With all the travel we do, we all live on the edge of something happening. I am so happy Senator ENSIGN is fine. He is a wonderful man. He has great faith. He is a good friend of mine and to all of the Senate. I know all of our thoughts and prayers will be with him. I am confident he is going to be fine.

As indicated, I spoke with him. I want Darlene, especially, to know our thoughts are with her and the children.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the hour of 4:30 having arrived, the Senate will proceed to a vote on the motion to invoke cloture on Executive Calendar No. 490.

Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

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

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

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on Executive Calendar No. 490, the nomination of Samuel A. Alito, Jr., of New Jersey, to be Associate Justice of the Supreme Court of the United States, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Nevada (Mr. ENSIGN) and the Senator from Nebraska (Mr. HAGEL).

Mr. DURBIN. I announce that the Senator from Iowa (Mr. HARKIN) is necessarily absent.

I further announce that if present and voting, the Senator from Iowa (Mr. HARKIN) would vote ''nay.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 72, nays 25, as follows:

[Rollcall Vote No. 1 Ex.]

YEAS—72

Akaka	Cantwell	DeWine
Alexander	Carper	Dole
Allard	Chafee	Domenici
Allen	Chambliss	Dorgan
Baucus	Coburn	Enzi
Bennett	Cochran	Frist
Bingaman	Coleman	Graham
Bond	Collins	Grassley
Brownback	Conrad	Gregg
Bunning	Cornyn	Hatch
Burns	Craig	Hutchison
Burr	Crapo	Inhofe
Byrd	DeMint	Inouye
Isakson	McConnell	Smith
Johnson	Murkowski	Snowe
Kohl	Nelson (FL)	Specter
Kyl	Nelson (NE)	Stevens
Landrieu	Pryor	Sununu
Lieberman	Roberts	Talent
Lincoln	Rockefeller	Thomas
Lott	Salazar	Thune
Lugar	Santorum	Vitter
Martinez	Sessions	Voinovich
McCain	Shelby	Warner

NAYS—25

Bayh	Jeffords	Obama
Biden	Kennedy	Reed
Boxer	Kerry	Reid
Clinton	Lautenberg	Sarbanes
Dayton	Leahy	Schumer
Dodd	Levin	Stabenow
Durbin	Menendez	Wyden
Feingold	Mikulski	
Feinstein	Murray	

NOT VOTING—3

Ensign	Hagel	Harkin

The PRESIDING OFFICER. On this vote, yeas are 72, the nays are 25. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

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

Mr. DEMINT. Mr. President, I ask unanimous consent to speak for 15 minutes.

Mrs. BOXER. Mr. President, reserving the right to object, and I will not object, would my friend extend his unanimous consent request to include the following Democratic Members: Senator BOXER for 20 minutes, Senator BAUCUS for 20 minutes, Senator DODD for 20 minutes, and Senator BIDEN for 5 minutes.

Mr. DEMINT. Mr. President, I do add that to the request.

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

The Senator from South Carolina is recognized.

STATE OF THE UNION ADDRESS

Mr. DEMINT. Mr. President, today the Democratic leader, HARRY REID, gave what was billed as a ''prebuttal'' to the President's upcoming State of the Union Address.

I am, frankly, astounded that he would criticize a speech so harshly that has not even been given yet.

I will let the President speak for himself when he addresses the Nation tomorrow night, but this misleading partisan rhetoric put forth on this floor by the Senator from Nevada cannot go unanswered, rhetoric which, unfortunately, further proves Democrats will say anything but do nothing.

Today, we heard many of the same tired cliches from the minority leader. He talks about a credibility gap. Well, the largest credibility gap in American politics is between what Democrats say and what they do. Democrats promised months ago to bring forth their own legislative agenda, but the Nation is still waiting. Day after day, the Democrats launch attack after attack on Republicans and our agenda, but how are we to take them seriously when they cannot articulate a clear plan of their own? They will say anything to get a media sound bite, but when it comes to solving today's challenges, Democrats do nothing.

It has been 4 years since 9/11, and after all their rock-throwing, Democrats still have no plan for victory in the war on terror. In fact, they have undermined the war effort with partisan attacks on the President.

They have complained about the economy since President Bush took office, but almost everything they do makes it harder for American businesses to compete.

Democrats spent the last year criticizing Republican efforts to strengthen Social Security but still offer nothing to fix this system in crisis. They even refuse to guarantee benefits for today's seniors and blocked a bill that would have stopped Congress from spending Social Security dollars on other Government programs.

They have decried looming deficits but offer no map to a balanced budget, instead calling for higher taxes and more spending programs.

How are we to take seriously a party that has no legislative agenda, that has no solutions or ideas to solve America's greatest challenges?

In stark contrast to the Democrats' invisible agenda, Republicans have clearly articulated and delivered a bold agenda to secure America's future. And while we have had some victories in recent years, the truth is that Democrats have fought bitterly to block progress for America every step of the way. Then these same Democrats come to this floor and blame inaction on Republicans.

To give just one example, Republicans have been working for decades to secure America's energy independence. However, Democrats, at the behest of extreme environmental activists, oppose real solutions to high energy prices such as increasing production of domestic oil and natural gas supplies and removing barriers to oil refinery investment such as onerous permitting requirements and a proliferation of boutique fuel blends.

Just last month, Democrats blocked energy exploration and production on the Coastal Plain of the Arctic National Wildlife Refuge which would provide millions of barrels of oil a day, or about 4.5 percent of the current U.S. consumption, with no significant environmental impact.

It is not just in Alaska where Democrats oppose efforts to access our Nation's energy resources. It has been estimated that enough natural gas lies under the Outer Continental Shelf and in the interior Western States to supply 27 years' worth of natural gas consumption, the primary fuel used to heat Americans' homes. Yet Democrats support policies that have closed these areas to exploration and production.

The administration has attempted to cut regulatory redtape, reduce regulatory costs, and streamline regulatory processes to allow more sensible use of the Nation's energy resources, while maintaining environmental standards—efforts that have been largely rebuffed by Democrats in Congress.

The obstacle to America's energy independence is clear: it is the blockade formed by the Democratic Party. In seeking to appease far-left interest groups, Democrats have blocked Republican efforts to reduce our dependence on foreign oil and have needlessly allowed energy prices to climb higher and higher for America's families.

Senator REID likes to say Democrats can do better. I think he is right, Democrats should do better. They have been conducting a war of rhetoric for years without offering anything positive to the public debate. Americans are rightly frustrated with a Democratic Party that will say anything but do nothing.

Now let me address what has become the favorite sound bite of the Democratic Party. Senator REID said it today and many times over the last week, what he likes to call the ''culture of corruption.'' Apparently, Democrats believe this media strategy will carry them to a sweeping electoral victory in November. I have news for my Democratic colleagues: The problem of outside influence on Congress is not a partisan issue. This is a bipartisan problem and requires a bipartisan solution.

For those hoping to usher in a new Democratic majority in Congress on a media sound bite, history teaches us that elections are won on ideas, not rhetoric. Americans are far too smart and today's challenges are far too serious for Democrats to expect they can coast to a victory in November with no solutions and no ideas.

Republicans learned this lesson long ago from one of our greatest teachers, Ronald Reagan. President Reagan always talked about ideas that still resonate with Americans today: limited government, personal freedom and responsibility, and peace through strength.

Republicans did not win on rhetoric in 1994. We won because Americans agreed with our solutions: lower taxes, fiscal responsibility, traditional values, and strong national defense.

President Bush has connected with the American people because he has run his campaigns on ideas. He promised to lower taxes, and he has. He promised to aggressively fight the war on terror to protect American families, and he has. He promised to nominate judges who will follow the law instead of creating it, and he has.

Yet, as Senator REID demonstrated today, Democrats still do not understand that Americans want solutions, not more partisan rhetoric. I know there are some Democrats who do have some good ideas and desire to work together to improve the lives of Americans. I have talked to many of my colleagues on the other side of the aisle who do seem to understand the reality, but their leadership refuses to allow them to break from the party line.

I urge the Democratic Party to think long and hard about the war of rhetoric they are waging. It is poisoning the atmosphere in the Senate, and it is turning off Americans from the public debate. The consequences of these actions will be fewer and fewer Democrats returning next year. This has been proved out during the last elections, as I and my fellow freshman Republican Senators can testify.

If Democrats sincerely want the opportunity to govern again, they need to abandon this ''say anything, do nothing'' stance and put forward some ideas and solutions. Regardless, the Republican Party will not wait around. We will continue to secure America's future with a bold, positive agenda.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I wish to amend the unanimous consent agreement to add an additional 10 minutes for Senator BAUCUS, which will give him 30 minutes.

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

Mr. DEMINT. Mr. President, I ask the Senator to add to her request that following the Democratic-allowed time that has already been agreed to, Senator INHOFE be recognized for up to an hour.

Mrs. BOXER. Certainly. I ask that at the conclusion of Senator BIDEN's remarks, Senator INHOFE be recognized for up to an hour.

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

The Senator from California.

Mrs. BOXER. Mr. President, I was listening to the Senator from South Carolina. I thought he was going to make some comments about the vote that just took place on one of the most important issues facing the Senate. Instead, he launched into an attack on Senator HARRY REID.

Shakespeare once said something to this effect: When someone acts that way, he is protesting too much. So Senator REID must have hit a chord with the Senator from South Carolina, and there are reasons for it.

Senator REID speaks straight from the heart, straight from the shoulder. He is fighting for the American people. He wants us to fix the mess this President and this Congress made in the Medicare prescription drug benefit. He wants us to take care of our men and women in uniform. He wants to make sure the budgets are balanced. He wants to make sure that our families have health care, that we are moving forward on homeland security, and cleaning up the culture of corruption which has been brought to us by the ruling party. Remember, we have one party that rules Washington.

So I think his remarks must have deeply touched the Senator from South Carolina for him to launch into such a personal attack on the Democratic leader. I stand here and say: Keep it up, Senator REID. You must be doing something right to elicit that kind of outrageous response.

Mr. President, many of us have been in elected life for more than a decade—in my case, three decades—and we know that when certain issues come before us, they are so profound, they are so important to the people we represent, they are such a watershed that they need to be marked, not rushed.

The vote on Samuel Alito to be a Justice of the Supreme Court is such a moment in our history. Yes, we are having two votes on this nomination, one just completed, which gave me and other opponents of the nomination an opportunity to signal that this nomination should be sent back to the President for a mainstream nominee in the mold of Sandra Day O'Connor.

We fell short of the 41 votes we needed to send this nomination back. But yet I am still glad I had the opportunity to go on record twice. And do you know why? Because the Supreme Court belongs to the people of America. It is their court. It is not George Bush's court. It is not any Senator's court. It is the people's court, and the highest court. It is their freedoms that are at stake, their protection from a power-hungry Executive, their right to clean air, to clean water, and safe communities, their right to make private decisions with their families, not with Senators and Congressmen and a President or Vice President breathing down their necks.

So although we knew the votes were not there for the filibuster of Judge Alito, we felt it was appropriate to use that historic Senate debate tool so the American people would know that we were willing to pursue even a losing effort because the stakes are so high.

Tomorrow, we will cast our votes on the nomination itself, and I want the record to reflect why I will be voting no.

Mr. President. Every judicial nomination is important, but rarely are the stakes as high for the Nation as they are in the case of the nomination of Samuel Alito to be an Associate Justice of the Supreme Court.

We now have a divided Court, a divided Congress, and a divided electorate, as evidenced in the last two Presidential elections. Unfortunately, we also have a President who failed to remember his promise, which he made in the campaign of 2000: to govern from the center—to be ''a uniter, not a divider.'' If he had kept that promise, he would not have nominated Samuel Alito.

Judge Alito was nominated to take the seat of Justice Sandra Day O'Connor, the first woman on the Court. She has long been the swing vote, and a commonsense voice of moderation, in some of the most important cases to come before the Court, including a woman's right to choose, civil rights, and freedom of religion.

The right thing to do for the court and for the Nation would have been to nominate someone in the mold of Justice O'Connor, and that is what the President should have done.

Let me be clear: I do not deny Judge Alito's judicial qualifications. He is experienced, intelligent, and capable. His

family should be proud of him, and all Americans should be proud that the American dream was there for him and for the Alito family.

But these facts do not outweigh my deep conviction that Judge Alito's extreme views of the law make him the wrong person for this job.

As a Senator, I have no more solemn duty than to vote on a nomination for the Supreme Court of the United States. These are lifetime appointments, with extraordinary power to shape the law of the land, and to affect the lives of Americans, not just those living now, but for generations to come.

In the 218 years since our Constitution was adopted, our Nation has made great strides toward achieving the more perfect Union that the Founding Fathers dreamed of Women were given the right to vote. African-Americans were given civil rights. A right to personal privacy has been recognized for women and families. The accused have a right to counsel. Congress has been recognized to have the power to enact laws protecting the health and safety of the people. This has led to a cleaner environment, safer workplaces and communities, and better health care for all Americans.

We who have enjoyed the fruits of this progress owe it to future generations not to let it slip away. Thus, in a vote such as this, which will have long lasting effects, it is incumbent on us to consider what those effects might be.

If Judge Alito is confirmed, he will join the far right wing of the Court now led by Justices Scalia and Thomas. Should their extreme views of the Constitution ultimately prevail—as they may well do in the very near future—I fear they will take our Nation on a backward path—toward a time of fewer rights for individuals and greater restrictions on Congress's ability to protect the public health and welfare. In addition, I believe that Judge Alito will support Justice Thomas's radical ideas about stronger Presidential powers.

In short, our children could end up living in a very different America from the one we treasure. What kind of Nation would that be?

Abortion undoubtedly would be illegal in many States. Dangerous automatic weapons might become broadly available. It might be almost impossible to get a claim of workplace discrimination to a jury. Search warrants might not have to be issued, or if they were, wouldn't have to be specific. The Nation's most important environmental laws might be made toothless for lack of enforcement in the courts. Trial by jury, one of the most precious of all rights guaranteed to Americans by their Constitution, could be tainted by racism in the selection of Jurors.

This is a harsh picture, but I believe it is not unrealistic. If you consider where the Court is now and consider Judge Alito's record and views carefully, you must conclude, as I did, that approving his nomination could have dire consequences for our Nation.

In reviewing Judge Alito's record, I asked myself whether, as a Supreme Court Justice, he would be likely to vote to preserve fundamental American liberties, values, and interests for all the people.

Would Justice Alito vote to uphold Congress's constitutional authority to pass laws to protect Americans' health, safety, and welfare? The record says no. When his Third Circuit Court of Appeals voted to uphold a ban on machine gun possession, Judge Alito voted to strike it down because he said Congress lacked the power to enact such a law. His colleagues on the court criticized him, saying his position ran counter to ''a basic tenet of the constitutional separation of powers.''

Would Justice Alito vote to protect the right to privacy, especially a woman's reproductive freedom? Judge Alito's record says no. We have all heard about Judge Alito's 1985 job application which he wrote that the Constitution does not protect the right of a woman to choose. When given the chance to disavow that position during the hearings, he refused to do so. He had the chance to say, as Judge Roberts did, that Roe v. Wade is settled law, and he refused.

When given the chance to explain his dissent in the Casey decision, in which he argued that the Pennsylvania spousal notification requirement was not an undue burden on a woman seeking an abortion because it would affect only a small number of women, he refused to back away from his position. The Supreme Court, by a 5 to 4 vote, found the provision to be unconstitutional, and Justice O'Connor, cowriting for the Court, criticized the faulty analysis supported by Judge Alito, saying that ''the analysis does not end with the one percent of women'' affected. ''it begins there.''

Judge Alito's ominous statements and narrow-minded reasoning clearly signal a hostility to women's rights, and portend a move back toward the dark days when abortion was illegal in many States, and many women died as a result.

In the 21st century, it is astounding that a nominee for the Supreme Court would not view Roe v. Wade as settled law. The fundamental principle of Roe—a woman's right to make reproductive choices for herself—has been reaffirmed many times since it was decided.

Would Justice Alito vote to protect Americans from illegal searches in violation of the fourth amendment? Judge Alito's record says no. In a 2004 case, he found that a police strip search of a 10–year-old girl was lawful, even though she was not named in the warrant. Judge Alito said that even if the warrant did not actually authorize the search of the girl, ''a reasonable police officer could certainly have read the warrant as doing so . . .''

This cavalier attitude toward one of our most basic constitutional guarantees—the fourth amendment right against unreasonable searches—is stunning. As Judge Alito's own court said regarding warrants, ''a particular description is the touchstone of the fourth Amendment.'' Americans have reason to fear a Supreme Court justice who does not understand this fundamental constitutional protection.

Would Justice Alito vote to let citizens stop companies from polluting their communities? The record says no. In a case involving toxic discharges into a major river, Judge Alito voted to stop citizens from taking the polluting company to court, as they were authorized to do under the Clean Water Act. Fortunately, in another case several years later, the Supreme Court overturned Alito's narrow reading of the law.

Would Justice Alito vote to let working women and men have their day in court against employers who discriminate against them? Judge Alito's record says no. In a 1997 case, Judge Alito was the only judge to say that a hotel employee claiming racial discrimination could not take her case to a jury. His colleagues on the court said that if his standard for getting to a jury were required of a plaintiff, it would ''eviscerate'' title VII of the Civil Rights Act of 1964, which prohibits discrimination in the workplace.

In another case, a female employee sued for discrimination, alleging that after she complained about incidents of sexual harassment, she was demoted and marginalized to the point that she was forced to quit. By a vote of 10 to 1, the Third Circuit found for the plaintiff. Guess who was the one? Only Judge Alito thought the employee should have to show that discrimination was the main cause of the employer's action. Using his standard would make it almost impossible for a woman claiming discrimination in the workplace to get to trial.

Would Justice Alito be an effective check on an overreaching executive branch? Judge Alito's record says no. As a Judiciary Department lawyer, Alito wrote a memorandum proposing that the President assert his own interpretations of statutes by issuing ''signing statements'' when the laws are enacted. He said this would give the Executive ''the last word'' on interpreting the laws.

The administration is now asserting vast powers, including spying on American citizens without seeking warrants, in clear violation of the Foreign Intelligence Surveillance Act, violating international treaties, and ignoring laws that ban torture.

We need Justices who will put a check on such overreaching by the Executive, not rubberstamp it. Judge Alito's record and his answers at the hearings raise very serious doubts about his commitment to being a strong check on an ''imperial President.''

During the hearings, we all felt great compassion for Mrs. Alito when she became emotional in reaction to the

tough questions her husband faced in the Judiciary Committee.

Everyone in politics knows how hard it is for families when a loved one is asked tough questions. It is part of a difficult process, and whoever said politics is not for the faint of heart was right.

Emotions have run high during this process. That is understandable. But I wish the press had focused more on the tears of those who will be affected if Judge Alito becomes Justice Alito and his extreme views prevail.

I worry about the tears of a worker who, having failed to get a promotion because of discrimination, is denied the opportunity to pursue her claim in court.

I worry about the tears of a woman who is forced by law to tell her husband that she wants to terminate her pregnancy and is afraid that he will leave her or stop supporting her.

I worry about the tears of a young girl who is strip searched in her own home by police who have no valid warrant.

I worry about the tears of a mentally retarded man who has been brutally assaulted in the workplace, when his claim of workplace harassment is dismissed by the court simply because his lawyer failed to file a well-written brief on his behalf.

These are real cases in which Judge Alito has spoken. Fortunately, his views did not prevail in these cases. But if he sits on the Supreme Court, he will have a much more powerful voice. His voice that will replace one of moderation and balance, and he will join the voices of other Justices who share his severe views.

Perhaps the most important statement Judge Alito made during the entire hearing process was when he told the Judiciary Committee that he expects to be the same kind of Justice on the Supreme Court as he has been a judge on the Circuit Court.

That is precisely the problem. As a judge, Samuel Alito seemed to approach his cases with an analytical coldness that reflected no concern for the human consequences of his reasoning.

Listen to what he said about a case involving an African-American man convicted of murder by an all white jury in a courtroom where the prosecutors had eliminated all African-American jurors in many previous murder trials as well.

Judge Alito dismissed this evidence of racial bias and said that the jury makeup was no more relevant than the fact that lefthanders have won five of the last six Presidential elections. When asked about this analogy during the hearings, he said it ''went to the issue of statistics . . . (which) is a branch of mathematics, and there are ways to analyze statistics so that you draw sound conclusions from them. . . .''

That response would have been appropriate for a college math professor, but it is deeply troubling from a potential Supreme Court Justice.

As the great Jurist and Supreme Court Justice Oliver Wendell Holmes, Jr. wrote in 1881:

> The life of the law has not been logic; it has been experience . . . The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.

What Holmes meant is that the law is a living thing, that those who interpret it must do so with wisdom and humanity, and with an understanding of the consequences of their judgments for the lives of the people they affect.

It is with deep regret that I conclude that Judge Alito' s judicial philosophy lacks this wisdom, humanity, and moderation. He is simply too far out of the mainstream in his thinking. His opinions demonstrate neither the independence of mind nor the depth of heart that I believe we need in our Supreme Court Justices, particularly at this crucial time in our Nation's history.

That is why I must oppose this nomination.

The PRESIDING OFFICER. Under the previous order, the Senator from Montana is recognized.

Mr. BAUCUS. I ask unanimous consent the order for recognition of Senator BIDEN be vitiated.

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

Mr. BAUCUS. Mr. President, on the corridor of the first floor of this Capitol building appear the words of Samuel Adams:

> Freedom of thought and the right of private judgment in matters of conscience direct their course to this happy country.

America still stands as the world's beacon of individual rights and liberties. Of that I know we are very proud. In large part, it is because of our Supreme Court. Our Founding Fathers were very wise setting up three separate branches of Government, including a very strong, independent judiciary, something many countries have struggled to attain, and their failure to achieve greatness is largely because they do not have a very strong, independent judiciary—and I mean independent.

The Senate protects the independence of the Supreme Court. How? By seriously exercising its responsibility to advise and consent on the nominations to that honorable Court. It is in the Constitution. We all take that duty seriously. We take it seriously by examining nominees. I personally have three criteria I use to examine nominees. They are professional competence, personal integrity, and a view of important issues within the mainstream of contemporary judicial thought. Let me review those three criteria.

First, professional competence. The Supreme Court must not be a testing ground for the development of a jurist's basic values. Nor should a Justice require further training. The stakes are simply too high. The nominee must be an established jurist already. Of that we must be very clear.

A second criteria is personal integrity. Nominees to our Nation's highest court must be of the highest caliber.

Third, the nominee should fall within the broad mainstream of contemporary judicial thought. Justices must possess the requisite judicial philosophy to be entrusted with the Court's sweeping constitutional powers. I believed that then-Judge and now Chief Justice Roberts met those tests. That is why I voted to support his confirmation.

Measuring Judge Alito against these three criteria, I have decided he does not meet these three tests. I do not think he is the right choice for my State of Montana or for our country.

This was not an easy decision. I grappled with it. I took my time. I have reviewed this nomination very carefully. I reviewed Judge Alito's prior writings and case rulings. I reviewed his Judiciary Committee testimony and I met with Judge Alito personally for over an hour.

Nominations to the Supreme Court rank among the Senate's most important decisions. Only the brightest, most objective minds should serve on the bench. But Judge Alito, in my judgment, stands outside the mainstream. I base my decision on what I think is right for my State and my country, and that is why I cannot support this nomination.

I reviewed the Judiciary Committee's hearings. The Judiciary Committee held 5 days of hearings. The committee questioned Judge Alito for 4 days. The committee heard from panels supporting and opposing his nomination. The Judiciary Committee members sought Judge Alito's views on many matters, including States rights, antidiscrimination laws, immigrant rights, due process, privacy, equal protection, ethical considerations, and broad judicial philosophy. Judge Alito responded eloquently, but he provided little detail. Members of the Committee attempted to pin Judge Alito down on many of his views, but Judge Alito did not offer detailed answers to their questions, at least not enough information to get a sense of who he was and where he was. Judge Alito appeared well prepared for these hearings—very well prepared, I might add. He appeared to have been advised to say as little as possible.

On January 24, the Judiciary Committee voted to report Judge Alito's nomination on a party-line vote. Unfortunate, but that is how it turned out; again, I think in part because of the nature of the nominee's views.

Let me take a few moments to examine Judge Alito's nomination in greater detail against the criteria I have laid out. First, professional competence. Mr. Alito received an excellent education. He holds an undergraduate degree from Princeton and a law degree from Yale School of Law. Judge Alito also has extensive experience as a judge, serving 15 years as a

judge on the Third Circuit Court of Appeals. In fact, he has served more years on the bench than many nominees to the Supreme Court.

Mr. Alito's work prior to his judicial appointment focused exclusively on representing only one client, the U.S. Government. Some have raised questions about Judge Alito's experience protecting the rights of individuals rather than the Government. I conclude that Judge Alito is professionally competent to serve as a Supreme Court Justice.

Second, personal integrity. Several issues arise from Judge Alito's promise to avoid conflicts of interest as a judge. Some raised questions about Judge Alito's sensitivity to the avoidance of conflicts of interest, and some raised questions about how steadfastly Judge Alito keeps his commitments to the Senate.

In 1990, Judge Alito told the Senate Judiciary Committee that he would disqualify himself from any cases involving five matters with which he had personal connections. Those matters were the Vanguard Companies, the brokerage firm of Smith Barney, the First Federal Savings & Loan of Rochester, New York, his sister's law firm, and matters that he worked on or supervised at the United States Attorney's Office in New Jersey. In the period of 1995 to 2002, however, Judge Alito heard cases related to these matters.

Judge Alito initially blamed the conflicts of interest on a computer glitch. In subsequent correspondence with Senators on the Judiciary Committee, Judge Alito argued that his promise during his 1990 confirmation hearings referred to only his ''initial service.'' He argued that as his service continued, he found unduly restrictive his 1990 promise to recuse himself from cases involving entities in which he had a financial interest. And he argued that the mutual funds in which he was invested were not at issue in the case that he heard.

In his responses to questions concerning Vanguard, Judge Alito testified:

I think that once the facts are set out, I think that everybody will realize that in this instance I not only complied with the ethical rules that are binding on federal judges—and they are very strict—but also that 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.

But Judge Alito also admitted to Senator KENNEDY that ''if I had to do it all over again, I would have handled this case differently.''

Judiciary Committee members also asked about Judge Alito's membership in an organization called Concerned Alumni of Princeton. In his 1985 job application to the Reagan Justice Department, Judge Alito listed Concerned Alumni of Princeton as one of his extracurricular activities. Concerned Alumni of Princeton is an alumni group that took the extreme position of arguing against letting women and minorities attend Princeton. When questioned about Concerned Alumni of Princeton, Judge Alito claimed that he had no recollection of ever having been a member of the group.

Judge Alito testified:

I really have no specific recollection of that organization. But since I put it down on that statement, then I certainly must have been a member at that time. . . . I have tried to think of what might have caused me to sign up for membership, and if I did, it must have been around that time. And the issue that had rankled me about Princeton for some time was the issue of ROTC. I was in ROTC when I was at Princeton and then until it was expelled from campus, and I thought that was very wrong.

Judge Alito's response about Concerned Alumni of Princeton raises concerns. In 1985, he apparently thought that his membership in this discriminatory organization was important enough to put on his page-and-a-half job application. His failure of memory now about that inconvenient position then raises questions about his credibility.

I am also disappointed that the White House has chosen not to release Judge Alito's tax returns for review by the Joint Committee on Taxation. On December 13 of last year, I introduced a bill that would require all Supreme Court nominees to submit 3 years of tax returns to the nonpartisan Joint Committee on Taxation for review on a confidential basis. The Joint Committee would report its findings on the nominee's tax compliance to the Finance and Judiciary Committee.

I might add that all nominees who are referred to the Finance Committee—from Cabinet Secretaries to Tax Court judges—have their tax returns reviewed for compliance. The reviews are discreet and confidential. We protect nominees' personal information. And I might say that in several cases we found errors of facts, matters that had to be attended to—and they were.

I understand the administration does a ''tax check'' for all Supreme Court nominees. They say they already do one. But I believe it is important for Congress to do its own due diligence on a nominee's tax returns. After all, this is a person who serves on the judiciary. That is a separate branch, not the executive, not the judicial. Both entities—namely both the Executive and the congressional—have a stake in making sure that the nominee's tax returns comply with the law.

I might also say, as I mentioned earlier, many so-called tax checks the administration has taken on other nominees have been very inadequate, full of mistakes, and we have had to correct them.

The Finance Committee views proof of the nominee's tax compliance as a testament to the nominee's integrity. What individuals do on their tax returns is a window on their ethical decision making. It is a good test of integrity and character.

The American people expect their national leaders to comply faithfully with the tax laws. A showing that leaders in the Federal Government faithfully comply with the tax laws sends an important message to people who might consider cheating on their taxes.

On January 19, President Bush appeared to agree. He told small business leaders in Sterling, VA, that public officials' tax returns should be public, because public officials have a ''high responsibility to uphold the integrity of the process.''

When I met with Judge Alito, I asked him to release his tax returns for such a review. He initially agreed to do so. But the White House official present at the meeting immediately intervened to block the release saying that he cannot do so.

The President was right when he said in Virginia that the release of public officials' tax returns contributes to the integrity of our whole tax system. And his White House was wrong to withhold that information on Judge Alito. I will continue to press future nominees to allow this kind of neutral review of their tax, returns because I think it is the right thing to do.

Let me turn now to judicial philosophy.

I do not believe that a Senator should oppose a nominee just because the nominee does not share that Senator's particular judicial philosophy. But the Senate must determine whether a nominee is in the broad mainstream of judicial thought. Is this a wise person, not an ideologue of the far left or the far right. The Senate must determine whether a nominee is committed to the protection of the basic Constitutional values of the American people.

What are those values?

One is the separation of powers of our Federal Government—including the independence of the Supreme Court itself.

Another is freedom of speech. Another is freedom of religion. Another is equal opportunity. Another is personal autonomy—the right to be left alone. And yet another is an understanding of the basic powers of the Congress to pass important laws like those providing for protection of the environment.

These are not unimportant matters. They are hugely difficult—all of these are.

The stakes are high. The Senate has a duty to ensure that the nominee will defend America's mainstream Constitutional values.

Judge Alito's record calls into question his ability to act as a check on executive powers. Recently, many have noted with concern the National Security Agency's surveillance of American citizens. At the Judiciary Committee's hearing, a number of questions focused on Judge Alito's interpretations of executive power, and the importance of the court's role as an effective check on overreaching presidential power and on government intrusion.

Judge Alito responded that ''no person is above the law.'' But he did not provide assurances that he would act on the Court to balance executive authority. His prior statements and court rulings indicate that he has an expansive view of the scope of executive power and a narrow view of Congress's authority to legislate.

In a 1984 memorandum, Mr. Alito argued that the Attorney General deserves blanket protection from lawsuits when acting in the name of national security, even when those actions involve the illegal wiretapping of American citizens.

In a 2000 speech to the Federalist Society, Judge Alito said that ''the theory of a unitary executive . . . best captures the meaning of the Constitution's text and structure.'' Judge Alito said: ''The President has not just some executive powers, but the executive power—the whole thing.'' Some have thus interpreted the theory of a unitary executive to support the proposition that the Constitution reserves all executive power exclusively for the President. The theory would thus prohibit other branches of Government from carrying out any power that one could characterize as having executive characteristics. This view of executive power could limit Congress's ability, for example, to create independent agencies such as the SEC with oversight duties. And some believe that this view could allow the President the ability to legislate through signing statements.

When Senator LEAHY pressed Judge Alito about his view of the unitary executive as well as his strategy of utilizing Presidential signing statements to expand executive authority, Judge Alito responded that he did not see a connection between these two principles.

In a 1986 memo, Mr. Alito argued that ''the President's understanding of the bill should be just as important as that of Congress.'' He argued that signing statements would allow the President to ''increase the power of the Executive to shape the law.''

President Bush has employed this method of Presidential signing statements to document his interpretation of congressional legislation, again even though he is certainly not a member of Congress. He didn't write the law. How could he say what Congress intended to do? He has, in fact, issued 108 signing statements expanding his executive interpretation of the laws passed by Congress.

Judge Alito's judicial rulings on the Third Circuit Court of Appeals, as well as his 1985 job application to the Reagan Justice Department, do not indicate an expansive view of civil rights and civil liberties. In his 1985 job application, Judge Alito wrote that he developed a ''deep interest in constitutional law, motivated in large part by disagreement with the Warren Court.'' Many credit the Warren Court with expanding civil rights and civil liberties.

Judge Alito has narrowly construed constitutional criminal procedure protections, such as the fourth amendment restrictions on search and seizure. In the case of Doe v. Grody, for example, Judge Alito wrote a dissent. He argued that the strip search of a mother and her 10-year-old daughter without a proper search warrant did not violate their constitutional rights.

That is his dissent, that is his view.

Judge Alito testified:

> It was a rather technical issue about whether the affidavit that was submitted by the police officers was properly incorporated into the warrant for purposes of saying who could be searched. And I thought that it was, and I thought that it was quite clear that the magistrate had authorized a search for people who were on the premises. That was the point of disagreement.

Judge Alito also refused to agree that Congress cannot take away the Supreme Court's ability to protect Americans' First Amendment rights.

In contrast, both Chief Justice Roberts and former Chief Justice Rehnquist have agreed to the position that Congress cannot take away the Supreme Court's ability to protect Americans' first amendment rights. This is sometimes called ''court stripping.'' It is extremely critical, extremely important. It is no academic matter. Basically it is that the Congress can say to the Supreme Court it does not have jurisdiction to hear any cases with respect to, say, the first amendment brought by an individual citizen; that is, Congress can take away the Court's authority to interpret the Constitution with respect to the first amendment. That is what that view held. I think it is an outrageous view. I don't understand how anybody can tentatively hold that view.

Judge Alito defended his viewpoint, saying this is an academic debate on which scholars are divided. I am astounded at that answer.

Judge Alito's rulings on civil rights cases appear to set a high bar for proving unequal treatment. A review of his record indicates that plaintiffs rarely ever prevail. Senator COBURN defended Judge Alito's record by noting that Judge Alito ruled for the ''little guy'' in a list of 13 cases. Judge Alito's record, however, includes almost 500 published and unpublished opinions. Thirteen is not very many out of 500.

Knight Ridder conducted a survey of Judge Alito's published opinions. They concluded that:

> although Judge Alito's opinions are rarely written with obvious ideology, he's seldom sided with a criminal defendant, a foreign national facing deportation, an employee alleging discrimination or consumers suing big business.

I am also concerned by Judge Alito's responses to privacy questions at the Judiciary Committee hearings which conflict with his past statements. In his 1985 job application, Mr. Alito wrote:

> It has been an honor and a source of personal satisfaction for me to serve in the office of the Solicitor General during President Reagan's administration and to help to advance legal positions in which I personally believe very strongly. I am particularly proud of my contributions in recent cases in which the government has argued in the Supreme Court that . . . the Constitution does not protect a right to an abortion.

In June 1985, Mr. Alito wrote a 17-page memo providing a strategy for using the Government's brief in the case of Thornburgh v. American College of Obstetricians and Gynecologists as an ''opportunity to advance the goal of bringing the eventual overruling of Roe v. Wade, and in the meantime, of mitigating its effects.'' Judge Alito advocated a strategy of creating a series of burdens on a woman's right to choose. In the hearings, however, Judge Alito responded to Senator FEINSTEIN that he ''did not advocate in the memo that an argument be made that Roe be overruled.''

In his hearings, Judge Alito acknowledged that the Constitution protects a right to privacy generally. He agreed with the premise in the Griswold case, which protects the right to use contraceptives. It is unclear, however, how widely the right to privacy extends for Judge Alito.

When pressed, Judge Alito refused to acknowledge that the Constitution protects a woman's right to choose. Judge Alito explained that he would approach privacy cases with an open mind.

On the Third Circuit Court of Appeals, Judge Alito also wrote a dissent in the case of Planned Parenthood of Southeastern Pennsylvania v. Casey. In that dissent, he argued that upholding Pennsylvania's restrictive spousal notification requirement did not place an undue burden on women.

Yet Justice O'Connor, writing for the majority of the Supreme Court, wrote that the spousal notification requirement ''embodies a view of marriage consonant with the common law status of married women, but repugnant of our present understanding of marriage and of the nature of the rights secured by the Constitution.''

When questioned specifically about the landmark case of Roe v. Wade, Judge Alito commented that he understands the principle of stare decisis—that courts should honor precedents. But he also said that this principle is not ''an inexorable command.''

Here again, Judge Alito's statements contrast with then-Judge Roberts' comments during his hearings. Judge Roberts said in his hearings that Roe v. Wade was settled law. When Senators asked Judge Alito about Judge Roberts' statements, Judge Alito responded that ''I think it depends on what one means by the term 'settled.' '' Judge Alito engaged in some discussion about what ''settled law'' means to him. His interpretation of how settled the right to privacy is remains unclear.

Judge Alito answered questions about his judicial philosophy by testifying that precedent is entitled to respect. But he would not provide great detail about specific precedents such as Roe v. Wade. Senator FEINSTEIN pushed

Judge Alito to clarify the discrepancy between answering cases about one-person one-vote, but not responding to questions about abortion and precedent. Judge Alito did not give a clear answer.

Judge Alito appears to support deference to the Framers' original intent. Judge Alito testified:

I think we should look to the text of the Constitution, as we should look to the meaning that someone would have taken from the text of the Constitution at the time of its adoption.

That is called originalism.

Judge Alito's judicial philosophy of original intent raises concerns about whether the Court could adapt to a changing society. And his philosophy indicates that he may not take an active role in extending Constitutional protections to new situations in the 21st century.

I have some concern about one ruling that Judge Alito issued related to the environment. In 2001, in the case of W.R. Grace & Company v. United States Environmental Protection Agency, Judge Alito threw out the Environmental Protection Agency order under the Safe Drinking Water Act for an ammonia-spill cleanup near Lansing, MI. Judge Alito concluded that the government cleanup standard was ''arbitrary and capricious.'' He explained that the reason for not upholding the order was that the EPA lacked a rational basis for imposing the cleanup standards on the company. This case raises sensitivities for me, because in my home state, W.R. Grace has acted with complete disregard of the health effects for Montanans in Libby, where illness from tremolite asbestos caused by W.R. Grace has hit the community hard.

In 1988, Judge Alito commented that Robert Bork ''was one of the most outstanding nominees of this century.'' When I asked Judge Alito about that, he did not provide an adequate response. He ducked the question.

He did not respond adequately to many of my questions. He evaded my questions, questions I asked in good faith, intended to elicit what kind of Justice he might be.

He was vague. He seemed not to want to talk to me. He seemed not to want to have an honest discussion about what kind of person he is. That is why I find it very difficult to support this nominee.

I supported Judge Roberts for Chief Justice in large part because of Judge Roberts' hearing testimony and responses when he met with me personally.

Judge Alito does not meet my standards for a Supreme Court Justice. Judge Alito has explained that he will be ''the same person that I was on the Court of Appeals.'' Judge Alito's record demonstrates that he is a very conservative judge who rules often in favor of expanding executive authority and of limiting civil rights and civil liberties. If the Senate confirms Judge Alito to Justice O'Connor's seat, he could change the balance of the Court, tipping it in a direction that could reverse or restrict important constitutional protections.

Based on all this information, I will vote against this nomination. I believe that Judge Alito is out of the mainstream. He is not the right choice for our country.

On a corridor on the first floor of this Capitol building appear the words of former Supreme Court Justice Louis D. Brandeis, who said:

The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

I shall thus vote against this nomination to carry out seriously my responsibility as a Senator to Advise and Consent on nominations to that honorable Court. I shall vote against this nomination because I believe the nominee is well-meaning, but without sufficient understanding of the importance of our cherished rights and liberties. And I shall vote against this nomination to help keep this great country the world's beacon of freedom.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Oklahoma.

The PRESIDING OFFICER. Under the previous order, the Senator from Connecticut is now recognized for up to 20 minutes.

Mr. DODD. Mr. President, I wish to commend my colleague, Senator MAX BAUCUS from Montana, before he leaves the Floor, for a very fine statement. I appreciate his thoughts and comments.

I rise today to discuss my vote on the nomination of Judge Samuel Alito to the United States Supreme Court. First of all, I wish to briefly comment on the cloture vote that occurred this afternoon. I voted not to invoke cloture on the nomination. I want to explain why.

As many of my colleagues know, I went through minor surgery to have a knee replacement before the holidays and I have been home in Connecticut recuperating. I looked forward to coming back to participate in the debate on the Judge Alito nomination and I followed the confirmation process closely from home. For this reason, I was somewhat stunned to learn that Senator FRIST filed a cloture motion on the nomination a day after it was voted out of the Judiciary Committee.

I have been a member of this body for a quarter of a century and I have voted to confirm the majority of the judicial nominations that have come before this Senate. I, too, like my colleague from Montana, voted with enthusiasm for the nomination of Chief Justice Roberts only a few months ago. The majority leader's action was surprising to me. It is exceedingly rare that a cloture motion is filed on debate regarding a Supreme Court nomination. In is my experience, cloture motions have gotten filed when the majority got frustrated with the minority for insisting upon extending debate—beyond a reasonable period of time. In this case, I feel strongly that there has not been a reasonable period of debate, let alone an extended debate.

But I am only one Member. Certainly, this institution cannot wait for one Member. I was allocated only 5 minutes of time this afternoon to comment on this nomination. However, my flight was canceled out of Hartford, CT, and thus, I lost that small window of 5 minutes to be heard. I consider the matter of confirmation of a Supreme Court Justice with great seriousness and solemnity. In my view, some of the most important votes that we make in the Senate are to fill vacancies in the Judicial Branch, second only to declarations of war. Constitutional amendments are not far behind. Therefore, to be notified that I would have only 5 minutes to comment on the nomination of a Supreme Court Justice who will serve for life, far beyond the tenure of the Chairman of the Federal Reserve Board, far beyond the tenure of a President of the United States, far beyond the tenure of a Senator or Congressman, I found rather disturbing.

We have always respected one another here, at least we try to, and to recognize this is the Senate, different entirely from the body down the hall. We are a bicameral body for good reason. This is the place where we spend a little more time evaluating issues that come before the Senate. To ask for a few more days to have discussion about the nominee that has provoked serious controversy in the country, seems little to ask.

Put aside the nominee for a second, put aside your decision to vote for or against the nominee, we should respect one another's desire to be heard on these matters. Tomorrow is the State of the Union, and there will be a photo opportunity for the President. I am deeply disturbed that this Senate may have made a decision to rush this nomination through, to invoke cloture, in order to provide a photo opportunity for a swearing-in ceremony prior to this President's State of the Union Message.

I note the presence of my good friend and colleague from Texas in the chair of the Presiding Officer. He serves on the Judiciary Committee. He watched the gavel-to-gavel hearing proceedings. While I was at home rehabilitating this knee, I had a chance to watch my colleagues do their job. The circumstances around this nomination have been complicated. The nomination came up after Harriet Miers withdrew. We had the Thanksgiving holiday and the recess coming up. In fact, the Judiciary Committee met when we were out of session. Obviously, the desire was to move this along. I have no objection to that. That seems to be a reasonable request to have the committee meet when it did. Certainly, we all had an opportunity to watch those proceedings.

The majority leader stated earlier than we have consumed an excessive amount of time on this nomination.

This statement is correct if we measure it by days on the calendar. If we measure it by days we have actually been here during the last couple of months, it is incorrect. We have been out of session. There have been only a limited number of days in session and only a limited number of votes. Obviously, the number of days that have been consumed since the nominee was presented to this Senate is more than usual due to the circumstances surrounding the nomination and holiday session.

I cannot allow the moment to pass without expressing my concerns about it and the rationale regarding why I voted against cloture. I would have preferred not to have voted on a cloture motion at all. If this were an extended debate, the majority leader might have been right to invoke cloture. I am troubled that now we are setting a new precedent for invoking cloture within only a short time after a nomination comes out of the committee.

Mr. President, I rise today to explain my vote on this nomination. Tomorrow, at 11 a.m., we are going to vote on the Alito nomination.

I would be remiss, obviously, if I did not thank the distinguished chairman of the Judiciary Committee, Senator SPECTER, and the minority ranking member, my good friend from Vermont, Senator LEAHY, for the extraordinary service they have rendered to the Senate, along with their colleagues, during this nomination process.

Over the last several months, these members have managed three separate nominations to the Supreme Court: Chief Justice Roberts, Harriet Miers, and now Samuel Alito. They are to be congratulated for their commitment to fair hearings and for the manner in which they discharged their duties.

The Constitution, as we know, vests in this great body, the Senate, the privilege and the solemn responsibility to advise and give consent to the President on Supreme Court nominations—a unique role in our governance. The Framers intended for the Senate to take an active role in the confirmation process. However, the Constitution does not delineate the factors by which each Member of this body should determine the fitness of a judicial nominee to serve his or her lifetime appointment on the Federal bench. Thus, each Member of the Senate, each Senator, must determine for him or herself the acceptable criteria in judging a Supreme Court nominee.

I have never opposed a nominee solely because he or she holds different views than my own regarding the Constitution or the Court's role in interpreting or applying it. I have supported seven of the last nine nominees to the Supreme Court, including the current President's nomination of John Roberts to be our country's Chief Justice. As I said earlier, I did it with enthusiasm, having witnessed and gone through the process and watched the process of his confirmation hearing.

I, like many of my colleagues, have supported the overwhelming majority of the current President's judicial nominees. Of the current President's 230 judicial nominees, only 5 have failed to be confirmed, a rather remarkable record.

In the course of my Senate career, I have never imposed a litmus test while reviewing Supreme Court nominees. But, due to the nature of a lifetime appointment, I feel they are entitled to a higher level of scrutiny than other judicial nominees for the Federal bench.

I have three specific criteria that a Supreme Court must satisfy: First, I require that the nominee possess the technical and legal skills which we must demand of all Federal judges. Second, the nominee, in my view, must be of the highest character and credibility. And, finally, I vigorously examine the nominee's record to see whether he or she displays a commitment to equal justice for all under the law, in order to protect the individual rights and liberties guaranteed by the Constitution of the United States.

Now, I waited until after the committee vote had occurred last week, and then, in an interview with my local press in Connecticut, indicated how I would vote on this nominee. I have always done that. I have always reserved the first judgment to be made by the committee. It seems to me to respect the committee process is very important, and the views of my colleagues are important to me. Whether I agree with them or not, I like to hear how they have arrived at their decisions.

So on Supreme Court nominees, I have never announced a view on a nominee until after the committee has completed its review. Hence, less than a week after the committee voted, I find myself having to rush to the floor to make a hurried statement on this nominee. I am denied the opportunity to debate back and forth with other members of the Senate.

I waited to make my decision because I felt that Judge Alito deserved a hearing before the Judiciary Committee. I felt that each of us who are not on the committee should have an opportunity to review the transcripts of that hearing and then engage, as nonmembers of the committee, in a discussion of the merits and demerits of this nominee. That has been denied this Member because of the cloture motion filed by the majority leader, provoking what I deeply regret that occurred only a few hours ago, and that was actually to have to vote on a cloture motion.

I did not like casting that vote. I did not want to vote for it, but I felt I deserved the opportunity to be heard. So I do not regret at all that I am a part of a very small minority that voted against cloture. I wish more Members had. But I wish the majority leader had not filed that cloture motion, which provoked the exact scene we saw unfold here a few hours ago.

Now, there is little question in my mind as to Judge Alito's intellectual competence and legal experience, and all of that. If this were the only criteria, I would be for him.

Judge Alito received his legal education from Yale University School of Law in my home State of Connecticut. He served as a Government attorney in a number of positions including: Assistant Solicitor General, Deputy Assistant Attorney General in the Office of Legal Counsel, and U.S. Attorney for the District of New Jersey under President Reagan. In 1990, Judge Alito was nominated by George H.W. Bush to U.S. 3rd Circuit Court of Appeals. In the course of his 15 years on the Federal bench, Judge Alito has heard more than 3,000 cases. Furthermore, the American Bar Association has twice unanimously awarded Judge Alito with their highest rating of ''well qualified.'' I have great respect and admiration for his intellect, legal experience, and service to the American people as part of the Judicial Branch.

''Next, I turn to character and creditability. The question is: Does Judge Alito possess the qualities of mind and temperament expected of a Supreme Court Justice? I do not question whether Judge Alito is personally decent or if he has integrity. I was impressed by the diverse group of former clerks and colleagues who testified before the Judiciary Committee who could not have given him higher praise.

Let me also say I know there were questions raised. I listened carefully regarding these concern including those regarding the Concerned Alumni of Princeton and the recusal issues that were raised by a number of committee members on the Judiciary Committee. These questions, while relevant, and certainly need to be explored, would not have decided my vote on this nominee. I do not minimize it. But if my decision were to be based solely on the recusal question or Judge Alito's membership in the Concerned Alumni of Princeton issue, I would be here supporting this nomination.

Those are not the most important issues to this Member. But what is important are other issues that were raised during this nomination. Indeed, I am troubled that throughout Judge Alito's hearings, Judge Alito failed to provide clear and germane responses to legitimate questions.

A few examples. For instance, when Senator SCHUMER, our colleague from New York, asked Judge Alito if he still believed his statement from the 1985 memo that said the ''Constitution does not protect the right to an abortion,'' rather than reply with a simple yes or no answer, Judge Alito deflected the question and instead replied, ''The answer to the question is that I would address the issue in accordance with the judicial process as I understand it and as I have practiced it.''

When Senator FEINSTEIN of California asked Judge Alito if Roe v. Wade was the settled law of the land—not an unpredictable question, a fair one, one you might ask about Brown v. Board of

Education, Griswold v. Connecticut, and there is a long list of cases that are considered established law, settled law—when she asked the nominee whether Roe v. Wade—one in that litany of cases—is settled law, instead of answering it directly one way or the other, as Justice Roberts did, in very unequivocal terms—others might have said absolutely not; that would have been a very straightforward answer—what did we hear? He said—this is reminiscent of some comments that were heard earlier—''I think it depends on what one means by the term 'well settled.'''

When Senator DURBIN of Illinois asked the same question, Judge Alito offered the convoluted response: ''It is—if settled means that it can't be reexamined, then that's one thing. If settled means that it is a precedent then that is entitled to respect of stare decisis . . . then it is a precedent that is protected, entitled to respect under the doctrine of stare decisis in that way.''

Imagine giving that answer to Brown v. Board of Education. Imagine giving that answer to the long list of cases we now have as settled law. Now, the answer is, as Justice Roberts said: ''It is settled law''. But what you have here with Judge Alito is this dance going on here, instead of a direct yes or no. A no answer would have been a very honest answer. In fact, I suspect that is what his answer is, but he did not have the courage, in my view, to say that, which I would have respected. I might have disagreed with it, but I would have respected it. That is troublesome to me.

Finally, I think we should vigorously examine the nominee to see whether he or she is capable of and committed to upholding the Constitution of the United States and its promise of freedom and equality for all. Protecting the constitutional rights of all Americans is perhaps the most fundamental duty of a Supreme Court Justice. Therefore, I am deeply concerned in his 1985 memo Judge Alito explained that his interest in constitutional law was ''motivated in large part by disagreement with Warren Court decisions, particularly in the areas of criminal procedure, the Establishment Clause, and reapportionment.''

That is a fairly sophisticated answer in 1985. Many of these decisions, of course, compromise the cornerstone of the Supreme Court's modern jurisprudence, in enforcing the fundamental democratic principle of one person, one vote, in preventing the violation of an individual's privacy by the state—a matter that concerns everybody in this country; we see a lot of it going on today—and in ensuring procedural fairness in criminal trials. To wholeheartedly reject this legacy is also to reject the continued pursuit of the constitutional ideals of liberty and equality, in my view.

Before the Judiciary Committee, Judge Alito defended himself by saying he wrote the comments 20 years ago. Twenty years ago, he was well into his thirties. This is not some 18-year-old who is writing these thoughts. Of course, before becoming a judge, in that case, he was merely outlining the development of his thinking about constitutional law at the time and pledged to keep an ''open mind'' if confirmed to the Supreme Court. Well, that is nice to know. I am glad to hear he is going to have an open mind.

The seven current and former members of the Third Circuit Court of Appeals stated Judge Alito is ''not an ideologue,'' ''has no agenda,'' and ''is attentive and respectful of all views and is keenly aware that judicial decisions are not academic exercises but have far-reaching consequences on people's lives.'' I think those were certainly worthwhile comments to make, and certainly the comments of his fellow peers on the court I found to be compelling arguments on his behalf. However, I must say, having said all of that—I respect the fact they said it in our hearings—Judge Alito's long record as a Third Circuit judge, particularly in cases involving questions of individual rights, indicates a personal intent on stripping away many of these so-called Warren Court era achievements. In Reynolds v. Simms, for instance, Justice Warren wrote:

> The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.

Yet, in Jenkins v. Manning, Judge Alito was part of a decision to dismiss a suit brought by African-American voters who argued that the district's voting system diluted the voting strength of minorities. In that case, the dissenters argued that the decision failed to give effect to ''the broad sweep of the Voting Rights Act.''

Judge Alito's long record of opinions and dissents in these, and other divided cases lead me to believe that he has a legal philosophy which lies outside the mainstream. Several newspapers and scholars provided support for this concern. One study conducted by University of Chicago Professor Cass Sunstein, found that when there was a conflict between institutions and individual rights, Judge Alito's dissenting opinions supported the institutional interest over individual rights 84 percent of the time. Moreover, 91 percent of Alito's dissents take positions more conservative than his colleagues—including those appointed by Presidents Bush and Reagan.

Judge Alito has set an incredibly high standard for individuals to meet when bringing a claim against the Government or a Corporation. He has repeatedly dissented in cases where the majority has ruled in favor of an individual alleging racial or gender discrimination. In Bray v. Marriott Hotels, for example, a housekeeper manager alleged that she was denied a promotion because she was black. While the Third Circuit Court of Appeals ruled that the plaintiff had established the essential elements of a case of race discrimination and therefore was entitled to go to trial by a jury, Judge Alito dissented. He argued for a heightened evidentiary burden in order to protect employers who, in the future, would have to choose between—and I quote—''competing candidates of roughly equal qualifications and the candidate who is not hired or promoted claims discrimination.'' The majority again criticized Alito's approach stating that ''Title VII would be eviscerated if our analysis were to halt where the dissent suggests.''

I also fear that if confirmed, Judge Alito may pose a threat to the laws that protected disabled citizens from discrimination. In Nathanson v. Medical College of Pennsylvania the majority held that the plaintiff, a victim disabled by a terrible car accident, should be allowed to present, to the jury, evidence that the college had failed to make reasonable accommodation for her disability. Alito dissented, and again the majority reacted strongly to Alito's analysis: ''few if any Rehabilitation Act cases would survive summary judgment if such an analysis were applied to each handicapped individual's request for accommodations.''

But, I am especially troubled about Judge Alito's dissent in the Third Circuit Case of Chittester v. Department of Community and Economic Development. That case involved an employee who was fired while taking sick leave and who sought to enforce his rights under the Family and Medical Leave Act, which became law in 1993. I was the original author of this law which has enabled more than 50 million workers to take leave for medical reasons or to care for a child or family member. A primary objective of the act is to ensure that both male and female workers have access to leave, and that they were not punished or discriminated against because of their family responsibilities. However, Judge Alito found that the law was not a valid exercise of Congressional power to enforce the Equal Protection Clause. He said:

> Unlike the Equal Protection Clause, which the Family Medical Leave Act is said to enforce, the Family Medical Leave Act does much more than require nondiscriminatory sick leave practices; it creates a substantive entitlement to sick leave.

The decision reflects a proscriptively narrow conception of what ''equal protection'' required. Real equality cannot be achieved, and the very real effects of discrimination cannot be remedied, without meaningful, substantive action. This is precisely why Congress enacted the Family and Medical Leave Act. The Supreme Court recognized this in Nevada Department of Human Resources v. Hibbs. In a 6–3 decision authored by Chief Justice Rehnquist, the Court held that contrary to what Judge Alito said in Chittester, a worker can sue a State employer who fired

him for taking family leave to care for his sick wife. This finding is critical to ensure that workers and their families can continue to take leave without fearing for their job. This right might be jeopardized if Judge Alito is confirmed, as during the hearing Judge Alito continued to reject evidence of discrimination in personal sick leave even though there is compelling evidence in the legislative history of this law.

In these cases, the very judges who talked about our nominee as being fair and not being an ideologue, in their majority opinions had very different things to say about their colleague on some very critical cases on which this Appellate Court Judge reached different opinions, such as I have cited here, as well as in several others that came before that circuit.

I am also concerned about Judge Alito's ruling regarding the Family and Medical Leave Act, which I authored. The Family Medical Leave Act has provided meaningful relief to millions of Americans. Judge Alito would have made significant changes, if not eliminated the law altogether, a great setback, in my view. The Supreme Court strongly overruled his decision.

Finally, I am troubled that the rights of privacy which are so deeply valued by Americans could be eroded by a Justice on the bench who does not appreciate the importance of these issues.

I am alarmed by Judge Alito's unwillingness to explain his previous statements on the unitary executive theory of Presidential power. In a November 2000 speech to the Federalist Society, Judge Alito expressed strong support for the unitary executive theory calling it ''Gospel according to the Office of Legal Counsel'' referring to the position he held in the Reagan Justice Department. Proponents of this theory believe that the Constitution vests in the executive complete control over the administrative and regulatory branches. Judge Alito's failure to shed any light on his professed support for a powerful, unitary executive is troubling. In Hamdi v. Rumsfeld, Justice O'Connor acknowledged that the executive power must have reasonable limits, asserting that ''a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens.'' Judge Alito refused to comment on O'Connor's statement, and instead remarked that ''no person is above the law, and that includes the President.'' Unlike Chief Justice Roberts at his confirmation hearing, Judge Alito did not identify an affirmative obligation of the courts to block an executive action if the Executive acts unconstitutionally. Judge Alito' s answer fails to adequately explain in any substantial way, his views on limitations to executive power.

This failure is of particular significance given the current political landscape. President Bush and his lawyers adopted an expansive interpretation in their view of executive power, particularly in relation to the War on Terror and the conflict in Iraq. In fact, President Bush has cited the ''unitary executive'' theory in several recent instances to override congressional provisions he finds objectionable. I am disturbed that the President has claimed, for himself, the authority to overrule the will of the Congress in passing its antitorture legislation—legislation which received the overwhelming support of congressional Members. This undermines the separation of powers and democratic principles. I am further troubled that in the course of the Judiciary Committee hearing, Judge Alito did not adequately distance himself from the current administration's belief that this theory provides justification for the NSA to engage in the warrantless wirewrapping of U.S. citizens in defiance of the Foreign Intelligence Surveillance Act, and for the detention of U.S. citizens accused of being enemy combatants.

Defining permissible boundaries of Presidential power is among the most pressing of today's constitutional questions, and will almost inevitably arrive before the Supreme Court in the years to come. It is for this reason that Judge Alito' s inability to shed light on his past comments and his current beliefs is so significant. These failures call into question whether Judge Alito has sufficiently demonstrated that his jurisprudential philosophy allows for the degree of respect for democratic checks and balances, and the protection of individual rights and freedoms that the Constitution—and the public—demands.

A Supreme Court Justice influences the most critical issues facing this and future generations of Americans. I believe that the Court may now be at a pivotal point in which the future direction of our law is at stake. Judge Alito, if confirmed, will take the seat of Justice Sandra Day O'Connor on the Supreme Court. While all Supreme Court Justices have the same unique obligation—to serve as the ultimate guardians of the Constitution, the rule of law, and the rights and liberties of every individual citizen—Justice O'Connor has long provided a voice of reason and open-mindedness as she has carried out this weighty responsibility. With a moderate temperament and judicial independence, Justice O'Connor has often supplied the deciding vote to protect fundamental American rights and freedoms. We cannot underestimate how much is at stake in filling this critical seat on the Court.

When I spoke on this floor regarding the nomination of Chief Justice John Roberts, I stated that for those of us concerned about keeping America strong, free and just, his confirmation was no easy matter. However, I ultimately concluded that although he was a conservative nominee, Judge Roberts was within the mainstream of judicial thinking—in his judicial philosophy, his respect for precedent and his belief that the Constitution cannot be read as a document frozen in time. While his responses to questions in the Judiciary Committee may not have been as open as I had hoped, I decided that there was sufficient evidence to believe that he would honor and protect the individual rights and freedoms enshrined in our Constitution as the majority of his record showed him to be a persuasive advocate for his clients rather than a radical judge out of the mainstream of judicial thought.

I regret to say that, having reviewed his judicial record and his responses to the committee, I cannot be convinced that Judge Alito falls within the judicial mainstream. His evasiveness in the face of questioning by the committee, his established record on the bench of taking a restrictive view of individual rights, and his inability to explain his past comments on executive power all lead me to harbor significant concern. Determining whether to confirm a nominee to the Supreme Court is never an easy decision. Whether a nominee is sufficiently within the mainstream of judicial thinking is often a question of degree. While Judge Alito is clearly intellectually qualified and legally experienced, I am not convinced that Judge Alito's judicial philosophy will allow for the faithfulness to the constitutional rights and freedoms, and the protection of equality before the law we have come to expect from a Supreme Court Justice.

After a review of Judge Alito's extensive record, his decisions as a judge on the Third Circuit, and his testimony before the Senate Judiciary Committee, I must oppose this nomination. I have concluded that Judge Alito's judicial temperament is out of step with our fundamental constitutional values and that his confirmation would not be in the best interests of the United States.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DODD. So, Mr. President, for the reasons I have stated, I will oppose this nomination. I say this with regret because it will only be the fourth occasion in 25 years I will have voted against a nominee for the Supreme Court. I will do so tomorrow at 11 a.m.

I deeply regret that I didn't have the opportunity to engage in a fuller discussion. It is somewhat disturbing, that I was only allocated 20 minutes. Because of the constraints on time, this is all this Senator can say about a lifetime appointment to a coequal branch of Government, a nominee that will have a huge impact on the course of America in the 21st century.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for up to 1 hour.

Mr. INHOFE. Mr. President, I say to my good friend from Connecticut, I was surprised to find out he was not a member of the conservative caucus. Now I know. But I would agree with him insofar as the significance of the confirmation vote that will take place

tomorrow. There is nothing more solemn, nothing more significant that we have to deal with than confirming judges, whether they are nominated by Democrats or by Republicans.

However, I respectfully disagree with the Senator from Connecticut. I look forward to voting for the successful confirmation of Judge Alito. I have had a chance to talk about him. I believe he will be a strict constructionist and will do a good job for the United States, specifically for my 20 kids and grandkids.

NATIONAL SECURITY

Mr. INHOFE. Mr. President, I am not here, people will be glad to know, to talk about Judge Alito. I am here as an assignment. Serving on the Senate Armed Services Committee, as is the keeper of the chair, I have been there for quite a number of years. I have taken the assignment of giving a grade as to what President Bush, prior to his State of the Union Message tomorrow night, has done in the way of national security and national defense. I am proud to say that I am very proud of the job he has done. In doing this, what I would like to do is break it down into three segments.

First, I want to talk about the problems this President inherited when he became President in terms of our national security; second, the solutions, the very impressive solutions so far to these problems; and third, the challenges he has for the future, for the next 2 or 3 years. In doing this, I know I will come across as being very partisan. Quite frankly, when we are dealing with national defense, I am quite partisan. I think the most important thing we have to do here is to keep America strong, make sure that we have a strong national defense system. I hate to say it, but that becomes a partisan issue. However, it is too serious of an issue to try to be diplomatic, so I will not attempt to be diplomatic tonight. I will be dealing with the truth.

Winston Churchill said: Truth is incontrovertible. Panic may resent it, ignorance may deride it, malice may destroy it, but there it is.

First, in dealing with the problems that he inherited, I would like to outline seven huge problems that this President inherited when he became President. The first is, when he was inaugurated he received a military structure that was in total disarray. During the Clinton administration in the 1990s, I will show you in terms of dollars what happened to our system. There was a euphoric attitude everyone had that somehow the Cold War was over and we did not need a military anymore.

This is what the Clinton administration did. If you take this line right here, this is kind of the baseline only increased by inflation. So by doing this, we would say if that President had taken the baseline, the appropriations that he came in with and just applied the inflationary rate, it would be that top line, the black line. However, he didn't do it. Instead, with his budget, this yellow line is what he requested.

Fortunately, we in Congress were able to get this up to what I see as a green line here. So this is actually what happened right here. This is what was actually appropriated. This would have been a static system. This is what the President wanted.

What does that mean? It means that during the years he was President, he decreased spending from the level where it was by $313 billion. If we had not raised the amount that was in his budget, his budget called for a decrease of $412 billion. We are talking about the difference between the black line and the red line. It means that the Clinton-Gore administration cut the budget by 40 percent, reducing it to the lowest percentage of gross national product since before World War II.

The first 2 years of the Clinton administration, I was in the House of Representatives. I was on the House Armed Services Committee. I knew what he was going to be doing to our military. I started complaining about this during the first 2 years of his administration. Then as I saw it taking place, we were on the floor at least every week or two talking about what this President was doing to our military.

When they say the Cold War is over, we don't need a military anymore, I look wistfully back to the days of the Cold War. During the Cold War, we knew we had one superpower out there. It was the Soviet Union. We knew what they had. They were predictable. Their attitudes were predictable. They represented a great country, the U.S.S.R. We knew pretty much where we were. We had a policy that was in place. It was a military that stood up to an Eastern Bloc type of mentality. It was one that was working quite well.

During the time of the 1990s, during the Clinton drawdown of the military, one particular general comes to mind. I considered him to be a hero because it took courage. It is hard to explain to real people, as I go back to Oklahoma, how much courage it takes for someone to stand up against his own President if he is in the military. These are career people. GEN John Jumper, who later became the Chief of the Air Force, stood up in 1998 or 1999 and said: This insane drawdown of our military is something we cannot continue.

Not only were we drawing down to almost 60 percent, in terms of Army divisions, of our tactical airwings, our ships were coming down from 600 to 300, but also our modernization program.

So General Jumper, with all the credibility that he had—and there is no one in America more credible than he is—was able to say that we have a very serious problem and we now are sending our kids out in strike vehicles where the prospective enemy has better equipment than we do.

People don't realize it. When I go back to Oklahoma, I say: Do you realize some countries make better fighting equipment. For instance, five countries make a better artillery piece than the very best one that we have, which is the Paladin.

John Jumper said: Our best strike vehicles are the F–15 and F–16. The Russians are now making the SU–27, the SU–30s, and are proposing to make the SU–35. Those vehicles are better than the best ones we have in terms of jammers and radar.

I could get more specific in how they were better, but they were better. I agreed with him at the time and said so and applauded him when he made the statement that we need to move on with the FA–22 so we can get back and be competitive again.

People wonder why the liberals and, I say, the Democrats do not support a strong national defense. There are some reasons for this. One of the things we have in this country, which people don't stop and really think through, is the convention system. It is kind of a miracle. In a living room in Broken Arrow, OK, Republicans all meet and they decide what we stand for. We stand for a strong national defense, we are pro-life, all that stuff. At the same time, across the street you have the Democrats meeting. They are talking about gay rights and abortion and all the things they stand for. They decide what delegates go to the county convention. So the most activist of each side, liberals and conservatives, become the people who end up going to the conventions. Then they go to the district convention, the State convention, and then the national convention.

The bottom line is, if any Republican wants to run for the Senate or for the House or for a higher position, that person has to embrace the philosophy, at least partially, that is adopted by his party in the national convention of the Republican Party. It is a conservative agenda. For the Democratic Party, it is liberal agenda. That is a long way around the barn, but it kind of explains as to why these Members of the Senate from the Democratic side are not strong in terms of a national defense.

It is because if you really look at a liberal, they don't think you need a military to start with. Liberals believe that if all countries would stand in a circle and hold hands and unilaterally disarm, all threats would go away. They don't say that, but that is what they really think. So we have these people running for President on the Democratic side, and they don't want to perform in terms of what the needs are from a national security standpoint.

I said at the outset, there are two things unique to America. The other one is, we are so privileged in this country. If people at home want to know how JIM INHOFE, as a Member of