process, to set things aside, let the people speak, and let that be instructive to the Supreme Court nomination.

Incidentally, I know the Vice President, at the time he made this quote, was the chairman of the Judiciary Committee, the position Senator GRASSLEY currently holds. He was basically saying what Senator GRASSLEY has said and that I fully support. So I think Vice President BIDEN was right the first time. He seems to be stepping back on his words, but I don't think his words can be parsed. They were pretty well-articulated right here on the Senate floor.

Then we come to the minority leader. We now have the minority leader and others coming to the floor talking about what our constitutional duty is, but the minority leader came to this floor—right over there, not very far from where I am now—and he said:

> The duties of the Senate are set forth in the U.S. Constitution. Nowhere in that document does it say the Senate has a duty to give presidential appointees a vote.

I agree with Senator REID. And finally, we have one from my good friend from New York, Senator SCHUMER. Senator SCHUMER is a very articulate man. He is a practiced attorney, and there are many aspects of the man I admire. In another instance, in a very passionate speech given—it is on YouTube so you can all watch it—he has taken a very similar position; that circumstances get to a point to where maybe we need to hold nominations until we get the information we need that is instructive to the future nomination or the future vote or consent matter.

I agree with Senator REID's 2005 statement, I agree with Senator BIDEN, Chairman BIDEN, now-Vice President BIDEN's statement of 1992, and I agree with Senator SCHUMER's of 2007.

My colleagues, it is time for us to move on and recognize the position we have taken is a position that is going to stand. We can go to the American people back in our States, States like North Carolina, where we have a primary next week, and I will be traveling all across the State tomorrow and Saturday, back again on Monday. I will explain to them why I have taken the position I have, and when we do, all the games that are being played now, with one poll saying one thing or another poll saying another thing, we can cut through the noise and talk about what we are really trying to do.

What we are trying to do is to give the people an opportunity to voice where they want to take the direction of the Supreme Court, where they want to take the Nation in terms of the Presidency, and where they want to take the Nation in terms of the Congress. I am willing to bet on the people's voice, and I am looking forward to it being instructive to the ultimate decision I make about a Supreme Court nominee.

I love getting letters from folks in my State, so the last thing I leave you with is a quote from a lady named Lois from North Carolina. I think she does a good job of summing up my own feelings. She said:

> I really wish the discussions and hoopla could have waited a little longer after Judge Scalia's passing, but we are having the back and forth of what to do. As your constituent, I'm in agreement with the committee position of waiting until after we have a new President. Word out of the White House to the Senate is: Do your job. Well, I, for one, think you are doing your job. It's called checks and balances.

In the coming weeks, I am looking forward to continuing this debate. I want to especially note that Senator GRASSLEY is a wonderful Member of the Senate. He has support and admiration from both sides of the aisle. I appreciate his leadership on this matter. I appreciate Leader MCCONNELL's leadership on this matter. I look forward to getting back to North Carolina and hearing what the people would like for me to consider as we move forward with the nomination process.

I thank the Presiding Officer.

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

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

The legislative clerk proceeded to call the roll.

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

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

AIR SERVICES AGREEMENT WITH CUBA

Mr. FLAKE. Mr. President, last month we reached a milestone in the continuing reform of our policy toward Cuba. The United States and Cuba completed a bilateral air service agreement that is key to ensuring the continued travel of Americans to the island. The newly minted air services agreement will, for the first time in 50 years, provide scheduled air service between the United States and Cuba, including 20 daily flights to Havana and 10 daily flights to other Cuban airports.

As someone who believes that all Americans should have a chance to see a living museum of a failed socialistic experiment, I look forward to the day when all Americans can use Web sites they are familiar with to make reservations, even with their frequent flyer miles, to book flights to Havana and elsewhere in Cuba. Clearly, there is interest on our side of the Florida Strait. With easing of regulatory restrictions, authorized travel to Cuba by Americans has increased by more than 50 percent in just one year. Freedom to travel between the two countries will continue to open cultural and economic ties, benefiting the Cuban people and Americans alike.

While I ardently support everyone's right to travel to Cuba, key to the success will be ensuring that the initial flights being awarded by the Department of Transportation provide for the continued and expanded ability of the Cuban American community to travel to the island via regular air service. This should include adequate regular service to accommodate the growing demand from the largest and closest Cuban American population located in Miami-Dade County.

In addition, having traveled to Cuba multiple times over the years, I hope that the Department closely evaluates the complexity of operating there and ensures that those selected to operate these routes are up to the task—those with experience.

A failure-to-launch scenario would represent a critically missed opportunity represented by the potential of successfully scheduled air services between the United States and Cuba. We can't afford to let this opportunity go to waste.

I have long supported efforts to restore the rights of American citizens to travel to Cuba and have introduced legislation to lift the statutory ban on travel, along with my colleague from Vermont, Senator LEAHY. I am pleased to say that our legislation continues to gain bipartisan support.

As the situation changes on the ground with developments like regular air service, direct air service, and scheduled air service, I hope that thousands upon thousands of Americans will visit Cuba and Congress will do the right thing when it comes to changing our outdated law.

I yield back, Mr. President.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

REMEMBERING JUSTICE ANTONIN SCALIA

Mr. SESSIONS. Mr. President, the Nation has lost one of the greatest Justices ever to sit on the Supreme Court, Antonin Scalia. My condolences and prayers go out to his wife of 55 years, Maureen, his 9 children, and 36 grandchildren.

My thought is that Justice Scalia's greatness was founded on the power of his ideas. His defense of those founding principles of America at the highest intellectual level is unprecedented, to my knowledge, in the United States. Over his career, he moved the legal world. As a young lawyer out of law school, I remember what the trends were and how Justice Scalia relentlessly, intellectually, aggressively, and soundly drove the message that many of the ideas that are out there today are inconsistent with the rule of law and the American tradition.

The trend was relentlessly toward activism. Judges were praised if they advanced the law—not when they followed the law, or served under the law,

or the Constitution, but if they advanced it. By advancing it, what that really means is you change it. If you advance it, it means the legislature hadn't passed something that you would like, or the Constitution doesn't advance an idea that you like, then you figure out a way to reinterpret the meaning of the words so it says what you would like it to say and what you wish the legislature had passed.

One of the bogus ideas at that time—you don't hear much about it anymore, but it was current, and it was mainstream then—was that the ink-stained parchment, well over 200 years old and right over in the Archives Building, was alive. Our Constitution, they said, was a living document.

Well, how ridiculous is that? The judges said that the Constitution gave them the power to update it, advance it, and make it say what they wanted it to say. They even contended that it was the duty of the judge, not just the privilege of the judge, to advance the words of the Constitution. Justice Scalia saw this as a direct threat, and he understood at the most fundamental level who was threatened by it, and that was ''we the people.''

You know how the Constitution begins with ''We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare . . . do ordain and establish''? Well, friends and colleagues, we establish this Constitution, the one we have, not the one some judge would like it to be or some politician would like it to be but the one we have.

He boldly criticized the idea that a mere five judges—it just takes five out of nine—with lifetime appointments who are totally unaccountable to the American people. We are prohibited from even reducing their pay, which I support because we want an independent judiciary.

Judges need to know they are given independence and a lifetime appointment because we trust them to serve under the Constitution and not above it. They serve under the laws duly passed by the elected representatives of the people of the United States, not above those laws. They were not given the power to set policies that they would like to set no matter how strongly they feel about it. That is not what they have been given to do. He boldly criticized those ideas and those individuals and didn't mind saying it in plain words: You are setting policy, you are not following the law.

I would say that Professor Van Aylstyne—while at William & Mary or Duke—had a great quote about this. He said: If you really honor the Constitution, if you really respect the Constitution, you will reinforce it as it is written whether you like it or not.

If judges today can twist the Constitution to make it say something it was not intended to mean, how might a new Court—five judges in a new age a decade or two from now—reinterpret the words to advance an agenda during that time? Isn't that a blow to the very concept of the democratic Republic we have? I think so.

I will tell you that this has been a long and tough intellectual battle. You don't hear many people say that paper document over in the Archives is a living thing. Of course it is not a living thing. It is a contract. The American people have a contract with their government. They gave it certain powers and reserved certain powers for themselves. They reserved certain powers for their States, and the Federal Government is a government with limited power. This is absolutely, undeniably fundamental, and people don't fully understand it today.

I remember when I was a U.S. attorney back in Alabama and an individual brought me a high school textbook. He said: I want you to see this.

The book said: How do you amend the Constitution? It talked about several different ways to amend the Constitution, such as Congress and the Constitutional Convention, but it also said by judicial decision.

He said: Mr. U.S. Attorney, I thought the judges were bound by the Constitution. They don't get to change the Constitution.

Well, of course that is correct. But, in effect, we have had many instances when judges, through their interpretation, have in effect amended the Constitution. It is an absolute legal heresy, and they should not do that. It weakens the power of the democracy.

One of the things that I think is very unfortunate is that judges have created an incredible amount of law that is contrary to common sense in the area of religion in the public life of America. Many of these cases are very confusing. But Justice Scalia, in a series of cases where he wrote the majority opinion, or wrote the dissent, or wrote concurring opinions, applied the principles of the Constitution as they were intended to lay out a lawful and commonsense framework for faith in the public square. I think that is a significant achievement.

When Chief Justice Roberts came before our committee for confirmation, I remember telling him: Sir, I would like you to try to clear up and bring some common sense to the expression of faith. You have a right to free speech in America, you have a right to the free exercise of religion under the Constitution, so how has it gotten around that you can be protected more in filthy speech than you can be protected in religious speech?

So as I said, Justice Scalia issued a series of opinions that were important on this subject. For example, in 1992, the Supreme Court decided Lee v. Weisman. This case involved a challenge to a Rhode Island public school policy that permitted a member of the clergy to deliver prayers at middle school graduation ceremonies. In this instance, a rabbi had delivered a prayer at one such ceremony, and one of the families in attendance that objected brought suit, alleging that the school's policy permitting prayer at graduation was a violation of the First Amendment's Establishment Clause. By a vote of 5-to-4, the Supreme Court concluded that the school's policy violated the Establishment Clause. Justice Scalia dissented. He wrote:

> In holding that the Establishment Clause prohibits invocations and benedictions at public school graduation ceremonies, the Court—with nary a mention that it is doing so—lays waste a tradition that is as old as public school graduation ceremonies themselves, and that is a component of an even more longstanding American tradition of nonsectarian prayer to God at public celebrations generally.

Two years later, the Supreme Court decided Board of Education of Kiryas Joel Village School District v. Grumet. This case involved a challenge to a New York statue that tracked village boundaries to create a public school district for practitioners of a strict form of Judaism known as Satmar Hasidim. By a vote of 6-to-3, the Court concluded that the government had drawn political boundaries on the basis of religious faith in violation of the First Amendment's Establishment Clause. Justice Scalia dissented. He wrote:

> the Founding Fathers would be astonished to find that the Establishment Clause—which they designed to insure that no one powerful sect or combination of sects could use political or governmental power to punish dissenters, has been employed to prohibit characteristically and admirably American accommodation of the religious practices—or more precisely, cultural peculiarities—of a tiny minority sect. . . . Once this Court has abandoned text and history as guides, nothing prevents it from calling religious toleration the establishment of religion.

Ten years later, in 2004, the Supreme Court decided Locke v. Davey. In this case, a student challenged a Washington State statute which created a scholarship for students enrolled ''at least half time in an eligible postsecondary institution in the state of Washington,'' but excluded from eligibility for this scholarship students seeking degrees in devotional theology. A student sued to enjoin Washington from refusing to award him a scholarship. By a vote of 7-to-2, the Supreme Court upheld the statute. Justice Scalia dissented. He wrote that:

> When the State makes a public benefit generally available, that benefit becomes part of the baseline against which burdens on religion are measured; and when the State withholds that benefit from some individuals solely on the basis of religion, it violates the Free Exercise Clause no less than if it had imposed a special tax. That is precisely what the State of Washington has done here. It has created a generally available public benefit, whose receipt is conditioned only on academic performance, income, and attendance at an accredited school. It has then carved out a solitary course of study for exclusion: theology.

The next year, the Supreme Court decided McCreary County v. ACLU of

Kentucky. This case involved a challenge to the placement of the Ten Commandments on the walls inside two Kentucky courthouses. By a vote of 5-to-4, the Supreme Court held that the placement of the Ten Commandments inside of courthouses was a violation of the First Amendment's Establishment Clause. Justice Scalia dissented. He wrote that:

> Historical practices demonstrate that there is a distance between the acknowledgment of a single Creator and the establishment of a religion. The former is, as Marsh v. Chambers put it, ''a tolerable acknowledgment of beliefs widely held among the people of this country.'' The three most popular religions in the United States, Christianity, Judaism, and Islam—which combined account for 97.7% of all believers—are monotheistic. All of them, moreover (Islam included), believe that the Ten Commandments were given by God to Moses, and are divine prescriptions for a virtuous life. Publicly honoring the Ten Commandments is thus indistinguishable, insofar as discriminating against other religions is concerned, from publicly honoring God. Both practices are recognized across such a broad and diverse range of the population—from Christians to Muslims—that they cannot be reasonably understood as a government endorsement of a particular religious viewpoint.

More recently in 2014, Justice Scalia dissented from a denial of certiorari in the case of Elmbrook School District v. Doe. In this case, the entire seventh circuit, over three dissents, held that a suburban Milwaukee public high school district violated the Establishment Clause of the First Amendment by holding its graduation in a nondenominational church. Justice Scalia wrote that:

> Some there are—many, perhaps—who are offended by public displays of religion. Religion, they believe, is a personal matter; if it must be given external manifestation, that should not occur in public places where others may be offended. I can understand that attitude: It parallels my own toward the playing in public of rock music or Stravinsky. And I too am especially annoyed when the intrusion upon my inner peace occurs while I am part of a captive audience, as on a municipal bus or in the waiting room of a public agency.
>
> In this case, at the request of the student bodies of the two relevant schools, the Elmbrook School District decided to hold its high-school graduation ceremonies at Elmbrook Church, a nondenominational Christian house of worship. The students of the first school to move its ceremonies preferred that site to what had been the usual venue, the school's gymnasium, which was cramped, hot, and uncomfortable. The church offered more space, air conditioning, and cushioned seating. No one disputes that the church was chosen only because of these amenities.
>
> In this case, it is beyond dispute that no religious exercise whatever occurred. At most, respondents complain that they took offense at being in a religious place. It bears emphasis that the original understanding of the kind of coercion that the Establishment Clause condemns was far narrower than the sort of peer-pressure coercion that this Court has recently held unconstitutional.

Although many of his dissents were memorable, not all of Justice Scalia's notable opinions on religion in public life were issued in dissent. In 1995, Justice Scalia wrote the opinion for the Court in Capitol Square Review and Advisory Board v. Pinette, where the Court rejected an Establishment Clause challenge to the Christmas season display of an unattended Latin cross in a plaza next to the Ohio State Capitol. Writing for the Court, Justice Scalia said:

> Respondents' religious display in Capitol Square was private expression. Our precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression. Indeed, in Anglo-American history, at least, government suppression of speech has so commonly been directed precisely at religious speech that a free-speech clause without religion would be Hamlet without the prince.

And just last term, Justice Scalia wrote the opinion for the Court in EEOC v. Abercrombie & Fitch Stores, a case about accommodation on the basis of religion in the employment environment. In this case, a Muslim individual who wore a head scarf as part of her religious observation applied for a job at a clothing retailer, but was not hired due to the company's policy, which prohibited employees from wearing ''caps.'' In reversing the court of appeals in favor of the applicant, Justice Scalia wrote that:

> Congress defined ''religion'' for Title VII purposes as ''including all aspects of religious observance and practice, as well as belief.'' Thus, religious practice is one of the protected characteristics that cannot be accorded disparate treatment and must be accommodated.

As we see, these opinions by Justice Scalia involve parties of varied faiths—Christians, Jews, and Muslims. Regardless of the identity of the party, Justice Scalia's opinions on religion in public life consistently evidence a deep respect for the unique history of religious pluralism in this country and a heartfelt appreciation for its positive impact across the landscape of the nation. While some may say his opinions are not consistent, I disagree. Religion in American life is an important and complex subject. Judges must think carefully but not abandon common sense as so many opinions have. Justice Scalia saw limits on free exercise of religion when it came to the contention, for example, that one's religion required the use of drugs that a State had declared illegal.

So this is an important area that needs to be cleared up so that we can bring some reality to the question of the expression of religious conviction in public life. Because the Constitution says we shall not establish a religion—Congress shall not establish a religion. It doesn't say States couldn't establish a religion; it says Congress can't establish a religion. It also says ''nor shall Congress prohibit the free exercise thereof.'' So you can't prohibit the free exercise of religion.

I think we have forgotten the free exercise clause and over-interpreted the establishment of religion. Some States at the time had established religions. Most of the countries in Europe had a religion that they put in law for their country, and we said: No, we are not going to establish any religion here. You have the right to exercise your religious faith as you choose.

Madison and Jefferson particularly believed it was absolutely unacceptable for this government to tell people how to relate to that person they considered to be their creator. That was a personal relationship that ought to be respected and the government ought to have no role in it.

Like Madison and Jefferson, Justice Scalia, too, believed in American exceptionalism. Indeed, he was truly exceptional. Although he will be impossible to replace, his seat on the Supreme Court will eventually be filled by the next President. After that nominee is confirmed, his or her decisions will likely impact our Nation for the next 30 years and far beyond. Next year, when we debate this eventual nominee's qualifications to assume Justice Scalia's seat, we need look no further than his own words for wisdom to guide us as we consider our decision. In no uncertain terms, Justice Scalia's McCreary County dissent reminds us that:

> What distinguishes the rule of law from the dictatorship of a shifting Supreme Court majority is the absolutely indispensable requirement that judicial opinions be grounded in consistently applied principle. That is what prevents judges from ruling now this way, now that—thumbs up or thumbs down—as their personal preferences dictate.

That is the governing principle that Justice Scalia abided by—unwavering commitment to the rule of law even when reaching the outcome that the law dictated did not align with his policy preferences. This—above all things—is the duty of a judge or Justice, and it is a principle that has fallen by the wayside far too often in recent years. It is imperative that we keep these words in mind when we consider appointments not only to the Supreme Court, but all lifetime appointments to the Federal judiciary.

I thank the Presiding Officer and yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

COMPREHENSIVE ADDICTION AND RECOVERY BILL

Mr. WYDEN. Mr. President, now that the Senate has passed the Comprehensive Addiction and Recovery Act, I wish to take a few moments to reflect on what I believe are going to be additional steps that are needed to really