

must act soon, and we must act completely, to end the three percent withholding provision entirely. I urge my colleagues to support this legislation.

NATIONAL BREAST CANCER AWARENESS MONTH

Mr. BLUMENTHAL. Mr. President, I rise today to recognize October as National Breast Cancer Awareness Month. This disease affects people everywhere of all walks of life, taking the lives of approximately 40,000 women in our country each year. In Connecticut, over 3,000 new cases of breast cancer will be diagnosed this year.

The epidemic incidence of breast cancer reminds us of the need for vigilance and vigor in fighting it. I applaud the various advocacy and fundraising organizations that have fought on behalf of the millions of individuals affected by breast cancer. These organizations have been instrumental in raising awareness of breast cancer throughout the health community, public, and Congress. Their work in promoting vital prevention activities and critical funding within government agencies for breast cancer has saved millions of lives, and I thank them for all they have done in the fight against breast cancer.

It is important to remember this month, and always, how critical preventive care is in the fight against breast cancer. I strongly encourage individuals to speak with their doctors about breast cancer to determine what steps they should take to protect themselves. Early detection can significantly lower the risk of death from breast cancer, and I hope women will be reminded this month to seek the preventive care they may need.

While progress has been made on this issue, we must continue to fight against breast cancer. I know my colleagues and I can agree that this fight is a national priority, and I look forward to working with them on this issue in the coming years.

20TH ANNIVERSARY OF THE APPOINTMENT OF JUSTICE CLARENCE THOMAS

Mr. HATCH. Mr. President, on October 20, I paid tribute to the 20th anniversary of Justice Clarence Thomas' appointment to the Supreme Court. I entered into the RECORD following my remarks letters from several of his former clerks giving their own reflections. I ask unanimous consent to have printed in the RECORD today letters from three other clerks: John Eastman, Jeffrey Wall, and Chris Landau.

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

CHAPMAN UNIVERSITY,
Orange, CA, October 12, 2011.

Hon. ORRIN G. HATCH,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATCH: I was honored to serve as a law clerk with Justice Clarence

Thomas during the Supreme Court's October 1996 Term. The Justice's mentorship, foresight, and depth of understanding of the principles of the American Founding ensured that my service with him would be one of the highlights of my professional career, no matter where that career would lead in the fullness of time. So I am particularly grateful for the opportunity to provide a letter for the Congressional Record commemorating the twentieth anniversary of his confirmation and appointment as Associate Justice of the Supreme Court of the United States.

I also want to express my sincere thanks to you, for your extraordinary efforts in advancing Justice Thomas's confirmation in the U.S. Senate twenty years ago. What a difference twenty years makes! Back then, even after the scurrilous efforts to derail the confirmation failed, there was a sustained effort to belittle the unbelievable accomplishments of this truly great man. Instead of taking American pride in the Justice's phenomenal rise from the depths of poverty to one of the highest offices in the land, a true Horatio Alger story if ever there was one, some of our fellow citizens continued their efforts to discredit. Justice Thomas was merely the "puppet" of Justice Antonin Scalia, we were told, because the two voted together roughly ninety percent of the time. (I never saw a similar claim that Justice Ginsburg was merely the "puppet" of Justice Stevens because of similarly high vote agreement, and I'm still waiting for the "puppet" charge to be applied to Justice Kagan, who this past year agreed with Justices Sotomayor and Ginsburg 94% and 90% of the time, respectively). The New York Times called him the "cruellest" Justice early in his tenure on the bench because of an opinion he authored faithfully adhering to the Constitution's text in a case involving an assault on a prisoner. One federal appellate judge even went so far as to claim that no Supreme Court decision decided by a 5-4 vote with Justice Thomas in the majority should be deemed binding precedent!

And yet, despite all this, the Justice persevered, building over the years such a coherent and profound body of law that even some of his most vocal critics from the early years have had to concede that they were wrong. This past summer, the New Yorker Magazine acknowledged that in "several of the most important areas of constitutional law, Thomas has emerged as an intellectual leader of the Supreme Court." His concurring opinion in the 1997 decision of *Printz v. United States* invited a long-overdue consideration of whether the Second Amendment conferred "a personal right to 'keep and bear arms,'" an invitation that the Court accepted and vindicated a decade later in the landmark case of *Heller v. District of Columbia*. His concurring opinion in *Simmons v. Zelman-Harris*, the 2002 Ohio school vouchers case, has created a virtual cottage industry in legal scholarship assessing his contention that the Establishment Clause was primarily a federalism provision, and thereby not as susceptible to being incorporated and made applicable to the States via the Fourteenth Amendment as the other clauses of the First Amendment, certainly without a more thorough analysis than had previously been provided by the Court.

But the Justice's most profound intellectual leadership on the Court has involved his commitment to our nation's founding principles. He has been at the forefront of the effort to revive the idea that the federal government is one of only limited, enumerated powers, and that it is the solemn duty of the Court to serve as a check against a Congress bent on ignoring the limits on its own power, in order to protect the cause of liberty. Even more important than his dedication to lim-

ited government, though, has been his devotion to the natural rights political theory of the Founders on which the idea of limited government is grounded, particularly as espoused in the Declaration of Independence. The Justice has famously disagreed with Justice Scalia about the role of the Declaration in constitutional interpretation, finding that the principles espoused there are not only relevant but binding. In the 1995 case of *Adarand Constructors, Inc. v. Peña*, for example, Justice Thomas objected to the federal government's use of racial preferences in government contracting, stating that there "can be no doubt that the paternalism that appears to lie at the heart of this program is at war with the principle of inherent equality that underlies and infuses our Constitution." The citation he provided for that simple but important proposition—paragraph two of the Declaration of Independence ("We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness").

When he nominated Justice Thomas to the Supreme Court, President Bush asserted that he was the most qualified person in the country for the job. Many disparaged the President's statement at the time, as so patently false that even the President himself could not possibly have believed it. Instead, it was said, the President was merely claiming that Thomas was the most qualified conservative African-American with judicial experience who could be nominated to fill the seat from which the first African-American to serve on the high Court, Thurgood Marshall, had just retired. And in that category of one, Thomas was the most qualified. Quite apart from the fact that the very idea of race-based allotments of seats on the Supreme Court runs counter to Justice Thomas's deep devotion to a color-blind constitution, the derogatory interpretation of the President's claim has, happily, been thoroughly debunked by the Justice's own jurisprudence. At a time when our understanding of the Law has been infected with a morally relativistic legal positivism, Justice Thomas's revival of the Declaration's recognition that there is a higher law that governs the affairs of man, that our inalienable rights to life, liberty, and the pursuit of happiness come not from any government but by our Creator, and that the sole legitimate purpose of government is to secure those rights, has proved beyond measure that the President was correct.

And increasingly, the Court is following his lead. As the New Yorker magazine recognized, "the majority has followed where Thomas has been leading for a decade or more. Rarely has a Supreme Court Justice enjoyed such broad or significant vindication."

The American founding was one of the great episodes in all of human history. The United States of America became a beacon of hope to the world, a shining city on a hill lighting the path of freedom for all. We had lost that wonderful legacy for a time, but we have begun to reclaim it, in no small part because of the efforts of Justice Clarence Thomas, of those who taught him, and of those who learned and continue to learn from him. Please join me in thanking Justice Thomas for his dedication to our nation's founding principles, congratulating him on this 20-year milestone, and wishing him Godspeed for the next twenty years as he continues his efforts on and off the bench on behalf of the principles of liberty.

With utmost respect and admiration,
JOHN C. EASTMAN,
Henry Salvatori Professor
of Law & Community Service.

OCTOBER 13, 2011.

Hon. ORRIN G. HATCH,
U.S. Senate, Hart Office Building, Washington,
DC.

DEAR SENATOR HATCH: Thank you for honoring Justice Thomas on the twentieth anniversary of his confirmation to the Supreme Court of the United States. Thank you also for inviting me to offer my own thoughts on this important anniversary.

In their letters, many of my fellow law clerks to Justice Thomas describe his contributions to the development of the law. As they observe, he has articulated a clear, consistent approach to judging that focuses on the text and history of the Constitution and federal statutes. It would be a mistake then to pigeonhole the Justice's views as either results-oriented or outdated. On the one hand, it would not explain many of his opinions—for instance, his view that the Eighth Amendment does not place limits on the amount of punitive damages that plaintiffs may recover against defendants, or his view that the Sixth Amendment places limits on the government's ability to introduce evidence from absent witnesses at criminal trials. On the other hand, it would not explain the areas in which Justice Thomas's attention to history has foreshadowed the later direction of the Court—for instance, his discussion of the Second Amendment in *Printz v. United States*, eleven years before the Court recognized an individual right to bear arms in *District of Columbia v. Heller*. Justice Thomas's contributions to the law have been principled and important, and their influence over the past two decades merits serious consideration.

I would like to focus, though, on something that receives less public attention: his decency, both as a judge and as a human being. Because Justice Thomas seldom asks questions at oral argument, it would be easy to assume that he is a quiet, reserved individual, detached from the life of the Court and the lives of those around him. Nothing could be further from the truth. Before the Supreme Court hears cases, it is common for the Justices to discuss those cases with their law clerks. I still remember the first of those conferences when I clerked for Justice Thomas: it lasted nearly two days. He discussed our views on the cases for hours—challenging us to clarify our thoughts, defend our positions, and explain our differences. In the end, of course, the Justice reached his own views, but no litigant should ever walk away from the Court thinking that his arguments fell on deaf ears. Indeed, Justice Thomas's reluctance to participate in oral argument is driven in large part by his desire to hear from the advocates. Many of them have worked for years to bring the country's most important cases before its highest Court, and he believes that they should have the opportunity to be heard. Whatever one thinks of that approach, it is born of a respect for other people and what matters to them.

Our conferences and conversations with the Justice also ranged far beyond the law. He wanted to get to know us as people—to understand where we grew up, what we enjoy, and what we hope for our futures. It is not an exaggeration to say that Justice Thomas treats his clerks, his staff, and his colleagues like a family. And like any family, he takes on our cares and concerns, our highs and lows. Several years ago, a member of my family was having an issue with her health, and I happened to mention it in passing to the Justice as something that had been weighing on my mind. The next day, without any indication to me, the Justice contacted her to see whether there was anything that he could do. Perhaps the most remarkable thing is, that story will not sur-

prise anyone who knows him: all of us can recall a time when he reached out to offer encouragement in an hour of need. He does not provide that support publicly, where he could receive recognition, which reminds me of Matthew's admonition to give alms in private and not for the glory of others. I suspect that if Justice Thomas ever reads this letter, he will be upset with me for bringing his humanity into the spotlight.

Several years ago, Justice Thomas gave a talk to students at the University of Alabama Law School. During the flight, he struck up conversation with a lawyer returning home to Birmingham. They talked about legal practice, their families, and Alabama football—all without the attorney's having any idea that he was conversing with a Supreme Court Justice. At the law school, Justice Thomas spoke before a packed house of hundreds of students, and afterward he stood for hours, meeting and taking pictures with every last student who had waited in line. At a similar visit to the University of Tennessee, he literally closed down the law school, waiting until everyone had left and then thanking the janitorial staff who were cleaning up from the event. From a lawyer in Birmingham, to students in Tuscaloosa, to employees in Knoxville, there are countless people across America who can testify to Justice Thomas's warmth and his deep, booming laugh. Wherever he goes, he connects with strangers from all walks of life, because he is sincerely interested in their backgrounds and genuinely grateful for their contributions. He reminds all of us that we are never too busy or important to be considerate to others, and he deserves the highest of compliments that I can pay to a fellow Georgian: he has never forgotten who he is or where he came from.

Finally, any recognition of Justice Thomas's time on the Court would be incomplete without also recognizing his wife, Mrs. Ginni Thomas. She has been there every step of the way, sharing in the substantial burdens that serving as a Justice can impose. Justice Thomas often says that he could not do his job without her support, and I am sure that he would want any commemoration of his service to extend to her as well. Thank you for recognizing them on the twentieth anniversary of Justice Thomas's confirmation to the Supreme Court.

Sincerely,

JEFFREY B. WALL,

Law Clerk to Justice Thomas, 2004–2005.

WASHINGTON, DC,

October 17, 2011.

Hon. ORRIN G. HATCH,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATCH, Thank you so much for inviting me to participate in your tribute to Justice Thomas on his twentieth anniversary on the Supreme Court.

Justice Thomas didn't want to be Justice Thomas. I know this for a fact, because I was with him on June 27, 1991, when he received word that Justice Thurgood Marshall had announced his retirement and that the White House was calling for an interview. Time stood still for a moment as then-Judge Thomas absorbed this information and its obvious implications. It wasn't a moment of excitement or exhilaration; rather, he accepted a stack of pink phone slips as if each one were an iron weight. He had just turned forty-three, and had been a judge on the D.C. Circuit for little over a year.

Ironically, one of the best qualifications for serving on the Supreme Court may be the lack of a craving to do so. For Justice Thomas, service on the Court is a job, not a calling. He gets up in the morning, goes into the office, decides cases, and then goes home

again. He isn't impressed by important people, and doesn't try to impress anyone. He enjoys his job, but it doesn't define him.

The job may come easier to him than to others because of his firm views about the limited role of federal judges. He doesn't believe it's his business to make tough policy choices, but to enforce the policy choices made by others. He's often voted for results that I'm quite sure he would oppose as a legislator. His concern is deciding cases correctly, not garnering either votes or accolades.

I vividly recall a case argued during Justice Thomas' very first sitting on the Supreme Court in November 1991. The Justice returned to Chambers after Conference and sheepishly admitted that he'd switched his intended vote because every one of his colleagues had voted the other way. The next morning, however, he summoned his law clerks into his office to tell us that he'd had trouble sleeping because he still couldn't justify that vote, and had just informed the Chief Justice that he would try his hand at a dissent. That dissent ultimately picked up a number of other votes, and the result in the case nearly flipped. When a similar issue reached the Court a few years later, Justice Thomas wrote the majority opinion.

I don't think that Justice Thomas has spent many sleepless nights since then. He knows who he is as a person and a judge, and is comfortable on both scores. His judicial voice is confident, original, and compelling. There can be little doubt that he has brought true diversity to the Supreme Court.

Finally, no tribute to Justice Thomas would be complete without acknowledging his warm personality, perfectly captured by his booming laugh. From a parochial perspective, he takes a real interest in his law clerks, both before and after the clerkship. He enjoys having lunch on a regular basis with those of us who live in the Washington area, not only so that he can keep up with us, but also so that we can keep up with each other. And, through it all, he derives great strength and comfort from his wife Ginni. Without her, he never would have found his beloved Cornhuskers!

I appreciate the opportunity to share these thoughts.

Sincerely yours,

CHRISTOPHER LANDAU,
Law clerk to Judge
Thomas, D.C. Circuit,
1990,
Law clerk to Justice
Thomas, Supreme
Court, 1991–92.

REMEMBERING REVEREND FRED SHUTTLESWORTH

Mr. PORTMAN. Mr. President, I rise today to recognize the late civil rights leader, Reverend Fred Shuttlesworth, who passed away earlier this month. From his humble beginnings in Mount Meigs, AL, he grew to become one of the most influential leaders in the battle for civil rights. Reverend Shuttlesworth was best known as co-founder of the Southern Christian Leadership Conference, which was formed in response to the Montgomery bus boycott, and for the role he played in the sit-ins of lunch counters in 1960 and the Freedom Rides of 1961.

Dr. Martin Luther King, Jr. considered Reverend Shuttlesworth one of the Nation's most courageous freedom fighters. Reverend Shuttlesworth was beaten, assaulted, jailed, and had his