago as that February meeting, which was led by Leonard A. Leo, executive vice president of the Federalist Society and informal adviser to the White House, Mr. Meese and Mr. Gray.

They laid out a two-part strategy to roll out behind whomever the president picked, people present said. The plan: first, extol the nonpartisan legal credentials of the nominee, steering the debate away from the nominee's possible influence over hot-button issues. Second, attack the liberal groups they expected to oppose any Bush nominee.

The team worked through a newly formed group, the Judicial Confirmation Network, to coordinate grass-roots pressure on Democratic senators from conservative states. And they stayed in constant contact with scores of conservative groups around the country to brief them about potential nominees and to make sure they all stuck to the same message. They fine-tuned their strategy for Judge Alito when he was nominated in October by recruiting Italian-American groups to protest the use of the nickname ''Scalito,'' which would have linked him to the conservative Justice Antonin Scalia.

In November, some Democrats believed they had a chance to defeat the nomination after the disclosure of a 1985 memorandum Judge Alito wrote in the Reagan administration about his conservative legal views on abortion, affirmative action and other subjects.

''It was a done deal,'' one of the Democratic staff members of the Senate Judiciary Committee said, speaking on the condition of anonymity because the staff is forbidden to talk publicly about internal meetings. ''This was the most evidence we have ever had about a Supreme Court nominee's true beliefs.''

Mr. Leo and other lawyers supporting Judge Alito were inclined to shrug off the memorandum, which described views that were typical in their circles, people involved in the effort said. But executives at Creative Response Concepts, the team's public relations firm, quickly convinced them it was ''a big deal'' that could become the centerpiece of the Democrats' attacks, one of the people said.

''The call came in right away,'' said Jay Sekulow, chief counsel of the American Center for Law and Justice and another lawyer on the Alito team.

Responding to Mr. Alito's 1985 statement that he disagreed strongly with the abortion-rights precedents, for example, ''The answer was, 'Of course he was opposed to abortion,' '' Mr. Sekulow said. ''He worked for the Reagan administration, he was a lawyer representing a client, and it may well have reflected his personal beliefs. But look what he has done as judge.''

His supporters deluged news organizations with phone calls, press releases and lawyers to interview, all noting that on the United States Court of Appeals for the Third Circuit, Judge Alito had voted to uphold and to strike down abortion restrictions.

Democrats contended that those arguments were irrelevant because on the lower court Judge Alito was bound by Supreme Court precedent, whereas as a justice he could vote to overturn any precedents with which he disagreed.

By last week it was clear that the judge had enough votes to win confirmation. And the last gasp of resistance came in a Democratic caucus meeting on Wednesday when Senator Edward M. Kennedy, joined by Senator John Kerry, both of Massachusetts, unsuccessfully tried to persuade the party to organize a filibuster.

No one defended Judge Alito or argued that he did not warrant opposition, Mr. Kennedy said in an interview. Instead, opponents of the filibuster argued about the political cost of being accused of obstructionism by conservatives.

Still, on the brink of this victory, some in the conservative movement say the battle over the court has just begun. Justice O'Connor was the swing vote on many issues, but replacing her with a more dependable conservative would bring that faction of the court at most to four justices, not five, and thus not enough to truly reshape the court or overturn precedents like those upholding abortion rights.

''It has been a long time coming,'' Judge Bork said, ''but more needs to be done.''

Mr. KENNEDY. Mr. President, America is listening to the President. He said: We are going to get the very best nominee we possibly can. That is one side of the story. Most of us certainly believed it. Well, this is the story. This may be accurate and it may not be. I think it is very difficult to read this story and not certainly find a very powerful ring of truth in it:

Last February, as rumors swirled about the failing health of Chief Justice William H. Rehnquist, a team of conservative grassroots organizers, public relations specialists, and legal strategists met to prepare a battle plan to ensure any vacancies were filled by like-minded jurists.

So the right wing had a plan. They knew what the thinking of the nominee was. The article continues:

The team recruited conservative lawyers to study the records of 18 potential nominees—including Judges John G. Roberts and Samuel A. Alito—and trained more than three dozen lawyers across the country to respond to news reports on the President's eventual pick.

So members of the right wing are going to make the pick and we see around the country where dozens of lawyers are going to respond to the news reports. It continues:

''We boxed them in'' . . .

Boxed whom in? They boxed in the American people. That is what they are saying proudly—''we boxed them in,'' one lawyer present during the strategy meetings said with pride in an interview over the weekend.

Boxed whom in? This is a nomination for the Supreme Court of the United States. This is supposed to represent all of the people, all Americans. No, no, they boxed them in, a lawyer present at the strategy meeting said with pride.

This lawyer and others present who described the meeting were granted anonymity because the meetings were confidential and because the team had told its allies not to exult publicly until the confirmation vote was cast.

There it is. They can hardly wait. Although I was surprised that—and this would be my 23rd Supreme Court nominee—the nominee was up in the Capitol last week thanking Senators for their support and receiving congratulations prior to the time we even vote on him.

It has been debated for less than a week on the floor of the Senate. Twenty-five Senators from our side have spoken. Only half of our caucus had a chance to speak. They will not speak now if we cut it off. They have not had a chance to talk. Again, the article says:

. . . The team had told its allies not to exult publicly until the confirmation vote was cast.

Then they will pop the champagne and say we pulled one over on you. And it continues:

They laid out a two-part strategy to roll out behind whomever the President picked, people present said. The plan: first extol the nonpartisan legal credentials of the nominee . . .

They don't even know who the nominee is going to be yet, but they have the plan to extol the nonpartisan legal credentials.

. . . steering the debate away from the nominee's possible influence over hot-button issues. Second, attack the liberal groups they expect to oppose any Bush nominee.

There it is, that is the strategy. It is not that we are going to nominate the best possible nominee and that we are going to work with Republicans and Democrats alike to make sure the American people understand how this nominee is going to protect your constitutional rights and liberties. That is what we thought. That is what has been done at other times—not every time, but most of the time. That is what the American people expect and what they are entitled to.

But, oh, no, this group is already saying we know how we are going to handle this, whoever it is. We are going to exalt the assets of this nominee. The other thing is we are going to launch our attacks on other people before the nominee is even out there. This is the confirmation process for the Supreme Court of the United States for a nominee who is going to make the decisions on your rights and liberties for the next 30, 40 years? Attack them as soon as the nomination is out there. Exalt the nominee's professional credentials. We don't know who it is, but you better get them out there doing it, and we have our network wired around the country to make sure they are going to come out right on it. This for the Supreme Court of the United States? This is what we are finding out.

It continues:

Mr. Leo and other lawyers supporting Judge Alito were inclined to shrug off the memorandum.

This is the 1985 memorandum of Judge Alito that he used in an application for a job with the Justice Department. He was 35 years old. He had argued 15 cases before the Supreme Court. He had a number of statements in there that were provocative. I will come back to that.

This memorandum was provocative because it indicated that he was against a woman's right to choose, he was against reapportionment, which, of course, has had enormous importance in terms of ensuring people's right to vote and have that vote counted in a meaningful way. There was some concern whether this was going to have any impact. This was his real, true view about the Constitution. This was a document which showed his real view about it, which would have been helpful to the American people to at least understand what Judge Alito's views are.

Those lawyers supporting Alito said we will shrug off the memo:

. . . which described views which were typical in their circles, people involved in the effort said. But the Conservative Response Concepts, the team's public relations firm, quickly convinced them it was ''a big deal'' that could become the centerpiece of the Democrats' attacks, one of the people said.

Creative Response Concepts. Who is this Creative Response Concepts? The Creative Response Concepts, if you look them up on the Web, right above the Alito confirmation hearings is the Swift Boat Veterans for Truth—Swift Boat Veterans for Truth, the ones who made the distortions and misrepresentations about my colleague and friend, JOHN KERRY, and his war record. They distorted and misrepresented it. They are now advertising the Alito confirmation hearings. They say, Let us get in it, and into it they go.

The American people are entitled to listen to those who believe in the nominee, and to listen to those on the other side. No, we are getting our message right through a PR firm, Creative Response Concepts. We are getting our truth right through them. The American people are going to understand his views of constitutional rights and liberties from Creative Response Concepts. When we finish doing the Swift Boat Veterans for Truth, we have the Alito nomination right here. This is what the American people are entitled to?

The team's public relations firm quickly convinced them it was ''a big deal'' that could become the centerpiece of the Democrats' attack, one of the people said.

The article continues.

This has been a difficult process to make a judgment and be fair to the nominee and also carry forward our responsibilities. But when we have the kind of action on the outside and the failure to be responsive on the inside, in terms of his response to questions, this is a disservice to the American people.

This has been a longstanding campaign. It has been a stealth campaign. I daresay that is not what the Founding Fathers intended, that is not what they expected, and the American people deserve a great deal better.

I hope people will have the chance to read the whole article. I am not going to go through it now. I have given the essence of it. It is very clear how this nominee was selected, why he was selected, and how that campaign for him was conducted.

As the American people are trying to make a judgment on this through their elected representatives today and tomorrow, all we are asking for is an opportunity to have the kind of full discussion and full debate that we ought to and that Members of the Senate who have not had a chance to speak have an opportunity. It is not asking too much.

I have been in the Senate when we really had filibusters. The idea that we are here on a Monday and this came to the Senate last Wednesday and the opposition is saying, Oh, well, this is delaying the work of the Senate—what is more important to the Senate than a vote for a Justice of the Supreme Court of the United States? What is more important? This is the issue, this is the time, this is the nominee, and we find out how we have been treated.

This body deserves better, and the American people deserve better. That is what this vote is this afternoon. That is what it is about. Let's really find out. Let's have a chance to go through these cases and this nominee.

We know that the right wing now has its campaign in full gear. Their mission is to cover up the truth. So we do need a full debate to bring out the truth on Judge Alito's record. What is wrong with debate? Are they afraid of what Americans would do if they really heard the full record? That is what the issue is, and that is why people are entitled to the time.

I was in my State for a few hours on Friday. The people of my State were talking to me, in the few hours I was there, about the prescription drug bill that they just cannot navigate. There are 35 different drug plans from which to choose. There are situations where if an individual signs up for a particular program—it is interesting, the plan itself can change the premiums and the formularies, but the person cannot get off that plan. Once they are in it, they are in it. Or if they do get off the plan, they pay an extraordinary penalty to get onto another. The plan can change deductibles and copays. They are very troubled elderly people.

There are heart wrenching stories. People up there care about the cost of their heating oil going right through the roof. People care about that in my State. People are absolutely in disbelief over how a part of America in New Orleans, Mississippi, and Alabama can be left out and left behind. They are continually pained by the continued loss of sons and daughters from my State and from across the country in the Iraq war with really no end in sight. They are bothered by all of this. They are bothered by the whole issue of lobbying and lobbying corruption.

They are working hard because the middle class is having a more and more difficult time just trying to make ends meet. They are finding that prescription drugs have gone up, heating has gone up, education has gone up, gas has gone up, and their wages have not gone up. It has been 9 years since we increased the minimum wage. Seven times we have increased our own pay, by $30,000, but we cannot afford to increase the minimum wage by a dollar.

Hard-working people are hurting in my State of Massachusetts. Today, they are wondering whether tonight they are going to have food on the table. Now we are asking them to shift their focus to Judge Alito. Judge Alito—how is that going to affect what my family is faced with? It will affect a great deal your children and your children's children's future.

Here are some of the issues Supreme Court decisions affect:

Supreme Court decisions affect the ability of Americans to be safe in their homes from irresponsible search and seizures and other government intrusions. We had those cases come up in the hearings. I will come back and spend some time on them. It is difficult to believe.

Supreme Court decisions affect whether the rights of employees can be

protected in the workplace. If you are a worker, you should be concerned about this nominee.

They affect whether families can obtain needed medical care under health insurance policies. Decisions on health care, whether they are under ERISA, often go to the Supreme Court.

Decisions affect whether people will actually receive retirement benefits they were promised. There was $8 billion lost in the last 5 years; 700 retirement programs lost, $8 billion, where workers actually paid in. Who is going to protect their rights? Is it going to be the powerful companies, powerful interests, special interests, or are we going to have a judge who is going to be looking out for the worker and the worker's interest? It is a legitimate issue.

If you care about your health care, if you care about your retirement, if you care about your conditions of employment, this Supreme Court nominee is where you ought to be focused and where you ought to give your attention.

Supreme Court decisions affect whether people will be free from discrimination, prejudice, and outright bigotry in their daily lives, whether you are going to be told you are not going to get the job because of the color of your skin or because of your gender. There are cases we went through during the Judiciary Committee hearings about Judge Alito being insensitive in those areas. I will come back to them.

Do you hear me? Discrimination, prejudice, outright bigotry in their daily lives. You are going to have to make sure you are going to have a Supreme Court that is going to be fighting for you.

The decisions affect whether Americans' most private medical decisions will be a family matter or subject to government interference. Terri Schiavo is a classic example. We have governmental solutions to these issues, or should these matters be left to the individuals who are closest to any patient—their families, their loved ones, their priests, their ministers, their rabbis? We had a debate on this issue. People can think that is a long way away from them, but there is nobody in this body, nobody in this audience, nobody who is watching who doesn't have a real concern for what is going to happen to their parents, to their loved ones, and whether we are going to be able to deal with that issue or whether the Supreme Court is going to say: Well, we think there are appropriate governmental kinds of roles in this kind of a situation. We certainly saw where a majority of this body legislatively felt the courts ought to become much more involved in that situation. They basically retreated on that position, although some still defended it even in recent days.

The decisions affect whether a person with disabilities will have access to public facilities and programs. I gave the example of Tennessee v. Lane. That is a case that was decided in the last few years about disability rights. Who among us doesn't have a member of their family who has some kind of challenges, either mental health challenges or physical challenges? We have certainly seen it in our family, and when we get the chance to talk about disabilities and disability rights in this body, it is always amazing—not amazing, it is always interesting to me that we give such little attention to those who have mental health challenges and disability needs and we give such little attention and assistance to them.

''Parity'' is the code word, whether we are going to treat people who have mental health issues and those with disabilities the same as those who have physical issues. We still haven't had it. I certainly hope, with the leadership of Senator DOMENICI, certainly myself, Senator HARKIN, and many other Members, that we will have a chance to vote on that issue this year. It is long overdue.

Supreme Court decisions affect whether we will have reasonable environmental laws that keep our air and water clean. Care about the water? Care about the air we have? Does that really make much of a difference to us, Senator? Does it really make much difference to us? Interesting, we have doubled the number of deaths from asthma this year than we had 5 years ago—doubled the deaths for children. I wonder why that is. Do you know where they are? They are all in the States and cities and communities that, by and large, have inhaled the toxins and the dioxins which have come, as a result of changes in the environmental laws, from major plants, carbon-producing plants in this country.

We had laws. I don't know what to tell a mother when she sees her child having that intense reaction. I know, as a father of a chronic asthmatic, they live with it. The idea that people outgrow it—not in our family. We see the constant challenge that it is for any young person as they grow to adulthood. Asthma is increasing, and there is no question about it. It is because of the pollution in the air.

Are we going to have a judge who will recognize what the Congress wanted to do, or someone who is going to say, Oh, no, we have a very powerful company down here that seems to have a reasonable argument—as we saw with Judge Alito; I will come back to that case as well—so, therefore, we are going to find for the company, and we are going to let them continue to discharge pollutants into the lakes. Do we care about the lakes? Do we care about the streams?

Mercury advisories apply to nearly a third of the area of America's lakes and 22 percent of the length of our rivers, and mercury pollution has led 45 states to post fish consumption advisories. Where kids used to go out and fish and enjoy it, that is absolutely denied them for health reasons. With respect to expectant mothers, that is very real.

We in Congress pass laws, the President signs them, they go to the courts for interpretation, and where will this nominee come out? Will he come out for that mother who has a child who has asthma, or that parent seeing the pollution taking place in a lake nearby and whose child has been affected by those kinds of poisons? Where is he going to come out on the issues of discrimination in jobs, issues we have been fighting to eliminate under title VII of our civil rights laws and that still are a problem.

We can go through those cases where this nominee fails to shape up. Let me just say this vote this afternoon will last for 15 or 20 minutes. But the implications of that vote, the implications for your life, your children's lives and your grandchildren's lives, will continue for years to come. We have only one chance to get it right. This is not a piece of legislation where you can go ahead and pass it and then say, oh, well, we got it wrong.

I think with respect to the prescription drug bill we will have to come back and redo it. I think we should. We can come back and redo a prescription drug bill. Americans are entitled to that. Seniors are entitled to it. We got it wrong when, effectively, the conference was hijacked by the drug companies and the HMOs. There were extraordinary payoffs. It was written up in the Washington Post last week about the payoff—it was $46 billion to the HMOs back in 2003, now it is $67 billion.

People who go to the HMOs are 8 percent healthier, and they got a 7-percent inflator, a 15-percent advantage. I thought Republicans used to say the private sector was more efficient; that we can do it more effectively than the Government so we don't need extra help. No, they want all the extras, 15 percent more, so it comes to $46 billion more. You are asking why people in my State are paying higher copays and premiums and all the rest? It is because we have these kinds of payouts.

We can come back and deal with those. People can deal with those in the elections next fall. I understand that. You win or lose and we come back to it, but not on the Supreme Court of the United States. You get one time, one chance, one vote to get it right. There are no second times. That is what all of this is really about in this debate we will have for the course of the day and this afternoon.

As I say, I don't know what is more important that we are going to deal with. I gave examples of the range of different issues that come before the Supreme Court. I doubt if there is anybody who is listening to this or watching this who is not affected by at least one or two of those different kinds of issues over the course of their lifetime—in terms of their work, their retirement, their pay, in terms of discrimination, in terms of environmental

issues and women's privacy issues, which are so at risk at this particular time with this nominee. All of those issues are out there. All we are saying is, don't we think we ought to try to get it right? Don't we think we ought to have the chance to lay this out just a little more?

In every one of those examples I gave, in those nine different titles, there are cases on which Judge Alito has ruled. He has taken a position. In many of those cases he has taken the position in strong opposition to other judges appointed by Republicans. Judge Rendell talked about Gestapo-like tactics that were used when marshals came in on a civil action. There was no crime committed. It was a civil action in order to repossess a farm in bankruptcy to be sold at public auction. People had worked their whole lives for this small farm in Pennsylvania, and the marshals came in, they seized it, and grabbed these individuals who had committed no crime. There was no attempt to run. There was no attempt to hide. There was no attempt to evade. And we have Judge Rendell talking about Gestapo-like tactics by those marshals. Whether they were Gestapo-like or they were not Gestapo-like certainly ought to be decided by the jury. I think most of us would agree with that, would we not?

Judge Alito said: No, no, we are not going to let that go to the jury. They were just performing their own responsibilities. I am not going to let that go to the jury.

Other judges, on issues about whether there is discrimination in employment—including some Republican judges who sat with Judge Alito and said if we follow Judge Alito's reasoning and rationale we would effectively—''eviscerate'' is the word that was used—title VII, title VII being the provisions we passed in the 1964 act to make sure we were not going to discriminate in employment.

The list goes on. It is not just myself or others who have expressed opposition. We have the very distinguished Cass Sunstein of the University of Chicago who has done a review of Judge Alito's cases and said that 84 percent of the time Judge Alito decided for the powerful or the entrenched interests or the government. Cass Sunstein said that.

Knight Ridder, that is not a Democratic organ. That is not Democrat members of the committee. They have a whole group who analyzed his opinions independently. The Knight Ridder newspaper chain reached the same decision.

The Yale study group—gifted, talented students and professors up there at Yale University—did a study about Judge Alito's dissents and opinions and came to the same conclusion. If you are looking for someone who is going to protect the workers, if you are looking for someone who is going to protect men and women of color, if you are looking for somebody who is going to protect children, if you are looking for someone who is going to protect the privacy issues of women, this is not your candidate.

Those are the conclusions of a broad range of different groups who have studied this. It was a broad range. They are not just Democrats, not partisan. Knight Ridder is not partisan. Cass Sunstein is basically in the middle. Some will say this afternoon, oh, well, you can always find a few cases. It is not just a few. These are the overwhelming number of studies. Even the Washington Post study, in terms of the number of victories that people of color had or the workers had over the existing power system, reaches the same conclusion.

It seems to me we ought at least to have the opportunity to make sure the American people understand this. It takes time. It took some time for the American people to understand what was really happening in Iraq. It took some time. They understand now, but it took time. People are working hard. They are busy with their jobs and their families, and they are trying to do what is right and play by the rules. It takes some time for them to understand how this nominee is going to affect their lives and their well-being in the future. But there is nothing more important. There is nothing more important here in the Senate. There is nothing more important in the unfinished business of the Senate.

Just pick up the calendar and look at the unfinished business of the Senate. Nothing comes close to it. If you said right behind this is the Defense appropriations bill, this is going to delay a decision on armor and support for our troops, I would say, fine, let's let that go through. Maybe we will find time after that for Judge Alito. But that is not here. What are we doing after this? We are doing asbestos issues. That is entirely different. We have real questions on that, whether there is going to be adequate funding for those people who have been sickest and all the rest. We have to have a full debate on that issue. But there is no reason in the world we cannot take the time and can't have the debate on this issue, which is incalculably more important to the lives and well-being of Americans.

There are sufficient questions across the front pages of America's newspapers today that raise very serious issues and questions about this whole process that ought to cause our colleagues, friends, associates, the Members of this body, some pause. Let's try to think. Let's try to get it right. I say let's try to get it right. We will have an opportunity to do that this afternoon at 4:30.

Mr. President, I believe my time is just about up.

The ACTING PRESIDENT pro tempore. The minority has an additional 3 minutes.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, in one reference to Judge Rendell and also Judge Chertoff on the two cases I referenced, it was Judge Rendell who described the tactics of the marshals brandishing shotguns as ''Gestapo-like'' and Judge Chertoff who criticized Judge Alito's position in an equally bad case, Doe v. Groody, which involved the strip-search of the 10-year-old girl. I ask the RECORD reflect that change.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Under the previous order, the time from 11 to 12 will be under the control of the majority side, and then debate will continue to alternate on an hourly basis until 4 p.m.

The Senator from Wyoming.

Mr. THOMAS. Mr. President, I appreciate the opportunity to talk a little bit about the judge issue that is before us. I have not done so until now. I have watched this debate with interest because I think it is one of the most important things we do.

The system, of course, is for the President to nominate and for the Senate to confirm or reject. So that is really one of the important issues before us.

I must confess I have been a little surprised at the system we have gone through. It has been strung out for a very long time and seems to me perhaps it has gone on longer than necessary, but nevertheless that is where we are. I was very pleased to learn it is not partisan, not political. I was a little surprised to hear that. But nevertheless I do think it is important.

I have not practiced law, but I certainly understand in our system the Supreme Court is one of the three elements of our Government and is a very important one. And so it is important that we deal with it. I just would like to say that it seems to me, as I have listened and as I have paid as much attention as I could to Judge Alito's hearings, I am certainly impressed. I am impressed with his qualifications and his experience. I would think surely one of the most important elements of the question of confirmation is experience, someone who has the qualifications, someone who has had the background. Certainly Judge Alito has that—Princeton University, Harvard Law School, Army Reserve, DOJ legal counsel, U.S. attorney, unanimously confirmed in New Jersey, circuit court judge Third Circuit, unanimously confirmed. He has argued 12 cases before the Supreme Court. Many attorneys, of course, have not had this kind of distinguished opportunity. I would guess

for the most part many of the candidates for the Supreme Court have not had that kind of experience. He has had some 15 years with the Third Circuit, some 35,000 votes. So the background is there.

I think one of the things, certainly, that is a part of the confirmation and the confirmation hearing and what we need to understand is the positions that these various candidates take, and I would like to just share a few quotations, responses that the judge gave to questions that were asked.

In terms of believing in the Constitution and that it protects rights for all, under all circumstances, in times of peace or war, the judge said:

Our Constitution applies in times of peace and in times of war, and it protects the rights of Americans under all circumstances. It is particularly important that we adhere to the Bill of Rights in times of war and in times of national crisis, because that's when there's the greatest temptation to depart from them.

It seems to me that is very clear and one that has been talked about a good deal currently.

Another question was: Do you believe anyone, the President, the Congress, the courts, rise above the law? The candidate said:

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

Again, I think that is a very basic premise. We are all treated equally under the law. ''Under the law,'' that is the key.

I, as we do, go to schools quite often, and having spent some time on the Foreign Relations Committee, I often tell students that one of the significant differences about our country and most of the rest of the world is we have laws under which everyone is treated equally. I think that is one of the keys, and that response, it seems to me, is a great one.

He was asked would he base decisions on the Constitution and the rule of law, not shifting public opinion. He said:

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

Certainly, that is a very important element as well. He was asked about his personal views and how that would affect his decisions. He said:

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

When someone becomes a judge, you really have to put aside the things that you did as a lawyer at prior points in your legal career and think about legal issues the way a judge thinks about legal issues.

When asked about upholding the high standards of integrity and ethics, he said:

I did what I've tried to do throughout my career as a judge, and that is to go beyond the letter of the ethics rules and to avoid any situation where there might be an ethical question raised.

It seems to me those are the kinds of responses that make you feel comfortable with the candidate. So I am very pleased that apparently we are going toward the end. Certainly, it is time to get down toward the end. There is no reason to continue to drag this out. We know what we need to know, it is there, and it is time to do it.

So I think throughout the process the candidate has answered the questions to the best of his ability. Unfortunately, many of the questioners spent more time giving speeches and circumventing the process than asking relevant questions, but that is part of the process.

I must confess I am getting a little concerned about the Senate confirmation process. We ought to take another look at our role and not deviate from that role for other unrelated reasons. So I hope Members have not taken us down the path of setting a bad precedent, and I am sure that is not the case. I am looking forward to completing this process starting this afternoon and completing it tomorrow. I think we have before us a great opportunity to confirm one of the most capable persons that we could have on our Supreme Court.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. THOMAS). Without objection, it is so ordered.

Mr. BENNETT. Mr. President, I was here in the Chamber in the role of Presiding Officer during the presentation of the senior Senator from Massachusetts in which he referred to a story in this morning's New York Times with respect to public relations activity aimed at supporting Judge Alito. He was quite outraged at what he had read in the New York Times and talked about how improper it was for a public relations firm or any group of lawyers to gather together and mount a campaign on behalf of this nominee; that that should be left to the Senate and that there should be no outside interference in this process.

The New York Times had focused on the activities that had been in favor of the nominee, and the Senator from Massachusetts found that objectionable.

As I listened to him, I could not help but think of the actions that went forward in opposition to this nominee by groups of lawyers who gathered together to get their ammunition ready in the public arena, by public relations firms that were hired to oppose the nominee.

I remember the story in the Washington Post when John Roberts was proposed where they described those groups that were opposed to the President gathering with their press releases to attack the nominee, who were forced to strip out the name of the person they thought the nominee would be and put in John Roberts' name so that they could issue the press releases as soon as the name was made public. They had prepared their ammunition to attack the President's nominee before they knew who he was, and they were embarrassed by the fact that they had guessed wrong. But they did not change a single word of their attack once they knew that the actual nominee was someone different than they had anticipated.

My only comments to the Senator from Massachusetts would be that if he decries the work that was done in favor of a nominee by outside lawyer groups and public relations firms, he should join with some of the rest of us and say that the same criticism applies to those who were prepared to savage the nominee, whomever he might have been.

If the Senator from Massachusetts will have a conversation with Ralph Neas and the People for the American Way and say to them, Back off, let the nominee be made known, let his views or her views be made known, have a clear evaluation of where they stand before you start your public relations attack, then I will turn to the groups on the right and say the same thing: You back off. Let the nominee be known. Let the views be examined before you mount your public relations campaign.

But we saw what happened when people in support of a Republican President's nominee back off and allow the field to be dominated by those who are on the attack. Out of that first experience of seeing attack after attack after attack into an empty field, we have created a new word in the English language. It is a verb, to ''Bork.'' The nominee was Robert Bork. I had my problems with Robert Bork. I am not sure how I would have voted, having heard his record. But I do know that the record was distorted and the opportunity to hear his record was changed by virtue of the groups that were all prepared to savage him, to attack his personality, to destroy any careful analysis of his record. He was ''Borked.'' And we heard that other people would be ''Borked'' by this same savage attack from the left.

So I have sympathy with the Senator from Massachusetts when he complains about the groups on the right that were marshaled in advance of the nomination to defend the nominee. But I say to him they were marshaled to defend the nominee because they saw what happened when such previous activity was not carried forward. With the way in which the Chief Justice, John Roberts, moved through here, with both sides having their say but ultimately the public demonstrating a sense of revulsion about this whole ''Borking''

process, and now with Judge Alito moving forward in a manner far more dignified than we have seen in the past, I hope ''Borking'' would become a historic artifact and would disappear and that groups on the far left and the far right would finally realize that the Senate is not moved by these kinds of tactics; that the ads that are run, television ads attacking the nominee boomerang.

We have seen some of these groups that have attacked Judge Alito have had to have their ads taken down because they were false, they were attacked by the media generally for the severity and the falsity of their position. ''Borking'' does not work anymore. And I hope that both sides would recognize that the Senate has demonstrated a level of civility and intelligence in this situation that says we will not be moved by those who raise large sums of money, who run television ads in our home States savaging the nominee. We will be focused on what happens in the hearings. We will be focused on the actual record. We will not allow this to turn into an electoral circus.

That was done in the case of Judge Bork. It was not done successfully, although it was attempted with Chief Justice Roberts.

It is not working now with Judge Alito. I hope people on both sides will then abandon those tactics, 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. GRASSLEY. 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. GRASSLEY. Mr. President, I assume the order of business is to speak on the Alito nomination.

The PRESIDING OFFICER. The Senator is correct.

Mr. GRASSLEY. Mr. President, I choose to do that.

I support the nomination of Samuel Alito. Judge Alito, as we heard in our hearings, and so far in most of the debate on the floor, is a person who is a dedicated public servant, who practices what he preaches: integrity, modesty, judicial restraint, and a devotion to the law and to the Constitution. He understands a judge should not have a personal agenda or be an activist on the bench but should make decisions as they should be decided—do it in an impartial manner, do it with an open mind, and do it with appropriate restraint and, of course, in accordance with the laws and the Constitution.

Listening to a lot of my colleagues on the committee, and last week, I am extremely disappointed that we are looking now at an attempt by Senators—and they are all on the other side of the aisle—to delay and filibuster this nominee. It is too bad Majority Leader FRIST had to take the extreme position of filing cloture on this very important nomination. No Supreme Court nomination has ever been defeated by filibuster if a majority of the Senators stood ready to confirm that nominee. Now, that certainly is not the case here because we already know a bipartisan majority of Senators will vote to confirm Judge Alito if we get to that point tomorrow at 11 o'clock. We also know we have had plenty of time to debate this nomination. It is unfortunate that certain Senators will vote against this nominee because they think doing so is a good political issue for them. These Senators are applying a very different standard to what has been the history and the tradition in the Senate of considering Supreme Court nominees. The position being taken by these Senators is that Judge Alito ought to somehow share Justice O'Connor's judicial philosophy in order for him to fill that seat where she has been for the last 25 years.

That sort of thinking is totally at odds with what the Constitution requires, but more importantly than what the Constitution requires, what has been the Senate's tradition in the last 225 years, and that is that Judge Alito does not have to be Justice O'Connor's judicial philosophy soulmate to deserve confirmation by this Senate. Because the Supreme Court does not have seats reserved for one philosophy or another. That kind of reasoning is completely antithetical to the proper role of the judiciary in our system of Government.

My colleagues on the other side, then, have it all wrong. There has never been an issue of ideological balance on the Court. If that were the case, do you think President Ford would have nominated Justice Stevens or President Bush 1 would have nominated Justice Souter—two Republican appointees who have turned out to be the most liberal members on the Court appointed by Republicans? Those Presidents did not think in terms of ideological balance.

The Senate's tradition, then, has not been to confirm individuals to the Supreme Court who promote special interests or represent certain causes. The Senate has never understood its role to maintain any perceived ideological balance on the Court. To the contrary, the Senate's tradition has been to confirm individuals who are well qualified to interpret and to apply the law and who understand the proper role of the judiciary to dispense justice.

Recent history, of course, is proof of that because in my years in the Senate, but as recently as 10, 12 years ago, when Ruth Bader Ginsburg was before the Senate, we gave overwhelming confirmation to her—a former general counsel of the very liberal group, the ACLU. She replaced a conservative Justice, Byron White, on the Court at that time. The Senate confirmed Justice Ginsburg. Why? Because President Clinton won an election, campaigning on the basis of the kind of people he was going to nominate, and President Clinton did that. That is what the Constitution says the role of the President, the role of the Senate is.

Now, some of my colleagues have said elections have results and the Constitution says the President gets to nominate Supreme Court candidates. Of course, Justice Ginsburg, whether you agree with her or not, had the requisite qualifications to serve on the Court.

Right after her, Justice Breyer came to the Supreme Court, a liberal as well, appointed by President Clinton. But the Senate confirmed that Justice by a big vote. The President made his choice, sent it to the Senate, the Senate found him qualified, and he was confirmed on an up-or-down vote. No filibuster was ever talked about, and no one talked about maintaining any ideological balance on the Court.

The Supreme Court, then and historically, is not the place to play politics. The Court is supposed to be, and as far as I know is, free of politics. But the Democrats and liberal outside interest groups want to change the rules because they did not win at the ballot box. They want to implement their agenda from the Court. Of course, that is a dangerous path, making the Supreme Court a superlegislature. The Constitution does not presume that. Under our checks-and-balances system of Government, we do not want to go down that path. Going down that path will create a standard that will seriously jeopardize the independence of the judiciary and distort our system of Government, a system based upon the judiciary being the arbiter of the war that often—I should say continually goes on between the executive branch of Government and the legislative branch of Government.

Democrats want the Supreme Court to assume an expansive role well beyond what was originally intended by the Constitution and its writers. They want the Court to take on a role that is closer to the role of the legislative branch, which is to make policy and bring about changes in our society.

Now, this has consequences when you go down this road. It has brought about the politicization of the judicial confirmation process that we have seen evidenced, particularly on the Alito nomination, but also on the Roberts nomination, or go back 3 years previous to the holding up of several circuit court nominees before this body through the threat of filibuster or not just the threat but the use of the filibuster.

Politicizing the judicial confirmation process is wrong. That is because when judges improperly assume the role of deciding essentially political questions rather than legal questions, the judicial confirmation process devolves into one focused less on whether a nominee can impartially and appropriately implement law. Instead, it becomes one

more focused on whether a nominee will implement a desired political outcome, and do it from the bench, regardless of the law and regardless of what the Constitution says.

Americans want what the Constitution writers have always called for: judges who will confine their job to interpreting the law as passed by legislative bodies and the Constitution as written rather than having the same group of men and women make policy and societal changes from the bench. We need to reject firmly the notion that the Supreme Court should be in the business of political decisionmaking or in the business of politicians—you and I who were elected to the Senate.

The Constitution provides that the President nominates a Supreme Court Justice and the Senate provides its advice and consent. Alexander Hamilton wrote an awful lot about the role the judiciary was to play and what judges were supposed to do because he had to explain that in relation to the ratification by the original 13 States. So he wrote several papers. But in Federalist 66, he wrote:

[I]t will be the office of the President to nominate, and, with the advice and consent of the Senate, to appoint. There will, of course, be no exertion of choice on the part of the Senate. They may defeat one choice of the Executive, and oblige him to make another; but they [meaning the Senate] cannot themselves choose—they can only ratify or reject the choice he may have made.

The way the Senate provides its advice and consent has been by a thorough Judiciary Committee evaluation, and then by an up-or-down vote in the full Senate. The Judiciary Committee has an important job because its members can ask in-depth questions of the nominee. The committee evaluates whether the nominee has the requisite judicial temperament, intellect, and integrity. The committee also looks to see whether a nominee understands the proper role of a Justice and respects the rule of law and the words of the Constitution over any personal agenda because no Justice should be sitting on the Court who has a personal agenda that he wants or she wants to carry out.

I have been a member of the Judiciary Committee for more than 25 years and take this responsibility seriously, as do my colleagues. I thought Judge Alito did a very good job answering our questions and that he was candid. No doubt he was thorough. As far as I am concerned, he was very responsive.

Judge Alito understands the proper role of the judiciary is not to make the law. He will strictly interpret the law as written and do his best to remain faithful to the actual meaning of the Constitution. As Judge Alito said:

Judges don't have the authority to change the Constitution. The whole theory of judicial review that we have, I think, is contrary to that notion. The Constitution is an enduring document and the Constitution doesn't change. It does contain some important general principles that have to be applied to new factual situations that come up. But in doing that, the judiciary has to be very careful not to inject its own views into the matter. It has to apply the principles that are in the Constitution to the situations that come before the judiciary.

To quote Judge Alito again:

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's a solemn obligation—is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires.

Judge Alito also understands that the Constitution provides justice for all, for everybody. He told the committee this:

No person in this country, no matter how high or powerful, is above the law, and no person in this country is beneath the law.

He said:

Our Constitution applies in times of peace and in times of war, and it protects the rights of Americans under all circumstances.

Judge Alito understands the importance of the independence of the judiciary in our system of checks and balances. We ought to be careful to make sure that we only approve judges who understand that. His colleagues believe Judge Alito will be an independent judge who will apply the law and the Constitution to every branch of Government and every person because Judge Alito knows that no one, including the President, is above the law. When I said ''his colleagues,'' I meant those colleagues who testified before our committee and have worked with him for a long time on that circuit.

One of his colleagues, Judge Aldisert, testified:

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

Former Judge Gibbons, who now represents clients against the Bush administration over its treatment of detainees in Guantanamo, doesn't believe that Judge Alito will ''rubber-stamp'' any administration's policy if it violates the law and Constitution. He said:

I'm confident, however, that as an able legal scholar and a fairminded justice, he will give the arguments—legal and factual—that may be presented on behalf of our clients careful and thoughtful consideration, without any predisposition in favor of the position of the executive branch.

Yet Judge Alito's critics claim he is out of the mainstream. That is what the debate last week was all about from the other side, that he is a judge with an agenda hostile to individual rights, civil rights, women, and the disabled. The truth is, Judge Alito's record has been distorted and mischaracterized. First, a statistical analysis that some try to use of how many times a certain kind of plaintiff wins or loses is not the way we dispense justice in America. It is a bad way to look at a judge's record. It is easy to manipulate and cherry pick cases to reach certain desired conclusions of why somebody should not be on the bench. But the bottom line is, who should win in a case depends on the facts presented in that specific case and what the applicable law says. What is important to Judge Alito is that he rules on specific facts in the case and the issue before the Court, in accordance with the law and the Constitution.

As his colleagues attested, Judge Alito doesn't have a predisposed outcome in cases. He doesn't bow to special interests but sticks to the law regardless of whether the results are popular. That is precisely what good judges should do and what good judging is all about.

Moreover, when you consider all these accusations, look at what the ABA said. They unanimously voted to award Judge Alito their highest possible rating, and that is, in their words, ''well qualified.'' A panel of Third Circuit Court judges—I already referred to two of them—who worked with Judge Alito more than 15 years, in their testimony had unqualified support for Judge Alito as they appeared before the committee. These colleagues didn't see Judge Alito to be an extremist, hostile to specific groups, or with having a personal agenda. They testified about Judge Alito's fairness, his impartiality with respect to all plaintiffs.

Judge Lewis, one I have not quoted yet, described himself to the committee to be ''openly and unapologetically pro-choice'' and ''a committed human rights and civil rights activist.'' But yet a person coming from this end of the legal continuum fully endorsed Judge Alito to the Supreme Court, testifying:

I cannot recall one instance during conference or during any other experience that I had with Judge Alito, but in particular during conference, when he exhibited anything remotely resembling an ideological bent.

The testimony of Judge Lewis continues:

If I believed that Sam Alito might be hostile to civil rights as a member of the United States Supreme Court, I guarantee you that I would not be sitting here today . . . I believe that Sam Alito will be the type of justice who will listen with an open mind and will not have any agenda-driven or result-oriented approach.

Justice Aldisert summarized these judges' testimony best on the day they appeared before the committee when he said:

We who have heard his probing questions during oral argument, we who would have been privy to his wise and insightful comments in our private decisional conferences, we who have observed at firsthand his impartial approach to decision-making and his thoughtful judicial temperament and know his carefully crafted opinions, we who are his colleagues are convinced that he will also be a great justice.

What other conclusion can you come to when you listen to people who have been close to him for a long time? We had a lot of people who worked with him on the court, who were not judges, who also appeared from both political parties. How can you come to any conclusion other than Judge Alito is going

to do what Justices on the Supreme Court ought to do based upon his 15 years on the circuit court, that he is fair and openminded and will approach cases without bias and without a personal agenda?

The people who know Judge Alito best believe, without reservation, he is a judge who follows the law and the Constitution without a preset outcome in mind. They believe he is a man of great integrity, modesty, intellect, and insight. They believe he is a fair and openminded judge, committed to doing what is right rather than committed to implementing a personal agenda.

After hearing all that, some of my colleagues ought to be ashamed of the blue smoke they are making out of this nomination or the ghosts they are putting up to scare us. Judge Alito will carry out the responsibilities that a Justice on the Supreme Court should, and he will do it in a principled, fair, and effective manner.

If Members have any doubt where I stand, I will cast my vote in support of Samuel Alito. This highly qualified nominee deserves to be confirmed to the Supreme Court. I hope my colleagues will see that as well and vote accordingly, particularly on a very tough vote because of the extraordinary majority it takes to also vote to end a filibuster, the first filibuster of the 110 nominees to the Supreme Court. Hopefully, we will never see another extraconstitutional action taken by our colleagues on the floor of the Senate with such a filibuster once again. Vote to end the filibuster late this afternoon and then vote to confirm Judge Alito tomorrow.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. CHAMBLISS). Without objection, it is so ordered.

Ms. STABENOW. Mr. President, this is an incredibly important time in our Nation's history. This is the second Supreme Court nominee to come before the Senate in the past 6 months. We are truly at a time where we are making decisions that will affect our children, our grandchildren, and an entire generation of people. Sandra Day O'Connor, the first woman Justice, and often the critical deciding vote, is retiring, as we know. The nominee who will replace her will have the power to change the direction of the Court and, as I indicated, touch people's lives, affect people's lives and opportunities for a generation.

I take this constitutional responsibility very seriously, as I know my colleagues do. I have closely studied Judge Alito's written opinions, his testimony, as well as the hearing transcript. I commend Senators SPECTER and LEAHY for conducting the hearings in a respectful and bipartisan manner. The Constitution grants all Americans, as we know, the same rights and liberties and freedoms under the law, which is why it is so important that we get this right. These are the sacred values upon which the United States was founded—not just words, but they are values, they are beliefs, they are the motivation for us as we, together, fight for the things we want for our families and work hard every day as Americans to make sure this democratic process works for everybody. We count on the Supreme Court to protect these constitutional rights at all times, whether the majority agrees or whether it is popular. Every American has the same rights under our Constitution.

Judge Alito's nomination comes at a time when we face new controversies over governmental intrusion into people's private lives, from secret wiretaps conducted without a warrant or the knowledge of the FISA Court, to attempt to subpoena millions of Internet searches at random from companies such as Google. One of the most important responsibilities of the Supreme Court is to serve as a check on excessive Government intrusion into people's lives.

In light of where we are today and the issues that this Court will face, it is even more important to have a Justice who will stand up for Americans.

Unfortunately, Judge Alito's record is clear and deeply troubling. When one looks at his writings, his court opinions from over 15 years on the Third Circuit Court of Appeals, and when one looks at the hearing transcripts, there is a clear and consistent record of siding with the government, siding with other powerful interests at the expense of American citizens.

In case after case, whether it is about job discrimination, pensions, illegal searches, or privacy issues, he has been an activist judge who has tilted the scales against the little guy. Often, he has been criticized by his colleagues as trying to legislate from the bench in order to reach the result he desires.

His views are way outside the mainstream, especially in his dissent opinions. There are numerous cases where Judge Alito was the only dissenter, which means he felt strongly enough about his personal views that he objected to what the other 10 judges supported and wrote his own separate opinion on an issue. These dissents give insight into what I believe is an extreme ideology on the most basic of American freedoms, liberties, and rights.

Because of his extreme record and after much deliberation, I concluded that Judge Alito is the wrong choice to replace Sandra Day O'Connor on the U.S. Supreme Court. He may well, as we know, be the deciding vote on issues that affect our children and grandchildren and an entire generation.

His record on workers' protections is outside the mainstream. Our manufacturers are struggling in Michigan, as well as across the country, and every day we see announcements of plant closings and filings of bankruptcy. Michigan families are worried. They are worried that they will not have a job tomorrow. They are worried that they are going to lose their pensions and their health care benefits for themselves and their families. We in Michigan need a Supreme Court nominee who will stand with us, stand with Michigan's workers and families, and Judge Alito is not that nominee.

In Belcufine v. Aloe, a company in bankruptcy did not give its employees the retirement benefits and vacation time they earned before the bankruptcy. Under Pennsylvania law, corporate officers are personally liable for nonpayment of wages and benefits. The employees sued, and Judge Alito sided with the company, saying that the law did not apply once a company filed for bankruptcy. Not only did he side with the CEOs at the expense of their workers' hard-earned wages and pensions, but he legislated from the bench to get the result he wanted.

Judge Greenberg, a Reagan appointee, wrote a strong dissent accusing Judge Alito of trying to rewrite the Pennsylvania law, stating:

> [W]e are judges, not legislators, and it is beyond our power to rewrite the [law] so as to create a bankruptcy exception in favor of statutory employers merely because we believe it would be good for business to do so.

Again, a colleague indicating that, in fact, Judge Alito was writing law instead of just interpreting the law.

In another case addressing pension benefits, the plaintiff had worked in jobs covered by the Teamsters pension fund from 1960 to 1971, had a 7-year break in service, and then worked under the fund again from 1978 until his retirement. The majority on the court held that both periods of employment would be counted when you are calculating his pension benefits, regardless of the break in service. If you are working and then you need to take a break, whether it is illness, caring for a loved one—regardless of the circumstance—if you come back to work under the pension system, you work until retirement, all of the years you worked hard should be counted toward your pension.

Judge Alito dissented, arguing that the first period of employment, a total of 11 years of hard work, should not count, essentially cutting the workers' pension benefits. If his dissent had prevailed—and thank goodness it did not—workers across this country would have their pensions cut, even if they worked 30 years in one job, if there was a gap in their employment. That is not right. If you work hard for 30 years, you should get the entire pension you paid in and you have earned.

The majority once again admonished Judge Alito for ignoring the plain language of the law and trying to legislate from the bench, reminding him that:

> Changes in legislation is a task for Congress and if our interpretation of what Congress has said so plainly is now disfavored, it

is for Congress to cure. We do not sit here as a policy-making or a legislative body.

Judge Alito has had a clear and consistent record when it comes to siding with corporate interests over working Americans and, in many of these cases, he has been out of step with the majority of the court. He dissented on a case to pay reporters overtime pay under the Fair Labor Standards Act. He dissented from a majority opinion that found a company in violation of Federal mining safety standards on a site where they were removing materials from a refuse heap and sending them to powerplants to be processed into electricity. These are laws that exist to protect working Americans, to protect their health and their safety. The recent tragedies in West Virginia have reminded us of how important this is, but Judge Alito argued that the safety standards did not apply to this site.

The same is true for workplace discrimination cases. Time and again, he has voted to make it more difficult for victims of discrimination to get their day in court as Americans.

In Sheridan v. E.I. DuPont de Nemours, a hotel employee sued, claiming sex discrimination. Over the years, she was promoted from a part-time waitress to a supervisory position. She received commendations and bonuses for her work. But after she complained about sexual harassment, she was demoted, and her work environment got worse and worse.

The trial court dismissed the case, and by a vote of 10 to 1, the Third Circuit reversed, saying she had produced enough evidence to warrant a jury trial of her peers. Judge Alito was the lone dissenter, arguing that she had not presented enough proof and that her case should be dismissed. When you are outnumbered 10 to 1, you really are outside the mainstream.

In another dissent, Judge Alito voted to deny a mentally retarded young man the chance to challenge severe abuse and sexual harassment. In his very first job out of high school, he had suffered vicious sexual harassment. He was held down in front of a group of workers, subjected to sexual touching, and he feared he would be raped. Judge Alito would have denied him a trial, not because the facts were disputed but because he felt that the brief was not well written.

Judge Alito even joined an opinion preventing veterans from suing the Federal Government for failing to enforce a law which requires agencies to have plans in place to help veterans gain employment.

The Supreme Court is the ultimate check on Presidential overreaching. However, when he was at the Justice Department, Judge Alito advised to expand Presidential power and argued that ''the President's understanding of a bill should be just as important as that of Congress.'' So, in other words, passing a bill for us is not enough; equal standing is what the President believes it says or wants it to say or his opinion on what it says.

He recommended that when the President signs a bill passed by Congress, he should issue a signing statement announcing his interpretation of the law in order to influence the court's interpretation, essentially creating a backdoor line-item veto.

Why is this important? I had one particular case recently which I will share with you, Mr. President. Last fall, Senator VITTER from Louisiana and I included an amendment in the 2006 Commerce-Justice-State appropriations bill to prevent the pharmaceutical industry from taking advantage of the President's trade promotion authority to insert language that prevents prescription drug importation.

A majority of us in the Senate and in the House believes that we should be able to safely bring retail prescription drugs back into our country for our citizens at a much reduced price. There was also a nearly identical provision put in the House bill, and in the final bill, we basically were saying you can't use trade agreements to stop a policy that is supported by Congress and use it as a backdoor way to stop the reimportation of less expensive prescription drugs for citizens.

Even though this was in the final bill that came to the President's desk, in his signing statement, the President stated that this section was ''advisory.'' We passed a law—bipartisan, House, Senate—and it goes to the President's desk. He signs it but states that this section is advisory and basically backdoor-vetoed this new law. The President can't pick and choose which provisions of a law he will enact when he signs a new law when it is passed by this Congress.

These views of Presidential power are troubling enough, but Judge Alito's record on the bench only reinforces his unwavering support for the government's position in case after case. Whether it is the President of the United States or a low-level official, he has supported the government's position at the expense of Americans' liberties and rights.

One of the most important issues we face today is personal privacy and freedom. We are having this debate in the Senate right now with the PATRIOT Act reauthorization, and we see it in the news reports with the Justice Department seeking unprecedented amounts of information on what Americans look up on the Internet.

When has the government gone too far? It is a question we face in the Senate, and the Supreme Court will have to eventually answer. Unfortunately, in cases involving privacy, security, and protection from unjustified search and seizures, Judge Alito has consistently sided with the government interests.

As an Assistant Solicitor General in the Reagan administration, Judge Alito authored a memo on whether the Justice Department should file a friend-of-the-Court brief in Tennessee v. Garner, a Supreme Court case on the constitutionality of a Tennessee law which allowed police to shoot a fleeing suspect, even when the shooting was intended only to prevent the suspect from escaping and not to protect the officer or the public from harm.

In this case, a 15-year-old boy broke into a house and stole $10 worth of money and jewelry. The police arrived while the boy was in the process of running away. They ordered him to stop. He did not stop. And despite the fact they could see he was unarmed, the officer shot him in the back of the head and killed him. The officer did not shoot this unarmed 15-year-old because he was a danger to others but to keep him from escaping.

The Sixth Circuit found that this law was unconstitutional, but in his memo, Judge Alito argued that the case was ''wrongly decided'' and that this was an issue that should be left to the State legislatures.

The Justice Department did not file a brief in this case, and the Supreme Court ultimately rejected Judge Alito's position and found the law unconstitutional, writing:

> It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that police arrive late or are a little slower afoot does not always justify killing the suspect. A police officer may not seize an unarmed, nondangerous suspect by shooting him dead.

In Doe v. Groody, Judge Alito dissented from a majority opinion written by now Homeland Security Secretary Michael Chertoff to uphold the strip search of a 10-year-old girl and her mother, even though neither was a criminal suspect, presented any risk or was named in the search warrant.

The search warrant specifically limited the search of persons to the suspect, John Doe, but when police arrived, they only found Jane Doe and her 10-year-old daughter inside the house. They took the mother and the little girl to another room and strip-searched them, having them lift their shirts, drop their pants, and turn around.

Judge Chertoff held that the warrant clearly limited police authority to the search of John Doe and not all occupants in the house. Judge Alito dissented, accusing the majority of a ''technical'' and ''legalistic'' reading of the warrant. The warrant was clear, but Judge Alito argued for a broad departure from what was actually written in the warrant in a way that would favor governmental intrusion.

I hear my colleagues from across the aisle saying over and over again that they want judges who will follow the law and not legislate from the bench. Judge Alito ignored the plain language of a search warrant in order to allow the strip search of a 10-year-old girl. How is this not legislating from the bench?

Judge Chertoff certainly thought so. He criticized Judge Alito's view as threatening to turn the requirement of a search warrant into ''little more than the cliche rubberstamp.''

In another case deeply concerning to me, a family of dairy farmers was being forced off their farm by a bankruptcy court. This was in Pennsylvania. It could easily have been in Michigan or anyplace else in the Midwest. When they refused to leave their farm, seven U.S. marshals and a State trooper arrived at their home to evict them by pointing shotguns and semiautomatic rifles at the family. The marshals grabbed a family friend who was also at the house and used him as a human shield. They put a gun to the man's back, led him into another house on the property, and told him: If anything goes wrong in here, you are going to be the first to go down.

The family sued, arguing that the marshals used excessive force. Judge Alito wrote an opinion saying it was reasonable for marshals, carrying out an unresisted civil eviction notice, to point shotguns and semiautomatic rifles at a family sitting in their living room. These people were not criminals. They were not dangerous. They were dairy farmers who had lost their home and their livelihood because of a bankruptcy.

Judge Alito also argued that putting a gun to the man's back and using him as a human shield was not an unreasonable search under the fourth amendment because the marshals never told him that he wasn't free to leave.

A fellow judge on the court dissented and called the marshals' conduct ''Gestapo-like'' since seven marshals had detained and terrorized the family and friends and ransacked a home while carrying out an unresisted civil eviction. But Judge Alito's decision made sure the family never got a trial.

In another dissent, Judge Alito again would have allowed the invasive search of a mother and her teenage son based on a broad reading of a warrant. Mrs. Baker and her three children arrived at the home of her oldest son for dinner in the middle of a drug raid by police. The warrant was limited to the search of her son's home, but when Mrs. Baker and her three children started walking up to the house, the police threatened them with guns, handcuffed them, and dumped Mrs. Baker's purse out onto the ground. They then took her teenage son into the house and searched him. Judge Alito once again dissented to keep a jury from hearing whether the police acted unlawfully by handcuffing, holding at gunpoint, and searching a mother and her teenage children who by happenstance walked up to visit the home of a family member.

This disregard for the personal privacy and freedom of Americans extends to the decision on a woman's right to choose, which affects every woman in this country. In Planned Parenthood v. Casey, Judge Alito voted in dissent to uphold a law requiring a woman to notify her husband before exercising her constitutional right to obtain an abortion. He argued that the spousal notification provision would only restrict a small number of women and didn't substantially limit access to an abortion, even though the women affected may face physical abuse as a result of this requirement. The Supreme Court, including Judge O'Connor, affirmed that the spousal notification provision was unconstitutional, rejecting Alito's argument, comparing it to antiquated 18th century laws that said that women had no legal existence separate from their husbands.

Justice O'Connor eloquently summarized the problem with Judge Alito's position, writing, ''women do not lose their constitutionally protected liberty when they marry.''

These cases are not isolated instances. They are part of a long and consistent record of siding with powerful interests over Americans—people who have had their rights violated, people who have been injured, people who have lost their pensions, people who have been victimized and are asking the court to make things right, make things whole, women in this country who want to know they are respected in their privacy and their most personal decisions, just like men.

For 15 years, Judge Alito has said no. A group of schoolchildren, ages 6 to 8, were being sexually abused by their bus driver. Despite the young age of the children and the fact that the driver had total custody of them when they were on the bus, Judge Alito joined an opinion dismissing the case, arguing that the school superintendent did not have a duty to make sure the children were protected because riding the bus wasn't mandatory.

A disabled student had to drop out of medical school because of her severe back pain that made it difficult for her to sit in classes for hours at a time. She had requested a special chair during class so she could continue her studies and become a doctor. The school failed to accommodate her request, and the Third Circuit ruled that her case should go forward, she should have her day in court. But Judge Alito dissented, arguing that the case should not go to trial; she should not get her day in court. The majority wrote that ''few if any Rehabilitation Act cases would survive'' if Judge Alito's view prevailed.

A college student died at a varsity lacrosse practice. None of the team's coaches were trained in CPR. The nearest phone was 200 yards away on the other side of a 8-foot fence, and there was no ambulance on the field. The Third Circuit ruled to allow the case to move forward, for the family to have their day in court. But once again, Judge Alito said no.

A worker suffered severe injuries after being thrown through the windshield of a garbage truck after the brakes of the truck failed. He brought a products liability lawsuit, arguing that the damaged hydraulic brake lines were a design defect. The Third Circuit ruled in favor of the injured worker, but Judge Alito sided with the company.

When we take a step back and look at the entirety of Judge Alito's record, we see a systematic tilt toward powerful institutions and against the little guy; a long history of writing ideologically driven dissents that are not only out of step with the majority of his peers on the Third Circuit but are way outside the mainstream of America.

Let me say in conclusion, whether it is a family losing their dairy farm, workers losing their pensions, a mentally disabled young man who was the victim of sexual harassment in the workplace, an unarmed 15-year-old boy being shot dead in the back of the head, a strip search of a 10-year-old girl, or the ability of a woman to make her own reproductive health decisions, Judge Alito has consistently said no to the daily concerns of average Americans.

Now we are being asked not just to confirm a nominee who has spent 15 years tipping the scales of justice against those Americans but to confirm a judge who will replace Sandra Day O'Connor, a woman who was a consensus builder, a uniter on the U.S. Supreme Court.

Based on this record, I cannot in good conscience cast my vote for Samuel Alito to be Associate Justice of the U.S. Supreme Court. The Supreme Court is the ultimate check on Presidential overreaching. And over and over again, we see this judge siding against Americans.

We can do better than this nominee at this critical time in American history, and I urge my colleagues to join me in voting no on this nominee.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, on countless nominations Democrats have joined Republicans and Republicans have joined Democrats to send a judicial nomination to the floor with a powerful, bipartisan vote. Chief Justice Roberts came to the floor 13 to 5. Justice Breyer came to the floor unanimously. Justice Ginsburg came to the floor unanimously. Justice Breyer won on the floor 87 to 9; Justice Ginsburg, 97 to 3; and Chief Justice Roberts, 78 to 22.

But, in this case, Judge Alito comes to the floor in a straight party line, particularly divided vote. In a divided country, at a time of heightened partisan tensions, at a time of ideology often trumping common sense or broad public interest, the President has chosen to send a Supreme Court nominee who comes directly out of a revolt by the ideological wing of his party in order to satisfy their demand for ideological orthodoxy.

Some people obviously delight in that. We have read about that today in the New York Times. And that is their right. But most don't. Most don't think that is the way to pick a Supreme Court Justice. It doesn't mean it is good for the country, it doesn't mean it fills our current needs, and it doesn't mean it is even the right thing to do.

As we approach this nominee, we can't forget that he was not the President's first choice. His first choice was Harriet Miers, and opposition to her nomination came not from Democrats but from the far right of the Republican Party. They challenged her ideological purity with such conviction that the President capitulated to their demands and gave them Judge Alito instead—a nominee who they received with gleeful excitement.

Jerry Falwell ''applaud[ed]'' his appointment. Ed Whelan called it ''a truly outstanding nomination.'' Rush Limbaugh called the nomination ''fabulous.'' Ann Coulter and Pat Buchanan raved about how it would upset liberals. This rightwing reaction can only mean one thing: they know what kinds of opinions Judge Alito will issue—opinions in line with their extreme ideology.

All of this is to be contrasted with the standard set out by Justice Potter Stewart. He said:

> The mark of a good judge is a judge whose opinions you can read and . . . have no idea if the judge was a man or a woman, Republican or Democrat, a Christian or Jew . . . You just know that he or she was a good judge.

What he is saying is not really limited to the status of religion, gender, or politics, or any other trait by which we categorize people. He is saying that a good judge through all their decisions shows no discernible pattern of identity that pigeonholes that judge except for the purity of their legal reasoning, their genuinely open-minded approach to judging.

But in Judge Alito we do see patterns—patterns which demonstrate a bias towards the powerful, patterns which demonstrate a lack of skepticism towards government overreaching, and patterns which demonstrate a hostility to the disadvantaged and the poor. This doesn't mean that Judge Alito never rules in favor of an individual suing the government for an unlawful search or a minority suing a corporation for unlawful discrimination. But it does mean that in the overwhelming majority of cases he has not. And this raises the question of whether he approaches each case with an open mind or whether he comes with a bias that can only be overcome in the rarest of circumstances.

So why should the debate on Judge Samuel Alito continue now? Well, to begin with, there hasn't been that much debate on this nomination in the first place—a nomination of extraordinary consequence. It came to the floor on Wednesday the 25th, and cloture was filed the very next day on Thursday. To this moment, not more than 25 Democratic Senators have had a chance to speak. At this time, the Senate has spent a total of 25 hours on a nomination that will last a lifetime.

The direction our country will take for the next 30 years is being set now and this is the time for debate. This is the time when it counts. Not after the Supreme Court has granted the executive the right to use torture, or to eavesdrop without warrants. Not after a woman's right to privacy has taken away. Is history going to care what we say after the courthouse door is slammed in the faces of women, minorities, the elderly, the disabled, and the poor? No. Except to wonder why we didn't do more when we knew what was coming.

Obviously, I have heard some people try to argue that exercising our rights is ''obstructionist.'' But did people suggest it was obstructionism when the extreme rightwing of the Republican Party scuttled the nomination of Harriet Miers? How many times have we heard our colleagues come to the floor and demand that judicial nominees get an up-or-down vote? She never got an up or down vote. She never even got a hearing. Yet a minority in the Republican Party was able to stop a nominee that they considered unfit for the Supreme Court.

It is hardly obstructionist to use, as the former chair of the Judiciary Committee Senator HATCH described it, ''one of the few tools that the minority has to protect itself and those the minority represents.'' That is exactly what we are doing here. That is why we have the Senate and the rules we live by. We are protecting basic rights and freedoms that are important to every American: privacy, equality, and justice.

It is important to remember that the rights we are expressing concern about didn't come easily. Access to the court house, civil rights, privacy rights, voting rights, antidiscrimination laws—all of these were hard fought for. They came with bloodshed and loss of life. Their achievement required courage and determination. None of these basic rights were written into law without a fight, and still today it requires constant vigilance to make sure they are enforced and maintained. That commitment for vigilance is one of the characteristics that should leap out in a Supreme Court nominee.

We should remember that even though the 13th, 14th, and 15th amendments outlawed slavery, provided for equal protection under the law, guaranteed citizenship, and protected the right to vote for African American Americans, the fact is the Federal Government took very little action to enforce them until the 1960s. Few politicians were willing to take a stand—to fight for the rights of African Americans. Something besides grassroots pressure was ultimately needed to prompt the Congress into action. That something was the unanimous Supreme Court decision in Brown v. Board of Education.

Imagine if the Court had not enforced the equality guaranteed by the 14th amendment. Imagine if it still had the ideological outlook it had when Plessy was decided. Or when Dredd Scott was decided. Two of the most ideologically driven—and regrettable—decisions ever. Segregation would still be a fact of life. African American children would be forced to attend their own schools, would be receiving an inferior and inadequate education. And, there would have been no catalyst to start the civil rights movement.

So a vote for a Supreme Court nominee is in fact a vote for the rights and freedoms we care about and fight for. That is exactly what this vote is.

There is no question in anyone's mind. Samuel Alito will have a profound impact on the Supreme Court. This is a pivotal moment in history for the Court. You only need to look at his past opinions to know that much.

Let me share with you the story of David D. Chittister. On February 14, 1997, David requested sick leave from the Pennsylvania Department of Community and Economic Development, where he worked. He was granted leave, but approximately ten weeks later, his leave was revoked, and he was fired. David knew that the Family Medical Leave Act guaranteed him 12 weeks of sick leave. So he sued the Pennsylvania Department of Community and Economic Development for firing him during that time.

Put yourself in David's shoes. Imagine that you become sick. You become so sick that you are hospitalized, completely unable to work. The only reason that you can afford your treatment is because you are still employed. And above all you believe that you are protected by the Family Medical Leave Act.

Now imagine that Judge Alito is on the Supreme Court. He is one of the nine voices that gets to decide whether the Family Medical Leave Act is constitutional. And he votes the way he did on the Third Circuit, invalidating that part of the Family Medical Leave Act which guarantees an individual 12 weeks of sick leave and applies to you. You are out of luck as you face mounting medical bills without any source of income.

This is not hypothetical. That is the decision he made. Health care is a very real problem for many more Americans than ever. Many of us have been pushing for a national approach to health care for years. Our citizens can't get the sick leave they need to take care of themselves. They cannot get adequate health insurance—coverage isn't what it should be. The Family Medical Leave Act was a step in the right direction to deal with family values and health needs. It made sure that people could take the time they needed when they became seriously ill without losing their income. It was enacted with overwhelming bipartisan support in a 71 to 27 vote. But if Judge Alito were on the Supreme Court and he follows his own precedent, it would no longer protect State employees.

So I ask my colleagues who voted for the Family Medical Leave Act: didn't we do exactly want we meant to do? Didn't we need to protect all workers? So is it right, now, to put a person on

the Supreme Court who will undo the good that we did with that legislation?

Take another example. Many of us have talked on the floor about how Judge Alito routinely defers to excessive government power. And how he is willing to overlook clear fourth amendment violations in the process. This may seem abstract to a lot of people right now, but listen to the facts of this case.

A family of farmers, the Mellotts, fell on hard times. They had to declare bankruptcy and were ordered to leave their farm—like a lot of farmers these days. They asked for permission to appeal and were denied. They asked that the judge be disqualified and were denied. They didn't accept the eviction order and refused to leave their farm. So the marshals were sent to evict them.

When Bonnie Mellott answered the front door, a deputy marshal entered, pointed his gun ''right in her face,'' pushed her into a chair, and kept his gun aimed at her for the remainder of the eviction. Another deputy entered, ''pumped a round into the barrel'' of his sawed-off shotgun, pointed it at Wilkie Mellott, and told him ''to sit still, not move and to keep his mouth shut.'' When he did this, the marshals knew Wilkie Mellott was recovering from heart surgery.

But that wasn't all. Another marshal ran into the kitchen where a guest was on the telephone with a local sheriff. He ''pumped'' his semi-automatic gun, ''stuck it right in [her] face and . . . said: 'Who are you talking to, hang up the phone.''' When she continued talking, the marshal put his gun ''to the back of her head'' and repeated the order.

I won't go into further details, but you get the picture. Now obviously the Mellotts were in the wrong to stay in their farm. They were ordered by the court to leave, and they should have. We all understand that.

But there is no fact in evidence suggesting that once the marshals got in the house there was resistance—no facts suggesting there was need for force or intimidation. Nothing justified running into a house, waiving sawed-off shotguns and screaming at the occupants. These folks weren't criminals. They weren't armed. They weren't resisting arrest. You know what, it is tough enough to get kicked off your property; it is another thing to be treated like a felon, absent cause, with pumped shotguns shoved in your face. Most reasonable people would conclude that the government's actions were excessive. But Judge Alito did not, and he wrote the majority opinion for two of the three judges hearing the case calling the law enforcement conduct reasonable. The dissenting judge disagreed. He said that once the marshals arrived and realized that the Mellotts were neither armed nor dangerous, the use of force was ''clearly not objectively reasonable.''

Where do you come out on this? Which view do you want on our Supreme Court?

Let me also share another story this one about Beryl Bray. Beryl was an African-American female who worked her way up from a room attendant to a Housekeeping manager for Marriott Hotels in less than three years. When the position of Director of Services opened up, Beryl applied. A Caucasian woman got the job, and Beryl sued claiming discrimination.

Now, as a Housekeeping manager, Beryl probably did not make a lot of money. She probably used a lot of her resources to bring her discrimination claim. She wanted her day in court. If Judge Alito had his way, she wouldn't have gotten it. Critical facts were in dispute. Facts which, if resolved as Beryl claimed they should be, would establish a clear case of discrimination. As the lawyers here know, the factual disputes should have been resolved by a jury of her peers. Beryl was entitled to her day in court. Judge Alito, however, did not agree. He would have resolved the facts on his own in favor of Marriott Hotels. He would have ended the case then and there.

Or let's talk about Harold Glass. Mr. Glass worked at Philadelphia Electric Company, of PECO as it is known, for 23 years before he retired. While working full-time, Harold attended school to improve his career opportunities. Over the years, he earned two associate degrees, a bachelor of science degree in industrial and management engineering and a bachelor of science degree in engineering.

In addition to his full-time work and continuing education, Harold was a long-time activist on behalf of PECO employees. In 1968, he helped organize the Black Grievance Committee to respond to problems of racial fairness, including inadequate representation of minorities by PECO's uncertified labor organization. He served as an officer. He represented employees in handling routine individual grievances before management and negotiated with management about employee concerns. In addition, he took the lead in organizing witnesses in three legal actions against PECO concerning racially discriminatory employment practices.

Over the years, Harold applied for promotions to new positions, but each time he was rejected. In addition, he was not able to apply for positions he would have liked to have because they were never posted by the company. This despite the fact that, in 23 years of employment with PECO, Harold received only one performance evaluation which was less than fully satisfactory—when he was serving as a junior technical assistant. Harold claimed that racial harassment at that time from his coworkers and a hostile work environment had affected his job. But the trial judge did not allow him to demonstrate these facts.

On appeal, a divided three-judge panel reversed the trial judge's decision. Two of Judge Alito's colleagues believed that Mr. Glass should have been allowed to present the evidence of racial discrimination to the jury. Judge Alito, however, disagreed. He thought that allowing Mr. Glass to tell his side of the story might cause ''substantial unfair prejudice.'' He called the trial judge's refusal to allow Mr. Glass's evidence ''harmless.''

Harmless. Was it harmless to Mr. Glass? What do you think? Do you think its harmless error to keep a discrimination plaintiff from showing evidence of discrimination? I think most reasonable people would disagree with Judge Alito.

I believe that is the problem here: Judge Alito has demonstrated a pattern of looking at discrimination claims with a high degree of skepticism. In the dozens of employment discrimination cases involving race that Judge Alito has participated in, he ruled in favor of African Americans on the merits in only two instances. He has never authored a majority opinion favoring African Americans in such cases. He has dissented from rulings of his colleagues in favor of African-American plaintiffs, and in doing so has required an unrealistic amount of evidence before he is willing to step in on behalf of wronged individuals. He is not willing to give them the benefit of the doubt even to just let a jury decide their case.

This is an unacceptable view of the way our country works. Americans know that what sets us apart from almost any other country is the right of any citizen no matter where they come from, what their lot in life is to have their day in court. That is what makes America special. This little guy can hold the big corporations accountable.

Our nation is defined by the great struggle of individuals to earn and protect their rights—particularly the disadvantaged. We have worked hard to ensure that no one is denied their civil rights. Judge Alito's track record casts serious doubt on his commitment to that struggle. The legislation we pass protecting individuals against discrimination requires the courts to fully enforce it. And we just don't keep faith with ourselves if we empower individuals to sue large corporations who act unlawfully and then have the courts refuse to hold them accountable.

Judge Alito's hostility to civil rights claims is not my observation alone. It is an observation shared by many people who have reviewed his record. Let's not forget that after reviewing more than 400 of Judge Alito's opinions, law professors at Yale Law School—Judge Alito's alma matter—concluded that:

> In the area of civil rights law, Judge Alito consistently has used procedural and evidentiary standards to rule against female, minority, age and disability claimants. . . Judge Alito seems relatively willing to defer to the claims of employers and the government, over those advancing civil rights claims.

That is the opinion of those who have studied his record. Similarly, Knight-

Ridder concluded that Judge Alito ''has worked quietly but resolutely to weave a conservative legal agenda into the fabric of the nation's laws'' and that he ''seldom-sided with . . . an employee alleging discrimination or consumers suing big business.''

Judge Alito may believe that it is his duty to keep these types of cases away from the jury. He may, and in fact probably does, believe that he is doing the right thing. That is his right. But, it is my right to judge the facts of these cases and disagree. It is my right to say that the record of his reaction to the same facts should not be elevated to the Supreme Court.

A fair amount has been said about Judge Alito's endorsement of the unitary executive theory. This is a complicated and somewhat abstract theory of constitutional interpretation, but if it is ever endorsed by a majority of the Court, it will have a significant practical impact on our everyday lives.

What it says is that the President alone is responsible for enforcing the laws. At its most simplistic, it seems somewhat reasonable: Congress makes the laws, the President enforces the laws, and the judiciary interprets the laws. The theory, in fact, dates back to the administration of Franklin Roosevelt, and it has been championed by liberal and conservative scholars and administrations as a way of asserting the President's ability to retain control over independent agencies. But, use of the theory in recent times has been changing.

During Judge Alito's tenure, the Reagan administration developed new uses for the theory. It was used to support claims of limitless presidential power in the area of foreign affairs—including the actions that became the Iran-contra affair. And, this view of Presidential power has been carried on by the current Bush administration, claiming in Presidential signing statements, that the President can ignore antitorture legislation overwhelmingly passed here in Congress. Not only is the substance of that message incredible, but the idea that the President can somehow alter congressional intent—the meaning of legislation agreed upon by 100 Senators—with a single flick of a pen is absolutely ludicrous. It turns the meaning of legislative intent on its head.

In the hearings, Judge Alito attempted to downplay the significance of this theory by saying it did not address the scope of the power of the executive branch, but rather, addressed the question of who controls the executive branch. Don't be fooled by that explanation. The unitary executive theory has everything to do with the scope of executive power.

In fact, even Stephen Calabresi, one of the fathers of the theory, has stated that ''[t]he practical consequence of this theory is dramatic.'' It is just common sense that if the unitary executive theory means that the President can ignore laws that Congress passes, it necessarily expands the scope of Presidential power—and reduces the scope of Congress.

Judge Alito had numerous opportunities in the hearings to define the limits of the unitary executive, but he refused to answer my colleagues' questions. He didn't answer when Senator LEAHY asked him whether it would be constitutional for the Congress to prohibit Americans from using torture. He didn't answer when Senator DURBIN asked whether he shared Justice Thomas's view that a wartime President has inherent powers—beyond those explicitly given to Congress. He didn't answer when Senator FEINGOLD asked what, if any, limits there are on the President's power.

We all understand that under article II, the President has primary responsibility for the conduct of foreign affairs. But, the idea that the President can simply disregard existing law or redefine statutory limits at will in the areas of foreign affairs, national security, and war is a startling one. And it is one that I cannot accept.

We needed to know what limits Judge Alito would place on the executive branch. We needed him to go beyond simple recitations of Supreme Court case law. We needed to know what he actually thought.

Sadly, however, Judge Alito did not give us those answers. In fact, he failed to give us answers on many questions of critical importance. He refused to answer questions from Senator LEAHY, Senator KENNEDY, Senator FEINGOLD, and Senator BIDEN on the question of the power of the presidency. He refused to answer questions from Senator SCHUMER, Senator DURBIN, and Senator FEINSTEIN on whether Roe v. Wade was settled law—an answer that even Chief Justice Roberts was willing to give. He refused to answer Senator LEAHY's questions on court stripping; Senator LEAHY's and Senator FEINSTEIN's questions on congressional power and the commerce clause; Senator FEINGOLD's questions on affirmative action and criminal law; Senator SCHUMER's questions on immigration.

These are all questions about issues that routinely come before the Court. Judge Alito had an obligation to answer them. He had an obligation to explain and clarify the positions he took in his speeches, judicial opinions, and Justice Department memoranda. But he did not.

Why are we supposed to think that is OK? Since when is it acceptable to secure a lifetime appointment to the Supreme Court by hiding behind a smokescreen of nonanswers?

I understand that, for many, voting for cloture on a judicial nomination is a very difficult decision, particularly on this Supreme Court nominee. I also understand that, for some of you, a nomination must be an ''extraordinary circumstance'' in order to justify that vote. I believe this nomination is an extraordinary circumstance. What could possibly be more important than this?

This is a lifetime appointment to a Court where nine individuals determine what our Constitution protects and what our laws mean. Once Judge Alito is confirmed, we can never take back this vote. Not after he prevents many Americans from having their discrimination cases heard by a jury. Not after he allows more government intrusions into our private lives. Not after he grants the President the power to ignore Federal law under the guise of protecting our national security. Not after he shifts the ideological balance of the Court far to the right.

As I have said before, Judge Alito's nomination was a direct result of the rightwing's vehement attacks on Harriet Miers, an accomplished lawyer whose only failing was the absence of an ideologically bent record. The rightwing didn't wait for the next nominee. The rightwing didn't leave any of the tools in their arsenal unused. The rightwing attacked with every option available to them to prevent Harriet Miers' confirmation, secure in their conviction that it was the right thing for them to do.

We believe no less. And we should do no less. We did allow the confirmation of three of the most objectionable appellate court nominees. There was no talk of prolonged debate on Chief Justice Roberts. Now we are presented with a nominee whose record raises serious doubt about serious questions that will have a profound impact on everyday lives of Americans. What on Earth are we waiting for?

Many on my side oppose this nomination. They say they understand the threat he poses, but they argue that cloture is different. I don't believe it is. It is the only way that those of us in the minority have a voice in this debate. It is the only way we can fully complete our constitutional duty of advice and consent. It is the only way we can stop a confirmation that we feel certain will cause irreversible damage to our country.

I will oppose cloture on the nomination of Judge Alito. And, I sincerely hope my colleagues will join me.

The PRESIDING OFFICER. The assistant majority leader is recognized.

Mr. MCCONNELL. Mr. President, I rise today in support of the nomination of Samuel A. Alito, Jr., to be an Associate Justice of the Supreme Court. We are familiar with Judge Alito's academic and professional qualifications. He graduated from Princeton and Yale Law School, where he served as editor of its prestigious Law Journal. He spent his life serving his country as a captain in the Army Reserve, as an assistant, and then as U.S. attorney in New Jersey, and for the past 15 years as a distinguished judge on the Third Circuit Court of Appeals, to name a few of his qualifications with which we are all quite familiar at this point in the process.

Equally important is his deserved reputation for fairness and for integrity and his measured approach to the

law. The American Bar Association, hardly a bastion of conservatism, found this out during its exhaustive review of its record. The ABA solicited the views of 2,000 people, including 130 Federal judges and every Supreme Court Justice. After that, the ABA awarded Judge Alito its highest rating, unanimously well qualified. What that means is that every member of the committee of the ABA gave Judge Alito the highest possible mark. It is like getting straight A+'s on your report card.

Let me repeat that since some who are watching and listening have undoubtedly heard the attacks by Judge Alito's most vociferous opponents: The ABA, the largest professional association of lawyers in the country, found Judge Alito to be unanimously well qualified for the Supreme Court. In the past, this rating was referred to by our friends on the other side of the aisle as the gold standard.

More insightful than the ABA's rating is the testimonials of those who know Judge Alito best, his colleagues and his coworkers. Although they possess different political philosophies, Judge Alito's colleagues enthusiastically praise him as ''thoughtful, intelligent, and fair'' and a judge who ''has a great respect for precedent-setting decisions.'' To most people, that sounds like the kind of Justice we would want on the Supreme Court.

Judge Timothy Lewis served with Judge Alito for 7 years during which Judge Lewis typically voted with the court's liberal members. He recounted how when he joined the Third Circuit in 1992 he consulted his mentor, the late Judge A. Leon Higginbotham, Jr., who was a Carter appointee, a former chief judge of the court and a scholar of U.S. racial history. According to Judge Lewis, Judge Higginbotham said:

> Sam Alito is my favorite judge to sit with on this court. He is a wonderful judge and a terrific human being. Sam Alito is my kind of conservative. He is intellectually honest. He doesn't have an agenda. He is not an ideologue.

That is the late Judge Leon Higginbotham. Judge Lewis added his own experience bore out Judge Higginbotham's evaluation. Judge Lewis said Sam Alito ''does not have an agenda'' and ''is not result-oriented. He is an honest conservative judge who believes in judicial restraint and judicial deference.'' He ''faithfully showed a deference and deep respect for precedent.''

That is liberal Judge Lewis of the Third Circuit.

Another former chief judge of the Third Circuit, Edward Becker, similarly praised Judge Alito. Here is what he had to say:

> I found him to be a guy who approached every case with an open mind. I never found him to have an agenda. I suppose the best example of this is in the area of criminal procedure. He was a former U.S. attorney, but he never came to a case with a bias in favor of the prosecution. If there was an error in the trial, or a flawed search, he would vote to reverse.

Judge Becker noted that Judge Alito is ''very principled, very analytical, never decides more than he has to in a case. He does believe in judicial restraint in the way he writes opinions, with no ideological overtones.''

The Third Circuit current chief judge, Anthony Scirica, succinctly said:

> . . . whatever quality you think a judge ought to have, whether it's scholarship or an ability to deliberate, or fairness or temperance, Sam has each one of these to the highest degree.

That is the current chief judge of the Third Circuit.

These reflections, which include three former or current chief judges of the Third Circuit, are echoed by Judge Alito's former law clerks, many of whom are self-described committed Democrats. Jeff Wasserstein clerked for Judge Alito in 1998. Here is what he had to say:

> I am a Democrat who always votes Democratic, except when I vote for a green candidate—but Judge Alito was not interested in the ideology of his clerks. He didn't decide cases based on ideology.

Mr. Wasserstein recounts how in one criminal case the defense attorney had submitted a sloppy brief while the prosecutor had submitted a neat, presentable brief. Mr. Wasserstein says that in his youth and naivete he suggested to Judge Alito it would be easy to decide the case for the Government. But Judge Alito stopped him ''cold by saying that was an unfair attitude to have before I had even read the briefs carefully and conducted the necessary additional research needed to ensure that the defendant had received a fair hearing.''

Mr. Wasserstein's simple anecdote illustrates how Judge Alito approaches each case fairly and with an open mind. He observes that Judge Alito has a ''restrained approach to the law.''

Another former law clerk, Kate Pringle, who worked for Senator KERRY, whom we heard speak a few moments ago, for his Presidential campaign, describes herself as a left-leaning Democrat and a big fan of Judge Alito's. She rejects the notion that Judge Alito is an ideologue, stating he ''pays attention to the facts of the cases and applies the law in a careful way. He is a conservative in that sense. His opinions don't demonstrate an ideological slant.''

That is Kate Pringle, law clerk of Judge Alito and Kerry supporter for President in 2004.

In light of the accolades from those who know him best, in light of his brilliant academic and professional achievement, in light of receiving the highest possible rating by America's largest association of his peers, the ABA, I was hopeful the Senate would provide Judge Alito with a fair and dignified process. Sadly, this has not been the case.

In the Senate we have known for over 200 years, a judicial nominee with Judge Alito's character, ability, and achievement would command a large bipartisan majority of support. Now it appears Judge Alito will not get that tomorrow. Why is that? It is because there has been a change in the standards by which the Senate considers qualified judicial nominees. In my view, it has not been a change for the better.

According to the New York Times, in early 2001, some of our Democratic colleagues attended a retreat where law professors such as Larry Tribe and Cass Sunstein implored them to ''change the ground rules'' with respect to how the Senate considered judicial nominees by injecting a political ideology test into the confirmation process. Soon after that meeting, some of our friends initiated a premeditated and sustained effort of serial filibusters of circuit court nominees. We saw a lot them. Those most passionate for this tactic thereby wrote a new and sad chapter into the pages of Senate history.

Like many Republicans and Democrats, I had hoped this sad chapter of trying to deny judicial nominees a simple up-or-down vote would recede into memory as a mere footnote in a long and proud history of the Senate. Unfortunately, today some are trying to revive it with the Alito nomination.

We stand today on the brink of a new and reckless effort by a few to deny the rights of many to exercise our constitutional duty to advise and consent, to give this man the simple up-or-down vote he deserves. The Senate should repudiate this tactic, and it will have an opportunity to do that at 4:30 this afternoon.

There is a role for the filibuster for legislative matters. Although I may disagree with its application in a particular legislative case, I neither deny the tactic nor begrudge it when a colleague employs that tactic when there is good reason to do so. I have done so on many occasions myself. I have not seen a good reason for employing it in the context of judicial nominations. Nor did any Senate prior to the last Congress find that tactic should be employed for judicial nominations.

It certainly is not warranted in the case of Judge Alito. He is clearly qualified. His friends, his peers, and, indeed, his entire life story tell us so.

During his hearings and despite the best efforts of those opposed to his nomination, he acquitted himself admirably. Over 18 hours of testimony he was asked 677 questions and was able to answer 659 of them—truly an impressive feat. In doing so, Judge Alito demonstrated an impressive command of the law and a model judicial temperament.

Now, while Judge Alito conducted himself with grace and dignity, unfortunately, some Senators did not. In fact, those who listened most attentively to the outside pressure groups, such as one whose top lobbyist declared ''you name it, we'll do it to defeat Judge Alito,'' could have learned a thing or two about grace and dignity

by watching Judge Alito perform in the face of the most absurd and baseless charges.

Despite the repeated efforts to caricature Judge Alito, the public's support for him only increased. After the hearing, the only thing the American public was concerned about with respect to Judge Alito was the sometimes shabby treatment he received.

With Stephen Breyer and Ruth Bader Ginsburg, Republicans resisted playing base politics and instead measured those two nominees by the traditional confirmation standard of integrity and legal excellence and not a political ideology standard. We did not grandstand on the colorful—to put it delicately—statements Justice Ginsburg had made decades before her nomination such as possibly abolishing Mother's Day and Father's Day and statements about purported constitutional rights to prostitution and polygamy, to name a few. Nor did Republicans seek to disqualify Judge Ginsburg from further judicial service because of her longstanding leadership of the ACLU and the controversial positions it often takes.

And Republicans did not succumb to the idea of a reckless filibuster to gain the approbation of a newspaper or an interest group.

If Republicans had wanted to demagogue and defeat the Ginsburg nomination, we could have done the things to Justice Ginsburg that have been done to Judge Alito. In fact, with her highly controversial writings and advocacy for the ACLU, it would have been a lot easier to do so, but we exercised self-restraint and self-discipline for the good of the country.

In conclusion, I implore my Democratic friends to consider that to engage in these tactics is neither fair nor right. If this hyperpoliticization of the judicial confirmation process continues, I fear in this moment we will have institutionalized this behavior, and some day we will be hard pressed not to employ political tests and tactics against a Supreme Court nominee of a Democratic President. In that case, no one—Republican or Democrat—will have won.

I urge my colleagues to desist in this tactic of turning the confirmation process of a judge into the functional equivalent of a political campaign. It is shortsighted, and we will mourn the day this tactic became the norm.

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

The PRESIDING OFFICER (Mr. HATCH). Without objection, it is so ordered.

Mr. CHAMBLISS. Mr. President, the Committee on the Judiciary has recommended that we consent to the President's nomination of Samuel A. Alito, Jr. as Associate Justice of the Supreme Court of the United States. I concur in that recommendation. I am convinced that Judge Alito will make an outstanding addition to the Supreme Court and will be faithful to his judicial oath in neutrally applying the law without imposing his personal, political or ideological views to circumvent the law or the Constitution.

First, I wish to commend Chairman SPECTER and my former colleagues on the Judiciary Committee—including the Presiding Officer—for conducting nomination hearings which established clearly Judge Alito's fitness to serve on the Nation's highest Court. I followed closely Judge Alito's responses to questions during the hearings. I was impressed by his profound patience, sincerity, and dedication to the ethical restraints which compel all nominees to refrain from prejudicing any matter which may come before the court. Many of my colleagues have complained that Judge Alito ''did not answer some questions.'' Their real complaint rather, is that they simply didn't like his answers. Judge Alito quite properly declined, as have all prior nominees to the Court, to address in advance specific matters which may come before them. As Judge Alito stated:

> If a judge or a judicial nominee announced before even reading the briefs or getting the case or hearing the argument what he or she thought about the ultimate legal issue, all of that would be rendered meaningless, and people would lose all their respect for the judicial system, and with justification, because that's not the way in which members of the judiciary are supposed to go about the work of deciding cases.

That statement, and the time-honored concept which it embodies, is profoundly important. Surely, those of my colleagues who have criticized Judge Alito in this regard know better. Surely, they do not want Justices on the Court to signal in advance how they will rule on cases. To the extent they do, they will be judged by the American people as perverting our constitutional system itself.

Others have criticized Judge Alito because he may hold personal, political, or ideological views. We all hold personal views. But the role of a judge, unlike that of a legislator, is to apply the law without respect to his or her personal, political, or ideological views. Judge Alito has demonstrated not only his ability to do this during 15 years of service as a judge on the United States Court of Appeals for the Third Circuit, but his commitment to this principle in responding to questions during his confirmation hearings.

Fidelity to the Constitution and commitment to the rule of law without respect to one's personal views is, at the end of the day, the only principle that provides legitimacy to the Federal judiciary—the only unelected branch of our government. The unelected status of the judiciary was, correctly, viewed with particular suspicion by the Founders, lest that unique status permit judges to impose their own views under the guise of judicial decisions, without direct accountability to the American people. In a letter to Spencer Roan, March 9, 1821, Jefferson stated:

> The great object of my fear is the federal judiciary. That body, like gravity, ever acting with noiseless foot and unalarming advance, [is] gaining ground step by step. . . . Let the eye of vigilance never be closed.

And so that vigilance now rests upon this body. Let us be vigilant in insisting that justices of the Supreme Court, and all other Federal judges who are presented to us, are sufficiently committed to the rule of law.

As I noted during my remarks concerning the nomination of Chief Justice Roberts at a time when too many of those in the judicial branch have sought to use their lifetime tenured position to advance their own personal, ideological, or political preferences in deciding matters which come before them; at a time when too many within the legal, media and political elites have sought to recast the role of the judiciary into a superlegislature, approving of, and even urging judges to supplant their views for those of the elected representatives of the American people—we should be reminded that such actions and such views on the part of some are anticonstitutional and contrary to the rule of law itself.

Describing his own fidelity to the Constitution and to the rule of law, Judge Alito told the Committee on the Judiciary:

> A judge can't have an agenda. A judge can't have a preferred outcome in any particular case. And a judge certainly doesn't have a client. A judge's only obligation—and it's a solemn obligation—is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires.

The standard for rendering advice and consent, which I outlined in my statement concerning Chief Justice Roberts, is the standard I will apply to Judge Alito as well. That standard—demonstrated commitment to the rule of law and fidelity to the Constitution—is amply met by Samuel A. Alito, Jr. I am pleased to support his nomination and will certainly vote to confirm him as Associate Justice of the Supreme Court. I urge my colleagues to do likewise.

Make no mistake about it. The American people do not want to see an obstructionist attitude in their legislative body. The American people are not benefited by an obstructionist attitude. An obstructionist attitude towards Judge Alito means not moving forward with affirming a cloture vote and then confirming Alito to be Associate Justice of the Supreme Court. The American people are best served by a bipartisan attitude in this body. I hope when the cloture vote is made at 4:30 we will see not just the 60 votes needed to not allow a filibuster but that we will see a strong bipartisan vote in support of moving ahead with giving Judge Alito an up-or-down vote on the floor of the

Senate. And tomorrow morning, when we consider the confirmation of Judge Alito, I certainly hope that once again we will see a strong bipartisan vote confirming Judge Alito as the next Associate Justice of the Supreme Court.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, how much time does the Senator from New Mexico have allotted?

The PRESIDING OFFICER. The majority controls the time until 2 p.m.

Mr. DOMENICI. I yield myself the time until 5 minutes of 2, and I ask unanimous consent that Senator ALEXANDER and I be permitted to use 5 minutes of that time to speak to an unrelated subject.

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

PROTECTING AMERICA'S COMPETITIVE EDGE

Mr. DOMENICI. Mr. President, today I rise to speak about a very important issue, the competitiveness of the United States and our future standard of living and whether we are going to develop the brainpower in America to meet the challenges of the future.

I compliment two Senators who initiated this endeavor—LAMAR ALEXANDER of Tennessee and JEFF BINGAMAN of New Mexico. They asked me, as chairman of the Energy Committee, if they could pursue a study with recommendations about how to achieve competitiveness. They did that. Now we have the results of that evaluation in a major report hereinafter to be called the Augustine report, named after Dr. Augustine, former president of Lockheed Martin. Many people know of him in many capacities. That report recommends 20 specific ideas to get America back on the track of competitiveness in the world.

Today I want to tell Senators and the world that in a day of confrontation and partisanship the implementation of that study is encapsulated in three bills. The bills now have 53 cosponsors. Of those, 29 are Republicans, 24 are Democrats. The bills are S. 2197, S. 2198, and S. 2199. Three Senators of the 23 have cosponsored only one portion.

At this early date, to have that many cosponsors is rather historic. This means we are going to proceed with the legislation. I am going to yield some time now to the distinguished Senator from Tennessee, closing by saying that the essence of this report says: America, produce better brainpower in math, science, and physics; produce more engineers of all types; produce more research in basic science; cause business to invest through tax credits—and do it as soon as possible. Without this, the report says, we will perish.

Lastly, I want my friend from Tennessee to listen to just one fact. We have at various times attempted to equate what we do with what we ought to do. Jeffrey Immelt, CEO of GE, recently shocked a DC audience with a troubling statistic. He said:

> If you want good manufacturing jobs, one thing you could do is educate more engineers. We had more sports exercise majors graduate than electrical engineering majors last year.

Based on that statistic, he added:

> If you want to be the massage capital of the world, you are well on your way.

That is very interesting. With that, out of my time, I yield to the Senator from Tennessee 3 or 4 minutes to speak to this bill, which is called the PACE legislation.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, I thank the Senator from New Mexico. First, there is nothing more important, along with the war on terror, than finding a way to keep our jobs from going to China, India, and other countries around the world. They have figured out how to increase their standard of living, and it has to do with brainpower.

What I want to say today is, first, I congratulate Senator DOMENICI, without whose leadership this would not have gotten to first base. He encouraged Senator BINGAMAN and I to go to work. He got our meeting with the President. It was he who presided over our homework sessions with the administration. It is he who has taken the leadership with Senator BINGAMAN on this bill to have 55 cosponsors prior to the President's speech tomorrow night. So I thank him first.

Second, I reiterate where this idea came from. It came not from Senators, not from lobbyists, nor from this or that clique. Senator BINGAMAN and I asked the people who should know—the experts at the National Academies—sthe answer to this question: exactly what do we need to do to keep our advantage in science and technology over the next 10 years so we can keep our jobs? They answered that question with 20 specific recommendations involving kindergarten through the 12th grade education, higher education, basic research, maintaining an entrepreneurial environment. These are ideas that many Senators on both sides of the aisle have advocated for several years, but the fact that the National Academy of Sciences, the Institute of Medicine, and the National Academy of Engineering joined together to say ''here is the blueprint'' is the reason this idea has gone so far. What it does is help keep our edge in science and technology.

I am looking forward to the President's remarks tomorrow night. It is my hope that he makes the Augustine report and the whole idea of keeping America on top and keeping our edge in science and technology a focus of his speech and of his next 3 years.

So it is my privilege today to ask unanimous consent on behalf of Senators DOMENICI, BINGAMAN, and myself to add as cosponsors Senators LAUTENBERG, JOHNSON, MCCONNELL, SNOWE, and now Senator SPECTER of Pennsylvania, who have asked to be added to S. 2197, S. 2198, and S. 2199 as cosponsors, as well as Senator REED of Rhode Island who has asked to be added as a cosponsor of S. 2197, so that we now have 54 cosponsors of these important pieces of legislation.

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

Mr. ALEXANDER. Mr. President, I ask unanimous consent that a letter from Senator BINGAMAN and myself, encouraged by Senator DOMENICI, to the National Academy of Sciences on May 27, 2005, and a two-page summary of the Domenici-Bingaman-Alexander-Mikulski legislation, which has 54 cosponsors, be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, May 27, 2005.

Dr. BRUCE ALBERTS,
President, National Academy of Sciences, Washington, DC.

DEAR DR. ALBERTS: The Energy Subcommittee of the Senate Energy and Natural Resources Committee has been given the latitude by Chairman Pete Domenici to hold a series of hearings to identify specific steps our government should take to ensure the preeminence of America's scientific and technological enterprise.

The National Academies could provide critical assistance in this effort by assembling some of the best minds in the scientific and technical community to identify the most urgent challenges the United States faces in maintaining leadership in key areas of science and technology. Specifically, we would appreciate a report from the National Academies by September 2005 that addresses the following:

Is it essential for the United States to be at the forefront of research in broad areas of science and engineering? How does this leadership translate into concrete benefits as evidenced by the competitiveness of American businesses and an ability to meet key goals such as strengthening national security and homeland security, improving health, protecting the environment, and reducing dependence on imported oil?

What specific steps are needed to ensure that the United States maintains its leadership in science and engineering to enable us to successfully compete, prosper, and be secure in the global community of the 21st century? How can we determine whether total federal research investment is adequate, whether it is properly balanced among research disciplines (considering both traditional research areas and new multidisciplinary fields such as nanotechnology), and between basic and applied research?

How do we ensure that the United States remains at the epicenter of the ongoing revolution in research and innovation that is driving 21st century economies? How can we assure investors that America is the preferred site for investments in new or expanded businesses that create the best jobs and provide the best services?

How can we ensure that critical discoveries across all the scientific disciplines are predominantly American and exploited first by firms producing and hiring in America? How can we best encourage domestic firms to invest in invention and innovation to meet new global competition and how can public research investments best supplement these private sector investments?

What specific steps are needed to develop a well-educated workforce able to successfully embrace the rapid pace of technological change?

Your answers to these questions will help Congress design effective programs to ensure that America remains at the forefront of scientific capability, thereby enhancing our ability to shape and improve our nation's future.

We look forward to reviewing the results of your efforts.

Sincerely,

LAMAR ALEXANDER,
Chairman, Energy Subcommittee.
JEFF BINGAMAN,
Ranking Member, Committee on Energy and Natural Resources.

PACE ACT: PROTECTING AMERICA'S COMPETITIVE EDGE

Focuses on keeping America's science and technology edge—as much as 85 percent of our per capita growth in incomes since World War II has come from science and technology.

Helps America continue to set the PACE in the competitive world marketplace.

Keeps our brainpower edge by strengthening K–12 math and science education, attracting bright college students to the sciences and investing in basic research.

In a package of three bills, the PACE Act implements 20 recommendations contained in an October report by the National Academy of Science titled ''Rising Above the Gathering Storm.''

Protecting America's Competitive Edge through Energy Act (PACE-Energy): Increasing our investment in energy research and in educating future American scientists.

Protecting America's Competitive Edge through Education and Research (PACE-Education): Investing in current and future math and science teachers and K–12 students, attracting bright international students, and investing in non-energy related basic research.

Protecting America's Competitive Edge through Tax Incentives (PACE-Finance): Doubling the research & development tax credit and allowing a credit for employee education.

KEY PROVISIONS OF THE PACE ACTS

Strengthening the nation's traditional commitment to research

More research opportunities for scientists and engineers: Increases basic research spending by up to 10 percent per year for seven years at several federal agencies, including the national laboratories. This investment would generate hundreds, maybe thousands, of new inventions and high-tech companies.

Targeted research grants for early career scientists and engineers: Creates a special research fund for 200 outstanding young researchers across the nation each year.

New federal funds to buy equipment and upgrade research laboratories: Provides a special pool of funds for the nation's research infrastructure to purchase updated research equipment and upgrade lab capabilities.

A New Agency for Transformational Energy Research: Establishes a new research agency within the Department of Energy tasked with developing transformational energy technologies that bridge the gap between scientific discovery and new energy innovations. This agency would be patterned on the management practices of a Pentagon research agency (DARPA) that contributed to innovations like the Internet, stealth technology and global positioning systems.

High-Risk, High-Payoff Research: Directs federal research agencies to develop guidelines that allow eight percent of R&D budgets to be devoted to high-risk, high-payoff research which falls outside the peer review and budget allocation process.

Improving K–12 Science/Math Education

Scholarships for Future Teachers of Math & Science: Each year, up to 10,000 bright students would receive a 4-year scholarship to earn a bachelor's degree in science, engineering or math, while concurrently earning teacher certification. In exchange for these scholarships, they would be expected to serve for at least four years as a math or science teacher.

Math & Science Teacher Training Programs: Funds part of the costs for new math and science teacher training programs based in math and science departments at universities across the country. These programs will stress a solid content knowledge of their subject while also providing the training necessary for teacher certification.

Summer Academies for Teachers: National laboratories and universities across the country would host 1–2 week academies each summer for up to 50,000 math and science teachers so they can get some hands-on experience and take back new, improved ideas for energizing their students.

Advanced Placement Courses in Math & Science: The federal government would provide funding to help establish non-profit organizations to promote Advanced Placement (AP) classes in math and science—tripling the number of students who could join these college-preparatory programs that consistently produce the highest achievers.

Specialty Math & Science High Schools: States would be eligible to apply for a grant from the federal government to help establish a new high school specializing in math and science that students from across each state could attend.

Internships and Summer Programs for Middle and High School Students: Provides unique internship and program opportunities for middle and high school students at national labs and other technology and scientific research facilities.

Increasing the Talent Pool by Improving Higher Education

Scholarships and Fellowships for Future Scientists: Each year, up to 25,000 bright young Americans would receive a 4-year competitive scholarship to earn a bachelor's degree in science, engineering or math, so that our brightest students pursue studies in these fields which are so critical to our economic growth. Up to 5,000 students who have already earned their bachelor's degree, would compete to receive graduate research fellowships to cover education costs and provide a stipend.

Attracting the Brightest Foreign Students to our Universities: Provides an efficient student visa process for bright foreign students to come here to study math, technology, engineering and science and then to stay here—contributing to our economic growth rather than being forced by an outdated immigration system to go home and produce the best new technology in India or China.

Growing our Economy by Providing Incentives for Innovation

Doubling the Research & Development Tax Credit to Encourage Innovation: Doubles the current R&D tax credit and makes it permanent—so companies conduct ground-breaking, job-producing research here, rather than building new facilities overseas.

Creating a Tax Credit to Encourage Employers to Invest in Employees' Education: Establishes a new tax credit to cover costs from providing continuing education to employees—so employees can learn cutting-edge skills.

Development of Science Parks: Supports the development of science parks through infrastructure planning grants and loan guarantees so that U.S. science parks are competitive with those throughout Asia.

Mr. DOMENICI. Mr. President, let me say what a privilege it is today to speak once again to the nomination of a Supreme Court Justice and to the advice and consent function of the Senate.

I came here in 1972, so there have been a lot of men and women nominated to the Supreme Court of the United States. In my time here, I have voted to confirm them all. I based my vote, first, on the fact that the President of the United States recommended them and second, on whether they were qualified. I determined whether they were qualified based upon outside evaluations and personal observations of those who knew, trained and taught that particular nominee. For example, I found Justices Ginsburg and Breyer, who were confirmed 96-to-3 and 87-to-9, to be qualified. In my opinion, neither of those judges, based upon the way the Senate is doing things these days, would have come close to getting those kinds of votes. As a matter of fact, for those who threaten filibuster, I believe there is a serious question.

If filibusters would have been the rule of the day, at least one of those nominees might very well have been filibustered, and the filibuster might have been successful. But that wasn't the way things were done.

Qualification was the question upon which we based our decisions; that has changed. Rancor has taken the place of reason. Partisanship has taken the place of responsibility and fairness. At every step of the process with this nominee, the American people have seen what a confirmation process can turn into if it is not vested and fair, but is instead full of what can be considered as almost hatred, almost fire and brimstone. Our colleagues have focused on the negatives of everything, however small or irrelevant. Currently, the trend is not to do what we have done, which has resulted in some great judges, but rather to be fed by the flames of partisan special interests that want assurances—they want guarantees.

I personally believe this is a dangerous course, and I hope and pray that this will be the last time we follow such procedure. But I doubt that it will be, although I believe such actions are wrong. Rejecting the judicial philosophy tests being urged by some is absolutely imperative.

When we apply the appropriate test of qualification, there is no doubt that Judge Alito is qualified. He is qualified to be a Supreme Court Justice. The American public realizes this and that is why they overwhelmingly indicate that we should get on with this and vote. It is clear that there has been no nominee—and the occupant of the chair has seen many—that has spread before the eyes of the Congress and the public more about themselves, their record, their philosophy, their vote,

their rationale, and their ethics than this man.

The President, indeed, took a big chance with this nomination because to have that much of a record and have a vote and all that goes with it here was, indeed, a giant risk. But it paid off because Judge Alito is what he purported to be—a scholarly, terrific judge, who is without any question, distinguished.

My second point concerns ''guarantees.'' I believe some members of the Judiciary Committee questioned this judge in an effort to get some guarantees about how he would vote. It is amazing to consider some of the Supreme Court Justices who have been approved by the Senate based on their testimony and their record, which were presumed to be commitments or guarantees as to how they would vote. We can look back to Justice Warren from California as well as two or three members of the Court right now. Those who voted for such judges could have, indeed, thought they were getting guarantees, and it has turned out not to be the case. Those judges' philosophy, their votes, and everything else has been different on the Court than what they appeared to be guaranteeing during the confirmation process.

There are no guarantees. Those who are making this a partisan fight won't say: We don't have any guarantees, on Roe v. Wade and many other issues, that Judge Alito will vote the way we want him to—they won't say they are doing that. They will use other words like ''I am bothered,'' but that is really their argument.

Now, as to the cloture vote this afternoon—we are going to do that. I have never had to make that vote in 34 years—on 11 Supreme Court nominees. I never had to make that vote. Why? Because this Senate has not used the filibuster on Supreme Court Justices. Some people say, oh, yes we have, or, yes, we almost did. But we did not, and we surely didn't when a majority was for the man or woman. That is the case here.

To have to take this route, I believe the process is headed in the wrong direction. To require cloture is not the way to do it. It is not in tune with the history of the Senate. It contradicts the significance of this body as a fairminded, deliberative body. I regret to say that with no particular people in mind. If the shoe fits, fine. If it fits no one, fine. But this has turned into nothing more than a political war. Those who are going to vote to continue debate, many of them know that this man is as qualified as anyone we are going to get. He is as assured to make as good of decisions on behalf of the American people as anyone we are going to get. And he is equally as assured to vote different than many of us who will vote for or against him expect. Of that, I have no doubt.

I regret that it has taken us so long to confirm Judge Alito. I regret that it has turned into the spectacle that it has. But perhaps today we will invoke cloture, change things from where they are to where they should be, and with an up-or-down vote tomorrow, this deserving, honest, well-informed, good man will be confirmed.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. REID. Mr. President, the Presiding Officer knows that I don't always agree with him or he with me, but in response to the Senator from New Mexico about the process here, the Presiding Officer was exemplary in how Justice Breyer and Justice Ginsburg were chosen to be members of the Supreme Court. There have been books written about it and chapters of books written about it.

The Presiding Officer, as chairman of the Judiciary Committee, in communication with President Clinton, said: I don't like this person, this person, this person. And so there was a process set up, nonpublic in nature, where the chairman of the Judiciary Committee conferred with the President and his people and waded through lots of names that, in the judgment of the distinguished Senator from Utah, were not appropriate. Now we have two Members on the Supreme Court whom I think have distinguished themselves.

I wish we could have a procedure like that in the future. I think, I repeat, it was exemplary. That is the way things used to be done. I would hope in the future that the President's men and women would be willing to meet with their counterparts in the Senate and come up with a procedure that is somewhat along the lines of the distinguished Senator from Utah. I would hope that would be the case.

The hearings of Ginsburg and Breyer were short and directly to the point. I hope in the future we can do more of that. I extend my applause and congratulations to the Senator from Utah. No matter what happens in the future regarding the long career of the Senator from Utah in the Senate, this, as far as I am concerned, will be an important chapter in his public service.

THE PRESIDENT'S STATE OF THE UNION MESSAGE

Mr. President, tomorrow night, the President of the United States will come to the Capitol and deliver his fifth State of the Union Address. This is an important moment for the President and for the country. Some say, reading the op-eds over the last week or so, this may be the most difficult speech the President will ever give.

The President comes to the Capitol in the midst of also what some write about as the greatest culture of corruption since Watergate. Public trust has dropped significantly in this culture in Washington, and I need not run through all the problems, but I will run through some of them.

The majority leader in the House of Representatives was convicted three times of ethics violations. They even went so far as to change the rules so he could stay in his position after having been indicted. They changed the rules back because the hue and cry of the American people was so intense.

For the first time in 135 years, someone is indicted working in the White House. Mr. Safavian, appointed by the President to handle Government contracting—hundreds of billions of dollars a year—is led away from his office in handcuffs as a result of his dealings with Jack Abramoff and others.

So I think in his speech, the President is obligated to the American people to show that he is committed to restoring the bonds of trust and repairing the damage done by this corruption.

Americans know the country can do better today, and after the year we had, a year of trying to privatize Social Security, Katrina, failures in Iraq, Terri Schiavo, and a heavy heart I have, Mr. President, as a result of how a good woman was—I would not say destroyed because she was not; she is stronger than that. But Harriet Miers, how she was treated is unbelievable. A good woman was treated so poorly, and the people who tried to destroy her are the ones being rewarded now with the Alito nomination. Then, of course, this past year we had Medicare prescription drugs come into being, which is a puzzle that no one can figure out.

So the American people, after this year we have had, simply will no longer be able to blindly accept the President's promises and give him the benefit of the doubt.

Americans will be looking past his rhetoric tomorrow night and taking a hard look at the results he intends to deliver. The President's State of the Union Message is a credibility test. Will he acknowledge the real state of our Union and offer to take our country down a path that unites us and makes us stronger, or will he give us more of the same empty promises and partisanship that has weakened our country and divided Americans for the last 5 years?

If he takes the first approach, together, Democrats and Republicans can build a stronger America. If he gives us more of the same empty promises and Orwellian doublespeak, we know he intends to spend 2006 putting his political fortunes ahead of America's fortunes. We need a fresh start, and I hope President Bush realizes that tomorrow night.

There is much more at stake in his speech than poll numbers. Empty promises will no longer work. We need a credible roadmap for our future, and we need the President to tell us how together we can achieve the better America we all deserve.

Our first signal that the President intends to move our country forward will come in his assessment of the state of our Union. It is not credible for the President to suggest the state of the Union is as strong as it should be. The fact is, America can do much better. From health care to national security,