

Mr. KYL. I support the nomination of Justice Andy Hurwitz to the Ninth Circuit Court of Appeals.

Justice Hurwitz received his undergraduate degree from Princeton University (A.B. 1968) and his law degree from Yale Law School (J.D. 1972), where he was Note and Comment Editor of the Yale Law Journal.

He served as a law clerk to Judge Jon O. Newman of the United States District Court for the District of Connecticut in 1972; to Judge J. Joseph Smith of the United States Court of Appeals for the Second Circuit in 1972–1973; and to Associate Justice Potter Stewart of the Supreme Court of the United States in 1973–1974.

Justice Hurwitz has served on the Arizona Supreme Court since 2003. Before joining the Arizona Supreme Court, Justice Hurwitz was a partner in the Phoenix firm of Osborn Maledon, where his practice focused on appellate and constitutional litigation, administrative law, and civil litigation. He is a member of the bar in Arizona and in Connecticut; he received the highest grade on the Arizona Bar examination in the summer of 1974. He argued two cases before the Supreme Court of the United States. Justice Hurwitz served as chief of staff to two Arizona governors—from 1980 to 1983 and in 1988. He was a member of the Arizona Board of Regents from 1988 through 1996, and served as president of the Board in 1992–1993.

He has regularly taught at the Arizona State University College of Law, and was in residence at the College of Law as Visiting Professor of Law in 1994–1995 and as a Distinguished Visitor from Practice in 2001. He was appointed by Chief Justice Rehnquist in 2004 as a member of the Advisory Committee on the Federal Rules of Evidence and reappointed to a second term by Chief Justice Roberts in 2007.

His easy to see why Justice Hurwitz was awarded the ABA's highest rating: Unanimous "Well Qualified."

During his 9-year tenure on the Arizona Supreme Court, Justice Hurwitz has consistently demonstrated a commitment to faithfully apply existing law and precedent regardless of his own policy preferences. A few examples are quite telling:

In 2006, he upheld the constitutionality of a 200-year sentence for a man convicted of possessing twenty pictures of child pornography even though Justice Hurwitz personally felt that the sentence was too long. Responding to the dissent in *State v. Berger*, he wrote:

As a policy matter, there is much to commend Justice Berch's suggestion that the cumulative sentence imposed upon Mr. Berger was unnecessarily harsh, and my personal inclination would be to reach such a conclusion. As a judge, however, I cannot conclude under the Supreme Court precedent or even under the alternative test that Justice Berch proposes that Berger's sentences violate the United States Constitution.

In 2005, in *State v. Fell*, Justice Hurwitz, followed Supreme Court

precedent and held that "the Sixth Amendment does not require that a jury find an aggravating circumstance before a natural life sentence can be imposed." In so doing, he rejected a position similar to the one he had advocated for at the Supreme Court just 3 years earlier.

Justice Hurwitz repeatedly reiterated his commitment to judicial restraint in his testimony to the Judiciary Committee. To briefly quote him: "Judgments about policy matters are within the province of the legislature, and courts should not second-guess such judgments."

Justice Hurwitz's steadfast commitment to this philosophy is likely the reason that no opinion written or joined by Justice Hurwitz has ever been overturned by the United States Supreme Court.

I support the nomination of Justice Hurwitz to the Ninth Circuit because I believe that his abilities, experience, and commitment to judicial restraint will enable him to serve the residents of the Ninth Circuit as ably as he has served the people of Arizona.

Today, I am very disappointed because a lot of friends of mine in the pro-life community are, to put it charitably, exaggerating one Law Review article that he wrote attributing to Justice Hurwitz all kinds of views which are not appropriate based upon the facts. It has to do with the pro-life issue.

I want to set the record straight on Justice Hurwitz's article about Judge Jon O. Newman, which has unfortunately been blown out of proportion. About 10 years ago, the New York Law School Law Review solicited Judge Jon O. Newman's former clerks to write articles for a symposium dedicated to Judge Newman's first 30 years on the bench. Five clerks agreed, including Justice Hurwitz, who wrote about the most influential opinion written by Judge Newman while Justice Hurwitz was clerking for him.

Justice Hurwitz wrote the Newman article to "document the historical record about the effect of Judge Newman's decisions on subsequent Supreme Court jurisprudence." [Hurwitz Responses to the Written Questions of Senator JEFF SESSIONS, question 1(a), pg. 1.] He did not express his "personal opinions" on the merits of Judge Newman's reasoning in *Abele I* or *Abele II*, something that Justice Hurwitz believes would be "improper for a law clerk to do, either then or now." [Hurwitz Responses to the Written Questions of Senator JEFF SESSIONS, question 1(a), pg. 1.]

Although Justice Hurwitz "assisted in the research," "Judge Newman wrote the [*Abele II*] opinion, as he did all opinions which bore his name during the time [Justice Hurwitz] clerked for him." [Hurwitz Responses to the Written Questions of Senator TOM COBURN, question 8, pg. 5.] Further, as a law clerk, Justice Hurwitz was required to implement Judge Newman's

preferences, not his own. Thus, Judge Newman's opinion cannot be attributed to Justice Hurwitz.

If someone told me that Justice Hurwitz was pro-choice, I would believe that, though he has never said, and he did not express his personal opinions in the Law Review article about the decision that his previous boss, a federal judge, had written. His boss, Judge Newman, wrote an opinion that was part of the basis for *Roe v. Wade*, a decision with which I wholeheartedly disagree. Andrew Hurwitz wrote about that. Somehow my friends in the pro-life community have turned this into a federal case against him. What do they suggest? That he approved of *Roe v. Wade*. The point is that Andrew Hurwitz has never in his career on the Arizona State Supreme Court evidenced any inability to separate his own personal views from the judging that he is required to do. And I would defy any of these people who think they know more about it than I do to show me a case if they can find one where that is not true.

Justice Andrew Hurwitz is known in Arizona as a very fair jurist who applies the law fairly and without regard to his personal inclinations. That is the kind of judge he will be on the Ninth Circuit of Appeals. If my reputation among my conservative colleagues means anything, I simply say I know the man; I have known him a long time; and my good friends in the conservative community have every confidence in Andrew Hurwitz.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CLOTURE MOTION

Under the previous order, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant 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, hereby move to bring to a close debate on the nomination of Andrew David Hurwitz, of Arizona, to be United States Circuit Judge for the 9th Circuit.

Harry Reid, Patrick J. Leahy, Al Franken, Daniel K. Inouye, Bill Nelson, Amy Klobuchar, Jeff Bingaman, Michael F. Bennet, Herb Kohl, Patty Murray, Robert P. Casey, Jr., Tom Udall, Richard Blumenthal, Benjamin L. Cardin, Sheldon Whitehouse, Christopher A. Coons, Mark Begich.

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 the nomination of Andrew David Hurwitz, of Arizona, to be United States Circuit Judge for the Ninth Circuit 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 called the roll.

Mr. KYL. The following Senators are necessarily absent: the Senator from North Carolina (Mr. BURR), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Oklahoma (Mr. COBURN), the Senator from Wyoming (Mr. ENZI), the Senator from Utah (Mr. HATCH), the Senator from Georgia (Mr. ISAKSON), the Senator from Illinois (Mr. KIRK), the Senator from Pennsylvania (Mr. TOOMEY), and the Senator from Louisiana (Mr. VITTER).

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

The yeas and nays resulted—yeas 60, nays 31, as follows:

[Rollcall Vote No. 118 Ex.]

YEAS—60

| | | |
|------------|--------------|-------------|
| Akaka | Gillibrand | Murkowski |
| Alexander | Hagan | Murray |
| Baucus | Harkin | Nelson (NE) |
| Begich | Inouye | Nelson (FL) |
| Bennet | Johnson (SD) | Pryor |
| Bingaman | Kerry | Reed |
| Blumenthal | Klobuchar | Reid |
| Boxer | Kohl | Rockefeller |
| Brown (MA) | Kyl | Sanders |
| Brown (OH) | Landrieu | Schumer |
| Cantwell | Lautenberg | Shaheen |
| Cardin | Leahy | Snowe |
| Carper | Levin | Stabenow |
| Casey | Lieberman | Tester |
| Collins | Lugar | Udall (CO) |
| Conrad | McCain | Udall (NM) |
| Coons | McCaskey | Warner |
| Durbin | Menendez | Webb |
| Feinstein | Merkley | Whitehouse |
| Franken | Mikulski | Wyden |

NAYS—31

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|----------|--------------|----------|
| Ayotte | Grassley | Paul |
| Barrasso | Heller | Portman |
| Blunt | Hoeven | Risch |
| Boozman | Hutchison | Roberts |
| Coats | Inhofe | Rubio |
| Cochran | Johanns | Sessions |
| Corker | Johnson (WI) | Shelby |
| Cornyn | Lee | Thune |
| Crapo | Manchin | Wicker |
| DeMint | McConnell | |
| Graham | Moran | |

NOT VOTING—9

| | | |
|-----------|---------|--------|
| Burr | Enzi | Kirk |
| Chambliss | Hatch | Toomey |
| Coburn | Isakson | Vitter |

The PRESIDING OFFICER. On this vote, the yeas are 60, the nays are 31. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

VOTE EXPLANATION

• Mr. TOOMEY. Mr. President, I want to submit for the record my views on roll call vote No. 118, the nomination of Andrew Hurwitz to the U.S. Court of Appeals for the Ninth Circuit. I am deeply concerned with Mr. Hurwitz's role in advancing a constitutionally flawed doctrine that would become the framework for *Roe v. Wade*. His actions constitute a brand of judicial activism unfit for the Court. I do not believe Mr.

Hurwitz holds the requisite traits necessary to be an objective arbiter of the law. Had I been present, I would have voted "nay." •

The PRESIDING OFFICER. The Senator from Colorado.

125TH ANNIVERSARY OF UNITED WAY

Mr. UDALL of Colorado. Mr. President, I rise tonight to recognize the 125th anniversary of United Way and honor their extraordinary achievements since their founding 125 years ago in Denver, CO.

In 1887, a Denver woman along with local religious leaders recognized the need for community-based action in order to address Denver's growing problem with poverty. In Denver, this group—this initial group—established the first of what would become a worldwide network of organizations called United Way. Their goal was simple: create a community-based organization that would raise funds in order to provide economic relief and counseling services to neighbors in need. During their first campaign in 1888, this remarkable organization raised today's equivalent of \$650,000.

Now, 125 years after its founding, United Way has become a celebrated worldwide organization committed to improving communities from the bottom up through cooperative action and community support in 41 countries across the globe. United Way forges public-private partnerships with local businesses, labor organizations, and 120 national and global corporations through the Global Corporate Leadership Program that brings an impressive \$1 billion to local communities each year. United Way effectively leverages private donations in order to finance innovative programs and initiatives that profoundly affect communities throughout Colorado, the United States and, dare I say, the world.

The success and strength of these partnerships between United Way and America's workers cannot be overstated. Nearly two-thirds of the funds for United Way come from voluntary worker payroll contributions, and the Labor Letters of Endorsement Program championed by the AFL-CIO encourages affiliates and their members to give their time and resources to United Way campaigns.

Just one powerful illustration of this partnership is the National Association of Letter Carriers' National Food Drive, which is a cooperative effort of the U.S. Postal Service, the AFL-CIO, and United Way, which has become the world's largest 1-day food drive.

United Way has strengthened bonds and built a foundation of collaboration and partnership in our communities. Its founders could never have imagined the ultimate breadth and reach of this group, growing from a local support organization in little Denver, CO, back in 1887 to a globally recognized force for good.

United Way is an indispensable part of Colorado's social fabric, and I am proud to recognize and honor this historic anniversary.

There are 14 local United Way organizations leaving an indelible mark throughout Colorado. I want to take a moment to recognize each of them for their tremendous role as cornerstones of their communities: Foothills United Way, Boulder; Pikes Peak United Way, Colorado Springs; Moffat County United Way, Craig; Mile High United Way, Inc., Denver; United Way of Southwest Colorado, Durango; United Way of Eagle River Valley, Eagle; United Way of Morgan County, Inc., Fort Morgan; United Way of Mesa County, Grand Junction; United Way of Weld County, Greeley; United Way of Larimer County, Inc., Fort Collins and Loveland; Pueblo County United Way, Inc., Pueblo; United Way of Garfield County, Rifle; Routt County United Way, Steamboat Springs; and Logan County United Way, Sterling.

To all of the employees and partners of United Way, I join my Senate colleagues in recognizing and applauding your legacy and inspirational service. This 125th anniversary is a milestone deserving of celebration, and I commend your tireless pursuit to advance the common good.

BIPARTISAN FARM BILL

Mr. President, I also rise to speak to the important bipartisan legislation we are considering which is commonly known as the farm bill.

This legislation is critical not just to our farmers and ranchers and rural communities but to every segment of our population and our economy. We have heard from others highlighting that this bill supports more than 16 million jobs across our country.

In fact, the Colorado Department of Agriculture estimates that in my home State alone the agricultural-related industry generates approximately \$20 billion in economic activity supporting more than 100,000 jobs. This is a principal reason why I urge the Senate to consider and pass a 2012 farm bill.

This bill will unquestionably strengthen our economy and help to grow jobs that support the livelihood of Coloradans and Americans in both rural and urban communities. That is what our constituents in Pennsylvania, Ohio, and Arkansas are demanding we do—work together across the aisle to pass bills that will help put people back to work.

I want to take a second or two to thank the members of the Senate Agriculture Committee, especially Chairwoman STABENOW and Ranking Member ROBERTS, for their efforts to bring a bipartisan bill to the Senate floor.

As with most of our work in the Senate—and when we are at our best—compromise is key, and it rules the day. I am pleased we are now discussing a bill that will provide certainty to our farmers and ranchers over the next 5 years.

Let me tell you some of the other things the bill will do. It will improve opportunities for farmers and ranchers to enter the agricultural sector, it will