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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, January 31, 2006, at noon.

Senate

THURSDAY, JANUARY 26, 2006

The Senate met at 9:45 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Lord God, the fountain of truth and wisdom, thank You for the yearning You have placed in our hearts for You.

Today, equip our Senators for the tasks before them. Help them strive to make the rough places of our world smooth and the crooked places straight. As they debate the Judge Samuel Alito nomination to the Supreme Court, give them the wisdom to be guided by conscience and not contention. Empower them to disagree without being disagreeable. Guide their hands, hearts, and minds to those undertakings that please You. May they never swerve from the straight and narrow path of Your unfolding providence.

Help us all to live for Your honor so that even our enemies will be at peace with us. Bless our military men and women who sacrifice each day to keep us free. We pray in Your righteous Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

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

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session and resume consideration of Calendar No. 486, which the clerk will report.

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

The PRESIDENT pro tempore. Under the previous order, the time from 10 a.m. to 11 a.m. shall be under the control of the Democratic leader or his designee.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. DEMINT. Mr. President, today, we resume consideration of the nomination of Judge Alito to be an Associate Justice of the Supreme Court. The order from yesterday allows the Democrat side to begin debate this morning at 10 o'clock and speak for up to 1 hour. Then the majority will have the hour from 11 to 12, and we will continue alternating 1-hour blocks of time between the two sides throughout the day. Members should plan their schedules accordingly to use the allocated time to make their statements. We will continue to work toward a final time for a vote on the nomination.

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

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

The legislative clerk proceeded to call the roll.

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

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

The Chair will state that the time from 11 a.m. to 12 p.m. shall be under the control of the majority leader or his designee, with each hour rotating back and forth in the same manner after that time.

The Senator is recognized.

Mr. LEAHY. I thank the distinguished President pro tempore, my friend of over 30 years. The debate has worked out well by going back and forth, showing the usual comity here in the Senate.

I began my discussion of Judge Alito's nomination for a lifetime appointment to the Nation's highest Court with the same issue I began my questions to Judge Alito and, before that, to now Chief Justice Roberts: That is the issue of checks and balances on Government power. Obviously, the answers given by Chief Justice Roberts I found satisfactory. I voted for him. The answers by Judge

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Alito, as I will explain further, I did not find satisfactory.

It is important because we are at a pivotal point in our Nation's history. This is a time of unprecedented governmental intrusion into the lives of ordinary Americans. The President has attempted to justify secret warrantless wiretapping of Americans, the evasion of legal bans against torture, and the detention of American citizens without due process of law. The Bush administration is making extraordinary claims of essentially unlimited power. There are troubling signs that this nomination is part of that effort by the President and Vice President to uphold Presidential claims of unchecked power and to upset the careful balance of our system of government, a system of government that was so carefully crafted by the Framers in our national charter, the Constitution. I have said I do not believe that Judge Alito would be that kind of a careful check and balance against Presidential overreaching. Because of that, I said I would not support his nomination.

I don't take this position lightly. There are nine members of the Supreme Court, seven of them nominated by Republican Presidents. I have voted for eight of those nine, but I will not for this one. I feel that the judge's record, his missed opportunities during the hearings to answer concerns about his record, leaves me to wonder whether he appreciates the role of the Supreme Court as a protector of Americans' fundamental rights and liberties. It is a test he failed. The Supreme Court has to be a source of justice. It has to be an institution where the Bill of Rights and human dignity are honored. It must be an institution dedicated to the mission embodied in the words etched in Vermont marble above the entrance to the Court where it says ''equal justice under the law.'' It must be an institution which carries on the spirit enshrined in our Constitution, refined following the Civil War, and realized further over the course of landmark decisions in Brown v. Board of Education and Baker v. Carr. Judge Alito's record and testimony demonstrate that he does not understand the vital role of the courts in implementing the constitutional guarantees of equal protection and equal dignity for all Americans.

A stark example of his failing the test took place during his confirmation hearing when I asked him a question Senator SPECTER had asked then Justice Rehnquist at his hearing to become the Chief Justice. I know; I was at the hearing. The question was a basic one: whether the Supreme Court can be stripped of jurisdiction to protect fundamental constitutional rights. I asked Judge Alito whether the Supreme Court could be stripped of jurisdiction to hear first amendment cases involving freedom of the press or freedom of religion or freedom of speech. The First Amendment is probably the greatest part of our Bill of Rights. I told him Senator SPECTER had previously insisted on an answer from Justice Rehnquist and that Justice Rehnquist had answered that it would not be constitutional to strip the Court of its jurisdiction, its vital function to protect fundamental rights. Unlike the late Chief Justice, Judge Alito responded as though it were merely an academic question. He said that there are scholars on both sides. He refused to state his view. This is a basic and fundamental issue for anybody aspiring to be a member of the Supreme Court. Justice Rehnquist got it right. For that matter, Judge Bork got it right. Judge Alito got it wrong.

When he failed to respond to my question, Senator SPECTER revisited it, but Judge Alito still failed the straightforward test. I asked the same question with respect to the fourth amendment, the fifth amendment, and the sixth amendment. Again, there was no answer. These are the constitutional amendments that guarantee our privacy rights, our protection against unreasonable searches and seizures, our right to due process, our right against self-incrimination, our protection against Government takings, and our right to public trial and to counsel. These are basic American rights that help to define us as a free people. They control the intrusiveness of Government power.

Judge Alito has shown through his answers that he does not appreciate the constitutional role of the Supreme Court as the protector of America's fundamental rights. In fact, in our system of checks and balances, the Supreme Court has to be the ultimate defender of Americans' constitutional rights. Judge Alito's refusal to acknowledge that in his answers is more than deeply troubling; it is stunning. It is stunning that anybody up for a lifetime appointment to the Supreme Court of the United States would not answer such basic questions. Suppose if by legislative act we could remove the constitutional right to freedom of religion or free speech how quickly we could remove our freedoms as Americans. Again, Justice Rehnquist and Judge Bork had it right. Judge Alito had it wrong.

I even gave him a concrete example. I asked whether in the early 1950s, Congress could have stripped the courts, including the Supreme Court, of jurisdiction to hear cases involving racial segregation in schools. This historical hypothetical raised the question whether the Supreme Court could have been prevented from deciding Brown v. Board of Education and enforcing the equal protection clause of the Constitution and calling for an end to unconstitutional racial segregation. His answer was no better. He was clearly stumped.

No Senator who truly cares about civil rights, equal rights, freedom of religion and speech and the press can have any confidence that Judge Alito understands the critical role of the Supreme Court in protecting those rights.

I ask unanimous consent that letters from civil rights organizations in opposition to Judge Alito's nomination be printed in the RECORD.

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

WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
Washington, January 9, 2006.

Re NAACP urges thorough review of Judge Samuel Alito's troubling record on civil rights & civil liberties during Judiciary Committee hearing

MEMBERS,
U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR: As you are aware from earlier correspondence, the NAACP is opposed to the nomination of Judge Samuel Alito to the United States Supreme Court based on our thorough review of his dismal record on upholding civil rights and civil liberties protections. As such, we would urge you, as a member of the Senate Judiciary Committee, to use your position and your Constitutionally-mandated responsibility to thoroughly review Judge Alito's record on civil rights and civil liberties and to try to determine the extent to which Judge Alito is likely to preserve the civil rights of Americans if he is confirmed to our Nation's highest court.

The Supreme Court is, in many cases, the last opportunity for many Americans to assert their rights and ensure the protection of their liberties. Many of the civil rights gains that have been made over the past 50 years are a result of Supreme Court rulings. Thus, the NAACP feels that it is of the utmost importance that any nominee to the Court is clear about his or her intentions to protect the civil rights gains that have been made over the past 5 decades and have always been promised to us by the US Constitution.

Of specific concern to us from Judge Alito's past history is:

In a 1985 job application for a position with the Reagan Administration, Judge Alito disagreed in writing with the Warren Court's reapportionment decisions now known as ''one man, one vote'', which are among the Court's most widely accepted decisions on civil rights and equal representation. The ''one man, one vote'' theory is also one of the basic tenets of Voting Rights that the NAACP has fought for;

In the 1993 case Grant v. Shalala Judge Alito ruled against a class action alleging racial and other bias by an Administrative Law Judge when determining Social Security benefits, arguing that the Court of Appeals lacked the authority to conduct a trial and make independent findings on actions taken by an Administrative Law Judge for the Social Security Agency. In a strongly worded dissent to the Alito ruling, Judge Leon Higginbotham said that the decisions is ''. . . effectively have courts take a back seat to bureaucratic agencies in protecting constitutional liberties. This . . . is a radical and unwise redefinition of the relationship between federal courts and federal agencies.''

In the 1997 case Bray v. Marriot Hotels, Judge Alito strongly dissented from a Third Circuit ruling and made it clear that he supports impossibly high barriers for victims of discrimination to have their cases heard;

In a separate 1997 case, Riley v. Taylor, Judge Alito held that a prosecutor was not motivated by race in striking all African Americans from the jury of a death-penalty case involving an African American defendant. When the defendant produced statistical evidence showing the prosecution repeatedly

striking African Americans from juries, Judge Alito contended that this was irrelevant and likened it to a study showing that a disproportionate number of recent Presidents have been left-handed.

In a 2004 case, Doe v. Grady, Judge Alito dissented from a ruling against police officers who had strip-searched a woman and her 10-year-old daughter while executing a search warrant authorizing the search of her husband and their home.

In short, during the course of the NAACP's investigation into Judge Alito's past we became convinced that he is unfit to sit on the United States Supreme Court because race and gender are still a real problem in the United States; a fact he appears to neither recognize nor appreciate.

Accordingly, as I said earlier, I hope you will ask tough questions, and demand thorough answers, during the hearings that begin today on Judge Alito to try to determine even further the extent to which he is, or is not, committed to upholding and protecting the civil rights and civil liberties of all Americans. On behalf of the NAACP, I would also like to further express our strong opposition to the nomination and our hope that you urge your Senate colleagues to oppose and defeat Judge Samuel Alito's nomination. Please contact me, or my Bureau Counsel, Crispian Kirk, at (202) 463–2940 soon to let me know your position on this matter, and to let me know what I can do to work with you to ensure that President Bush nominates, and the Senate confirms, moderate, not extremist, judicial candidates to the federal bench.

Sincerely,

HILARY O. SHELTON,
Director.

NATIONAL URBAN LEAGUE,
January 10, 2006.

SENATE COMMITTEE ON THE JUDICIARY,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATORS: As you know, the National Urban League, Inc. (''Urban League'') is the oldest community-based civil rights organization in the country. Through our 102 professionally-staffed affiliates, located in 34 states and in the District of Columbia, the Urban League works to ensure, in a non-partisan way, economic and social parity and full civil rights for African-Americans and other people of color.

Nominations to the United States Supreme Court are of particular concern to the Urban League Movement because of the high Court's tremendous power and impact on the issues relevant to our mission of securing civil rights and economic empowerment for African Americans. Since the President nominated Judge Samuel Alito, Jr. to be an Associate Justice of the United States Supreme Court, the National Urban League has carefully and exhaustively reviewed his judicial record, judicial philosophy, and professional qualifications. Our study found that Judge Alito has a long and unambiguous history of opposition to critical and established voting rights protections, civil rights remedies and social justice guarantees. Our examination also established that Judge Alito frequently injects this philosophy into his judicial decision-making, often in direct contravention of well-settled law. A copy of our report is attached.

Based upon this review, it is our conclusion that Judge Alito's stated opposition to reasonable and established civil rights remedies and voting rights protections, and his consistent record of injecting these views into his decision-making to the degree that it undermines basic civil rights protections make him unsuitable for a seat on our nation's highest court.

Therefore, we urge the Senate Judiciary Committee to reject the nomination of Judge Alito to be a Supreme Court Justice and look forward to working with you to ensure the nomination and confirmation of judges who will uphold fundamental civil rights protections.

Respectfully,

MARC H. MORIAL,
President and CEO.

NAACP LEGAL DEFENSE FUND OPPOSES ALITO NOMINATION

REPORT DETAILS HOSTILITY TO CIVIL RIGHTS AND WARNS OF TIPPED BALANCE ON HIGH COURT

On December 15, 2005, the NAACP Legal Defense and Educational Fund, Inc. (LDF) announced opposition to the nomination of Samuel Alito, Jr. to the U.S. Supreme Court, citing his hostility to strong enforcement of civil rights laws. LDF warned that confirmation of Judge Alito would threaten to shift significantly the Supreme Court's jurisprudence relating to affirmative action, voting rights, employment and criminal justice issues.

At a press conference in Washington, D.C., LDF released a 10-page report detailing what it called an ''extreme'' judicial approach by Judge Alito that would demonstrably impact important future decisions of the High Court. The LDF report cites cases in which Alito has attacked congressional legislative authority in a manner that his colleagues viewed as extreme. As a Justice Department lawyer, he argued to uphold police use of deadly force and undermine the rights of criminal defendants. In the area of affirmative action, LDF highlighted ''troubling signals'' that Alito would tip the delicate Court balance to unravel policies ''at the epicenter of the modern struggle for racial equality.''

''We can predict with substantial certainty that Judge Alito will very likely vote in a manner that, given the current composition of the Court, will cause a substantial shift in the Court's civil rights jurisprudence with devastating effects,'' the LDF report cautioned.

Judge Alito is scheduled to appear before the Senate Judiciary Committee in early January for confirmation hearings.

LDF Director-Counsel and President Theodore M. Shaw stressed that the organization does not relish opposing a nomination to the Supreme Court and does so only when the nominee's record is contrary to the goals of equal justice that are the hallmark of LDF's work.

With the announcement of Justice Sandra Day O'Connor's retirement last summer, LDF called upon President Bush to nominate a successor who is not ideologically rigid and predictable, but who is fair and open-minded, and committed to protecting advances in civil rights. LDF emphasized that Justice O'Connor's successor should not be a mission-driven ideologue but, even if a conservative, should maintain the balance on the Court with respect to civil rights issues.

To analyze Alito's record, LDF reviewed published and unpublished opinions in cases decided by Judge Alito as well as documents released by the White House and the National Archives. Appointed by President George H.W. Bush to the U.S. Court of Appeals for the Third Circuit in 1990, Alito spent his entire legal career at the Department of Justice.

LDF's report also reveals:

Unquestionably, Justice O'Connor cast pivotal votes in civil rights cases coming before the Supreme Court. While Justice O'Connor did rule against civil rights litigants, at least her vote on important issues such as affirmative action was ''always in play.'' In contrast, a review of Samuel Alito's tenure at the Justice Department reveals that he was directly involved in the Reagan Administration's frontal attacks on affirmative action, arguing against affirmative action in three significant cases before the Court. In his 15 years on the bench, he has ruled against African Americans on this issue.

Judge Alito's record should be extremely troubling to minority workers, women and others who depend on equal opportunity protections in the workplace. Although he has heard dozens of cases, Judge Alito has almost never ruled in favor of an African-American plaintiff in an employment discrimination case; he has never authored even one opinion favoring an African-American plaintiff on the merits in such a case.

Judge Alito's criticism of the Warren Court's reapportionment decisions is extremely troubling. These cases ''set into motion a process that led to the dismantling of a political system infected both by prejudice and other forms of patent electoral manipulation.'' In his only opportunity on the bench to interpret the Voting Rights Act, Alito voted to uphold an at-large system of electing members to a Delaware school district, perpetuating an electoral system that diluted the voting strength of racial minorities.

In the criminal justice area, Judge Alito has repeatedly parted ways with his colleagues and failed to heed Supreme Court precedent in important cases regarding race discrimination in jury selection, the right to effective assistance of counsel, and search and seizure issues.

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW,
WASHINGTON, DC, JANUARY 5, 2006.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

Hon. PATRICK J. LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR CHAIRMAN SPECTER AND RANKING MEMBER LEAHY: As the Co-Chairs of the Lawyers' Committee for Civil Rights Under Law, we submit the enclosed ''Statement of Board Members Opposing the Nomination of Judge Samuel A. Alito as an Associate Justice of the Supreme Court of the United States'' on behalf of the 114 individual members of the Board of Directors and Trustees who subscribe to the Statement.

These members of our Board oppose Judge Alito because the record demonstrates that his views are in direct conflict with the core civil rights principles to which the Lawyers' Committee is dedicated, and that as a member of the Supreme Court, Judge Alito would cast votes and write opinions that would set back the cause of civil rights in our country and impede our progress toward the goal of equal justice for all. It is worth noting that in the Lawyers' Committee's 42-year history, its Directors and Trustees have opposed a Supreme Court nominee on only two previous occasions.

We also enclose a Final Report that analyzes Judge Alito's legal philosophy pertaining to civil rights and constitutional interpretation. This in-depth Report serves as the basis for the conclusions contained in the Statement and provides extensive analysis of Judge Alito's background. If Judge Alito's testimony during confirmation hearings or other evidence justifies a change in the conclusions we have drawn, we will so inform you.

We hope the Statement and Report are of assistance to you and your staff. For the reasons noted in them, we strongly urge the Ju-

diciary Committee to vote not to confirm this nominee.

Respectfully,

MARJORIE PRESS LINDBLOM,
Co-Chair.

ROBERT E. HARRINGTON,
Co-Chair.

AMERICAN ASSOCIATION FOR AFFIRMATIVE ACTION,
Washington, DC, January 11, 2006.

Re Nomination of Judge Samuel A. Alito, Jr., as Associate Justice of the Supreme Court of the United States

Hon. ARLEN SPECTER,
Chair,
Hon. PATRICK J. LEAHY,
Ranking Member, Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN SPECTER AND SENATOR LEAHY: The American Association for Affirmative Action (AAAA), an association of equal employment opportunity (EEO), diversity and affirmative action professionals founded in 1974, respectfully urges you to oppose the nomination of Judge Samuel Alito, nominated to serve as Associate Justice of the U.S. Supreme Court.

AAAA has reached this conclusion based on Judge Alito's very troubling record on equal employment opportunity and affirmative action. In his 1985 application to be the Reagan Administration's Deputy Assistant Attorney General in the Office of Legal Counsel, Samuel Alito expressed his support of the ''same philosophical views'' that he believed were central to the Administration. In this application, Alito highlighted his work as Assistant Solicitor General on affirmative action and reportedly wrote that he was ''particularly proud'' of his ''contributions in recent cases in which the government has argued in the Supreme Court that racial and ethnic quotas should not be allowed. . . .'' To use Judge Alito's ''Hank Aaron'' analogy, affirmative action requires not moving the fence in but opening the gate. After that, it is up to the player to demonstrate his or her abilities. Whoever selected Hank Aaron, Secretary Rice or Justice O'Connor understood that the essence of affirmative action is opportunity, not favoritism or quotas.

Judge Alito's application described the efforts of the Reagan Justice Department to restrict affirmative action and court-awarded remedies for discrimination as ''quota'' litigation. In one such case, Alito signed a brief arguing for restricting affirmative action remedies, even in cases where discrimination was intentional, egregious, and longstanding. In Local 28 of the Sheet Metal Workers' International Ass'n v. EEOC, the Solicitor General's brief advanced the extraordinary theory that relief in Title VII cases could be granted only to ''identifiable victims of discrimination,'' contradicting an earlier view of the EEOC itself. The Supreme Court rejected this argument.

In Local Number 93, International Association of Firefighters, AFL–CIO v. City of Cleveland, Alito signed on to an amicus brief seeking to reverse a consent decree that included numerical goals for the promotion of black firemen. By a 6–3 vote, the Supreme Court again rejected the Solicitor General's argument and upheld the affirmative action plan.

In the months before Alito applied for a job with Attorney General Edwin Meese, Meese waged a fierce campaign to have President Reagan abolish Executive Order 11246, signed by President Lyndon Johnson in 1965. The Order requires that federal contractors not discriminate in employment and that they use affirmative action. Ultimately, two-thirds of the Reagan cabinet repudiated the extreme views of the Justice Department and a coalition of corporations, members of Congress and civil rights organizations successfully defeated Meese's campaign against affirmative action.

There is nothing subsequent to Mr. Alito's tenure in the Reagan Administration or his testimony before the Senate Judiciary Committee to suggest persuasively that he has moderated his views on equal opportunity law enforcement. In civil rights cases he has often argued for higher barriers that victims of employment discrimination would have to overcome to secure remedies for such discrimination. For example, in Bray v. Marriott Hotels, Judge Alito's colleagues said Title VII of the Civil Rights Act of 1964 ''would be eviscerated'' if Judge Alito's approach were followed. In Nathanson v. Medical College of Pennsylvania, Judge Alito dissented in a disability rights case where the majority said: ''Few if any Rehabilitation Act cases would survive'' if Judge Alito's view were the law.'' And in Sheridan v. DuPont, he was the only one of 11 judges on the court who would apply a higher standard of proof in a sex discrimination case.

According to a report of the NAACP Legal Defense and Educational Fund, Inc., Judge Alito has almost never ruled for an African-American plaintiff in employment discrimination cases and has never written a majority opinion for the Third Circuit in favor of an African-American plaintiff on the merits of a claim of race discrimination in employment. In each majority opinion authored by Judge Alito and addressing such a claim, he has ruled against the African-American plaintiff.

This is not the time for the Judiciary, a longstanding refuge for victims of discrimination, to reverse fifty years of progress. The record emerging suggests that Judge Samuel Alito is not prepared to interpret the laws on behalf of all Americans.

Sincerely,

SHIRLEY J. WILCHER,
Interim Executive Director.

Mr. LEAHY. Judge Alito missed opportunities during the hearings on a number of issues. I am left with a deep and abiding concern about Judge Alito's understanding of the role of the courts and their responsibility to protect the constitutional rights of individuals, especially the less powerful and especially where the political system has failed to do so.

Despite Judge Alito's attempts to retreat from several of the more outrageous statements in his 1985 job application for a political position in Edwin Meese's Justice Department, his testimony at the hearing has done little to dispel my concerns. The consequences for all Americans of Judge Alito putting the beliefs he expressed in that job application into practice on the Supreme Court are too great.

In his job application, Samuel Alito wrote, as a 35-year-old, practicing lawyer, that:

> In college, I developed a deep interest in constitutional law, motivated in large part by disagreement with Warren Court decisions, particularly in the area[] of . . . reapportionment.

This was a startling statement to make in 1985, just two decades ago. He was 35 years old and had been practicing law for almost a decade when he wrote that statement about his disagreement with Warren Court decisions on reapportionment. Even after being asked about this statement several times at the hearing, Judge Alito failed to adequately answer why he would seek to highlight a disagreement with the landmark equal protection cases by which the Supreme Court made elections fairer for all Americans and established the principle of ''one person, one vote.''

The Warren Court's reapportionment decisions were among the central achievements of the civil rights era. They ensured that voting districts which had been grossly mal-apportioned, often to the detriment of minority voters, would be fairly revised so that everyone's vote was weighed equally. It is clear from looking at the Republicans' partisan redistricting in Texas that these cases did not solve all the problems. However, reapportionment cases like Baker v. Carr, 1962, and Reynolds v. Sims, 1964, are landmarks because they established that courts have a responsibility to make certain that voting districts meet constitutional standards.

It was Justice William Brennan of New Jersey who wrote the Court's opinion in Baker. Two years later, in Reynolds, the Court established the ''one person, one vote'' standard because, as stated by Chief Justice Warren in his opinion in that case:

> As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.

At his hearing, Judge Alito was in retreat and had to concede that the concept of one person, one vote is well-settled and should not be reexamined. It was equally well-settled in 1985 when he made the statement in his job application. More importantly, Judge Alito's testimony calls into question whether he truly understands that the courts have a responsibility in our constitutional system to intervene to ensure that constitutional guarantees of equal access to the political system are met. This is important in situations where the political system is corrupt or where the political branches lack the will to fight against entrenched power or to reform themselves.

In response to a question from Senator KOHL, Judge Alito sought to retreat from the unqualified disagreement with the reapportionment cases expressed in his 1985 application. He told the Committee that his disagreement was based only on certain details of later Warren Court decisions like the 1969 case, Kirkpatrick v. Preisler. Not only is this narrow objection to certain Warren Court decisions not a credible explanation for why he made his sweeping assertions of disagreement in 1985, but Judge Alito also contradicted it later in his testimony when he suggested that his disagreement with the Warren Court's reapportionment decisions was based on Alexander Bickel's ideas about judicial self-restraint. Professor Bickel was not

concerned merely with later applications of one person, one vote. Rather, his theory was critical of the courts having any role at all in helping to guarantee that access to the political system is fair and equal.

In fact, one of the justices whom Judge Alito described as among his favorites, Justice Harlan, applied Bickel's theories in dissenting from every landmark Warren Court reapportionment case establishing one person, one vote, starting with Baker v. Carr. In Justice Harlan's dissenting opinion in Reynolds v. Sims, as in all of Justice Harlan's reapportionment dissents, he argued that there is no constitutional basis for one person, one vote and that courts should restrain themselves from ''usurping'' the state legislatures' self-serving apportionment decisions. In his dissent in Reynolds, Justice Harlan wrote: ''It is difficult to imagine a more intolerable and inappropriate interference by the judiciary with the independent legislatures of the States,'' and ''[w]hat is done today deepens my conviction that judicial entry into this realm is profoundly ill-advised and constitutionally impermissible.'' This dissent, described as one of Judge Alito's favorites, hardly sounds like a disagreement only with certain aspects of later reapportionment decisions.

The effects of the Court's decisions to intervene were dramatic. Were the Supreme Court to have followed the dissents of Justice Harlan or the theories of Alexander Bickel that Judge Alito embraced in 1985, the massive disparities in the size of voting districts would not have been corrected in the 1960s. Nor would the underrepresentation of voters from urban areas, minority voters, have been corrected. Had the Court not acted we might still have poll taxes and other barriers to the ability of minorities to vote.

At the hearing we heard testimony from pioneering civil rights attorney Fred Gray, who spent a lifetime fighting for those who were denied the rights to equal protection and equal dignity under the law guaranteed by our Constitution. After he graduated from law school, Mr. Gray immediately went to work defending Rosa Parks and Dr. Martin Luther King, Jr., in the Montgomery bus boycott. He has a real-life appreciation for the role of courts as providing a check to protect individual rights and liberties. In the late 1950s, after the Alabama legislature changed the city limits of Tuskegee, excluding all but three or four African Americans who were registered to vote in the city, Mr. Gray brought before the Supreme Court the case of Gomillion v. Lightfoot. This unanimous decision securing the right to vote for African Americans laid the foundation for Baker v. Carr and the cases establishing one person, one vote.

I asked Mr. Gray what the consequences would have been had the courts followed the lead of Justice Harlan and Alexander Bickel, views with which Samuel Alito apparently agreed, and not involved itself in reapportionment. He testified:

> The difference is then, prior to these decisions, and even prior to Brown v. Board of Education, and prior to Gomillion v. Lightfoot and Browder v. Gayle, the case that desegregated the buses, we had very few African Americans and other minorities registered. We had little or no African Americans in public office. For example, in my state, in 1957 we had none. Now my State has approximately the same number of persons in our State legislature. It mirrors the population. We now have thousands of African Americans and other minorities who are holding public office, and an additional thousand that those public office holders have appointed to elected office.

Judge Alito did not adequately explain his disagreement with the Warren Court reapportionment decisions. He refused to say that he changed his views. He did not repeat what he had suggested in some private meetings—that he was merely saying what he thought people in the Reagan White House wanted to hear and that it was just a job application. Candidly, his testimony on this critical point makes no sense. This is too fundamental a matter to be left without a solid, credible explanation. The equal protection rights and voting rights of all Americans are the fulcrum for realizing the promises of our democratic republic.

Judge Alito's sweeping disagreement with the Warren Court's reapportionment decisions is not the only part of his 1985 job application which has caused me to doubt his understanding of the responsibility for the courts to intervene where the political process is broken down, corrupt or entrenched. Judge Alito also stated in that application that he believes in ''the supremacy of the elected branches of government.'' In the hearing, Judge Alito tried to retreat from this statement, describing it as ''inapt'' and ''very misleading and incorrect.'' However, he refused to disavow it, telling Senator KENNEDY: ''I haven't changed my mind.''

The Supreme Court's decisions to intervene in the reapportionment cases in the 1960s had a tremendous effect on the ability of millions of Americans to participate in the political process. Yet I am concerned that his 1985 written statement reveals that he will be too deferential to the President as ''supreme'' even when needed to be a check on the Government.

The elected branches have no claim to being legitimate, let alone ''supreme,'' if they are controlled by entrenched political corruption. After listening to several days of his testimony, I am left with serious questions and concerns about Judge Alito's appreciation for this critical role of the courts. These concerns are heightened by his apparent adherence to the so-called doctrine of the ''Unitary Executive.''

Judge Alito has failed to grasp the importance of the courts in providing a venue for all Americans to assert their rights. One of the clearest examples of this is Judge Alito's distressing record in cases in which individuals allege discrimination based on race, gender, or disability. Judge Alito has consistently found ways to keep the ''little guy'' from having a day in court. For example, he has held individuals trying to prove discrimination to an excessively high standard of proof, rendering their cases almost un-winnable. From the bench, he has favored the government and big companies accused of discrimination. He seems to view these cases not as examples of regular Americans struggling for equal treatment but, instead, as technical legal exercises.

Judge Alito's supporters—and many on the other side of the aisle were lined up to support him well before the hearings—have cherry picked individual cases to try to show that Judge Alito was fair to average Americans. Judge Alito told us to look at his whole record and we did. In fact, a study of Judge Alito's decisions by Knight Ridder newspapers found that Judge Alito was consistently skeptical of discrimination plaintiffs, generally setting high standards of proof and finding that the plaintiffs before him did not meet those standards. The study found that he was similarly dismissive of criminal defendants alleging discrimination by the government and of immigrants fighting deportation. Noted law professors Cass Sunstein and Goodwin Liu studied the cases where Judge Alito dissented from his colleagues and reached the same conclusion.

In several cases, the Third Circuit criticized Judge Alito for taking positions which would make it almost impossible for people to prove discrimination. In Bray v. Marriott Hotels, Judge Alito would have denied an African-American worker the chance to show that her employers denied her a promotion based on race. The majority criticized Judge Alito's dissent saying that a key discrimination statute ''would be eviscerated if our analysis were to halt where the dissent suggests.''

The case of Pirolli v World Flavors, Inc., is a particularly poignant example of the kind of case that gives me great concern about whether Judge Alito would uphold the rights of ordinary Americans seeking equal treatment. In that case, Kenneth Pirolli, a mentally retarded employee, brought a claim for hostile work environment based on sex and disability, alleging a pattern of sexual abuse and harassment that can only be described as disgusting. Judge Alito dissented from the Third Circuit's decision that Mr. Pirolli's case should go to a jury, not based on the merits of the claim, but essentially because he thought Mr. Pirolli's lawyer's legal brief was poorly drafted. Senator DURBIN asked Judge Alito about this matter and gave him every opportunity to explain. It remains another example of Judge Alito focusing on technical details rather than on the rights of real people.

As a former prosecutor, I am sensitive to the need for a fair process and a fair jury in all criminal cases, particularly the most serious ones. I am troubled that in Riley v. Taylor, Judge Alito dissented from an en banc decision in a capital case in which the Third Circuit granted a new trial because the prosecutor had improperly dismissed Black jurors. Judge Alito denigrated the defendant's use of statistical evidence to show improper exclusion of Black jurors, comparing it to a statistical analysis of the disproportionate number of recent left-handed U.S. Presidents. The majority criticized Judge Alito's inappropriate analogy, writing, ''To suggest any comparability to the striking of jurors based on their race is to minimize the history of discrimination against prospective Black jurors and Black defendants''.

In response to the many cases in Judge Alito's record in which he has ruled against victims of discrimination, victims of government intrusion, and immigrants, Judge Alito's Republican supporters searched hard to find a small set of cases to show Judge Alito has not always ruled against the ''little guy.'' What is notable about these efforts is that even in the cases they have trumpeted, Judge Alito often denied any meaningful relief to the average American.

Several Republicans have raised the case of United States v. Kithcart. They incorrectly suggest that in Kithcart, Judge Alito ruled in favor of an African American in a racial profiling case. Mr. Kithcart was pulled over by the police because he was African American and searched and arrested. When the case came before Judge Alito, he sent it back to the trial court to give the government a second chance to prove that the stop and search of an African American were constitutional and were not motivated by race. Judge McKee dissented from the remand saying, ''just as this record fails to establish that Officer Nelson had probable cause to arrest any Black male who happened to drive by in a black sports car, it fails to establish reasonable suspicion to justify stopping any and all such cars that happened to contain a Black male.'' When the case came back to Judge Alito on appeal, Judge Alito upheld the search and affirmed the conviction. So while he remanded the case back to the trial court, he then upheld the search and conviction in his final decision and afforded Mr. Kithcart no relief.

Judge Alito's supporters have pointed to Fatin v. INS as an example of a case in which Judge Alito sided with powerless immigrants and did not defer to the Government. This is another bad example because he ultimately ruled against the immigrant, Parastoo Fatin, and she was deported.

Ms. Fatin was an Iranian woman whose family had opposed the Ayatollah Khomeini and who had come to the United States as a student. She was fighting deportation and requested asylum, arguing that she would be subjected to harsh treatment as a former opponent of Iranian regime, as someone who did not practice a strict form of Islam, and as a woman—who would have to wear a veil and live under great restrictions in Iran. As his supporters have noted, Judge Alito ruled in the case that gender-based persecution could be a basis for asylum. But Judge Alito went on to rule against Ms. Fatin anyway. So he denied her petition for review and sent her on to be deported.

Judge Alito and Republican Senators seeking to bolster Judge Alito's record cited Leveto v. Lapina as an example of a case in which he protected the rights of individuals against government intrusion. It is telling about Judge Alito's record in the area of individual rights protection that in a case he trumpeted for his protection of the rights of individuals, he threw the Levetos out of court and denied them any remedy.

The facts of this case are egregious. In the course of an IRS tax fraud investigation of the Levetos, armed agents ''rushed'' Dr. Leveto at the veterinary hospital where he worked when he arrived at 6:30 a.m., patted him down, and then held him in a small room for over an hour, not allowing him to speak to anyone or make any calls. They then accompanied Dr. Leveto to his home where they patted down Mrs. Leveto, who was still in her nightgown, and then detained and interrogated her for 6 hours.

Meanwhile, other agents took Dr. Leveto back to the hospital where they held him in a closed room for 6 more hours. During this 6 hours, he was not permitted external communications, was accompanied on bathroom breaks, and was interrogated without Miranda warnings, while other agents searched the hospital. During the course of the search IRS agents sent hospital employees home and turned away clients in the parking lot, informing them that the hospital was closed until further notice.

Despite acknowledging numerous violations, Judge Alito dismissed the Levetos' appeal and their case based on ''uncertainty'' in the case law, and threw them out of court.

Supporters of Judge Alito have cited the case of Brinson v. Vaughn as an example of a case in which Judge Alito sided with a victim of discrimination, reversing a conviction because Black jurors had been improperly excluded from the jury pool. This was an easy case given the extraordinary facts involved. In Brinson, the prosecutor dismissed 13 of 14 prospective Black jurors and had previously made a training video in which he urged prosecutors to dismiss Black prospective jurors from the jury pool. This does not reassure me about my concern that Judge Alito will only give credence to claims of discrimination in extreme cases. Indeed, in Riley v. Taylor, when an en banc majority of the Third Circuit found that Black jurors had been improperly dismissed from the jury pool, Judge Alito disagreed and denigrated the defendant's use of statistical evidence to show improper exclusion of Black jurors, comparing it, as has been previously noted, to a statistical analysis of the disproportionate number of recent left-handed U.S. Presidents.

The role of courts should be to protect and make sure there is a fair forum for the powerless and even the unpopular. This is the reason the courts are the one undemocratic branch. I am concerned that rather than demonstrating an understanding of the effect of the law on the lives of real Americans as Justice O'Connor has shown, Judge Alito would close the courthouse doors to those Americans most in need of the courts to protect their rights.

In the next few years, the Supreme Court will hear many challenges to political entrenchment. Critical provisions of the Voting Rights Act, VRA, Congress's part in guaranteeing equal access to voting, the fundamental machinery of democracy, were upheld by the Warren Court in South Carolina v. Katzenbach, 1966, by an 8 to 1 vote. The VRA will need to be reauthorized before it expires in 2007. Subsequent court challenges will be critical to fairness to minority voters.

The Supreme Court will soon hear a challenge to Texas Republicans' partisan mid-Census redrawing of congressional districts. There are questions before the Supreme Court this term about campaign finance laws. We are seeing exposed in the news every day a culture of corruption through money and access that has taken root in Washington, by which one political party has sought to entrench itself as a permanent majority.

The cost to Americans is high if we in the Senate get it wrong. I go back to the central question I asked at the outset of Judge Alito's hearing: Will this nominee serve to protect the fundamental rights and liberties of all Americans? Based on Judge Alito's record, I have no confidence that he will provide a check against either an overreaching President or entrenched political power, nor that he will serve to protect Americans' fundamental rights and liberties.

I thank the distinguished Presiding Officer.

I yield to the distinguished Senator from California.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from California.

Mrs. FEINSTEIN. I thank the ranking member of the Judiciary Committee and I thank the Chair.

I come to the floor to offer my reasons for opposing Judge Alito. Let me begin with this: If the Supreme Court's decisions were simply mathematical computations of legal points, our job would be easy and all of the Court's decisions would be 9 to 0. But the legal philosophy and views of each individual Justice do play a role in decisionmaking on the Court. Perhaps not the

majority of the time, when the question before the Court is not controversial; but certainly when the question is controversial and divisive, legal views and philosophies do play a role.

We just had a recent example. Last week the Supreme Court upheld Oregon's Death with Dignity Act by a 6-to-3 decision in a case called Gonzales v. Oregon. When then-Judge Roberts came before the Senate, I and others questioned him on his end-of-life views. He then replied that the Government should not enter the arena. When discussing my point that he would not want the Government telling him what to do, he said:

> The basic understanding that it's a free country and the right to be left alone is one of our basic rights.

He gave us the impression that he believed there was, in fact, a right to die. However, just last week, Chief Justice Roberts joined the two most conservative members of the Court, Justices Scalia and Thomas, in an opinion that, if it had carried the day, would have allowed the administration to invalidate the end-of-life initiative twice supported by Oregon voters in State elections, once when it was enacted and once when it was reaffirmed.

Secondly, history reveals that legal views and philosophies have been the rationale for the rejection of at least 12 Presidential nominees for the Supreme Court. Members on the other side of the aisle often say these legal views and philosophies are not a bona fide consideration. But what I say is these have been used as the rationale for the rejection of at least a dozen Presidential nominees in history.

Let me mention a few of them. It began with President George Washington when he nominated John Rutledge in 1795. Rutledge was rejected by a vote of 10 to 14 because he made a speech denouncing the Jay Treaty between the United States and Great Britain.

Fifteen years later, President James Madison's nomination of Alexander Wolcott was rejected by the Senate by a vote of 9 to 24, in part, based of his policies while a U.S. collector of customs and his actions strongly enforcing controversial embargoes.

President Andrew Jackson, in 1835, nominated Roger Taney to the Supreme Court. He had served as the Secretary of Treasury, and he removed the Government's deposits from the Bank of the United States. Senators who were opposed to that move offered a motion postponing his nomination indefinitely, which passed 24 to 21.

President James Polk, nominated George Woodward in 1845, and allegations arose that as a delegate to the 1837 Constitutional Convention, he introduced an amendment that would have prohibited any foreigners who came to Pennsylvania after 1841 from voting or holding office.

President Ulysses S. Grant nominated Ebenezer Hoar in 1869, who had served as Attorney General. Senators were upset by the fact that he recommended nominees to the circuit courts without taking into consideration Senators' preferences. His nomination was defeated 24 to 33.

The same thing happened in 1881, when President Rutherford Hayes nominated Stanley Mathews. He was defeated because of his close ties to railroad and financial interests.

President Warren Harding, in 1922, nominated Pierce Butler. His nomination was blocked from consideration on the Senate floor because of an alleged procorporation bias and his previous advocacy for railroad issues that were coming before the Court.

In 1930, President Herbert Hoover's choice of John Parker was rejected because he made statements opposing the participation of African Americans in politics and because of his labor record while chief judge of the U.S. Fourth Circuit Court of Appeals.

Marshall Harlan II was nominated by Dwight Eisenhower in 1954. The nomination was never reported out of committee because some members felt he was ''ultraliberal'' and hostile to the South and dedicated to reforming the Constitution by ''judicial fiat.''

In 1968, President Lyndon Johnson nominated Abe Fortas to be elevated to Chief Justice of the Supreme Court. His nomination was defeated after the Senate failed to invoke cloture 45 to 43. One Senator is reported as saying that Fortas' ''judicial philosophy disqualifies him for this high office.''

It went on for two of President Nixon's nominees. Clement F. Haynsworth, Jr. was rejected in 1969 by a vote of 45–55. At that time, five senators issued a joint statement that expressed ''doubts about his record on the appellate bench,'' and one senator opposed the nomination on the basis of his record on civil rights issues.

The other, G. Harrold Carswell, was rejected by a vote of 45–51, in part based on his judicial philosophy. A statement issued by four senators at the time stated they opposed his nomination because his ''decisions and his courtroom demeanor had been openly hostile to the black, the poor and the unpopular.''

And, of course, one of President Ronald Reagan's nominees, Judge Robert Bork, whose views and legal philosophy were of great concern. Judge Bork believed Americans had no constitutional right to use contraception. He argued that in guaranteeing one man, one vote, the Court ''stepped beyond its boundaries as an original matter.'' And he had a broad view of Executive power. He once asserted that a law requiring the President to obtain a court order before conducting surveillance in the United States, and against U.S. citizens was ''a thoroughly bad idea and almost certainly unconstitutional.''

Most recently, White House Counsel Harriet Miers was withdrawn even before consideration by the Judiciary Committee due to the rightwing's objections.

So it is abundantly clear that judicial philosophy and legal views have been evaluated by senators from both sides of the aisle throughout history, and they are valid reasons to reject a nominee for the U.S. Supreme Court.

To now argue that evaluating one's judicial philosophy is setting a new precedent is simply turning a blind eye to history. So while none of us can predict how any person will act in the future, we do have to thoroughly consider information available that provides insights into a nominee's judicial philosophy and legal reasoning. I want to make clear.

Secondly, many of my colleagues on the Judiciary Committee have argued that the nomination of Justices Ginsburg and Breyer have set a precedent for how Supreme Court nominations should be handled, that no one questioned their judicial philosophy, and that they swept through by large votes. I want to take a moment to answer that.

The fact of the matter is that there was real advice and consent in the nominations of Justices Ginsburg and Breyer. Senator HATCH, in his book ''Square Peg: Confessions of a Citizen Senator,'' who was then the ranking member of the Judiciary Committee, gave the following account of the Ginsburg nomination:

> It was not a surprise when the President called to talk about the appointment and what he was thinking of doing.

So President Clinton told Senator HATCH what he was thinking of doing. Senator HATCH goes on:

> President Clinton indicated he was leaning toward Bruce Babbitt . . . Clinton asked for my reaction.
>
> I told him the confirmation would not be easy. I explained to the President that although he might prevail in the end, he should consider whether he wanted a tough, political battle over his first appointment to the Court. I asked whether he had considered Judge Stephen Breyer of the First Circuit Court of Appeals or Judge Ruth Bader Ginsburg of the District of Columbia Court of Appeals.

Both were confirmed with relative ease. So since the ranking member of the Judiciary Committee—the minority ranking member—had recommended these nominees, it is not surprising that they moved through the confirmation process relatively easy. I am confident that if President Bush had decided to nominate any of the candidates suggested by the current ranking member of the committee, Senator LEAHY, the process could have been smooth this time as well. But he didn't. With that said, I also believe that today is a very different day than the time when Justice Ginsburg and Justice Breyer were before the Senate. Let me point out some of the differences. There was not the polarization that there is within America today. There was not the clear effort to upset the current balance of the Court and move it far to the right.

When Justices Ginsburg and Breyer were before the Senate, it had been

more than 50 years since any statute had been struck down by the Supreme Court on commerce clause grounds.

It wasn't actually until April 26, 1995, after both Justices had been confirmed, that the Supreme Court began to revisit an area that had been well settled since the New Deal in the mid-1930s in its decision on a case known as Lopez. In U.S. v. Lopez, the Court struck down the Gun-Free School Zones Act that had been passed by the Congress, which essentially prohibited the possession of a firearm within a thousand feet of a school. It was this decision that signaled the beginning of the Rehnquist Court's federalism ''revolution.'' In the next decade, from 1995 to 2005, the Rehnquist Court struck down all or portions of 30 congressionally enacted laws, 10 of them on federalism grounds. Here they are on this chart. I will point out some of them to you:

The Indian Gaming Regulatory Act, the Federal Election Campaign Act, the Cable Television Consumer Protection and Competition Act, the Religious Freedom Restoration Act, the Communications Decency Act, the Brady Handgun Violence Prevention Act, the Water Resources Development Act, the Coal Industry Retiree Health Benefit Act, section 316 of the Communications Act, the Fair Labor Standards Act, the Age Discrimination in Employment Act, the Violence Against Women Act, the Telecommunications Act, the Americans with Disabilities Act, section 2511 of the Omnibus Crime Control and Safe Streets Act, the FDA Modernization Act, the Child Pornography Act, the Bipartisan Campaign Reform Act, the Child Online Protection Act and on and on and on, using various sections of the Constitution to hold impermissible congressional actions in these areas.

Now, this is a major thrust of the Court, and it is a serious thrust. It is one that this body and the other body ought to understand because, with these actions, the Court was essentially declaring that the Congress cannot legislate in many important areas, areas that are very important to me and to my constituents.

When Justice Ginsburg and Justice Breyer were before the Senate, we were not in the midst of a war with Iraq, nor was our country faced with a war on terror that could last for our lifetime and, for all we know, for our children's lifetime. Few would have predicted that the President would authorize the use of torture in defiance of the Geneva Convention and the Convention Against Torture and Military Law; that the President would argue that he had inherent plenary authority to detain Americans without due process; and that the President would authorize the electronic surveillance of Americans in direct violation of the law, a law passed by this body, the other body, and signed by President Carter in 1978.

In addition, when Justices Ginsburg and Breyer were before the Senate, Planned Parenthood v. Casey had just recently been decided. Casey made it clear that Roe v. Wade remained controlling precedent; it affirmed a woman's constitutional right to privacy; it clarified that States have an interest to protect viable unborn life; and it held that many State laws relating to abortion were valid.

With the Casey decision, there was a general acceptance that a woman's right to choose was secure. There had been a clear and direct challenge to Roe—as a matter of fact, it has been challenged at least three dozen times—and the Court had affirmed in Casey Roe's central holding.

Finally, as I noted when discussing Senator HATCH's book ''Square Peg,'' at the time Justices Ginsburg and Breyer were before the Senate, we didn't have an administration that was bent on moving the Court dramatically in one direction. Yet today, when we are evaluating a nominee to replace Justice Sandra Day O'Connor—a pivotal Justice, a Justice who was the fifth vote in 148 out of 193 decisions—the President continues to assert that he will only nominate those who view the Constitution through a lens of strict constructionism and originalism.

I think we must remember what these terms mean. I want to take a moment to do so. It is widely accepted among legal scholars that strict constructionists and originalists look to evaluate the Constitution based on what the words say as written and what the Framers intended those words to mean at the time they were written.

If we examine what these terms could mean when applied to actual constitutional questions today, it becomes clear why most legal scholars view the Constitution as a living document, able to adjust to the differences of the country today. Remember, in colonial times, there were 13 colonies and around 3 million people. Today we are close to 300 million people and we are 50 States.

Justice Brennan wrote in 1986 about this, and I quote him:

> During colonial times, pillorying, flogging, branding, and cropping and nailing of the ears were practiced in this country. Thus, if we were to turn blindly to history for answers to troubling constitutional questions, we would have to conclude that these practices would withstand challenge under the cruel and unusual clause of the eighth amendment.

He wrote that in the Harvard Law Review in December of 1986.

If an originalist analysis were applied to the 14th amendment, women would not be provided equal protection under the Constitution, interracial marriages could be outlawed, schools could still be segregated, and the principle of one man, one vote would not govern the way we elect our representatives.

My concerns about confirming a strict constructionist or originalist to the Court are best demonstrated by what this legal reasoning could mean in three important areas: congressional authority to enact legislation, checks on Presidential powers, and individual liberty and privacy interests. I want to talk about these for a minute in the context of Judge Alito.

It is my conclusion that Judge Alito would most likely join Justices Thomas and Scalia in the originalist and strict constructionist interpretations of the Constitution. And those are the interpretations that have been used by the Rehnquist Court in the past decade to overthrow all or portions of the 30 laws to which I just referred. I have come to this conclusion based on Judge Alito's record in the Reagan administration and on the bench.

In 1986, Congress passed what seemed to me a pretty simple law. It was called the Truth in Mileage Act. It basically forbid anyone from tampering with odometers in automobiles. As a deputy at the Office of Legal Counsel, Judge Alito recommended that President Reagan veto this bill because it violated principles of federalism.

Judge Alito also drafted a statement for President Reagan to make when he vetoed the bill, asserting ''it is the States and not the Federal Government that are charged with protecting the health, safety, and welfare of their citizens.''

It is the States, not the Federal Government. The implication is the Federal Government does not have a role in protecting the health, safety, and welfare of our citizens.

Judge Alito's restricted views of congressional authority later surfaced in his decisions while on the Third Circuit. For me, a prime example is the case of U.S. v. Rybar. This case is significant because it was a case where Congress clearly had the authority to enact legislation, and yet Judge Alito wrote a separate opinion, a dissent, to argue against the law. He was the sole dissenter, and he was outvoted.

In his opinion, he used a legal technicality that would have thrown out the conviction of a man who had illegally possessed and sold fully automatic machine guns in the State of Pennsylvania.

In reaching his conclusion, he seemed to ignore past precedents, clearly establishing congressional authority to regulate firearms, such as the Miller case of 1939.

He also dismissed previous statutes that had already outlined the obvious impact guns have on interstate commerce, even when sold within a State. To me, that was a major indication of his thinking.

The facts in this case make this point even more obvious: one gun was from China, the other was a military M3 submachine gun made during World War II by General Motors. Clearly, both guns had traveled through interstate commerce before reaching Pennsylvania where the arrest took place.

Judge Alito's views on congressional power could also limit Congress's ability to protect the environment. In the next few years, the Supreme Court is likely to hear a number of cases challenging Congress's authority to pass

laws protecting the environment, such as the Clean Water Act and the Endangered Species Act. In fact, later this term, the Supreme Court will hear two cases. One is Carabell v. Army Corps of Engineers, and the other Rapanos v. U.S.

The issue in both is whether the Congress has the authority to regulate nonnavigable waterways under the Clean Water Act. Both are brought to the Court on the basis that Congress could not regulate environmental control in nonnavigable waterways. If the Supreme Court were to strike down this provision, the Federal Government would lose its primary tool to protect wetlands.

If confirmed, Judge Alito could be the decisive vote in these environmental cases, and his record on the environment, in this regard, is not reassuring. Let me give an example.

In the case Public Interest Research Group v. Magnesium Elektron, it was undisputed that a chemical company had committed 150 different violations of the Clean Water Act by illegally dumping chemicals into a river. The plaintiffs in the case were members of an environmental group and had stopped using the river because of the pollution.

Judge Alito voted in a 2-to-1 decision to throw the case out. He adopted a narrow reading of both the Clean Water Act and the legal concept of standing. In doing so, his conclusion would have gutted the provision that allows individual citizens to enforce the law.

Three years later, the Supreme Court in a 7-to-2 decision in Friends of the Earth v. Laidlaw rejected Judge Alito's expansive view of the standing requirement, making it easier for individuals to sue to stop violations of the Clean Water Act.

So this is a serious concern—Clean Water Act, Clean Air Act, Endangered Species Act. Our ability to legislate in these areas is very much at stake with this judge.

Judge Alito's views on the scope of Presidential powers are deeply concerning to me at this point in American history. The Constitution gives both the President and the Congress critical roles in the defense of our Nation. The Constitution specifically provides in article I, section 8:

> The Congress shall have Power To . . . provide for the common Defense and general Welfare of the United States . . .
>
> To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;
>
> To raise and support Armies . . .
>
> To provide and maintain a Navy;
>
> To make Rules for the Government and Regulation of the Land and Naval Forces . . .
>
> To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;
>
> To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Services of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress . . . and
>
> To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers. . . .

In other words, we are responsible to give the powers to the President for him to execute in these areas. That is a very important article, and it is the heart of congressional authority and the balance of power at a time of crisis.

Our national security and constitutional liberties suffer when either branch oversteps its bounds. Today our Nation is in a very different place than it was 10 years ago. We face new challenges to our constitutional framework of checks and balances.

This President has asserted unprecedented authority in many areas which has raised profound constitutional questions. They include:

May the President authorize torture?

Does the Constitution permit the President to order the arrest and detention of individuals inside the United States without due process or access to counsel?

Does the Constitution allow the President to violate laws based on inherent plenary power?

Is it constitutionally permissible for the President to authorize electronic surveillance of Americans without a warrant in violation of Federal law?

Given the critical importance of these questions to both our national security and our constitutional democracy, I asked Judge Alito a variety of questions to get a sense of his vision of the balance of power between the President, the Congress, and the courts.

Rather than engage in a productive discussion about the issues, he simply repeated obvious truisms, such as ''nobody is above or below the law,'' or agreed to the unsurprising proposition that the Constitution and the laws of the Nation are supreme. He did not answer whether the President had to follow these laws.

His answers were inadequate, so I was left to evaluate his views based on his prior record.

At the Department of Justice, Judge Alito was part of the effort to press for expanded Presidential power, and there is no doubt about that.

While serving in the Department of Justice, he wrote a memo on Presidential signing statements, and here is what he argued:

> From the perspective of the executive branch, the issuance of interpretive signing statements would . . . increase the power of the Executive to shape the law.

''The power of the Executive to shape the law.'' Do we believe this is correct, or do we believe that the ability to make and shape the law rests with the Congress, and the President can sign it or veto and indicate his reasons for so doing, but not shape the law to his specific demand? Then when speaking before the Federalist Society in November of 2000, Judge Alito expressed his support for the unitary executive theory. In 1988, this unitary executive theory was rejected by the Supreme Court in a decision called Morrison v. Olson. It was rejected overwhelmingly. The majority was 7 to 1. The opinion was offered by Justice Rehnquist. The Court rejected Justice Scalia's argument that the independent counsel must be under the executive branch and report to the President. That took care of what is called the theory of the unitary executive.

Yet more than a decade later, Judge Alito declared:

> I still think that this theory best captures the meaning of the Constitution's text and structure.

Clearly, this is a statement for expanded Presidential authority and for the unitary executive.

Judge Alito's vague answers at the hearing, coupled with the specific statements made a few years ago, lead me to conclude that he is a strong proponent of expanded Presidential authority and that he is not committed to a proper system of checks and balances, which brings me to my third point.

If one is pro-choice in this day and age, with the balance of the Court at stake, one cannot vote to confirm Judge Alito. I, for one, really believe there comes a time when you just have to stand up, particularly when you know the majority of people stand as you do. And I don't make that statement simply based on my gut instincts. It is reflected in the polls we see.

A Gallup poll released earlier this week, January 24, stated that 63 percent of Americans do not want to see Roe overturned. And that is backed up by other polls.

A CNN/USA Today/Gallup poll released earlier this month, January 9, said a majority of Americans, 56 percent, do not believe Judge Alito should be confirmed if his confirmation hearings reveal he would vote to overturn a woman's right to have an abortion.

Around here when it comes to the issue of abortion the tail wags the dog. The minority is the dominant voice, while the majority of people out there feel very differently on the question. A majority of people, it is clear, in the United States of America believe that a woman should have certain rights of privacy—privacy that is limited by the State's interest to protect potential life, but a certain right to privacy. If you know this nominee is not going to respect those rights but holds differing views, then you have to stand up.

I am very concerned about the impact Judge Alito could have on women's rights, including a woman's right to make certain reproductive choices as limited by State regulation.

When the issues of Roe and precedent came up during the hearings for Chief Justice Roberts, he engaged in a conversation with me and other Senators. He acknowledged that Roe is well settled. He discussed the different factors the Court considered when Casey affirmed the central holding of Roe. In

fact, during Judge Alito's hearings, I read part of the Roberts transcript to him and I gave him an opportunity to review it. I then asked him to tell me where he differed from Chief Justice Roberts and if he, too, believed Roe is well settled. He responded this way:

I think that depends on what one means by the term well settled.

That was after reading an explicit and full description of what the now Chief Justice had said before us. His response clearly indicated, at least in my view, that he didn't regard precedent that highly.

I next tried to talk to him about his legal views and what he meant when he said ''precedent is not an inexorable command.'' I specifically stated:

Those are the words that Justice Rehnquist used arguing for the overturning of Roe. So my question is did you mean it that way?

The most Judge Alito would say is this:

The statement that precedent is not an inexorable command is a statement that has been in the Supreme Court case law for a long period of time. And sitting here, I can't remember what the origin of it is. . . .

In providing nothing more than this for an explanation, Judge Alito spoke volumes about his view on Roe. I listened carefully to the testimony of many legal scholars, including professors in constitutional law. One I want to quote, and I quoted it in the committee as well because it meant a great deal to me, is a professor of constitutional law at Harvard, Professor Larry Tribe. He said that, with the addition of Judge Alito:

The Court will cut back on Roe v. Wade, step by step, not just to the point where, as the moderate American center has it, abortion is cautiously restricted, but to the point where the fundamental underlying right to liberty becomes a hollow shell.

It is important to remember that Roe, as modified by Casey, is in fact a moderate compromise that considers both sides of the question. Together, Roe and Casey protect women's privacy interest but also allow States to pass regulations to restrict that interest postviability.

If you look carefully at Judge Alito's decisions in three cases—Planned Parenthood v. Casey, Blackwell v. Knoll, and Planned Parenthood v. Farmer—you will see in his writing where serious questions of his views arise. While sustaining Roe in these cases, Judge Alito's opinions also raised serious questions indicating if Judge Alito was not bound by precedent, or there was a gray area, he would weaken Roe by narrowly interpreting what constitutes an undue burden. Since in his dissent in Casey, Judge Alito argued that spousal notification was not an undue burden—a position rejected by the Supreme Court.

Judge Alito may have a different interpretation of when life begins that could dramatically alter the Court's rulings and impact women's access to contraception. This concern was highlighted when in Alexander v. Whitman, Judge Alito wrote a separate opinion to clarify that he disagreed with the Court's ''suggestion that there could be 'human beings' who are not 'constitutional persons.'''

Judge Alito may not agree with the Supreme Court's holding in Roe that a woman's health must be protected for a law to be constitutional. This issue was raised in Planned Parenthood v. Farmer where Judge Alito agreed with the decision of the Court to strike down a New Jersey abortion law. However, he asserted that the Court's opinion, including the discussion about the lack of a health exception, was ''never necessary.''

In addition, I was deeply troubled by Judge Alito's 1985 job application. Let me tell you where he was in 1985. He was not a youngster. Senator DURBIN pointed this out in the Judiciary Committee. He had already clerked at a New Jersey law firm. He had already clerked for a Federal court of appeals judge. He had spent 4 years as an assistant U.S. attorney, and he had spent 4 years as Assistant to the Solicitor General in the Department of Justice, and he had argued 12 cases on behalf of the Federal Government before the Supreme Court and numerous other cases before the Federal courts of appeals. So this was not some naive ingenue coming down the pike, trying to get a job in the administration. He filled out the job application and gratuitously added these words, that he believed ''the Constitution does not protect a right to an abortion.'' He was not asked the question; he simply added those words. Why would you do that if you have argued 12 cases before the Supreme Court, if you spent 4 years as an assistant U.S. attorney, if you have argued before Federal circuit courts, you have clerked for judges—why would you do it unless it was a deeply held view of yours that you wanted to express?

I asked him about this privately in my office and he said that he was attempting to get a political appointment. But he also told me that the application speaks for itself and he did not disavow what he wrote. That spoke volumes about where he is today. It is pretty clear to me that, given a chance, he would vote to overthrow Roe.

He also wrote in that same application:

In college, I developed a deep interest in constitutional law, motivated in large part by disagreement with Warren Court decisions, particularly in the areas of criminal procedure, the Establishment Clause, and reapportionment.

The Warren Court's reapportionment decisions established the principle of one man, one vote, and they stopped the abhorrent practice of diluting votes by making some voting districts larger than others. For example, prior to these decisions some voting districts in the same State were 41 times the size of others.

As an attorney with the Solicitor General's Office of the Department of Justice, Judge Alito argued three affirmative action cases, each time urging the Supreme Court to strike down affirmative action programs. The arguments he made in these cases are contrary to the Supreme Court's subsequent decision in Grutter v. Bollinger, another 5–4 decision where Sandra Day O'Connor was the decisive fifth vote. In Grutter, the Court held that the University of Michigan and other colleges and universities receiving Government funding could consider race, ethnicity, and gender in school admissions policies in order to encourage a diverse student body.

Judge Alito encouraged the Senate to judge him on his 15-year record on the Third Circuit. An examination of this record reveals a judge who tends to rule against civil rights more often than his colleagues. A review of Judge Alito's opinions by Yale Law School professors concluded that in the area of civil rights law, he consistently used procedural and evidentiary standards to rule against female, minority, age, and disability claimants. Similarly, a review of 311 published opinions by Knight-Ridder found that, although his opinions were rarely written with obvious ideology, he seldom sided with an employee alleging discrimination.

Here again, there is a case, Riley v. Taylor, that is particularly troubling. This case took place in Delaware, where prosecutors had excluded every African-American juror in all four of its first-degree murder trials that had taken place in a Delaware county that year. A majority of the Third Circuit, sitting en banc, concluded that excluding every Black juror in four State murder trials was evidence of race-based discrimination. I would conclude that, too. The Court noted that it is not ''necessary to have a sophisticated analysis by a statistician to conclude that there is little chance of randomly selecting four consecutive all white juries.''

Judge Alito dissented. In contrast, he argued that ''there is little chance of randomly selecting left-handers in five out of six Presidential elections. But does it follow that the voters cast their ballots based on whether a candidate was right- or left-handed?''

This dissent demonstrates a failure to grasp the critical point. Left-handed individuals have not suffered the long history of discrimination in this country the way African Americans have. I think to use that, as a Federal appellate court judge, as a bona fide argument to say that you can have four consecutive murder trials in a county and exclude every African American from the jury shows you have a mode of thinking that is not in the mainstream of American legal thinking.

So, bottom line, based on all of the information before me, I have decided to vote against Judge Alito's confirmation. Mine is a vote that is made with the belief that a person's legal reasoning and judicial philosophy, especially at a time of crisis, at times of

conflict, and at times of controversy, do mean a great deal. It is my belief that this nominee's legal philosophy and views will essentially swing the Court far out of the mainstream, toward legal philosophy and views that do not reflect the majority views of this country. I will vote no. I urge my colleagues to vote no.

I ask unanimous consent to have printed in the RECORD a list of California organizations that oppose Judge Alito's confirmation and a set of letters from pro-choice organizations following my full remarks, and I yield the floor.

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

CALIFORNIA ORGANIZATIONS THAT OPPOSE JUDGE ALITO'S NOMINATION

ACLU of Northern California; ACLU of Southern California; AFSCME California; Alliance for Justice; Asian Pacific Law Caucus; Asian Pacific American Legal Center of Southern California; California Church Impact; California National Organization for Women; California Nurses Association; California State Conference of NAACP Branches; Coalition for Economic Equity; California Women's Agenda; Committee for Judicial Independence; Disability Rights Education and Defense Fund; Ella Baker Center; Equal Justice Society; Equal Rights Advocates; Greenlining Institute.

Lawyers Committee for Civil Rights of the San Francisco Bay Area; Mexican American Legal Defense and Educational Fund; MoveOn.org; NARAL Pro-Choice California; NAACP Legal Defense and Educational Fund; National Council of Jewish Women California; National Health Law Program; People For the American Way West; Planned Parenthood Affiliates of California; Planned Parenthood Golden Gate; National Lawyers Guild California; Planned Parenthood Los Angeles; Progressive Jewish Alliance; Public Advocates Inc.; Rainbow Push California; SEIU California State Council; Sierra Club; Women's Employment Rights Clinic; and Women's Leadership Alliance.

CATHOLICS FOR A FREE CHOICE,
Washington, DC, January 11, 2006.

Senator ARLEN SPECTER,
Chairman,
Senator PATRICK LEAHY,
Ranking Member, U.S. Senate Committee on the Judiciary.

DEAR CHAIRMAN SPECTER, RANKING MEMBER LEAHY AND MEMBERS OF THE JUDICIARY COMMITTEE: I write to you today as president of Catholics for a Free Choice, an organization that shapes and advances sexual and reproductive ethics that are based on justice and reflect a commitment to women's well being, to express our opposition to the nomination of Judge Samuel A. Alito Jr. to the Supreme Court of the United States.

Our decision to ask the U.S. Senate Committee on the Judiciary to reject this nomination and not to send this nominee for an up-or-down vote by the entire Senate is not one that we take lightly. Indeed, Catholics for a Free Choice, after examining his record an carefully following Chief Justice John Roberts' confirmation hearing did not oppose his nomination.

Based on public documents released by relevant government agencies and from published interviews and statements with and from the nominee himself during the first days of the confirmation hearing, it is evident that Judge Alito is a vastly different nominee from Chief Justice John Roberts. These differences, however are not only manifested in judicial philosophy, but sadly in critical aspects of his character and integrity.

Our reasons for oppose this nomination go far beyond Judge Alito's personal and legal opposition to reproductive health services including abortion—but center on the underlying principles of the qualifications necessary to serve on the Supreme Court.

In our view, serving on the highest court in the land takes a fundamental commitment to the individual rights enshrined in the Constitution. These include the rights of women to make decisions about their bodies; the rights of employees to seek judicial relief when they feel they have been discriminated against based on race or gender; a belief in the ''one person, one vote'' doctrine that has been a pillar of American democracy; and an understanding that all citizens of the United States have equal standing under the law regardless of which religious tradition they identify with, if any. Throughout his time on the federal bench, Judge Alito has not shown an allegiance to these principles and has in fact, in many cases, shown hostility to them.

Equally important is the integrity and character of the mail or woman being nominated. This integrity includes a consistent view of the law and a guarantee that the principle espoused by the nominee are based on sound legal reasoning and conscience—and not based upon which political appointment or job they are applying for at the time. Judge Alito has an unfortunate mate and well-documented history of changing his positions on key personal rights based upon which position in government he is being considered for. To us, this suggests a nominee whose values in public service are not grounded in principles, integrity and respect for individual rights, but in the politics and personal ideology of the moment.

Judge Alito has also demonstrated through his words and his actions that what he pledges during confirmation hearings does not necessarily reflect his actions once confirmed and behind the bench. During his 1990 confirmation hearings for the U.S. Court of Appeals for the Third Circuit. Alito promised to rescue himself from any cases involving Vanguard Group Inc. and Smith Barney Inc., companies which have handled some of his personal investments. Despite this promise, Alito ruled on a case involving Smith Barney in 1996 and Vanguard Group in 2002. When pressed about this major lapse, Alito responded that the 1990 promise applied only to his first few years on the bench. This is a clearly troubling example of either a major ethical lapse on the part of Judge Alito or yet another example of the nominee saying one thing to get the job, and then playing by different rules when he wins confirmation.

Of critical importance to Catholics for a Free Choice is the outright hostility to and the politicization of reproductive rights by this nominee. Unlike Chief Justice Roberts who was well known to be personally opposed to abortion before he was confirmed to the Court, but pledged to separate those views and respect the law of the land nominee Alito has made both his personal and legal views on this subject a hallmark of his career advancement.

Throughout his career, Judge Alito has shown that he believes—both personally and legally—that the right to choose, to make decisions about the most private and profound aspect of a woman's life, i.e. when and whether to have children, is not protected under the Constitution. There are several examples of this, including his 1985 application letter to then-Attorney General Edwin Meese III in which Alito wrote that he was, ''particularly proud'' of his personal contributions to legal views endorsed by the administration including ''that the Constitution does not protect a right to an abortion,'' and his integral role as an attorney in the Reagan Justice Department where he sought ''opportunity to advance the goals of overruling Roe v. Wade and, in the meantime, of mitigating its effects.

We were not convinced by his claim during his confirmation hearings that he has an open mind on the right to choose as embodied in Roe. Given his belief that the Constitution does not protect a right to an abortion and his personal view that abortion is morally untenable, it would be foolhardy to accept his claim of open mindedness.

During opening statements of the Alito hearings, Senator Edward Kennedy asked the defining questions for the entire hearings. He began, ''So the question before us in these hearings is this: Does Judge Alito's record hold true to the letter and the spirit of equal justice? Is he committed to the core values of our Constitution that are at the heart of our nation's progress? And can he truly be evenhanded and fair in his decisions?''

Through his words, his legal actions and his incontrovertible actions to date, the simple answer is no. Judge Alito cannot be counted on to issue rulings and to write opinions based upon sound legal philosophy and the proper consideration of past landmark rulings by the Court. Judge Alito cannot be counted on to protect the individual rights and freedoms of Americans who count on the federal judiciary to protect them from undue burdens imposed by ideologically driven governments and administration officials. And lastly, Judge Alito cannot be counted on to deliver justice in a manner that does not commingle previously stated strongly held personal and legal viewpoints that will be of serious detriment to members of our society.

I urge you to vote no on this nomination and by doing so to save the rights to privacy and the individual freedoms and choice to which all Americans—regardless of race, gender, religion or sexual orientation—are entitled.

Sincerely,

FRANCES KISSLING,
President.

NARAL PRO-CHOICE AMERICA,
January 11, 2006.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: On behalf of NARAL Pro-Choice America, I am writing to express our opposition to the confirmation of Samuel Alito to the U.S. Supreme Court. During his career, Alito has consistently demonstrated hostility toward fundamental reproductive rights. If he is confirmed as an Associate Justice on the Supreme Court, women will likely lose critical protections that Roe v. Wade established.

At the Department of Justice in the 1980s, Alito actively worked to limit and ultimately overturn Roe v. Wade. As an assistant to the Solicitor General, he wrote a lengthy, detailed strategy memorandum in which he recommended that the Reagan administration intervene in a significant abortion-related case before the Supreme Court in order to advance the administration's anti-choice agenda. In the memo, Alito detailed his legal strategy to dismantle the protections of Roe v. Wade, while pushing toward the ultimate goal of overturning the landmark decision altogether. He supported even the most intrusive and unreasonable restrictions on reproductive freedom. Perhaps most disturbingly, he saw nothing wrong with the government forcing doctors to tell patients that their use of birth control may

cause abortion—an utterly inaccurate statement that defies scientific definitions endorsed by the medical community and the federal government.

Far from claims to the contrary, Alito's work at the Department of Justice was hardly that of a government functionary. According to a then-colleague in the Solicitor General's office, Alito sought out the opportunity to work on the administration's friend-of-the-court brief in the case, the colleague has explained that Alito was instrumental in crafting the brief, providing ''the research, the thinking, as well as the legal research and analysis.'' In application for another job in the Department of Justice, Alito later boasted that he was ''particularly proud'' of his contribution in the case ''in which the government has argued in the Supreme Court that. . .the Constitution does not protect a right to an abortion.'' He emphasized that this was a ''legal position'' in which he personally believed ''very strongly.''

It was my hope that, during his Senate hearings, Alito would explain further these writings and share with senators and the American public whether he still holds these legal opinions about a woman's right to choose. Unfortunately, thus far, he has failed to do so. Alito admitted that his 1985 statement accurately reflects his views at the time, but then flatly, repeatedly, refused to answer whether he continues to believe that ''the Constitution does not protect the right to an abortion.'' Especially given his willingness to state his legal views in other areas, we have no choice but to conclude that he in fact continues to hold this extremely troubling view of women's fundamental freedom, and that he will vote to dismantle and ultimately overturn Roe v. Wade should he be confirmed.

Again, turning back to Alito's career: After his appointment to U.S. Court of Appeals for the Third Circuit, Alito tried, in the single case before him affording an opportunity to shape the contours of reproductive-rights law, to allow states the greatest latitude for restricting women's's right to choose. As a member of the three-judge panel that heard Planned Parenthood of Southeastern Pennsylvania v. Casey before the case went to the Supreme Court, he wrote a dissent in which he voted to uphold every restriction on the right to choose at issue in the case. He argued in favor of a statute that would have forced married women to notify their husbands before seeking abortion care, even though the statute would endanger and coerce women who may fear abuse if forced to notify their husbands. Just a year later, Justice Sandra Day O'Connor cast the decisive vote to strike down the law. Justice O'Connor, along with her coauthors, wrote, ''Women do not lose their constitutionally protected liberty when they marry.''

Alito and his defenders sometimes cite other: abortion-related decisions he has issued as claimed evidence that his legal philosophy does not predispose him against a woman's right to choose. But the claim is baseless. Planned Parenthood of Central New Jersey v. Farmer was squarely controlled by a Supreme Court case that dealt with a virtually identical statute. Elizabeth Blackwell Health Center for Women v. Knoll was decided on administrative law grounds and tells us nothing about how Alito will rule on a woman's constitutional right to privacy and choice. Regrettably, pro-choice Americans can take no comfort in these decisions. At every meaningful opportunity Alito has sought to restrict our constitutional freedom of choice.

Because Samuel Alito's record is rife with hostility toward women's reproductive freedom, NARAL Pro-Choice America must oppose his confirmation to the Supreme Court. I urge you to vote ''no'' on this nomination.

Thank you for your consideration.

My best,

NANCY KEENAN,
President.

PLANNED PARENTHOOD, FEDERATION OF AMERICA, INC. AND ACTION FUND, INC.

Washington, DC, January 10, 2006.

Senator ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate.

Senator PATRICK LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate.

DEAR CHAIRMAN SPECTER AND SENATOR LEAHY: On behalf of the Planned Parenthood, the world's largest and most trusted voluntary reproductive health care provider, we urge you to oppose the nomination of Judge Samuel Alito to be Associate Justice of the United States Supreme Court. Planned Parenthood has a long-standing history of working to ensure the protection of reproductive rights, as well as working to advance the social, economic, and political rights of women. Because the United States Supreme Court wields the ultimate and unreviewable power to define the contours of women's rights, the right to privacy, reproductive freedoms, and other basic civil rights, Planned Parenthood believes that justices appointed to this Court must demonstrate an affirmative commitment to safeguarding these fundamental rights and freedoms.

We believe that not only has Samuel Alito, Judge for the Third Circuit Court of Appeals, failed to demonstrate a commitment to protecting these rights, he has revealed himself to be actively hostile toward them. Indeed, his record is one of open antagonism toward constitutional protections for reproductive rights and freedoms. Therefore, PPFA strongly opposes his nomination to the United States Supreme Court.

Alito has made clear on repeated occasions his hostility toward the right to choose. In 1985, while serving as an Assistant to the Solicitor General in the Department of Justice, Alito devised and promoted a legal strategy to bring about the eventual overruling of Roe v. Wade, and, in the meantime, to ''mitigate its effects.'' In an application he submitted to become a Deputy Assistant U.S. Attorney General, he wrote that he was ''particularly proud'' of his work on cases where the government argued that ''the Constitution does not protect a right to an abortion.''

His hostility continued as an appellate judge. Indeed, Judge Alito's judicial record reflects and advanced the very legal strategy he laid out years earlier to undermine the right to choose. Judge Alito was the lone dissenter in Planned Parenthood of Southeastern Pennsylvania v. Casey when the case was before the Third Circuit. Writing separately from his colleagues, Alito voted to uphold a state law that forced married women to notify their husbands prior to obtaining an abortion. On review, a majority of the Supreme Court—including Justice O'Connor—emphatically rejected Alito's interpretation as one based on outdated notions of women's role in marriage and society and held the husband notification provision unconstitutional.

Judge Alito's record demonstrates hostility to women's equality in general and reproductive rights specifically. Judge Alito has been nominated to replace Justice Sandra Day O'Connor, who has for over a decade played a crucial role in protecting these fundamental rights. If permitted to take Justice O'Connor's seat on the High Court, Judge Alito would have the power to advance his ''closely held'' personal view that Roe should be overturned, to work to unravel settled law and to influence adversely the course of the Constitution's basic protections for access to reproductive health care for more than a generation. Judge Alito's record suggests that, if confirmed, he would do just that.

On behalf of the millions of women and men who count on us to protect their reproductive health, we urge you to oppose the nomination of Judge Samuel Alito to Associate Justice and protect the right to choose.

Sincerely,

KAREN PEARL,
Interim President.

[Jan. 11, 2006]

RMC OPPOSES JUDGE ALITO FOR SUPREME COURT

The Republican Majority for Choice (RMC) regrettably announces its opposition to the nomination of Judge Samuel Alito to the Supreme Court.

RMC is an organization whose core mission is to protect the right to choose as outlined in Roe v. Wade and to represent the millions of Republicans who strongly support this right. After much research and analysis of Mr. Alito's own record and statements on this issue of individual freedom it is clear that he is an advocate for further restricting this right.

Judge Alito seems by all measures to be an experienced and capable jurist, but one who is out of step with mainstream Americans on the issue of abortion and maintaining the legal right to choose.

There is no crystal ball to predict how a Justice Alito would rule in future cases; therefore we have closely monitored the confirmation hearings with the hope that Judge Alito would offer some clarifying statements that would allay our concerns about his record. Instead, he side-stepped the issue of whether or not the right to privacy in the Constitution extends to reproductive choice. He avoided answering whether Roe was settled law and existing precedent required a health exception to statutes limiting a woman's access to abortion.

Without such assurances, we can only calculate his judicial philosophy on reproductive rights through the prism of his past actions and statements. As the replacement for the architect of the ''undue burden'' standard, the stakes are too high for RMC to support an appointee who outlined a blueprint to dismantle that very standard.

The reality is that Judge Alito would not have to vote to overrule Roe in order to be the architect of the denial of a woman's right to choose. He could give lip service to respecting Roe while upholding the numerous legislative efforts to chip away at reproductive freedom. The cumulative result is that Roe v. Wade and its progeny are rendered meaningless.

But Judge Alito's position on choice, however, is not the only disappointment surrounding his nomination. The selection of Judge Alito sends a very clear message from the Bush Administration and the Republican leadership in Congress that they are willing to continue steering the party into a marginalized corner that puts it at odds with most voters.

Sadly, we have come to a point at which average Republicans are beginning to abandon the GOP policy and candidates. We have seen this in the public outcry concerning President Bush's opposition to stem cell research; we saw it last November in the Virginia gubernatorial race, and we will see it again this year if Republican candidates continue to promote extremist views. We pledge to continue our mission to promote common

sense solutions to help lessen the incidence of abortion while ensuring that women and families maintain the safe and legal right to choose. We will no longer stand by while women's rights are used as a political soapbox for either party.

NATIONAL ABORTION FEDERATION,
Washington, DC, January 9, 2006.

Senator ARLEN SPECTER,
Chairman, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

Senator PATRICK LEAHY,
Ranking Minority Member, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN SPECTER AND SENATOR LEAHY: On behalf of the National Abortion Federation and our members, I am writing to express our opposition to the nomination of Judge Samuel A. Alito to the United States Supreme Court. If confirmed, Alito would shift the Court to the right and would be a vote to overturn Roe v. Wade, thereby jeopardizing women's lives and health.

Alito has made no secret of his opposition to abortion and a woman's constitutional right to privacy. Alito has argued that the ''Constitution does not protect abortion,'' and has touted his work to overturn Roe v. Wade as an early highlight of his career. Although some have tried to downplay these statements as evidence only of an advocate applying for a job, Alito was not merely expressing his personal views or advocating for a client. Instead, Alito was offering his own legal philosophy and legal opinion that the Constitution does not protect the right to choose.

Additionally, Alito has actively volunteered to work on cases arguing for a reversal of Roe v. Wade. For example, Alito volunteered to draft the legal strategy and framework for the government's brief in Thornburgh v. American College of Obstetricians and Gynecologists. In that case, the government's brief sought to mitigate the effects of Roe for the short term while launching a ''back-door assault'' on Roe for the long term. Alito's work on the brief was deemed ''instrumental'' by one of his colleagues and central to the drafting of the brief.

Judge Alito's hostility to Roe v. Wade is not only evident from his tenure as a government lawyer, but also from his work as a judge on the U.S. Court of Appeals for the Third Circuit. While serving on that court, Judge Alito supported restricting access to abortion and limiting the right to privacy in Planned Parenthood v. Casey. His opinion on spousal notification was ultimately rejected by the Supreme Court. In the 2000 case, Planned Parenthood of Central New Jersey v. Farmer, Alito refused to join the majority opinion in striking down a ban on abortion because it lacked an exception to protect women's health. Instead, he wrote his own opinion making clear he joined the decision only because he was required to follow the Supreme Court precedent of Stenberg v. Carhart, a case he no longer would be required to follow as a Supreme Court justice.

Rather than nominating a moderate, consensus candidate to the Supreme Court, President Bush chose to bow to the pressures and demands of his far-right base and nominate Samuel Alito, a jurist whose judicial philosophy is clearly out of the mainstream. The fact that the President chose such an extreme candidate to replace Justice O'Connor, who cast the swing vote in many reproductive rights cases, is unacceptable. For these reasons, the National Abortion Federation calls on the United States Senate to defeat the nomination of Samuel Alito to the United States Supreme Court.

Sincerely,

VICKI A. SAPORTA,
President and CEO.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from Alaska is recognized.

Ms. MURKOWSKI. Mr. President, I rise this morning in support of the nomination of Samuel Alito to the position of Associate Justice of the U.S. Supreme Court. I have had an opportunity over the past couple of days, and certainly in this past hour, sitting in the chair as you are, Mr. President, to listen to the discussions on both sides of the aisle about the nominee before us, Judge Alito. I have been listening very carefully to the comments that have been made and the discussion of certain issues. But when it comes to the issue of Judge Alito's credentials, I do not hear a debate about them. I do not hear a hue and cry that this is a man who does not have the credentials to serve in the U.S. Supreme Court. I believe, and I believe many of my colleagues would agree, that Judge Alito's credentials are exemplary. No President should be denied the prerogative of appointing a person who is as qualified as Judge Alito to the Court.

Judge Alito, after 3 very long days of responding to over 700 questions, emerged from these nomination hearings the same person who many of us who met with him understood him to be—quite simply, a seasoned jurist who has the intellect, the temperament, and the reverence for the law which is required for service on the Nation's highest Court. So it is not surprising that Judge Alito has received the American Bar Association's highest rating for any nominee. It was a unanimous ''well qualified'' rating.

For those who are not familiar with how the American Bar Association scores or does the rating of the judges, the criteria that are looked to are criteria such as the judicial qualifications—the resume, the credentials; whether or not the individuals have presented themselves or conducted themselves free from bias, operating in a fair and impartial manner as a fair and impartial decisionmaker; and also looking to judicial temperament.

The bar association, through its rating process, couldn't keep a scorecard as to whether the individual has ruled more times in favor of the big guy over the little guy. It is a process where truly judicial temperament, the qualification, the credentials, and the free-from-bias and fair decision-making, is the criteria that is looked at.

We have heard over the course of days and in the committee hearings about Samuel Alito's background. He has a very moving and a very American personal story. Born to immigrant parents, Judge Alito is probably the first one to say that the person he admires most is his father—his father who battled barriers of prejudice until he became both a teacher and the first director of the New Jersey Office of Legislative Services.

Judge Alito excelled at his studies. He received degrees from two Ivy League institutions. But I sense—I certainly picked this up in my meeting with him—that Judge Alito is not one to forget where he came from or forget his modest roots.

His testimony in the hearings was unassuming, unpretentious. He thoughtfully listened, and I believe sincerely responded, to the committee's questions, recognizing that there are certain limitations in terms of predicting outcomes or sticking to the issues that might be before the Court should he be confirmed.

By all accounts, including those of many Democrats who have served with him, Judge Alito scrupulously lets the facts and the law—the facts and the law, not the politics—dictate his decisions.

What struck me during the nomination process in the hearing was the testimony of so many of his colleagues—and not just Republican colleagues but a wide range of individuals, self-professed liberals, and conservatives—who all spoke very highly of and who acclaimed Judge Alito.

I would like to mention a couple of the comments that were made in the course of the testimony. The testimony of the Third Circuit Court's senior judge, Judge Aldisert, had this about Judge Alito:

> We who have heard his probing questions during oral arguments, of being privy to his wise insightful comments in our private conferences; we who have observed at firsthand his impartial approach to decision-making and his thoughtful judicial temperament and know his carefully crafted opinions; we—who are his colleagues—are convinced that he will also be a great Justice.

Here is another statement from one of his colleagues, from Judge Edward Becker, who serves on the Third Circuit, and who sat with Judge Alito on over 1,000 cases. He described the judge as:

> Brilliant . . . highly analytical, and meticulous and careful . . . The Sam Alito that I have sat with for fifteen years is not an ideologue. He is not a movement person. He is a real judge, deciding each case on the facts and the law, not on his personal views whatever they may be. He scrupulously adheres to precedent.

Still another colleague, Judge Leonard Garth, described him as ''an intellectually gifted and morally principled judge . . . he will always vote in accordance with the Constitution and laws as enacted by Congress.''

I believe these qualities are critical; for when Judge Alito is confirmed, as I believe he will be, he will have giant shoes to fill. The legacy that Justice Sandra Day O'Connor will leave is one of fair-mindedness, open-mindedness, and lack of an ideological agenda. Justice O'Connor once described her approach to cases in this way:

> It cannot be too often stated that the greatest threats our constitutional freedom comes in times of crisis . . . The only way

for judges to mediate these conflicting impulses is to do what they should do anyway: stay close to the record in each case that appears before them, and make their judgments based on that alone.

Based on my conversations with Judge Alito, his testimony before the committee, and the statements of so many of his colleagues who know his work best, I am confident that Judge Alito will have that open- and fair-mindedness. He told the Judiciary Committee:

Good judges are always open to the possibility of changing their minds . . . Result-oriented jurisprudence is never justified because it is not our job as judges to try to produce particular results.

In his opening statement, Judge Alito recalled the oath that he made at the time he was sworn as a judge of the court of appeals. He stated that he would ''administer justice equally, both to the rich and the poor'' and that he would ''carry out the laws and the Constitution'' to the best of his ability.

I believe Samuel Alito has done that for nearly two decades as a Federal judge. I will certainly look to him to do that in his new role—again, without agenda, without prejudgment, without bias.

I join many of my colleagues on the Senate floor this morning in supporting the nomination of Judge Samuel Alito to the U.S. Supreme Court.

I yield the floor.

Mr. HAGEL. Mr. President. I rise to announce my intention to vote in favor of Judge Samuel A. Alito's nomination to be an Associate Justice of the Supreme Court of the United States.

The Senate Judiciary Committee and others have thoroughly scrutinized his background and credentials. Hundreds of documents and memos he produced as a lawyer have been reviewed, along with hundreds of judicial opinions he authored or participated in during his 15 years as a Federal court of appeals judge. Those documents have revealed a strong intelligence and a deep respect for the law and the Constitution.

Earlier this month, the Judiciary Committee held several days of hearings on Judge Alito's nomination. Everything in those hearings reinforced my impressions of Judge Alito from my meeting with him in November. He was forthcoming during the committee members' questioning, candidly answering hundreds of questions regarding specific cases, the law, and his judicial philosophy. His judicious temperament during the hearings was apparent.

During the hearings, I was also impressed by the comments of seven current and former Third Circuit Court of Appeals judges. They testified in support of Judge Alito's nomination to the Supreme Court. This support by the individuals most familiar with Judge Alito's skills and judgments carries great weight.

Finally, last month, the American Bar Association unanimously rated Judge Samuel Alito as ''well qualified'' for his appointment as Associate Justice of the Supreme Court. This is the highest rating that can be given to a judicial nominee. Given Judge Alito's performance at the hearings and the strong support for his nomination, no one should be surprised by this top ABA rating.

I enthusiastically endorse and support Judge Alito's nomination. I believe he will bring a solid base of legal and judicial experience to the Court. The President has chosen wisely, and I encourage my Senate colleagues to join me in voting for this exceptional nominee.

Mr. VOINOVICH. Mr. President, I rise today to urge my colleagues to vote to confirm Judge Samuel A. Alito, Jr., as an Associate Justice of the U.S. Supreme Court.

Before I discuss my reasons for supporting Judge Alito, I would like to make a few remarks about the judicial confirmation process. Judge Alito is the second nominee to the Supreme Court since I was elected to the Senate. I have been pleased with how his nomination has been handled by both the White House and the Judiciary Committee.

I wish to compliment Senator SPECTER and Senator LEAHY for the excellent job they have done in handling the confirmation hearings for Judge Alito. The hearings were fair and orderly. These hearings gave the country an important opportunity to see what type of person Judge Alito is: one with a long history of service to his country and with a true love of the law. As was the case with the confirmation hearings for Chief Justice Roberts, the ''advice and consent'' process gave the country a valuable lesson in constitutional law, showing that each branch of Government plays a valuable role in our democracy.

The President has nominated another fine candidate to the Supreme Court. History will look back on the nomination of Judge Alito, combined with President Bush's nomination of Chief Justice Roberts, as one of the most important legacies of the Bush administration.

A Supreme Court nominee must have two qualities. First, a nominee must have an exceptional intellect. Second, a nominee must be committed to the rule of law. I am very pleased to say that based on everything I have seen and heard, Judge Alito has demonstrated both of these qualities.

It is difficult to see how Judge Alito could have more impressive professional credentials. From his academic record to his almost 30 years in government service, including 15 years on the U.S. Court of Appeals for the Third Circuit, Judge Alito has accumulated a remarkable record of achievement.

As my colleagues have previously noted, Judge Alito graduated from Princeton University, was elected to Phi Beta Kappa, and was selected as a Scholar of the Woodrow Wilson School of Public and International Affairs. Judge Alito then attended Yale Law School where he served as an editor of the Yale Law Journal.

Since his start as a young lawyer, Judge Alito has shown a commitment to public service in the Jeffersonian ideal of the citizen-lawyer. Judge Alito served as a law clerk to Judge Leonard Garth of the U.S. Court of Appeals for the Third Circuit. After completing his clerkship, Judge Alito began his legal career as an Assistant U.S. Attorney briefing and arguing cases before the Third Circuit. I hope that Judge Alito's commitment to public service is noted by law students and young lawyers around the country as they think about their career choices. Judge Alito's experience stands as a model of public service and has led him to the opportunity to obtain one of the highest honors a lawyer can hope to achieve, a chance to serve his country as an Associate Justice of the U.S. Supreme Court.

In 1987, Judge Alito was nominated and approved by unanimous consent as the U.S. attorney for the District of New Jersey. As U.S. attorney, Judge Alito prosecuted a wide variety of cases, including those involving white collar and environmental crimes, drug trafficking, organized crime, and violations of civil rights. Judge Alito's extensive experience as a Federal prosecutor will add a unique perspective to the Court's decisionmaking process.

In 1990, Judge Alito was unanimously confirmed by the Senate to serve on the U.S. Court of Appeals for the Third Circuit. Throughout his 15 years as a judge on the Third Circuit, Judge Alito has developed a reputation as a methodical, gracious, even-tempered jurist with a history of fairness for all who appear before him. Judge Alito is also known for producing well-written and well-reasoned opinions. His 15 years on the Third Circuit give Judge Alito a unique and seasoned perspective on, and appreciation for, the courts.

His impressive educational and professional background makes Judge Alito well prepared to be an Associate Justice of the Supreme Court. As he displayed during his confirmation hearings, he has an encyclopedic knowledge of the Supreme Court and of constitutional law. Yet he also has diverse, real-world experience in government and in how law interacts with the actual day-to-day operation of government. Judge Alito has the ideal balance of academic and practical experience.

Given his professional achievements, it is not surprising that the American Bar Association has given Judge Alito its highest rating. Mr. Stephen L. Tober, the chairman of the American Bar Association's Standing Committee on the Federal Judiciary, noted in his statement, the ABA unanimously concluded that Judge Alito is ''well qualified'' to serve as Associate Justice on the U.S. Supreme Court. The ABA noted that ''[Judge Alito's] integrity,

professional competence, and judicial temperament are indeed found to be of the highest standing. Judge Alito is an individual who, we believe, sees majesty in the law, respects it, and remains a dedicated student of it to this day.''

Judge Alito has shown a commitment to the rule of law. Now, no two people will agree on how to interpret every provision of the Constitution or of every statute. Nevertheless, Judge Alito's statement that ''there is nothing that is more important for our republic than the rule of law'' is an important testament to his commitment to ensuring that the rule of law, and not individual preferences of Justices, remains supreme. It is essential that any nominee displays a conscious commitment to deciding cases based on the law, rather than on his or her own personal views.

During Judge Alito's confirmation hearings, I was struck by how dedicated he is to the law and to correctly applying the law as a judge. As Judge Alito noted, ''The judiciary has to protect rights, and it should be vigorous in doing that, and it should be vigorous in enforcing the law and in interpreting the law . . . in accordance with what it really means and enforcing the law even if that's unpopular.'' He went on to state, ''A judge can't have any agenda. A judge can't have any preferred outcome in any particular case. And a judge certainly doesn't have a client. The judge's only obligation—and it's a solemn obligation—is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires.''

I observed Judge Alito's demeanor and conduct during this confirmation process, as he refused to abandon his judicial independence for the sake of political expediency. As Judge Alito noted, ''We shouldn't decide those questions, even in our own minds, without going through the whole process. If we announce—if a judge or a judicial nominee announced before even reading the briefs or getting the case or hearing the argument what he or she thought about the ultimate legal issue, all of that would be rendered meaningless, and people would lose all their respect for the judicial system, and with justification, because that is not the way in which members of the judiciary are supposed to go about the work of deciding cases.''

Accordingly, I have every confidence that parties who appear before Judge Alito will encounter a judge who is committed to viewing each case without bias and to reaching a decision that is dictated by the rule of law alone.

Finally, I want to offer some personal observations about Judge Alito. Too often we view executive and judicial nominees through political or ideological glasses and not as human beings. Nominees quickly get labeled as being a ''Republican nominee'' or a ''Democratic Nominee'' or as belonging to a particular school of thought or being a follower of a particular thinker or politician. This is unfortunate as each nominee's character gets overlooked and we fail to see this important aspect of each nominee. It is, however, a nominee's character that can have the biggest impact on his or her work.

In Judge Alito, I believe the Senate has before it not only a nominee who has the capability to be a great Associate Justice but also a nominee who is simply a wonderful person.

I share Judge Alito's appreciation of the great and wonderful opportunities for all Americans. I was moved by Judge Alito's sentiments about his father, as he recalled how a ''small good deed'' from a local Trenton area person allowed his father the chance to attend college and how this act of kindness eventually led to Judge Alito's presence before the U.S. Senate. I can relate to the story of Judge Alito's father because my own father was strongly influenced by his high school principal and a history teacher to stay in school rather than take a laborer's job. With the strong encouragement from these two individuals, my father completed high school and attended Carnegie Tech on a Kroger's Scholarship. Such stories are familiar to many descendants of immigrants and they show that the American Dream is still alive and well.

During my meeting with Judge Alito, he displayed a gracious manner and humble attitude. He is clearly very smart and engaging, and it was a pleasure to hear him explain his view of the Supreme Court and the rule of law. But he is also a very openminded person who listens to others with sincerity and a willingness to hear their views. For such a brilliant and successful person, I did not detect a hint of arrogance. He is a dedicated family man with a good sense of humor whom I believe all Americans will be able to respect and admire.

I have also been pleased to hear that my impressions of Judge Alito have been echoed by so many others during the hearings. I point particularly to the testimony of Professor Nora Demleitner, a self-professed ''left-leaning Democrat,'' who served as a law clerk with Judge Alito after graduating from Yale Law School. Professor Demleitner described Judge Alito as ''a man of great integrity, decency and character.'' Professor Demleitner also noted that Judge Alito is one of her role models and that he has one of the most brilliant legal minds of our generation.

In short, Judge Alito displays the openmindedness, humility and commitment to serving the public interest that should serve as the paradigm of judicial temperament for members of our highest Court.

In reviewing Judge Alito's academic and professional record, his firm commitment to the rule of law, and his strong character, it is clear that Judge Alito is eminently qualified to serve on the Supreme Court. It would be truly unfortunate if we allow this nomination to fall victim to the partisanship that has been growing in the Senate.

I, therefore, urge my colleagues to support the nomination of Judge Alito to be the next Associate Justice of the Supreme Court.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. COBURN. Mr. President, as a member of the majority and sitting as the President of the Senate yesterday, I was able to hear several hours of debate on the nomination of Judge Sam Alito, Jr.

I heard time and again dire predictions that Judge Alito is going to give the executive branch complete authority over our Government, including himself on the Supreme Court. Those who oppose him never mentioned one single case where Judge Alito ruled in favor of the President or expanded Executive power—not once. They think if they just keep repeating the same far-left smear—one dreamt up by far-left groups such as Ralph Neas' People for the American Way and Nan Aron's Alliance for Justice—the American people will fall for it.

It is disturbing to me that those who oppose Sam Alito are taking their cues from people such as Nan Aron and the Alliance for Justice who, even before the hearings began, before we had any hearings whatsoever, bragged, ''You name it, we'll do it,'' to sink Judge Alito.

I think the American people and their elected representatives would rather base their views on the lawyers and judges from across the political spectrum who had actually known Judge Alito.

Former Third Circuit Judge Gibbons explained his faith in Judge Alito's ability to fairly judge cases in which the government is asserting its executive power. He said: ''The committee members should not think for a moment that I support Judge Alito's nomination because I am a dedicated defender of that administration. On the contrary, I and my firm have been litigating with that administration for a number of years over its treatment of detainees held at Guantanamo Bay, Cuba, and elsewhere, and we are certainly chagrined at the position that is being taken by the administration with respect to those detainees. I am confident, however, that as an able legal scholar and a fair-minded justice, he will give the arguments, legal and factual, that may be presented on behalf of our clients careful and thoughtful consideration without any predisposition in favor of the position of the executive branch.''

Defense lawyers who litigated against Judge Alito confirm that when Judge Alito was part of the executive branch, he had a modest view of its power.

The New York Times reported that one defense attorney, Dan Ruhnke,

said that Judge Alito lacked the ''cop mentality'' of many career prosecutors and was ''never a cheerleader for law enforcement.''

Another defense attorney, Drew Barry, said that Judge Alito was ''not a bloodthirsty United States attorney,'' and that he was ''a vigorous prosecutor who went after a wide variety of bad guys, but his reputation was not someone who would ask for the heaviest sentences.''

As a member of the Judiciary Committee and in my time in the Senate, this is a sorrowful time for me.

The politics of personal destruction were all too evident in the Senate hearing and continue on the floor of this body.

The ''guilt by association'' standard of those who oppose Sam Alito would disqualify anybody who would be nominated no matter who the President is.

The idea that politics guides the Supreme Court nominations process in the Senate is new. The idea of the ''results only in my eyes qualification'' proves that those who challenge the integrity of Sam Alito require standards that they themselves could never live up to.

To be critical is fair to the process of confirmation, but destruction and absolute mischaracterization of one's record the way we have seen reaffirms the lack of fairness and conscience of those who carry out such tactics.

As a member of the Judiciary Committee, I spent 4 days listening, questioning, and watching—not only Sam Alito but all those who came to testify for him and those who came to testify against him.

Here is what I observed—not as a lawyer, not as a Senator, but as a physician trained in the art of observation and the art of listening.

Sam Alito is a man of high moral character. You do not hear the direct words challenging that, but you hear everything indirectly.

He is also a man of intellectual brilliance, impressing everyone who comes in contact with him.

He is a man of dedication to the law, to equal justice under the law.

He is a man who has shown dedicated commitment to the things that are important in our country.

He is a man who is completely sold out to one thing, and one thing only: His record and his life has demonstrated equal justice under the law.

What I also observed was a great diversity of political background of those who support him, those who know him, those who have worked with him for the last 15 years, regardless of their political views, either liberal or conservative, regardless of their gender or their color, regardless of their view on abortion.

Those who know him uniformly support him as a great jurist, a man of integrity and conscience, and one who is completely sold out to the idea that everyone in this country has equality under the law.

Those who know him, those who testified, of all stripes, of all political persuasions, would and are challenging what we have been hearing on the floor by those who oppose him—the mischaracterization of his rulings, the mischaracterization of his beliefs, the mischaracterization of his actions.

What I also observed, which concerns me even more, was that those who don't know him but have a political agenda to keep the Court activist and beyond its constitutional bounds oppose him. They do not know him. But what they do know is judicial activism, making law where none exits, which they put before a judiciary committed to equal justice under the law.

That is why he is being opposed. Their greatest fear is the Court will return to a place where the Constitution, the statutes, and treaties are interpreted, but personal political agendas are left at the door.

They fear the battles lost in the legislatures will no longer be carried out by judicial fiat. The former Soviet Union is the great example. They had a constitution but there was not equal justice under that constitution.

During Chief Justice Roberts' opening statement to the Judiciary Committee, he referenced the fact that the most powerful entity in the world, the U.S. Government, deferred to the rule of law when the Court was convinced that a private client was right on the law and the Government was not. He referenced President Reagan's speeches about the Soviet Constitution and how it purported to grant wonderful rights of all sorts to people, but those rights were empty promises because that system did not have an independent judiciary to uphold the rule of law and enforce those rights. Roberts concluded:

> We do, because of the wisdom of our founders and the sacrifices of our heroes over the generations to make their vision a reality.

Under our law, the mighty can be defeated by the meager.

We heard yesterday the philosophy of those who oppose this great jurist. Let me quote it exactly because it is very dangerous. This quote is from the Senator from Rhode Island:

> . . . in truth the Supreme Court is the Constitution.

If that is so, we are no longer a nation of laws but rather a nation of judges. That is not America. That is not freedom. That creates nine kings, the exact opposite of what our Founders intended. That is the very thing the American people rejected in the election of 2004. It was about judges.

Finally, let's talk about the real issue that will cause most people to oppose him. They fear he may truly believe in liberty for all. That is their fear. Let me explain. Senator KENNEDY had a very eloquent quote during the hearing. I would like to repeat it:

> America is noblest when it is just to all of its citizens in equal measure. America is freest when the rights and liberties of all are respected. America is strongest when we can all share fairly in its prosperity. And we need a court that will hold us true to these guiding principles today and into the future.

But he did not mean ''all,'' he meant all those except the truly innocent and truly weak, the preborn child. Behind me are two pictures, one of a 26-week-old preterm infant in a neonatal IC unit, smaller than your hand; and the other picture is of a 26-week preborn child's face seen by ultrasound.

The Declaration of Independence states:

> We hold these truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness . . .

So, America, ask yourself, how did we get to the point that the accidental killing of a 26-week unborn infant is a felony but taking of that same life by abortionists is legal? It is schizophrenic. Why should your liberty be based on your location inside the womb or out?

The Court's jurisprudence on liberty and privacy interests is fundamentally flawed. They fear a correction in that flaw.

To quote Robbie George of Princeton University:

> On what constitutional basis can we say that abortion is protected by ''due process'' but a right to assisted suicide . . . is not? Why is sodomy protected and prostitution unprotected? Why does the right to privacy not extend to polygamy or the use of recreational drugs?

That is the kind of justice you have when you are a nation of judges and not law. Hopefully, someone of Sam Alito's character can steer the ship back to liberty for all, including the weakest and most innocent of all. Sam Alito was sold out to this document, the U.S. Constitution. He sold out to equal justice under the law. We need to speak truthfully about the opposition to him. We need to speak truthfully about the problems that have been created by an activist Court, and about the opposition to bring back and steer the ship to where the judges make judgment based on the Constitution, laws, and the treaties of this country, not their political philosophies.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. TALENT. Mr. President, it is a privilege for me to spend a few minutes visiting with the Senate about Judge Alito. Based on my study of his record and my discussions with him, I believe, if confirmed, he will turn out to be one of our best Supreme Court Justices.

I do not know that anybody on the floor has contested his professional qualifications. He is certainly exceptionally qualified, at least based on

that, to serve on the Nation's highest Court. He has the experience, the temperament, and integrity that America expects in a Supreme Court Justice.

Judge Alito has more prior judicial experience than any Supreme Court nominee in more than 70 years. He has served for 15 years as a judge on the Court of Appeals for the Third Circuit. He participated in the decisions of more than 1,500 Federal appeals. He wrote more than 350 opinions. I think his clerks probably have to work pretty hard, he has been so busy. This is why I wonder why some people say they do not know enough about what he might do. I do not know how any judge, how any candidate could qualify on that basis, if Judge Alito does not.

He served as the top Federal prosecutor in one of the Nation's largest Federal districts. He was an appellate advocate for the United States in the Office of Solicitor General. He was a Deputy Assistant Attorney General in the Office of Legal Counsel. He received his bachelor's degree from Princeton. I would not hold that against him. He was elected Phi Beta Kappa at the time. He went to Yale Law School, where he served as an editor on the Yale Law Journal. That is quite a record.

During last week's hearing, Judge Alito answered over 700 questions for more than 18 hours. He was thoughtful and thorough in answering the tough questions. He was humble throughout the process, which is something I personally look for when considering anybody who is seeking a life appointment and particularly a judicial appointment. I think a big dose of ''humble'' is important if you want to be a judge because you are in the position, as a judge, to be rude to people and they cannot be rude back to you. I think you ought to have a temperament where you are not tempted to do that.

What does the record and the process reveal about this nominee? Simply that he is one of the finest nominees ever to come before the Senate. We learned a lot about him as a person during this process as well. He is certainly brilliant and hard working. He went before the Judiciary Committee without a note. He is a man of integrity. He is honest. He is devoted to his family. These are all qualities we want in the men and women who serve our Nation on the high Court. These are the kinds of qualities that will move America forward and move the judicial branch forward.

He has proven beyond any doubt that he has the qualifications, the temperament, the knowledge, and the understanding of the Constitution to serve on the United States Supreme Court. I do not know how you can prove it, if he has not proven it. I would imagine even those who are going to oppose his nomination for other reasons would agree he has the right kind of temperament and qualifications. He wants to be on the Court because he loves the law. And he is a judge because he wants to serve the United States. Those are the right reasons to want to be on the Supreme Court.

I made a point on other occasions about judicial nominations that I think is relevant here. It is, in a way, misleading to talk about a judicial nominee being in or out of the mainstream of American jurisprudence because the truth is there is more than one mainstream. Lawyers are divided over which jurisprudential theory ought to guide judges in interpreting the statutes and in interpreting the Constitution. Just as we in the Senate disagree, legitimately, about political philosophy, lawyers also disagree about jurisprudential philosophy.

Oftentimes, there is not any one completely correct answer when you are interpreting a vague provision of the Constitution, but that does not mean there are no incorrect answers. Because reasonable people looking at the history and the text of the document might disagree as to what is exactly the right answer in a given case does not mean there are no wrong answers. And a wrong answer, as Judge Alito said so clearly in his introductory remarks before the Judiciary Committee and throughout his testimony, is an answer that does not respect the rule of law.

Here is what Judge Alito said:

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

A wrong answer is one that is based on an idea of the judicial role that allows the judge to do whatever he or she thinks they would want to do if they were in control of the policy involved in an issue. Whatever their theory of interpreting the Constitution is, they should be consistent in applying it. Judges should not work for a particular outcome or agenda.

Here is what Judge Alito said on this issue:

> Results-oriented jurisprudence is never justified because it is not our job to try to produce particular results. We are not policy makers and we shouldn't be implementing any sort of policy agenda or policy preferences that we have.

As Chief Justice Roberts said when he was testifying before the Judiciary Committee: Judges are umpires. They are not the rule-makers. The people are the rulemakers, through their representatives, in their laws and in their Constitution.

In another statement Judge Alito said:

> I don't think a judge should be keeping a scorecard about how many times the judge votes for one category of litigant versus another in particular types of cases. That would be wrong. We are supposed to do justice on an individual basis in the cases that come before us. But I think that if anybody . . . looks at the cases that I have voted on in any of the categories of cases that have been cited, they will see that there are decisions on both sides.

He went on to say:

> In every type of employment discrimination case, for example, there are decisions on both sides.

Because of this respect for the rule of law, the individuals who know Judge Alito best—and that includes Republicans and Democrats, his colleagues on the bar and on the bench—have overwhelmingly supported his elevation to the Supreme Court. I think it is important, when you look at nominees, to make certain they have support from people from all parts of the political spectrum and all parts of the jurisprudential spectrum.

Let me quote a couple people.

Nora Demleitner is the vice dean for academic affairs and professor of law at Hofstra University School of Law. And to this point I have not cited anybody from Missouri supporting Judge Alito, but I am going to vote for him anyway. She said:

> Now, since the very early days of my clerkship, I must admit that Judge Alito has really become my role model. I do think he is one of the most brilliant legal minds of our generation, or of his generation, and he is a man of great decency, integrity and character. And I say all of this as what I would consider to be a left-leaning Democrat; a woman, obviously; a member of the ACLU; and an immigrant.

This is Dean Demleitner speaking.

In addition, Judge Aldisert, who has served with Judge Alito on the Third Circuit, had the following to say:

> In May 1960, I campaigned with John F. Kennedy in the critical Presidential primaries of West Virginia. The next year, I ran for judge . . . and I was on the Democratic ticket, and I served eight years as a State trial judge. As the Chairman indicated, Senator Joseph Clark of Pennsylvania was my chief sponsor when President Lyndon Johnson nominated me to the Court of Appeals, and Senator Robert F. Kennedy from New York was one of my key supporters. Now, why do I say this? I make this as a point that political loyalties become irrelevant when I became a judge. The same has been true in the case of Judge Alito, who served honorably in two Republican administrations before he was appointed to our court. Judicial independence is simply incompatible with political loyalties, and Judge Alito's judicial record on our court bears witness to this fundamental truth.

I could go on with other quotes. I am not going to. I suppose everything really has been said about Judge Alito in the Senate, although not everybody said it, so the debate is going to go on for a while. But I do think the first and most basic right we all have as political actors—in the sense that every person who lives in this country shares in running the Government—the first and most basic right we have is the right to govern ourselves through the processes set up in our Constitution. It is not out of a desire to avoid difficult decisions but out of a respect for that right that Judge Alito talked about the rule of law.

I want to say this. Whether your views about social policy are on the right side of the political spectrum or whether they are on the left side of the political spectrum, I believe we can all rest easily in leaving the development of our culture and our society to the wisdom and the decency of the American people. The center in this country

has held in the past, and it will hold in the future.

As President Franklin Roosevelt said: This Nation will endure as it has endured, and not because of the courts, not because of the Congress, not because of the President but because of the people. They will move us in an orderly and decent direction, as they have for 200 years. We do not need to be governed by guardians or dictators, whether they are in the form of judges or anybody else. That is what Judge Alito meant when he was talking about the rule of law.

I have said from the beginning of this debate—and I withheld my decision about the judge until I had a chance to meet him and watch the hearings and get a feel for who he is—he deserved a fair and respectful confirmation process, ending in a timely up-or-down vote on the Senate floor. I hope he will receive that. I believe, if confirmed, he will respect the Constitution, he will apply a consistent jurisprudence, without imposing his personal views on the law. For that reason, I am pleased to vote to confirm Judge Alito. I am hopeful the full Senate will give this highly qualified nominee a fair up-or-down vote and then send him to service on the U.S. Supreme Court.

I thank the Chair and yield back whatever remains of my time.

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

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

Mr. VITTER. Mr. President, I rise in support of the nomination of Judge Samuel A. Alito to be an Associate Justice of the U.S. Supreme Court. I am supporting Judge Alito's nomination because he is, No. 1, superbly qualified to sit on the Supreme Court, and, No. 2, and as important, he possesses the right view of the role of a judge, the right judicial philosophy, which I think is essential in terms of taking a seat on that high Court.

The appointments clause, article II, section 2, clause 2, of the Constitution gives the President the plenary power to nominate certain high-level officials and, as important, bestows on the Senate a crucial role, a crucial constitutional role, of advice and consent.

Like, I hope, every Member of this body, I take that constitutional duty of advice and consent very seriously. I owe it as high as any duty to the Louisiana people I represent. In line with that, I will neither provide a rubberstamp of approval for all of President Bush's nominees nor will I automatically disapprove any Democratic President's nominees for the Supreme Court or any other Federal court.

I think I have shown my seriousness of purpose in that regard in my short time in the Senate. I have studied the qualifications and legal writings of all nominees to see whether they possess a consistent and well-grounded judicial philosophy and have the right credentials and qualifications.

I was very upfront about being mindful of that responsibility when Harriet Miers was nominated. I looked very carefully at her qualifications and her judicial philosophy and, quite frankly, I expressed some real reservations about that.

That is why, after Judge Alito was nominated, I focused on those qualifications and that judicial philosophy just as hard. I met him personally. I watched his confirmation hearings. I read his record. That is the process I used to reach this conclusion, that, No. 1, he is eminently qualified in terms of credentials and background, and, No. 2, he has the right judicial philosophy, the right view of the role of a judge in our society.

Let's talk, first, about those basic legal qualifications. Again, Judge Alito is superbly qualified. His academic achievements and his distinguished career make that clear.

He has a bachelor's degree from Princeton University and a J.D. from Yale Law School. After graduating from law school, Judge Alito began his career in public service as a clerk for Judge Leonard Garth on the Third Circuit Court of Appeals and is now a colleague of his on that court. He served as an assistant U.S. attorney, Assistant to the U.S. Solicitor General, Deputy Assistant Attorney General, and U.S. attorney for the District of New Jersey. He has argued specifically before the U.S. Supreme Court 12 cases, at least two dozen court of appeals cases; direct, relevant and impressive experience in terms of that sort of high-level litigation.

In 1990, President George H.W. Bush nominated Judge Alito for the Third Circuit Court of Appeals, and he was confirmed by unanimous consent in this body because of his strong credentials and clear and overwhelming qualifications. Of course, today those qualifications are even greater because he has served as a judge on that circuit court for the past 15 years.

After being nominated to the U.S. Supreme Court, the ABA rated Judge Alito as ''well qualified.'' That is the highest rating possible. Everyone recognizes the ABA is not some conservative political group by any stretch of the imagination. If its membership has a slant, it is probably to the left. That is the gold standard, that rating of judicial qualifications and credentials. Again, Judge Alito received the highest rating.

Then he had his confirmation hearings. Despite some ugly questioning, frankly, and some smear tactics, in my opinion, he had an impressive performance. He demonstrated clear humility and indepth understanding of legal matters. And perhaps most impressive in terms of what he faced from the minority side, he maintained his composure in an unfortunately partisan atmosphere.

As I said at the beginning, those credentials and qualifications, that legal background is the first important matter I look to. But it is not the only matter. The second equally important matter I look to is a person's judicial philosophy. Do they understand the correct role of a judge in society? I have thought a lot about that regarding all nominees who have come before this body. I thought Judge Roberts expressed that role precisely right when he talked about being an umpire and not a pitcher or a batter. Judge Alito has that same view of the appropriate role of a judge.

Throughout the debate over judicial nominees, this notion of whether a nominee possesses the right judicial philosophy has been asked a lot. Some may ask what this term means and why it is important. Again, it is important because it goes to the heart of the role of a judge and how this democracy works. I believe what it means is a commitment to the rule of law, a commitment to the Constitution as written, and a commitment not to let one's personal political views or personal political leanings or prejudices enter into any of those important decisions on the Court. It requires a judge to be openminded, to analyze the law carefully, to analyze the facts of each case based on the Constitution and the law. It requires a judge not to do what can be tempting—intoxicating in terms of the power a judge can hold—not to make new law based on personal opinion, not to play legislator but to follow the law as enacted by the Congress or the State legislature.

Judge Alito has demonstrated that right judicial philosophy. He has demonstrated his unwillingness to change the law to fit his personal beliefs. He stated clearly:

> There is nothing that is more important for our Republic than the rule of law. No person in this country, no matter how high or powerful, is above the law, and no person in this country is beneath the law.

What is vital and embedded in the concept of the rule of law is the application of the law as written, not judges becoming kings or legislators and imposing their views and legislating from the bench. I believe this is the second and crucial matter we must look to in the confirmation of judges, particularly those who would be Justices of the U.S. Supreme Court. I have great confidence in Judge Alito's correct understanding of the role of a judge.

It has troubled me that throughout this confirmation process, some of my colleagues and many outside interest groups, many members of the press, have demonstrated a different view of the role of a judge. One way they have demonstrated that is by treating Judge Alito more akin to a candidate for political office than a nominee for the highest Court. They have talked about judges taking sides, being on this side

versus that side, taking the side of labor versus management, taking the side of environmentalists versus business groups, taking the side of the little guy versus the big guy. In talking in those terms, many Members of this body and many liberal interest groups and many members of the press have demonstrated a completely different view of the role of a judge which is inappropriate. Other than the fact that many of their characterizations of Judge Alito in these terms are false—for instance, he has decided in favor of employment discrimination plaintiffs in 22 percent of the cases, whereas the national average is 13 percent—it troubles me that the public is being led to believe that we should think of judges as legislators, that it should be a results-oriented discussion.

This goes to the heart of the confirmation process. The role of the judiciary is to interpret the law and to apply it to the facts of each case. It is not to elect legislators, politicians to go on the bench and vote certain interests or certain political philosophies.

I believe Judge Alito has the correct view, the opposite view, quite frankly, as has been demonstrated by some Members of this body and certainly by the liberal press and liberal interest groups. In his confirmation hearing, the judge made this clear. He described his disagreement with keeping a scorecard of how many times a judge rules for or against a particular party. He stated:

> I don't think a judge should be keeping a scorecard about how many times that judge votes for one category of litigant versus another in particular types of cases. That would be wrong. We are supposed to do justice on an individual basis in the cases that come before us.

I wish to touch on one other specific type of case because I believe Judge Alito has been smeared in this category, and that is with regard to his strong record and experience in the area of civil rights. I have been disappointed that some of my Democratic colleagues have chosen to paint Judge Alito as having anything less than the stellar record on civil rights that he has. In doing so, they don't really cite any evidence for this accusation. They think if they just keep repeating this smear, one dreamt up by far-left groups such as Ralph Neas' People for the American Way and the Alliance for Justice, if they keep repeating the lie over and over, the American people will fall for it. The American people are smarter than that. The American people are listening to some distinguished people, including distinguished African Americans, with whom Judge Alito has served.

To cite a couple of examples, the late Judge Leon Higginbotham, the first African American to serve on the Federal District Court for the Eastern District of Pennsylvania and whom the L.A. Times called ''a legendary liberal and scholar of U.S. racial history,'' had said of Judge Alito:

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

Former Third Circuit Judge Timothy K. Lewis, an African American, testified in support of Judge Alito. He joked that it was no coincidence he was sitting on ''the far left'' of the panel. He said:

> I was then—as I am now—a committed and active Democrat. I learned in my year with Judge Alito that his approach to judging is not about personal ideology or ambition. He is not result oriented. He is an honest conservative judge who believes in judicial restraint and judicial deference.

And Judge Lewis emphasized:

> If I sensed that Sam Alito during the time that I served with him or since then was hostile to civil rights as a justice of the United States Supreme Court, I absolutely would not be here today.

I hope the smear tactics will end, particularly on an issue as important and sensitive as civil rights. I am confident the American people are hearing from those sound voices, including African-American voices, who have served directly with Judge Alito, many of them are politically liberal. Many of them are Democrats who say Judge Alito is fair. He is impartial. He is not results oriented.

That returns me to the central factor I have focused on in this process: Does Judge Alito have the right view of the role of a judge? Does he have the right judicial philosophy? Is he committed to the Constitution as written, to the rule of law as it is written not by him but by legislatures and the Congress? Is he committed to that and is he committed to not legislating from the bench? I believe his record and testimony and all of the evidence supports a firm conclusion that he is committed to that proper role of a judge. For that reason, I am proud to be supporting the nomination of Judge Samuel Alito. I am confident he will serve as a very distinguished member of the Supreme Court.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. INOUYE. Mr. President, at this moment in our history, our country faces a spectrum of challenges broader than any we have ever faced before, both at home and abroad. However great the storm we face today, I am confident that our Nation, founded on the architecture of our Constitution, will prevail. The checks and balances established among the Congress, the President, and the courts are the true arsenal of freedom. In the end, these checks and balances in the hands of the American people will prove greater than any assault on the precious freedoms and liberties our forefathers fought to establish.

For the officials of our Federal Government, the protection of the institutions of our American democracy is a duty that both transcends and supersedes all others, especially for members of the Supreme Court who must interpret the Constitution of our Nation as a living foundation for the freedom and liberty of our people.

From confiding the power of the Federal Government in three co-equal but separate branches of government, to guaranteeing the civil liberties that bless our Nation, the Constitution enshrines principles that are as relevant today as they were when it was first penned centuries ago.

These cherished principles are the backbone of our Nation, and they comprise the final yardstick for taking the mettle of any man or woman who would aspire to our Nation's highest Court. I have studied the full record of President Bush's nominee, Samuel A. Alito, Jr., and carefully measured it against the sworn duties of the Supreme Court. Regretfully, I conclude that Judge Alito falls short.

From his writings on the Third Circuit Court of Appeals to his public speeches, I discern a man who would fundamentally rewrite the interpretation of our Constitution and leave in doubt the legacy of freedom it was meant to preserve.

For many, this will mean his record on civil rights, reproductive choice, or the death penalty. Let there be no mistake, I share these concerns, and I have spent my life fighting for these rights.

For me, however, the greatest area of doubt lies in Judge Alito's consistent preference for expanding the power of the President by relaxing the checks and balances the Constitution places on the executive branch of Government.

In 1989 and 2000, Judge Alito gave speeches to the Federalist Society in which he embraced an obscure legal doctrine called the ''unitary executive theory.'' This so-called ''unitary executive theory'' places the President almost above the law.

Under this theory, independent counsel appointed to investigate Presidential misdeeds would be unconstitutional. Similarly, the theory holds that enforcement agencies independent of the President, such as the Securities Exchange Commission, the Federal Communications Commission, and the National Labor Relations Board, would also be unconstitutional because they are not under the President's control.

The theory also justifies a President who would overstep Acts of Congress and the Constitution when acting as Commander in Chief.

How Judge Alito might actually apply this ''unitary executive theory'' on the Supreme Court is, of course, an open question.

Separated by a span of 11 years, however, his own speeches in 1989 and 2000

suggest that Judge Alito's views on the powers of the President are long-held and strong.

A memo he generated early in his career with the Reagan administration amplifies this impression. In that memo, Judge Alito wrote on a President's authority to modify an act of Congress by making a ''*signing statement*''—a written document issued by a President on signing an act of Congress into law.

In the memo, Judge Alito wrote, that ''the President's understanding of the bill should be just as important as that of Congress.'' This statement suggests that Judge Alito believes the President has a role in the legislative process not contemplated under the Constitution's exclusive grant of legislative power to the Congress.

Judge Alito's writings and speeches show how he personally believes that the Congress should have less power to check and balance the President.

His judicial opinions, issued in his official capacity as a judge on the Third Circuit, demonstrate a parallel conviction that the Congress should have less authority in general.

In United States v. Rybar, Judge Alito wrote a minority opinion asserting that the Congress had no authority to pass laws to regulate machine guns. The majority opinion criticized Judge Alito's narrow and restrictive view of Congressional authority.

In Chittister v. Department of Community and Economic Development, Judge Alito ruled that the Congress had no authority to allow State employees to sue for damages under the Family Medical Leave Act. Judge Alito's restrictive view on Congress's authority was later invalidated by the Supreme Court when it considered the same issue in a later case.

Our Supreme Court shoulders the solemn task of discovering how the Constitution applies to the unique problems of the day. Through dialog, study, and diligent inquiry, the Justices bring to bear the collected experiences of the Nation, and forge justice from the Constitution by tempering its words with human compassion, wisdom, and integrity.

Judge Alito's record suggests that he holds his personal beliefs on expanding the President's power so strongly that they might come before the call of justice. Accordingly, I have concluded that I must oppose his nomination.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the Asian American Justice Center, dated January 10, 2006, and a letter from the Japanese American Citizens League, dated January 8, 2006. Both letters refer to the nomination of Judge Alito.

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

ASIAN AMERICAN JUSTICE CENTER,
Washington, DC, January 10, 2006.

Hon. ARLEN SPECTER,
Chairman,
Hon. PATRICK J. LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR CHAIRMAN SPECTER AND RANKING MEMBER LEAHY: On behalf of the Asian American Justice Center (formerly National Asian Pacific American Legal Consortium), a national civil rights organization dedicated to advancing and defending the civil rights of Asian Americans, we are writing to express our concern opposition to the nomination of Judge Samuel Alito to be Associate Justice of the Supreme Court of the United States. Judge Alito's record demonstrates hostility and poses grave risks to constitutional and legal rights and protections that are core to the advancement of the communities we represent.

Supreme Court decisions continue to have an immense impact on the lives of Asian Americans, ranging from Gong Lum v. Rice (1927), an unsuccessful challenge to school segregation that would later be overturned by Brown v. Board of Education in 1954, to United States v. Korematsu (1944), where the Court upheld the internment of Japanese Americans. Often, cases where the rights and liberties of minorities are at question are decided by a very narrow 5–4 margin. Based upon materials produced by Judge Alito as well as his judicial record, we believe that he would fail to demonstrate a clear understanding of key issues important to the civil rights communities.

In 1986 Alito wrote a letter in his capacity as Deputy Assistant Attorney General to former FBI Director William Webster in which he suggested that ''illegal, aliens have no claim to nondiscrimination with respect to nonfundamental rights,'' and that the Constitution ''grants only fundamental rights to illegal aliens within the United States.'' Alito makes no mention of Plyer v Doe in this letter, which ruled that a state could not discriminate against undocumented children in public education, even though education is not considered a fundamental constitutional right. This raises questions about whether he would adequately protect undocumented immigrants from unconstitutional forms of discrimination.

Judge Alito's opinions in cases involving racial discrimination and voting rights lead us to believe that he will fail to champion civil rights in a manner that would ensure that all communities will be full participants in the rights and liberties that our constitution promises. For example, in Bray v. Marriot Hotels, a racial discrimination case, the majority concluded that Alito's dissenting view would protect employers from suit even where the employer's belief that it had selected the best candidate ''was the result of a conscious racial bias.'' As majority pointed out, ''Title VII would be eviscerated if out analysis were to halt where the dissent suggest.'' In his 1985 application to the Department of Justice's Office of Legal Counsel, Judge Alito raised opposition to the Supreme Court decisions that first articulated the fundamental civil rights principle of ''one person, one vote.'' Those decisions later paved the way for major strides in the effort to secure equal voting rights for all Americans and greater representation of racial and ethnic minorities at all levels of government.

Of great concern to us is Judge Alito's record on immigration law. In asylum cases, it appears that Judge Alito has a tendency to rule against individuals who are seeking protection in the United States, even where evidence show that they have been or would have been persecuted in their own countries. In Chang v. INS, Judge Alito disagreed with the court's decision to grant asylum despite the fact that Chang had presented evidence that his wife and son already faced persecution and he was threatened with prison if he returned to China. In Dia v. Ashcroft, Judge Alto dissented from a majority opinion granting asylum to an immigrant from the Republic of Guinea whose house was burned down and wife raped in retaliation for his opposition to the government.

For the above reasons, we must oppose his confirmation as Associate Justice. We appreciate your consideration of our views. If you have any questions, please feel free to contact AAJC Deputy Director Vincent A. Eng at (202) 296–2300, x121 or AAJC Director of Programs Aimee J. Baldillo at (202) 296–2300, x112. We look forward to working with you.

Sincerely,

KAREN K. NARASAKI,
President and Executive Director.

JAPANESE AMERICAN CITIZENS LEAGUE,
San Francisco, CA, January 8, 2006.

Hon. PATRICK J. LEAHY,
U.S. Senate, Ranking Minority Member, Senate Judiciary Committee, Washington, DC.

DEAR SENATOR LEAHY: The Japanese American Citizens League (JACL), the nation's oldest and largest Asian American civil rights organization, wishes to express our strong opposition to the nomination of Judge Samuel Alito to the United States Supreme Court.

Judge Alito's legal opinions and writings over the past several years have left a clear record of an individual whose legal views could have serious negative impact on the nation's Asian American communities. As a civil rights organization, we are not only troubled by Judge Alito's ideological brand of conservatism, but also by his judicial leanings that would make tenuous the constitutional protections of American citizens.

The record shows that Judge Alito once stated proudly his opposition to affirmative action; as a lawyer for the government, he has argued that immigrants can be denied basic protections and rights guaranteed by the Constitution; he has shown little regard for individuals who have sought sanctuary in the U.S. through the political asylum appeal process; he has expressed a legal opinion that would support racial discrimination in employment cases; he has written an opinion that would have denied a gender discrimination case to be heard by the court; he has raised serious concerns about the ''one person one vote'' concept of democracy; he has shown a proclivity to undermine due process and privacy protections.

The Supreme Court is in many instances the final arbiter in protecting the rights of Americans and therefore should not be a vehicle for those who would push for a political agenda, be it from the left or the right of the political spectrum. Given the early pronouncements in his career and his legal opinions either as a government attorney or from the bench, we are not convinced that Judge Alito can serve the interests of the people as a member of the highest court of the land.

The Japanese American Citizens League urges you, as a member of the Senate Judiciary Committee, to vigorously question Judge Alito on his past record and to carefully examine his current legal positions. The JACL strongly opposes Judge Alito's nomination and does not believe that his confirmation as an Associate Justice of the Supreme Court serves the best interest of all the people of this great nation.

Yours truly,

JOHN TATEISHI,
National Executive Director.

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

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

Mr. HARKIN. Mr. President, soon the Senate will vote on the nomination of Samuel Alito to replace Justice O'Connor on the U.S. Supreme Court. Of all of the issues we consider in the Senate, perhaps no issue raises such deep and fundamental questions as the nomination of a Supreme Court Justice.

The issues that come before the Supreme Court are not abstract legal concepts; rather, they involve the very values that define who we are as a nation. They ask us to think about what kind of society we want to be. I believe strongly that we want to be a society which strives for justice, protects the powerless, provides meaningful protections to workers, and allows those who have suffered discrimination to seek recourse and affirm their rights in Federal court.

I believe that a nominee to the Supreme Court needs more than just excellent legal qualifications. He or she must possess a true passion for justice, an understanding that the law cannot be viewed with cool, analytical dispassion, but with the acknowledgement of its role in molding a fairer and more just society. He or she must understand and believe in the critical role the Federal courts play in protecting the civil rights of all Americans, including the 54 million Americans who live every day with a disability. A thorough review of Judge Alito's record and of the Senate Judiciary Committee hearing has convinced me that he falls far short of that measure and, as a result, I oppose his nomination.

One of the things I found most troubling about Judge Alito was his statement that one of the factors that motivated him to study constitutional law was his disagreements with the Warren Court decisions in the areas of criminal procedures and voting rights. Frankly, I find this to be a stunning admission. I know there are many who often decry the decisions of the Warren Court as inappropriate liberal judicial activism.

I strongly disagree with that characterization. So many of the decisions of the Warren Court, beginning with the 1954 unanimous decision in Brown v. Board of Education—that decision that separate is not equal—are not just liberal values, they are American values—American values that each person's vote should have the same weight; that legislative districts should contain equal population; that the freedom to marry a person of another race is a fundamental civil right; the decision that broadcasters are required to provide programming that serves the public interest and to provide for a diversity of viewpoints; the decision that illegally seized evidence cannot be used in a trial; the decision that poor people are entitled to have lawyers in criminal cases; the decision that the wearing of symbols of protest is protected speech; the decision that suspects have the right to remain silent; the decision that you have a right to an attorney; the decision that you have the right to be informed of these protections and the charges against you.

These were all Warren Court decisions, and these decisions, far from evidencing an extreme view of the Constitution, are decisions that the vast majority in this country believe are fair and correct and give meaning to our Constitution's promise of individual liberty and dignity.

Yet Judge Alito chose to cite his disagreement with these very decisions as his motivation for studying law. He chose to cite his disagreements with these decisions as his reason for working to narrow or overturn the rulings in the Reagan Justice Department.

I find this very troubling. I cannot help but wonder what other laws Justice Alito might seek to narrow if he is granted lifetime tenure on the Supreme Court.

Another law that gives meaning to our Constitution's promise of liberty and dignity is the Americans with Disabilities Act. Fifteen years ago—now approaching 16—I championed the ADA, as it is now known, because I had seen discrimination against the disabled firsthand, growing up with my brother Frank who was deaf. Throughout his life, Frank experienced active discrimination at the hands of both private individuals and the government, and this served to limit the choices before him.

Frank's experience was by no means unusual, as Congress documented extensively prior to enacting the Americans with Disabilities Act. As part of the writing of that bill, we gathered a massive record of blatant discrimination against those with disabilities.

We had 25 years of testimony and reports on disability discrimination. Fourteen congressional hearings and 63 field hearings by a special congressional task force were held in the 3 years prior to the passage of the Americans with Disabilities Act. We received boxes loaded with thousands of letters and pieces of testimony gathered in hearings and townhall meetings across the country from people whose lives had been damaged or destroyed by discrimination against people with disabilities. We had markups in five different committees. We had over 300 examples of discrimination by States—by States—against people with disabilities.

I know this. I was there. I was the chairman of the Disability Policy Subcommittee and the lead sponsor of the bill.

Yet since enactment of the ADA, the Court has repeatedly questioned—or I should say a minority of the Court has repeatedly questioned—whether Congress had the authority to require States to comply with the ADA and, amazingly, whether Congress adequately documented discrimination. For example, in 2001, the Court narrowly held that an experienced nurse at a university hospital, who was demoted after being diagnosed with breast cancer because her supervisor did not like being around sick people, was not covered by the ADA because she had the misfortune to work for a State hospital. If she had worked for a private hospital, she would have been covered, according to the Supreme Court.

In contrast, in 2004, again by a narrow margin, 5 to 4, with Justice O'Connor in the majority, the Court held that Congress did have the authority to require States to make courthouses accessible.

Over the next few years, the Court will likely look at whether other State and locally owned facilities are required to be accessible. And in case anyone doubts that accessibility is still a day-to-day issue for the disabled in this country, I want to point out two stories recently in the Des Moines Register in the last week.

First, the fire alarm went off in the State capitol, and there was no way for people in wheelchairs, including a State legislator who was recently injured in a farming accident, to exit the building.

Another example is before that, a woman in a wheelchair had no way to get onto the stage to speak at a Martin Luther King, Jr., Day tribute.

But there is no guarantee that the Court will continue to require that facilities be made accessible. Instead, we could end up with a crazy patchwork where courthouses are accessible but maybe libraries are not; prisons are accessible but maybe employment offices are not.

When we passed the ADA, we in Congress did not forbid employment discrimination against the disabled unless they work for the State. We didn't say some services must be accessible. But that is what the Court has been saying. Talk about judicial activism.

To put a fine point on it, the ADA is at the mercy of the Supreme Court and of the nominee who assumes this seat. Based on his record, I am gravely concerned that Judge Alito does not believe that Congress has the authority to protect the fundamental rights of all Americans. Instead, his record is one that values the rights of the State over the rights of people.

In the two instances where Judge Alito has been required to interpret recent Supreme Court cases limiting the power of Congress to pass national legislation under the 14th amendment or under the commerce clause, he has gone further than the Court itself.

First, consider a case involving the Family and Medical Leave Act, the law that allows Americans to take unpaid leave from work to care for a newborn child, a sick child, or an ailing parent.

Over 50 million Americans have taken unpaid family and medical leave since its passage, including 5 million State workers. Yet confronted with a case challenging whether State and local employers were required to grant unpaid family and medical leave, Judge Alito held in Chittister v. Department of Community and Economic Development that Congress lacked the authority to order State and local employers to abide by the law.

Imagine that, Judge Alito on the Third Circuit said that we didn't have the authority to pass the family and medical leave bill. He was opposed to it.

Fortunately, that holding was affirmatively rejected by the Supreme Court in 2004 when the Supreme Court ruled 6 to 3 in favor of the FMLA. Chief Justice Rehnquist was the author of that opinion. He was joined by Justice O'Connor.

Think about this. Would that case have been decided the same way if Chief Justice Roberts had been there in place of Chief Justice Rehnquist? And if Justice Alito had been there instead of Justice O'Connor? I am afraid it would not.

Secondly, again in 2004, the Supreme Court issued a 5-to-4 decision that held similarly that Congress could order State courthouses to abide by the Americans with Disabilities Act. Justice O'Connor was in the majority, a 5-to-4 decision, Lane v. Tennessee. This is where a person with a disability had been cited for speeding and was given a ticket. He used a wheelchair. He showed up at the courthouse, and guess what. The court was on the second floor. There was no elevator. So they said: OK, we will carry you up. The first time he appeared in court they carried him up into the courtroom. Then the case was put over to another day. The second time Lane showed up, they said: We will carry you up again.

He said: I'm not going to be carried up. I have too much dignity for that.

They said: OK, you are going to have to crawl. Get out of your wheelchair and crawl up the steps or, of course, the court will fine you because you did not appear in the courtroom.

This is a real case. This really happened. It went to the Supreme Court. A 5-to-4 decision held that courthouses must be accessible under the ADA.

If Justice Alito had been there instead of Justice O'Connor, given his limited view of congressional authority, it would be foolish to think that we would have had the same outcome, and Mr. Lane would, indeed, have to crawl up the steps of the courthouse or be carried up.

I want to digress here a moment. There may be those who say maybe it was an old courthouse and they couldn't put in an elevator. The ADA does not require that. It says that services must be accessible. The judge can hold court wherever he wants. The judge could have gotten out of that second floor room and gone down to a room on the first floor and held court there, and Mr. Lane could have wheeled his wheelchair into that room.

Services must be accessible, and that is what we said in the ADA. But Mr. Alito does not see it that way. His failure to recognize the role of the Federal courts in protecting victims of discrimination can be seen even more directly.

In 1995, the Third Circuit, on which Mr. Alito sat, ruled that people with disabilities should be allowed to live in the community, not warehoused in institutions, whenever it was possible. The Third Circuit's opinion was consistent with Justice Thurgood Marshall's opinion in the Cleburne case. Justice Marshall wrote that persons with disabilities, and I quote Justice Thurgood Marshall:

> . . . have been subject to a ''lengthy and tragic history'' of segregation and discrimination that can only be called grotesque. [In the early 20th Century] a regime of state-mandated segregation and degradation emerged that in its virulence and bigotry rivaled, and indeed paralleled, the worst excesses of Jim Crow. . . .[L]engthy and continuing isolation of the retarded has perpetuated the ignorance, irrational fears, and stereotyping that long have plagued them.

The Third Circuit agreed that people should not be warehoused. They should be allowed to live in the community whenever possible. Yet after three judges on the circuit court ruled that such institutionalization was a form of discrimination under the ADA, Judge Alito argued that the Third Circuit should reconsider the opinion.

When asked about this issue at his Judiciary Committee hearing, Judge Alito suggested that his desire to rehear the case did not suggest he had a disagreement with the outcome. Frankly, I find this response difficult to believe. I think most lawyers would agree that judges do not vote to rehear cases unless they disagree with the outcome or unless other factors, factors that were not present here, require such a rehearing.

Fortunately, Judge Alito's desire to reconsider the Helen L. case was denied. The Supreme Court shortly after that held, in the landmark Olmstead decision, that unnecessary institutionalization is, in fact, a form of discrimination. Once again, Justice O'Connor sided with the majority in the Olmstead decision. Given Judge Alito's judicial record, we can safely assume that he would have come down on the opposite side of this landmark ruling and might even have steered the Court in a different direction, and years of progress toward equal rights for the disabled might have been erased.

In case after case on the Third Circuit, Judge Alito seems to have been immune to the real-life struggles of the people in the cases before him. It is like: This is the legal theory. Don't bother me with the facts. Don't bother me with what is actually happening. There is some legal theory out there that I believe in, and somehow this legal theory trumps, overcomes the real-life travails of ordinary people. As I said—immune to the real-life struggles. The fact that the police strip-searched a 10-year-old girl, the fact that a mentally disabled worker was sexually assaulted, the fact that a farm family was threatened at gunpoint by U.S. Marshals without any resistance during an eviction process—all of this failed to sway him that these ordinary Americans even deserve to be able to present their cases against the Government. It failed to persuade the judge that they should even be allowed to present their cases against the Government. This is real life, real people, and real situations. But, no, Judge Alito had some other philosophy, some other theory that overcame this.

In the past few days, I have heard a number of my colleagues on the other side of the aisle express alarm or dismay that so many Democratic Senators have expressed their opposition to this nominee. In light of the record that I just outlined, I find it alarming that more Senators on the Republican side have not expressed their opposition to this nominee. I thought it was my friends on the other side who so loudly proclaimed individual liberty, individual dignity of the person. Yet Judge Alito dismisses this under some rubric of a judicial philosophy or some theory that he has.

I must say, my alarm becomes more pronounced when I consider Judge Alito's record on Executive power. At a time when the President of the United States is illegally spying on American citizens, at a time when the President believes that he can ignore the clear intent of Congress—including a vote of 90 Senators—and continue the use of torture in the interrogation of criminal suspects, at a time when the President believes he can indefinitely detain American suspects without charges and without access to a lawyer, it is more important than ever that Justices on the Supreme Court recognize the need to protect and preserve the balance of power envisioned by our Founding Fathers.

Judge Alito is not that Justice. He is, instead, an adherent of a legal theory that Presidential powers should be wholly unchecked. In fact, he is the author of the very strategy used by President Bush earlier this month when he essentially said to 90 Senators: I signed the amendment that says no torture but I hereby declare that I can ignore it if I feel like it.

After reviewing Judge Alito's record, it is not difficult to wonder, if Judge Alito had been on the Supreme Court during its consideration of Marbury v. Madison, would he have voted the other way? Would we have an imperial President today and not a Court that has the role as final arbiter? That strikes at the very heart of our Democratic form of government and our checks and balances.

But don't take my word for it. Consider the words of the Justice whom

Judge Alito seeks to replace, Justice O'Connor, who wrote in the Supreme Court's recent decision in Hamdi v. Rumsfeld that it is:

. . . clear that a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens.

I agree with Justice O'Connor. It is clear under the Constitution of the United States that our President does not have unfettered powers. It is clear that the Supreme Court has the authority, the duty to serve as a check on that power. And it is clear to me that Judge Alito is not committed to providing that check.

As recently as 2000, in a speech before the Federalist Society, Judge Alito said in his speech:

. . . the President has not just some executive powers, but the executive power—the whole thing.

What does that mean?

. . . the President has not just some executive powers, but the executive power—the whole thing.

What does Judge Alito mean by that? I find this to be a frightening theory, in someone getting life tenure on the Supreme Court.

In closing, the new Supreme Court Justice will have a tremendous impact on our society. The decisions before the Court will determine whether we are true to our fundamental national values of fairness and justice and dignity for all. In Judge Alito, we have a nominee whose history, record, and testimony make clear that he holds an unduly restrictive view of the power of Congress to enact laws to protect workers, to protect public safety, to protect victims of discrimination, and that he holds a dangerous view of the Court's proper role in providing a necessary check on Executive powers. Indeed, if Judge Alito is confirmed, I fear that many of the core protections provided to people with disabilities under the Americans With Disabilities Act and other laws simply disappear. For these reasons, I strongly oppose his nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I rise today to state my intention to vote against the nomination of Judge Alito to be the next Associate Justice of the Supreme Court. Let me start by saying I certainly do not doubt Judge Alito's qualifications, his integrity, his temperament. He has served on the Federal bench for over 15 years, and he has demonstrated during that time that he is, indeed, a very capable jurist. Nonetheless, after carefully looking at his judicial record and listening to his answers to the Senate Judiciary Committee, it is also clear to me that if confirmed, Judge Alito will move the Court in what I believe is the wrong direction for our country.

Judge Alito has been nominated to replace Justice Sandra Day O'Connor. She is a moderate who has been a critical fifth vote in cases impacting privacy rights, disability rights, civil rights, the environment, consumer protections, discrimination laws, access to the courts and campaign finance reforms, among others. It has taken us years to enact legislation aimed at protecting the rights of all Americans in these areas I have mentioned. Other Justices on the Court, particularly Justices Scalia and Thomas, have pressed to reverse many of the advances the Congress has made in these areas. They have pressed to limit congressional power under the commerce clause and the ability of Congress to enact Federal civil rights legislation. I fear that Judge Alito will join Justices Scalia and Thomas in this regard.

Justice O'Connor's vote has also been instrumental in ensuring that we do not surrender our civil liberties in times of war. Justice O'Connor's statement in the Hamdi decision was just quoted by my colleague from Iowa. It was a resounding reaffirmation that the President could not indefinitely detain a U.S. citizen without providing adequate due process. The quote which was just made, and has been made by many of my colleagues, is that:

We have long since made clear that a state of war is not a blank check for a President when it comes to the rights of our Nation's citizens.

At a time when the President has asserted expansive powers with regard to imprisoning U.S. prisoners without charges, with regard to wiretapping without warrants, with regard to using interrogation techniques that amount to torture, it is essential that we have Justices on the Supreme Court who are willing to provide a check on the authority of the executive branch. Judge Alito's record indicates that he may not be the right person to provide this important check.

For example, he stated his support in varying degrees for this so-called unitary executive theory. This relatively obscure legal theory has very little support in the mainstream legal community, but it has profound implications for our understanding of the Constitution.

Just recently, Congress passed a law reiterating the prohibition on the use of torture. In signing the legislation, the President issued a statement reserving the right to take whatever action he deems necessary as Commander in Chief—in effect reserving the right to ignore the very law which he was at that time signing. The President cited this unitary executive theory as the legal basis for his power to disregard the plain text of the legislation.

We need to have a Supreme Court that is prepared to provide the necessary checks and balances crucial to our democratic system of government. I believe Justice O'Connor charted a moderate course in terms of the authority of Congress to enact legislation aimed at protecting the welfare of Americans and with regard to upholding the rights of citizens vis-a-vis their own government, and I believe it is important to maintain that same course.

This is not to say that I have agreed with all of Justice O'Connor's decisions. But her swing vote has helped to maintain a balance on the Court that has kept many decisions within the mainstream, and I believe Judge Alito's confirmation will sway the existing balance on the Court in a manner that will jeopardize many of the protections afforded to the American public, many of which have been the result of many years of struggle. For this reason, I am not able to support his nomination.

I yield the floor, and 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.

Mrs. LINCOLN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mrs. LINCOLN. Mr. President, I rise today to state my opposition to the nomination of Samuel Alito to the United States Supreme Court.

After thoroughly reviewing Judge Alito's record during his time on the Federal bench, I am left with grave and serious concerns about his views on the power and scope of executive branch authority, the lack of discrimination against parents in the workplace, his general disposition toward cases involving civil rights, and his views on the scope of voter rights.

Because of these concerns, I cannot in good conscience support his nomination to the Supreme Court to replace Sandra Day O'Connor, the highest Court in the land with tremendous ability to exercise judgment over the people of this Nation.

Over the course of Judge Samuel Alito's career and his tenure on the Federal bench, he has compiled a troubling record of personal statements and court decisions that signal his willingness to defer authority to the executive branch when questions of presidential powers are deliberated before the Supreme Court.

I strongly believe that our Constitution calls for an independent and coequal judicial branch that provides a check on the government's power to encroach upon our individual rights of Americans.

At a time when many Arkansans have expressed concerns over the President's legal authority to eavesdrop on Americans without court supervision and detain U.S. citizens without judicial review or due process, I cannot support a Supreme Court nominee who has repeatedly failed to uphold reasonable limits of presidential authority at the expense of constitutional liberties.

This issue is especially significant because Judge Alito would replace Justice Sandra Day O'Connor, who recently ruled in a 2004 case on executive authority that ''a state of war is not a blank check for the President when it comes to the rights of the nation's citizens.''

While the legislative and executive branches of government are, by their very nature, political, we demand our judicial branch be above that.

When one party controls both of the political branches, the independence of the judiciary is especially important.

It is not just important to keep in check but also to maintain the confidence of the American people that their government is balanced and that it is there to serve them and not the politicians.

Our Founders created our country and its government with the memories of tyranny still fresh in their minds.

The judicial branch was given exceptional authority for the specific reason that it provides a critical check on the two political branches of our government.

This is not to say that the judicial branch is charged with correcting the perceived wrongs of the party in power. It is simply charged with upholding the Constitution and the rights guaranteed to citizens under it. Upholding this requirement is the most important duty the court is given.

If a potential nominee to the Supreme Court cannot or will not uphold either part of this solemn duty, his or her appointment will serve to undermine the fundamental system of checks and balances on which our government depends.

Of equal concern is Judge Alito's record on the issue of discrimination in the workplace.

In Chittister v. Department of Community and Economic Development, Judge Alito's statement that the Family Medical Leave Act was a ''disproportionate solution'' to the problem of workplace discrimination is deeply troubling.

In an opinion rejecting the position of Judge Alito, Chief Justice Rehnquist explicitly noted that common workplace practices had been discriminatory toward both men and women by reinforcing the role of women as the sole domestic caregiver.

I fear that Judge Alito' s inability to recognize this type of discrimination threatens dire consequences for rights hard won by women over the last few decades.

The majority of our Nation's families depend on income from both parents just to get by. The future and strength of our Nation depends on the strength of the fabric that our families are made of.

I cannot in good conscience vote to allow any of the gains that have allowed women to become an integral part of our Nation's workforce while remaining exceptional mothers to their children to be rolled back.

As his record points out, Judge Alito has consistently set an unfairly high burden of proof in discrimination cases leading him to rule consistently against Americans who are merely attempting to assert their basic constitutional rights.

Judge Alito's philosophy of deferring to the government and those in positions of authority threatens to undermine many of the laws established by Congress to ensure that discrimination does not prevent anyone from realizing his or her full potential—not just as an American, but as a human being.

Also of concern are Judge Alito's comments on voter rights. He has stated his interest in constitutional law was motivated largely by his disagreements with the Supreme Court reapportionment decision that established the principle of ''one person, one vote.''

This landmark case became a cornerstone of our democracy by ensuring that everyone's vote would be weighted equally, regardless of an individual's economic background, their address, or the color of their skin.

If an individual is prevented from seeking a fair remedy at the ballot box by denial of his basic right to vote, the only avenue he has left is our judicial system.

Judge Alito's skepticism of established principles of voter rights coupled with his skepticism of claims relating to discrimination is a dangerous combination that threatens to exclude many Americans from full and equal participation in their government and society.

I remind my colleagues that the strength of our Nation comes from the input of the diversity of individuals who make up this great land. We cannot diminish that.

Equal access to the ballot box is a right guaranteed to every American that is the very foundation of democracy.

These rights came after much work and incredible sacrifice and to me they are too important to put at risk.

As I stated during the debate on Chief Justice Robert's nomination, considering a Supreme Court nomination is one of the most important duties we are called upon as Senators to fulfill.

I did not come to my decision on Judge Alito' s nomination lightly.

Ultimately, I supported the nomination of Chief Justice Roberts because I sincerely believed he cared more about the rule of law and our Nation's judicial system than he did about ideology or political parties.

I sincerely regret I cannot draw the same conclusion about Judge Alito.

For me, this nomination is not about a single issue or controversy. It is much more important than that.

This nomination is about the rights and freedoms we cherish as Americans.

It is about the future course of our Nation and the impact the decisions of the Supreme court will have on the citizens of this great land.

I feel government has a commitment to those amongst us who face incredible challenges to ensure that the values we all hold dear as Americans apply equally to them.

I have real doubts about Judge Alito's views on the role of government in protecting those rights. I respect the opinions of my constituents and colleagues on both sides of this issue. But in the end, after great prayer and research—and certainly after listening to all the principles I learned growing up as a farmer's daughter in east Arkansas in the rural part of this Nation—I made the decision that I believe is in the best interests of my State and of my country.

I appreciate the time attention of my colleagues. I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the quorum call be rescinded.

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

Mr. GRASSLEY. Mr. President, do I have 30 minutes?

The PRESIDING OFFICER. The Senator may use as much of the next hour as he pleases.

Mr. GRASSLEY. Thank you.

Mr. President, I support the nomination of Samuel Alito. President Bush has made a very excellent choice in picking Alito. He has the intellect, judicial temperament, and integrity to be an excellent Justice.

He seems to have a very clear understanding of the proper role of the judiciary in our government. That came out very clearly in the hearings.

He commands the respect of his colleagues on the Third Circuit, as their testimony before our committee demonstrated.

He also has the respect of the lawyers who practice before him and the employees who have worked with him. That was demonstrated in testimony before our committee as well.

But we can't always accurately predict how an individual ultimately will make decisions once he or she gets on the bench. But we do have a constitutional process in place, and we have to use our judgment within that process and trust the confirmation process.

I would say the 225-year history of our country succeeding as it has is an affirmation that the process has worked well.

We have confirmed many outstanding individuals to the Supreme Court, and the process has worked well thus far and will continue to work well with Judge Alito.

Judge Alito was very impressive in the hearings. He did an excellent job under a great deal of fire. He was thorough, he was candid, and he was forthright with all 18 of us on the committee, and demonstrated a deep understanding of the law and a deep understanding of the law and our Constitution.

Contrary to the claims of some of my colleagues from whom we have been hearing this morning and yesterday, Judge Alito's testimony was very substantive, and he was responsive.

Let me quantify that. Judge Alito answered more than 650 questions during nearly 18 hours of testimony. Compared to the performances of Justice Ginsburg who answered 307 questions at her hearing, and Justice Breyer, who answered 291 questions, one can hardly swallow what we hear on the other side—that Judge Alito was not forthcoming with the Committee.

I easily conclude, as I think the public concludes, that he has been one of the most forthcoming nominees to come before the Judiciary committee.

The Constitution provides the President with the power to nominate Supreme Court Justices. And it provides the Senate with advise and consent duties, presumably ending up in an up-or-down vote.

In Federalist No. 66, Alexander Hamilton wrote:

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

That is Alexander Hamilton commenting on the role of the President and the Senate in the judicial confirmation process. I have been on the Judiciary Committee for more than 25 years. I take this constitutional responsibility very seriously. Our work in committee allows us to evaluate whether a nominee has the requisite judicial temperament, intellect, and integrity. We also evaluate throughout that process whether the nominee understands the proper role of a Justice in our democratic system of government; mainly, but not limited to, respect for the rule of law and respect for the Constitution, all over any personal agenda the nominee might have. A Justice, to do justice, cannot have a personal agenda.

Specifically, a Supreme Court nominee should clearly understand that the role of a judge under the Constitution is a limited role, to say what the law is, rather than make the law.

I quote Alexander Hamilton, Federalist Paper No. 78:

> The courts must declare the sense of the law, and if they should be disposed to exercise will instead of judgment, the consequences would equally be the substitution of their pleasure to that of the legislative body.

In fact, most Americans want judges who will confine their job to interpreting the law and the Constitution, rather than making policy and societal choices from the bench. But what we have seen lately is a trend where the courts have expanded the role of the judiciary far beyond what was originally intended in the Constitution and by the Framers. The courts have taken on a role that is much more akin to what we do in Congress, the legislative branch, making law, which is to make policy choices and to craft laws based on those choices.

As a consequence of this power grab by the courts, the judicial confirmation process also, unfortunately, has become extremely politicized. That is because when judges improperly assume the role of deciding essentially political questions rather than legal questions, the judicial confirmation process also devolves into one focused less on whether a nominee can impartially and appropriately implement the law. Instead, the process devolves into one focused on whether a nominee will implement a desired political outcome from the bench, regardless of what the law says, regardless of what the Constitution requires.

But Judge Alito understands the proper role of a judge. Judge Alito understands the judicial branch plays a limited role in our system of government—but not surprisingly so because that is what the Constitution intended. Judge Alito testified:

> The judiciary has to protect rights, and it should be vigorous in doing that, and it should be vigorous in enforcing the law and interpreting the law . . . in accordance with what it really means and enforcing the laws even if that's unpopular.

He continues:

> But although the judiciary has a very important role to play, it is a limited role. . . . It should always be asking itself whether it is straying over the bounds, where it is invading the authority of the legislature, for example, and whether it is making policy judgments rather than interpreting the law. And that has to be a constant process of reexamination on the part of the judges.

Judge Alito's record is clear that he will not make law, but rather he will strictly interpret the law we write. His record is clear that he will do his very best to remain faithful to the actual meaning of the Constitution, rather than mold it into what he would like that Constitution to say.

Judge Alito said, along that line:

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

Judge Alito possesses a knowledge of and respect for the Constitution that is necessary for all Supreme Court Justices. Judge Alito, in his testimony, demonstrates an understanding of the proper role of a Justice. He understands and respects the separate functions of the judicial branch as opposed to the functions of the legislative branch and the executive branch, the political branches of government.

Judge Alito explained that a judge's role is not one of an advocate. He testified:

> The role of a practicing attorney is to achieve a desired result for the client in a particular case at hand, but a judge cannot think that way. A judge can't have any agenda. A judge can't have any preferred outcome in a particular case. And a judge certainly does not have a client. The judge's only obligation, and it's a solemn obligation, is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires.

For all of his opponents, when we hear things such as that and they fit in with what the Constitution's writers intended for the judiciary to do, how can we find fault with Judge Alito's approach? Why would we fear him at all?

Judge Alito also believes in justice for all, as afforded by the laws and the Constitution of our great nation. He told the 18 members of the Judiciary Commitee:

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

He said:

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

Another very important position Judge Alito takes:

> Results-oriented jurisprudence is never justified because it is not our job to try to produce particular results. We are not policy makers and we shouldn't be implementing any sort of policy agenda or policy preference that we have.

Contrary to the claims of his opponents, Judge Alito understands the Judiciary has an important role in our system of checks and balances. He understands the importance of the independence of the judicial branch. Judge Alito will not shirk from that responsibility and he will see that the Judiciary is an effective check on abuses of power, both by the executive and the legislative branches of government. In fact, as Judge Aldisert, who served with Judge Alito on the Third Circuit testified:

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

Let me quote former Judge Gibbons, who also served with Judge Alito and who now is litigating with the Bush administration over the treatment of detainees held at Guantanamo. He believes Judge Alito will not shy away from checking Government abuses. He does not believe Judge Alito will rubberstamp any administration's policies if they run counter to the law and the Constitution. And he certainly did not have any concern about Judge Alito's judicial independence.

Judge Gibbons testified:

> It seems not unlikely that one or more of the detainee cases that we are handling will be before the Supreme Court again. I do not know the views of Judge Alito respecting the issues that may be presented in those cases. . . . I'm confident, however, that as an able legal scholar and a fairminded justice, he will give arguments, legal and factual, that may be presented on behalf of our clients careful and thoughtful consideration, without any predisposition in favor of the position of the executive branch.

I agree. I believe Judge Alito will be that independent judge who will apply

the law and the Constitution, not just to Congress, but to every branch of government, and every person, because Judge Alito knows no one, including the President, is above the law.

Not only is Judge Alito an intelligent and experienced jurist, he is also an openminded and fair judge. I am telling everyone that, but anyone that saw the hearing knows that, from the 18 hours he testified before the Judiciary Committee 2 weeks ago. He is an openminded and fair judge. He told the committee:

Good judges develop certain habits of mind. One . . . is the habit of delaying reaching conclusions until everything has been considered. Good judges are always open to the possibility of changing their minds based on the next brief that they read or the next argument that is made by an attorney who is appearing before them, or a comment that is made by a colleague when the judges privately discuss the case.

How much more appropriate is that approach to the law than just yesterday the Supreme Court decided to hear an execution case of a person in Florida when they got the decision made and the word down as they were strapping him in to inject the lethal chemical into him: Wait, don't make a decision until all the facts are in. So that person did not die last night.

In fact, Judge Alito acknowledged he has changed his opinion in the middle of the judicial process because he is waiting for all the facts, those motions, those debates, to be done before he finally concludes. He testified:

There have been numerous cases in which I've . . . been given the job of writing an opinion . . . and in the process of writing the opinion, I see that the position that I had previously was wrong. I changed my mind. And then I will write to the other members of the panel and I will say, I have thought this through and this is what I discovered and now I think we should do the opposite of what we agreed, and sometimes they'll agree with me and sometimes they won't.

Now, what do you hear from the people opposed to Judge Alito? His critics have tried to paint him out to be an extremist. An activist judge with some agenda hostile to individual rights and to what his critics have called the ''average American.''

We were presented with analyses on how outside the mainstream Judge Alito's opinions were. But that is not what we heard from the American Bar Association. This group of men and women unanimously voted to award Judge Alito its highest possible rating: ''well qualified.'' We have heard from the Democrats that this ABA rating is the ''gold standard'' about how to make any judgment about who is qualified to serve on the judiciary.

But that is also not what we heard from the panel of four sitting and two former Third Circuit judges who have worked with Judge Alito for more than 15 years. They did not think Judge Alito was out of the mainstream, as certain people on the floor are trying to claim, or an extremist, as you have heard often argued by the other side. We heard quite to the contrary.

I have to say the committee received absolutely extraordinary testimony from these appellate judges, which included nominees from—just think, these different Presidents nominated these people who testified before us, who said Judge Alito will make a great Justice—President Lyndon Johnson, President Richard Nixon, President Ronald Reagan, President George H.W. Bush, and President Bill Clinton, these Presidents appointed the people who came to us and said Samuel Alito will make a good Justice.

There is disagreement on the floor of the Senate as to whether he will be a good Justice. These are individuals we have heard from who have had the opportunity to witness the interworkings of Samuel Alito as a judge during their private conferences, on a daily basis, behind closed doors, when all the hair is let down. They saw his deliberative process. They know the ''real deal'' Sam Alito. And these witnesses—all respected and accomplished judges in their own right—each of them only had glowing comments about Judge Alito. Their support was unqualified.

As Judge Aldisert told the committee:

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

Let's go to Judge Becker:

The Sam Alito that I have sat with for 15 years is not an ideologue. He's not a movement person. He's a real judge deciding each case on the facts and the law, not on his personal views, whatever they may be. He scrupulously adheres to precedent.

Judge Becker said:

I have never seen him exhibit a bias against any class of litigation or litigants. . . .His credo has always been fairness.

Chief Judge Scirica said:

Despite his extraordinary talents and accomplishments, Judge Alito is modest and unassuming. His thoughtful and inquiring mind, so evident in his opinions, is equally evident in his personal relationships. He is concerned and interested in the lives of those around him. He has an impeccable work ethic, but he takes the time to be a thoughtful friend to his colleagues. He treats everyone on our court, and everyone on our court staff, with respect, with dignity, and with compassion. He is committed to his country and his profession. But he is equally committed to his family, his friends, and his community. He is an admirable judge and an admirable person.

Judge Barry said:

Samuel Alito set a standard of excellence that was contagious—his commitment to doing the right thing, never playing fast and loose with the record, never taking a shortcut, his emphasis on first-rate work, his fundamental decency.

So contrary to what his misguided critics have alleged, Judge Alito is fair and open-minded, and will approach cases without any bias and without a personal agenda.

Unfortunately, Judge Alito's record—as you have heard for the last 2 days and as you heard 2 weeks ago in the hearing—has been wildly distorted. Contrary to these critics' claims, Judge Alito has ruled for plaintiffs as well as defendants in civil rights, ADA, and employment discrimination cases. I think a statistical analysis of how many times a certain kind of plaintiff wins or loses is not the best way to judge a judge's record. It is wrong to think there should be a scorecard on how often plaintiffs or defendants should win, like some basketball game. Who should win depends upon the facts presented in the case and what the law says, just as it should be in a country based on the rule of law.

What is important to Judge Alito is that he rules on the specific facts in the case and the issue before his court, in accordance with the law and the Constitution. Judge Alito does not have a predisposed outcome in a case. He does not bow to special interests, but sticks to the law regardless of whether the results are popular or not.

Similar to Chief Justice Roberts, Judge Alito rules for the ''big guy'' when the law and the Constitution say the ''big guy'' should win. He rules for the ''little guy'' when the law and the Constitution say the ''little guy'' should win. That is precisely what good judging is all about, and that is precisely the kind of Justices who ought to be on the Supreme Court and, for most of the time in our history, have been on the Supreme Court—I think it will be 110 of them when Alito gets there.

The claims that Judge Alito is somehow hostile to civil rights, minorities, women, and the disabled are really off the mark, and those arguments are intellectually dishonest. It is easy to cherry-pick cases and claim that a judge is out of the mainstream. His fellow colleagues on the Third Circuit, though, give you a completely different picture of Judge Alito than what you have seen painted here in the last 2 days. Fellow colleagues on the Third Circuit testified about Judge Alito's fairness and impartiality with respect to all plaintiffs.

For example, Judge Garth testified:

I can tell you with confidence that at no time during the 15 years that Judge Alito has served with me and with our colleagues on the court and the countless number of times that we have sat together in private conference after hearing oral argument, has he ever expressed anything that could be described as an agenda. Nor has he ever expressed any personal predilections about a case or an issue or a principle that would affect his decisions.

Judge Higgenbotham, Jr., a liberal judge, said:

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

Kate Pringle, a former Alito law clerk and Democrat who has known the judge since 1994, testified that:

[Judge Alito] was not, in my personal experience, an ideologue. He pays attention to the facts of cases and applies the law in a careful way. He is conservative in that sense. His opinions don't demonstrate an ideological slant.

I found Judge Lewis's testimony to be particularly compelling. Judge Lewis described himself to the committee this way. These are his words: ''openly and unapologetically prochoice'' and ''a committed human rights and civil rights activist.'' That is how he described himself, Judge Lewis.

He testified about Judge Alito:

[I]t is in conference, after we have heard oral argument and are not propped up by law clerks—we are alone as judges, discussing the cases—that one really gets to know, gets a sense of the thinking of our colleagues.

Judge Lewis continued:

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

Judge Lewis further said:

If I believed that Sam Alito might be hostile to civil rights as a member of the United States Supreme Court, I guarantee you that I would not be sitting here today. . . . My sense of civil rights matters and how courts should approach them jurisprudentially might be a little different. . . . But I cannot argue with a more restrained approach. As long as my argument is going to be heard and respected, I know that I have a chance. And I believe that Sam Alito will be the type of justice who will listen with an open mind and will not have any agenda-driven or result-oriented approach.

Judge Lewis concluded:

I am here as a matter of principle and as a matter of my own commitment to justice, to fairness, and my sense that Sam Alito is uniformly qualified in all important respects to serve as a justice on the United States Supreme Court.

So who do you believe has accurately depicted Judge Alito's qualifications and record? The speeches of opponents today and yesterday? Or the people who have worked with the judge, day in and day out for years, who know him personally, and who have seen him up close and in the trenches? I will pick those people who have worked with Judge Alito for 15 years, particularly because they come from different political backgrounds and different approaches to the law and the Constitution, as opposed to the partisan, liberal outside interest groups that have probably never even met Judge Alito. I, then, know whom I believe.

Not only that. If one wipes away the distorted and deceptive characterizations, as well as the false insinuations and calculated smears, Judge Alito's record plainly shows that he is a dedicated public servant who practices what he preaches: integrity, modesty, judicial restraint, devotion to the law, and devotion to the Constitution.

Let me briefly address this issue which has been brought up that somehow Judge Alito's appointment is going to upset the balance of the Court. As I said before, history will take care of the proper ''balance'' on the Court. But some of my colleagues—or maybe speaking for their outside liberal interest groups—have taken the position that Judge Alito has to share Justice O'Connor's judicial philosophy and voting record in order to take her seat on the Court. They argue that Judge Alito should not be confirmed, regardless of whether he is qualified or not, because he does not appear to be Justice O'Connor's judicial philosophy ''soul-mate'', and he would change the ideological balance of the Court.

Well, the last time I checked, the Supreme Court does not have seats that are reserved for a conservative or a liberal or a moderate or a Catholic or a Jew or a Protestant, one philosophy or another philosophy—no! The Senate has never taken the position, moreover, that like-minded individuals should replace like-minded Justices leaving the Court. And until just recently, I never heard the argument from the other side of the aisle. That kind of reasoning is completely antithetical to the proper role of the judiciary in our system of government.

The reality is that the Senate has historically confirmed individuals to the Supreme Court who are determined to be well qualified to interpret and apply the law. It has not been the Senate's tradition to confirm individuals to promote special interests or represent certain causes. That is not what the Constitution says for the Senate to do. In fact, the Court's composition has changed with the elected branches over the years. Almost half of the Supreme Court Justices have been replaced by individuals appointed by a President of a different political party.

The truth is that the Senate has not ever understood its role as maintaining any perceived ideological balance on the Court. In fact, the Senate outright rejected that kind of thinking when Ruth Bader Ginsburg came before us. She was a known liberal, a former general counsel for the ACLU, and she was overwhelmingly approved by the Senate by a vote of 96 to 3. She replaced whom? A conservative justice, Justice Byron White. Yet there were not any arguments from the other side of the aisle or from this side of the aisle that she would upset the balance of the Court. And she did—change the balance of the Court, radically swinging it to the left.

I certainly did not agree with Justice Ginsburg's liberal judicial philosophy, but I voted for her. The fact is that the Senate confirmed Justice Ginsburg because President Clinton won the election. He made a promise in that election who he was going to appoint to the Supreme Court. He had a right to nominate who he wanted based upon the results of that election—the same thing for George Bush in the 2000 election and the 2004 election. Moreover, and more importantly, though, Justice Ginsburg had the requisite qualifications to serve on the Court, and she was not a political hack. So she was confirmed.

This was the same for Justice Breyer. I knew that Breyer was a liberal and that I probably would not agree with his judicial philosophy, but he was qualified. So I voted for him. The Senate confirmed Justice Breyer by a vote of 87 to 9. The President had made his choice. The Senate found him to be qualified, and we confirmed him. Republicans certainly did not put up any roadblocks to the Ginsburg and Breyer nominations. I would say that Judge Alito is no more out of the mainstream than Justices Breyer and Ginsburg.

The Democrats and liberal outside interest groups are intent on changing the rules of the game because they did not win at the ballot box in 2000 and 2004, or maybe over the last 10 years. The way the Democrats want to operate now is not the way we have operated in the past. But the truth is, by politicizing and degrading the nominations process, and the nominees themselves, we will end up driving away our best and brightest minds from volunteering for public service. It is disappointing to me to see a decent man and his family have to endure hurtful allegations and insinuations which are just plain false and, moreover, meanspirited.

It is disappointing to me that so many of my colleagues are going down this path, creating a standard that can only harm the independence of the judiciary, and severely distort our system of government.

Before I conclude my remarks, I want to quote from a letter I received from an Iowa constituent. I will only quote it in part, but I will include it for the RECORD. Her name is Joan Watson-Nelson, and she wrote about her very personal impressions of Judge Alito when they attended high school together in the late 1960s in New Jersey. I don't know exactly how she got to Iowa. But she is there and she wanted me to know how she remembered Sam Alito.

She wrote:

I remembered [Samuel Alito] because he stood out in his class and in the school. He was one of the leaders of the school. . . . I remembered him being very bright, well prepared, and brilliant. He appeared to be an individual with vision. . . . . He stood out as a young man with a great deal of integrity. Many of his teachers from high school are gone now. But I know if they were here and could write letters on his behalf, they would have many stories to tell about the kind of student he was both inside and outside the classroom.

The letter continues:

I am not a very political person. I have some issues that I believe in deeply and others that I do not have a deep commitment about. I am sure that Sam and I do not agree on all the issues that will be placed before him. The abortion issue is likely to be one of those, as I understand from the media that he may be against abortion. However, I do strongly believe that he will listen to the arguments placed before him, research the law, and decide honorably.

She concludes her letter this way:

It has been nearly 40 years since he graduated from high school.

I think the implication is she hasn't even talked to him in the last 40 years. She says:

And although I have a good memory for details, the specific details of my involvement with Sam are not as clear as I would like to have them be in my endorsement for him. What is left, however, is the internalized memory of Sam. That memory tells me that he will make an excellent Supreme Court justice. I hope that with your hearings on his appointment, you and the others will be able to make that clear to any who may wish to try to discredit him for political reasons. What I learned about the Supreme Court branch of government—

Talking about when she was in school—

is that this part of the ''checks'' in our system is to be devoid of politics. I believe that Sam has what it takes to fulfill that role.

I think this is a very nice testimonial about the man we are going to vote on and hopefully confirm to become the next member of the Supreme Court. I appreciate Ms. Watson-Nelson's letter letting us know about her personal experience with Sam Alito. She hit the nail on the head. The Supreme Court needs to get out of the business of politics, and we need to stop discrediting good nominees for political reasons. She, like most Americans, knows what is going on.

So, it is clear to me, the people who know Judge Alito personally believe, without any reservation, that he is a judge who follows the law and the Constitution without preset outcomes in mind. They believe he is a man of great intellect and insight. They believe he is a fair and open-minded judge committed to doing what is right, rather than committed to implementing a political agenda or a personal agenda. They believe he is a man of integrity, modesty, and restraint.

I am pleased to support Judge Alito's nomination. Judge Alito will be a great Justice, not a politician on the bench. He won't impose his personal views or be a judicial activist, but will make decisions as they should be decided—in an impartial manner, with the appropriate restraint, in accordance with the laws and the Constitution. Judge Alito will carry out the responsibilities of a Justice in a principled, fair, and effective manner. I am proud to cast my vote in support of this decent and honorable man.

I wish this story would end with qualifications, integrity, and judicial restraint, because only those considerations should matter. But it looks as though the most partisan and political among us won't let that happen. There may be some who will vote against Judge Alito's confirmation, not because of qualifications or integrity, and not even because they want somebody to legislate from the bench or treat the Constitution as a blank slate that judges can freely draw upon.

No, it appears some Senators will vote against this nominee because they think doing so is a good political issue. Instead of applying the same standard we Republicans applied when the Senate overwhelmingly confirmed Justice Ginsburg, the most liberal Justice on the Court, these partisans will change the rules in the middle of the game once again. They will vote against Judge Alito with an eye toward the next election and the demands of their most extreme and activist supporters.

The Washington Post had it right when it editorialized on January 15:

A Supreme Court nomination isn't a forum to refight a presidential election.

I would go a step further than that editorial. A Supreme Court nomination is not a forum to fight any election. It is the time to perform one of our most important constitutional duties and decide whether a nominee is qualified to serve on the Nation's highest court.

I hope my colleagues will cast their vote based on Judge Alito's outstanding qualifications, rather than on the distorted claims of liberal outside-interest groups. I urge my colleagues to rise above partisan politics and support this worthy nominee, Samuel Alito. Samuel Alito deserves our overwhelming vote of approval, and it would be a great shame if he doesn't get it.

I ask unanimous consent to print in the RECORD the letter from which I quoted.

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

DEAR SENATOR GRASSLEY: I spoke with you briefly at the Iowa Farm Bureau annual meeting on November 30th regarding Sam Alito. You requested that I follow up our discussion with a letter about how I felt about him.

He graduated from Steinert High School (AKA Hamilton High School-East) in 1968 and I graduated from Steinert in 1969. I remember well that he was one of 4 Valedictorians that year, a first for the school. There were 2 men and 2 women. I knew one of the women well and I remembered him because he stood out in his class and in the school. He was one of the leaders of the school. He was student council president at Steinert his senior year, and I think he was also student council president at Reynolds Jr. High as well. I had worked with him on the school newspaper staff my Junior year, the year he was the editor of the paper.

I remember him as being very bright, well prepared, and brilliant. He appeared to be an individual with vision. His high school ''crowd'' of kids were the leaders of the school and his class. I knew some of his crowd well during my high school years. He stood out as a young man with a great deal of integrity.

Many of his teachers from high school are gone now. But I know if they were here and could write letters on his behalf, they would have many stories to tell about the kind of student he was both inside and outside the classroom. The teachers at Steinert at the time Sam and I were in high school were a family and they viewed the student body as part of that family. His first principal at Steinert was my father, Richard F. Watson. When we discussed that Sam was up for the Supreme Justice opening, he remembered him and hoped that he would be approved.

I am not a very political person. I have some issues that I believe in deeply and others that I do not have a deep commitment about. I am sure that Sam and I do not agree on all of the issues that will be placed before him. The abortion issue is likely to be one of those, as I understand from the media that he may be against abortion. However, I do strongly believe that he will listen to the arguments placed before him, research the law, and decide honorably.

The best summary of the type of person that I believe Sam to be is that I believe that he has many of the same qualities that I have observed in you, Senator, over the years that you have been our State senator. Those qualities and values are the reason that I continue to vote for you and support you. I think that this is the best endorsement that I can give to Sam. It has been nearly 40 years since he graduated from high school. And although I have a good memory for details, the specific details of my involvement with Sam are not as clear as I would like them to be in my endorsement for him. What is left, however, is the internalized memory of Sam. That memory tells me that he will make an excellent Supreme Court Justice.

I hope that with your hearings on his appointment, you and the others will be able to make that clear to any who may wish to try to discredit him for political reasons. What I learned about the Supreme Court branch of our government is that this part of the ''checks'' in our system that is to be devoid of politics. I believe that Sam has what it takes to fulfill that role.

Sincerely,

JOAN WATSON-NELSON.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Mississippi.

Mr. LOTT. Mr. President, parliamentary inquiry before I begin: I know we have a balance, going back and forth in this debate. Have any prior arrangements been made with regard to others proceeding, or may I go at this time?

The PRESIDING OFFICER. The Senator may proceed until 2.

Mr. LOTT. Mr. President, I rise today to speak in favor of the nomination of Judge Samuel Alito for Associate Justice of the U.S. Supreme Court.

Before I proceed to my discussion of my views of Judge Alito, I take a moment to thank Senator ARLEN SPECTER for the good work he has done on the Judiciary Committee over the last few months. He has had a loaded calendar, a lot of important legislation, important hearings, and the process of confirming two Supreme Court Justices. It has been a while since any chairman of the Judiciary Committee or any committee has had this kind of workload over just a few months. Senator SPECTER has done an excellent job in the way he has handled it.

I also recognize Senator GRASSLEY and his participation on the committee and the statement he just gave. It is obvious he has done his homework. He handled himself well in the hearings, and he has even developed what seems to be a personal affinity for Judge Alito. That will affect a lot of other Senators' thinking about this, and a lot of the American people.

I commend those on the committee who have treated this process with the dignity and respect it certainly deserves. The Chair will note, I said to ''those,'' meaning not necessarily all of the members of the committee.

There is not a lot I can say here today that others won't say about his

record or about this issue. But I believe this is one of the most important functions we have in the Senate; that is, our advice and consent, the confirmation process for our Federal judiciary. There is no question that it was intended we have three equal branches of Government: the judiciary, the executive, and the legislative. We all have responsibilities under the Constitution and under the law, and those have evolved over the years. Separation of power should not mean we become the body or the part of Government that becomes obstructionist or is always looking for a way to take on the executive or the judiciary. This is an important responsibility, and it is important every Senator have a chance to express his or her views on this topic.

This is such an important issue that it is good for the country, anytime we have a debate about the judiciary and what is the role of the Congress, the executive branch, the judiciary, the whole process: How should judges be selected and how should the hearings be held and what should they do when they get on the Court. This is good for the country, and we should look at it that way.

I do know that it has been a constant topic of discussion in much of the country since last summer with the process that led to the confirmation of Chief Justice Roberts and now the discussion about Judge Alito. I had a call from a constituent in Jackson, MS. She expressed her support for the fact that the Judiciary Committee reported out this nomination and thought we were going to vote today, which we should be voting today on his confirmation as an Associate Justice. It said to me, once again, this is not a person involved in the judiciary, but people are paying attention to what we say and what we do. We should not trivialize in any way this important process.

Over the years I have asked myself, what should I do in analyzing Federal judicial nominations, particularly the Supreme Court, since they clearly can have a long-term effect. When we confirm these men and women for life terms, it is serious. We need to always be thinking about it. When I first came to the Senate after years in the House, I asked my senior colleague from Mississippi, a respected member and now chairman of the Appropriations Committee, to talk with me about what should be the criteria in debates for confirming judges. He gave me good advice, and it was pretty simple. He basically said that under our advice and consent responsibility, we should look to see if the nominee is qualified by character, education, experience, and temperament. Then if the nominee meets the basic criteria or qualifications in those areas, he or she should be confirmed. End of discussion. Not a ruling on a particular case, not a personal view on any subject, not one based on religious faith or any number of other issues. Are they qualified by character, which means do they have good integrity and ethics, are they educated for the job, do they have good experience, and do they have the right temperament to serve. That is the way it should be.

When I have looked at the issue, I am absolutely satisfied we have one of the most qualified nominees for the Supreme Court, probably one of the most qualified in at least 70 years, when we look at all he has done. I have applied this principle during Democratic administrations and Republican. Have I occasionally voted against nominees? Yes, for good and valid reasons. I voted against one because I thought he had a conflict of interest. I voted against one because I thought he had been a recess appointment inappropriately. I don't think Federal judges should, generally get recess appointments, although it has been done in one case where I clearly felt it was fair. But it is not something I would want us to make a practice of.

I voted for Justice Ginsburg. A lot of people in my State said: Why? I voted for other so-called liberal judges I philosophically had problems with, but in the case of Justice Ginsburg, I thought she was qualified by character, education, experience, and by her temperament. I am sure I don't agree with an awful lot of the decisions she has made on the Supreme Court, but she is qualified.

There is one other thing. It is called elections. When we elect a President, we should know what is going to be their position on appointing people to the Federal judiciary. This President, George W. Bush, made it clear he was going to be looking for strict constructionists, men and women of good character who would not write the laws but would interpret the laws. He talked about it. Nobody in America should be surprised that he would nominate a candidate such as Judge Alito. He certainly is experienced. He is a strict constructionist. He is qualified.

Some people are offended that the President would suggest what appears to be a conservative for the Supreme Court. Why? What did they expect? That is why I voted for Justice Ginsburg and a lot of President Clinton's nominees for the Federal judiciary, because he won the election. These were his choices. While I might disagree with him philosophically, I couldn't disagree with him as far as their qualifications. Even the very active Democratic Governor of Pennsylvania, Mr. Rendell, has talked about elections and their meaning in this process. This President has selected this nominee and he is entitled to that and, basically, this judge should be confirmed. That was an interesting comment for a former chairman of the Democratic National Committee. But he took the right position, and I appreciate the fact that he would do that.

When you look at Judge Alito's background, it becomes clear he is highly qualified. He is a graduate of Princeton and Yale Law School. Some people might try to use that against him. I guess he couldn't get into Vanderbilt or the University of Mississippi, but Princeton and Yale are not bad institutions.

He was a member of Phi Beta Kappa. He was an editor of the Yale Law Review. He clerked for Judge Leonard Garth of the Third Circuit. He was an assistant U.S. attorney for the District of New Jersey. He was Assistant to the Solicitor General of the United States beginning in 1981 where he argued 12 cases before the Supreme Court on behalf of the Federal Government. After serving as Deputy Assistant Attorney General in the Office of Legal Counsel, he was nominated for U.S. attorney for the District of New Jersey. He was unanimously confirmed by the Senate. Then, of course, he was nominated by President George H.W. Bush in 1990 to the Third Circuit Court of Appeals.

So he has good character. I think most people would agree to that. He is clearly well educated. It is hard to disagree with that. He clearly is brilliant. Maybe sometimes he is too smart for a lot of us; he knows the law, and he can talk about cases by name without reference to notes. He clerked and has worked as a Federal judge in the Third Circuit. He was on the prosecution side as assistant U.S. attorney and as U.S. attorney. So these are all good qualifications.

Then he went on the Third Circuit, a very important and active circuit, where he has served 15 years. He cast approximately 5,000 votes, and he participated in the decisions of more than 1,500 Federal appeals and has written more than 350 opinions—a lot of work and a lot of good work.

If there was a problem with this judge and his opinions, do you really think the Judiciary Committee could not have found some cases or more phrases when he participated in all of these votes and wrote 350 opinions? I have been very impressed by the willingness of his colleagues, but not just from New Jersey, not just those who served with him in previous administrations, but six current and former Federal judges with all kinds of backgrounds and philosophies—people who admit, I am a Democrat, a liberal, but I know this man, his demeanor, how he handles himself when we were in conference—where judges come out with these mystical decisions they develop in those quarters. That is where you see the real man. When you have people who have spoken up and made it clear about the quality of this nominee, I think that is very important.

The ''holy grail,'' the American Bar Association, has rated him well qualified. There again, a lot of people used to say that is the most important thing of all. Well, he got their top rating. Surely, that would affect us. Regardless of ideological, philosophy, or positioning, the people who know him best have spoken up very aggressively in his support. That is very convincing to me.

I thought during the hearings he handled himself quite well. He answered over 600—maybe 700 questions, when he was given a chance. The statements and questions were a lot longer than the answers were allowed to be. I thought his responses were good and studied. He met the so-called Ginsburg standard. He would not say how he might rule on a particular case. How can you do that? You have to know the facts and you have to look at precedents and you have to go through all these hoops that lawyers enjoy wrestling with and judges have to comply with. I watched it. My wife thought I was strange for sitting there watching these committee hearings, but I felt it was part of my responsibility. I wanted to see what the Senators asked him and how he responded. I thought he handled himself well on his answers and how he responded on substance.

I was upset, quite frankly, when it turned from substance to what got close to character assassination, smear. It really got personal and ugly. I was embarrassed about that. I was ashamed, quite frankly. I realize that sometimes our spouses have to put up with a lot for those of us who are in government and politics and on the judiciary. But I thought it was a defining moment when the judge's wife was driven to tears.

I have appreciation for the fact that one of the Senators was saying, We are sorry that you had to put up with this. We know you are a man of character and integrity. I don't think it needs to go that far.

Do we get carried away around here sometimes on both sides of the aisle? Sure. It is a tough, political, and partisan political place. But how much is enough? How low will we sink? Every year I have been in the Senate we have drifted further and further down in how we deal with these Federal judicial appointments. Hopefully, we will finally reach the bottom and we will go back up.

There is no good reason to vote against this good man to be on the Supreme Court, even if you might disagree with him on some of his decisions. But he will be careful and studied and he will pay attention to the precedents—more so than I probably would like him to. But it is time to begin to try to go back and approach these nominations differently. Again, I am not absolving any of us for having misbehaved sometimes in the way we handle these issues.

The American people are watching, and they have to feel for this man. They were unhappy with what they saw from a lot of Senators on the Judiciary Committee. They felt that he went through more than he should have, in terms of personal attacks. They would like for us not to go quite so far.

I was encouraged, frankly, when we had the vote on Judge Roberts, to be the Chief Justice. I was pleased that it was as bipartisan as it was, and he received 78 votes. But now I see that slipping away in this case.

Some say: Wait a minute, this is extraordinarily important because this may tip the balance, and that Justice Sandra Day O'Connor became somewhat of a swing vote and probably would be interpreted by some people as being a moderate in some respect.

Well, it may tip the balance. From my standpoint, I sure hope so. But I was not paying any attention to balance when I voted for Justice Ginsburg. I was voting on the merits of that particular individual.

I don't think it is fair to Judge Alito to oppose him because he is conservative and may tilt the balance of the Supreme Court. These things swing back and forth. The pendulum has been way over there in the Supreme Court for a long time and, finally, it has become more moderate. Maybe it will become more conservative.

I think I have told the story in the Senate before about how I was talking to a personal friend, now a Federal judge. He was inquiring in bemusement, and incredulously:

Why is it that the Federal judiciary is held in such low regard?

I could not believe he even asked. I said:

Your Honor, it is because of the dumb decisions that you all quite often make.

The people are outraged with decisions such as the Kelo v. City of New London case, dealing with eminent domain.

Time and time again, people see what is happening in Supreme Court rulings. They get in here when they should not and don't get in there when they should. In many instances, they interpret the law wrongly or start to try to make laws. And it is not just the Supreme Court. I think over the years—recently, at least—if you look at the Supreme Court, they have been pretty good. But the eminent domain decision just absolutely floored me. We have to correct that mistake. When you get down to the rest of the Federal judiciary, they are into all kinds of stuff all the time—social engineering, intervention when they have no business intervening, and they have lost a lot of respect from the American people.

That said, I want the Federal judiciary and the Congress and the President to be respected for the special institutions they are. So this is an important decision.

I am pleased the President nominated Judge Alito. I think that his experience over these years has clearly qualified him for it. He has 30 years of experience, and he went though 18 hours of questioning. He is a good man with a great background, with an American dream story, a first generation American from another country. He is everything I thought we should be looking for. So I am pleased and honored to be able to come and speak on behalf of his nomination and urge his confirmation, and I will vote for him.

In conclusion, let me say again that there are some who say we may still have a filibuster. We should not do that. We cannot do that. That is not fair to the process, not fair to this nominee, not fair to the President. I hope our colleagues will not impose a filibuster here and force action by the Senate to stop that sort of thing from happening.

I also want to say again that I think we have sort of lost our grip on how we treat these nominees. We need to find a way to pull back. It has gotten too ugly, too personal, and I think it undermines the credibility of the judiciary and those of us who sit in judgment on these men and women. I repeat again that we have all been a party to this, including me—I don't deny it—over the years. But at some point there comes a time when you say to each other, regardless of philosophy or region or party, let's see if we cannot do a better job, with more dignity and decorum, and that is more focused on the qualifications and character of the men and women and not on politics, partisanship, or ideology. I would like to be a part of making that happen.

Every now and then, I have colleagues say: What can we do about the atmosphere? Well, it begins with us. It begins with making up our minds that we are going to be more communicative and we are not going to be quite so partisan. I have been as partisan as anybody around here. I served in the House, and it tends to make you a partisan warrior when you have been in the minority. Some people say maybe you get to be kind of arrogant and mean when you get to be in the majority. We can make a difference. I hope we find a way to do it, and do it soon.

I yield the floor and 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. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. WARNER. Mr. President, it is my understanding at this time that there is an allocation of time reserved for the Senator from Virginia, and I shall proceed, although we are slightly off schedule. I don't wish to encroach on others, but I will proceed and watch the floor very carefully.

The PRESIDING OFFICER. The Senator will suspend for a moment. I have been advised there are only 2 minutes left of the majority time for this allocation.

Mr. WARNER. Then I will proceed, if I may, and ask unanimous consent to speak for not to exceed 5 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Reserving the right to object, Mr. President, we certainly hope there will be no objection. My friend and colleague from Connecticut is roughly scheduled on the hour, but that seems to be a reasonable request.

We could add the other 5 minutes at the end of the hour if that would be agreeable to the Senator from Virginia.

Mr. WARNER. Mr. President, I think that would work out. Perhaps the intervening hour will be such that we won't need that additional 5 minutes because I think the managers and leadership have tried to carefully manage the time. I am just able to get started now because my colleagues gave very good speeches, and we all enjoyed it.

The PRESIDING OFFICER. Without objection, the Senator from Virginia is recognized for 5 minutes.

Mr. WARNER. Mr. President, article II, section 2 of the U.S. Constitution explicitly provides for the responsibilities of the executive branch and Government and the Senate with respect to judicial nominations. The Constitution reads in part that the President ''shall nominate and, by and with the advice and consent of the Senate, shall appoint judges of the Supreme Court and all of the officers of the United States.'' Thus, the Constitution provides the President of the United States with the responsibility of nominating individuals to serve on our Federal bench.

The Constitution provides the Senate with the responsibility of providing advice to the President on those nominations and with the responsibility of providing and withholding consent on those nominations. In this respect, article II, section 2 of our Constitution places our Federal judiciary in a unique posture with respect to the other two coequal branches of our Federal Government.

Unlike the executive branch and unlike the Congress, the Constitution places the composition and continuity of our Federal judiciary entirely within the coordinated exercise and responsibilities of the other two branches of the Government. Only if the President and the Senate fairly and objectively and, if I may say, in a timely manner exercise their respective constitutional powers can the judicial branch of Government be composed and maintained so that our courts can function and serve the American people.

For this reason, in my view, a Senator has no higher duty than his or her constitutional responsibilities under article II, section 2—the advise and consent clause.

With respect to the Senate's advice responsibilities under article II, section 2, I believe our Founding Fathers explicitly used the word ''advice'' in our Constitution for a reason. This was to ensure consultation between a President and the Senate prior to the forwarding of a nominee to the Senate for consideration. Adequate consultation prior to the forwarding of a nominee is of utmost importance. And, I compliment our distinguished President for recognizing that in the case of now, Justice John Roberts, and with respect to this nomination.

But, let's not forget that while the Constitution calls for the Senate to provide advice to a President on whom he should nominate, the decision of whom to nominate solely rests with the President of the United States.

Alexander Hamilton made this point crystal clear in the Federalist Paper No. 66 when he wrote:

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

That is precisely why we are here in these closing days of a very prolonged procedure with regard to Judge Alito.

I am privileged to indicate that I shall strongly support him at the time the vote is taken and cast my vote for him.

With respect to the issue of consent, I believe it is imperative that when a Senator considers whether to grant or withhold consent, he or she should recognize article II, section 2 and Alexander Hamilton's statement in Federalist No. 66. Accordingly, during the course of my 28 years in the Senate, I have always tried to fairly and objectively review a judicial nominee's credentials prior to deciding whether I will vote to provide consent on a nomination. I look at a wide range of factors, primarily: character, professional career, experience, integrity, and temperament for lifetime service on our courts. While I certainly recognize political considerations, it is my practice not to be bound by them.

These same fair and objective factors that I have used during my 28 years in the Senate have guided my consideration of Judge Alito's nomination.

When Judge Alito's nomination was first announced, I wasn't overly familiar with the nominee. But over the past few months, I have reviewed his record thoroughly. I met with the nominee twice—the first time prior to his confirmation hearings before the Senate Judiciary Committee and the second time after the hearings. Each time I asked him a number of indepth questions. I have also reviewed a number of his judicial opinions and followed the confirmation hearings before the Judiciary Committee. In addition, many people have written, emailed, called my office, or spoken to me personally about this nominee, and I have respectfully considered their views.

Having now completed my review of Judge Alito's nomination, I can say, without equivocation, that of the numerous judicial nominees I have reviewed during my nearly three decades in the Senate, Judge Alito's credentials and qualifications place him as very well qualified.

Judge Alito has an impressive record of legal accomplishments.

He received his bachelor's degree from Princeton University and attended Yale Law School. While at Yale, he served as an editor on the Yale Law Journal. Following graduation from law school, he worked as a law clerk for a Federal circuit court judge, Judge Leonard Garth of the U.S. Court of Appeals for the Third Circuit.

Subsequent to his clerkship, Samuel Alito worked as an assistant U.S. attorney, as an assistant to the Solicitor General of the United States, and in the Office of Legal Counsel in the U.S. Department of Justice. In 1987, Mr. Alito was unanimously confirmed by the Senate to serve as the U.S. attorney for the District of New Jersey. Three years later he was nominated and unanimously confirmed by voice vote to serve as a judge on the U.S. Court of Appeals for the Third Circuit, and he has served on this court for the last 15 years.

Without a doubt, Judge Alito has the requisite legal and professional experience to serve on the Supreme Court. Indeed, the American Bar Association, whose rating system of Federal judges is often referred to as the gold standard in the Senate, recently awarded Judge Alito a rating of well qualified—its highest rating.

But in addition to his impressive record of legal accomplishments, Judge Alito has also demonstrated—during his confirmation hearings and over the past 15 years on the Federal bench—a deep respect for legal precedent and for the constitutional responsibility of the legislative branch to write our laws. These qualities of Judge Alito were confirmed by the remarkable testimony before the Judiciary Committee of several current and retired Federal judges, appointed by both Republican and Democratic Presidents, who worked closely with Judge Alito on the Federal bench.

In my view, Judge Alito's strong record and experience, coupled with his appearance before the Judiciary Committee, eliminate any question of the existence of ''extraordinary circumstances'' that would justify denying him an up-or-down vote.

Judge Alito is an outstanding judicial nominee who I am proud to support for confirmation. I believe he will serve on the U.S. Supreme Court with distinction, and I commend our President on making such a fine nomination.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. LIEBERMAN. Mr. President, pursuant to the understanding between the Senator from Virginia and the Senator from Massachusetts, I now ask unanimous consent that there be an extra 5 minutes added at the end of this hour for this side of the aisle.

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

Mr. LIEBERMAN. I thank the Chair.

Mr. President, I rise to discuss the nomination of Samuel Alito to be Associate Justice of the Supreme Court. This is the sixth opportunity I have had as a Senator to consider a President's nominee to the High Court. It is surely one of the most awesome and important responsibilities of Members of this body because of the uniquely powerful and autonomous role the Supreme Court has in our governmental system and because, once confirmed, Supreme Court Justices serve for life, with accountability only to the Constitution, as they read it.

Similar to most of my colleagues, I judge the nominees based on four factors: their intellect and ability, their experience, their character, and their judicial philosophy.

On the first three factors—intellect, experience, and character—I conclude that Judge Alito more than passes the test. But on the fourth factor, judicial philosophy, I am left with too many doubts to vote to confirm this nominee for a lifetime of service on the U.S. Supreme Court.

Let me now go over these four areas of consideration.

First, intellect and ability. From the meeting I had with Judge Alito, the legal quality of his opinions, over 15 years as a judge, and his testimony before the Judiciary Committee, I believe Judge Alito has shown that he is a person of considerable intellect and ability.

Second, experience. Judge Alito's curriculum vitae itself depicts his excellent and relevant experience as a law clerk, a Federal Government attorney, a U.S. attorney, and an appellate judge on the Third Circuit.

Third, his character. Judge Alito, I know, was questioned aggressively at the Judiciary Committee's confirmation hearings and elsewhere with regard to his character, but I thought he emerged with his integrity and honor intact. The ABA standing committee confirmed that judgment when it concluded that ''he is an individual of excellent integrity,'' and that was based on more than 300 interviews with professional colleagues.

Fourth is judicial philosophy, and here is where, for me, the problems with this nomination begin and, in some sense, ends. Judge Alito brings to this nomination process a more lengthy record of judicial opinions than any of the previous five nominees to the U.S. Supreme Court whom I have had the privilege to consider. In his 15 years on the Third Circuit Court, Judge Alito has written more than 350 opinions. Together, these opinions leave me with profound doubts about whether Judge Alito would protect and advance the special role the Constitution gives the Supreme Court as the single institution in our Government that our Founders freed forever from popular political passions so that it could protect the rights our founding documents gave to every American.

Personal freedom and equal opportunity are America's core ideals, and our courts have been and must be the great advancers and protectors of those ideals. To me, that work defines the vital mainstream of American jurisprudence.

Based on his personal statements during the 1980s when he was a Government attorney, and particularly on his 15 years of judicial opinions, I am left with profound concerns that Judge Alito would diminish the Supreme Court's role as the ultimate guarantor of individual liberty in our country.

This is not about a single issue but about an accumulation of his opinions that leads me to a preponderance of doubts. For example, in civil rights cases, Judge Alito has repeatedly established a very high bar, an unusually high bar for entrance to our courts for people who believe they have been denied equal opportunity and fair treatment based on race or gender.

In one case, Bray v. Marriott Hotels, the majority of his colleagues on the court said:

> Title VII of the Civil Rights Act would be eviscerated if our analysis were to halt where the dissent of Judge Alito suggests.

Judge Alito's narrow reading of the commerce clause, as exemplified by his dissent in the case of United States v. Rybar, casts a shadow on Federal legislation passed to protect the rights of individual Americans which has been and will be based on the commerce clause. When asked at his confirmation hearings about the question of personal privacy, Judge Alito accepted the 1965 decision of Griswold v. Connecticut as settled law. But when asked over and over, he refused to say the same about the 1973 decision in Roe v. Wade.

On that most divisive and difficult question of abortion, I personally believe that Roe achieved a just balance of rights and reflected a societal consensus that has continued and deepened in our country for more than three decades. I was left with serious concerns that Judge Alito would not uphold the basic tenets of Roe, and that is a very troubling conclusion.

Every time I have voted to confirm a nominee to the U.S. Supreme Court, as I have with Justices Souter, Breyer, Ginsburg, and Roberts—two appointed by Republican Presidents and two appointed by a Democratic President—I did so knowing, as we all do, that I was taking a risk because I could never know exactly how the particular Justice would rule on the many cases that would come before him or her in a lifetime on the bench. But I ultimately concluded, based on their records and their testimony, that those four Justices would more likely than not uphold the unique responsibility the Supreme Court has as the most important guardian of freedom, opportunity, and privacy for every single American.

Unfortunately, I have not been able to reach the same conclusion about Judge Alito, and so I will respectfully vote ''no'' on his nomination.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank the Senator from Connecticut for his excellent statement.

I spoke on this issue yesterday. I wish to include in the RECORD some letters that I have received from the representatives of the working community. I will include them in the RECORD. The first letter I am going to include in the RECORD is a letter I received from the AFL–CIO. Included in the comments are these words:

> As the enclosed memorandum explains more fully, Judge Alito's decisions and dissents show a disturbing tendency to take an extremely narrow and restrictive view of laws passed by Congress to protect workers' rights, resulting in workers being deprived of wage and hour, health and safety, anti-discrimination, pension, and other important protections. On a number of occasions, Judge Alito's colleagues on the Third Circuit have criticized his opinions for their excessively narrow view of worker protection and civil rights statutes. Judge Alito holds federal agencies to an unrealistically high standard when they seek to enforce worker protection laws, often reversing them on hypertechnical grounds and depriving workers of important protections as result.

It continues:

> Working families are struggling mightily against an assault on our hard-won gains in the legislative arena and at the bargaining table. Wages are being cut, pensions and health benefits are being drastically reduced or eliminated, and job security is vanishing. Now more than ever, workers need the protections offered to them under the laws passed by Congress to protect their pay, benefits, retirement security, and health. Working families need and deserve Supreme Court Justices who understand and respect the importance of hard-fought rights and protections, not Justices who take an unduly narrow view of the law, and of our rights. Judge Alito's judicial philosophy is one that appears at odds with workers' interests. Given the current composition of the Supreme Court, and the absence of even a single Justice with a worker advocacy background, we cannot afford to have the Court further skewed against working families' interests.
>
> In recent years, many cases have been decided in the Supreme Court by a one-vote margin. The Supreme Court, decided, by one-vote margins, two cases involving the question of whether certain groups of workers were protected under the National Labor Relations Act. Millions of state employees were deprived of their ability to seek relief in court under the Fair Labor Standards Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act because of decisions decided by a one-vote margin. The Court issued a decision restricting States in their ability to adopt their own workplace safety laws, again by a one-vote margin. By a one-vote margin, the Supreme Court excused employers from having to pay backpay when they are found to have discriminated against union supporters who happen to be undocumented workers. The importance of this nomination to the rights and protections of working families is clear.

There is an excellent letter I received from AFSME. It points out:

> As a judge on the 3rd Circuit Court of Appeals in Philadelphia, Lilts's extreme views can be seen in his rulings where he consistently limits Congress' authority to enact

laws that protect the rights of workers and individuals. . . .

Then it says:

In one such case, Alito denied a female police officer's sexual harassment claims despite overwhelming evidence that she had indeed been victimized.

Public employees also have not been spared under Judge Alito. He wrote an opinion in a Pennsylvania case where he stated that the Family and Medical Leave Act did not apply to state employees. Rightfully so, the Supreme Court ruled in disagreement with Alito, upholding the family care provision of the FMLA. Several courts since then, including the very conservative Fourth Circuit Court of Appeals, have concluded that state employees shall have access to the entire range of protections under the FMLA, thus rejecting Alito's earlier ruling.

Perhaps most disturbing about Judge Alito's judicial philosophy is his narrow reading of our civil rights laws, notably Title VII of the Civil Rights Act of 1964. . . .

It continues:

While Alito's 15 years as a Judge raises major concerns, the time he spent as Presidential appointee in the Reagan White House is equally disturbing. When Alito was a Justice Department lawyer in the 1980s he urged President Reagan to veto legislation that would have protected consumers from crooked car dealers. . . .

Alito wrote that protecting Americans is not the federal government's job. He said in his memo, ''After all, it is the states, and not the federal government, that are charged with protecting the health, safety and welfare of their citizens. This philosophy is extremely harmful to state employees who deserve to have federal worker protections apply to them as well.

That is a letter from Mr. Gerald W. McEntee.

There is a similar letter from the United Auto Workers.

I ask unanimous consent those letters be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. KENNEDY. Whoever is confirmed to succeed Justice Sandra Day O'Connor will have enormous power to affect Americans' daily lives. We have a constitutional duty to ensure Justice O'Connor's successor has demonstrated a core commitment to upholding the fundamental rights and freedoms on which our Nation was founded.

Our decision whether to confirm a Supreme Court nominee affects the rights and freedoms not only of our generation, but those of our children and grandchildren as well.

The Court's decisions affect whether employees' rights will be protected in the workplace. I have just referred to three letters that I have received. I have received many others that have been quite specific, pointing out the different areas where the judge has basically turned his back on the employees' rights and workers' rights.

They will affect the ability of Americans to be secure in their homes from unwarranted searches and seizures. They affect whether families will be able to obtain needed medical care under their health insurance policies. And they affect whether people will actually receive the retirement benefits they were promised. They affect whether people will be free from discrimination in their daily lives. They affect whether Americans' most private medical decisions will remain a family matter or will be subject to government interference. And they affect whether students will be given fair consideration when they apply to college. They affect whether persons with disabilities will have access to public facilities and programs. They affect whether we will have reasonable environmental laws that keep our air and water clean.

There they are. These are the issues which the Supreme Court has ruled on very recently. We wonder about the Supreme Court Justices, what judgments and decisions are they making that are so important to the average family. Why should an average family in America who is watching this debate think this nominee and his decisions are going to affect them? That is a reasonable question.

Here you are. Employees, if you are a worker, you may question whether employees' rights will be protected in the workplace. I have just outlined several examples where there have been Supreme Court Justices who have denied workers fair consideration.

The ability of Americans to be secure in their own homes from unwarranted searches and seizures, we went through the Groody case, Justice Alito permitting the strip-searching of a 10-year-old girl who was clearly not included in the warrant that was approved by the judge. He was criticized, not by those of us who have expressed reservations about the nominee, but criticized by a judge on the Third Circuit, talking about how Judge Alito's actions were out of order.

They affect whether families will be able to obtain medical care under their health insurance policies. Remember the debates we had on the Patients' Bill of Rights? We had legislation that passed here, passed the House. We came very close to getting legislation—doesn't each HMO have to provide the types of coverage they have committed themselves to or do they not? Does that violate ERISA or doesn't it violate ERISA? These are important judgments. But it comes down to whether individuals are going to get the health care coverage they thought they were going to get. That is going to be decided by the Supreme Court of the United States.

They affect whether people will actually receive the retirement benefits they were promised. The retirement pensions are in free fall in the United States of America at the present time; absolutely free fall. They say for retirement you need to have your savings—that is part of it—you need the Social Security and Medicare, and you need to have your retirement. Those are the three legs on the stool for a dignified retirement.

These are the issues involving pensions. We have now seen 700 pension funds collapse over the period of the last 4 years, and $8 billion that workers had put aside has effectively been lost. These issues will come up. What are the obligations of companies in order to pay back workers? Those issues eventually come before the Supreme Court—whole lifeline savings. Those issues come up before the Supreme Court.

Mr. President, I see my friend from West Virginia who had been scheduled during this time. I have had an opportunity to speak previously. There are some additional comments I would like to make, but certainly the Senate looks forward to the words of the Senator from West Virginia. I yield at this time.

EXHIBIT 1

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,

Washington, DC, December 14, 2005.

DEAR SENATOR: The AFL–CIO, a federation of 53 national and international unions representing over nine million working women and men, has reviewed Judge Samuel Alito's record on the U.S. Court of Appeals for the Third Circuit in cases of importance to working families. Based on this review, we are compelled to oppose his nomination to be an Associate Justice on the United States Supreme Court.

As the enclosed memorandum explains more fully, Judge Alito's decisions and dissents show a disturbing tendency to take an extremely narrow and restrictive view of laws passed by Congress to protect workers' rights, resulting in workers being deprived of wage and hour, health and safety, anti-discrimination, pension, and other important protections. On a number of occasions. Judge Alito's colleagues on the Third Circuit have criticized his opinions for their excessively narrow view of worker protection and civil rights statutes. Judge Alito holds federal agencies to an unrealistically high standard when they seek to enforce worker protection laws, often reversing them on hypertechnical grounds and depriving workers of important protections as a result.

We are also very concerned about Judge Alito's views on the scope of Congressional power, given some of his rulings in this area, and his views about voting rights, given his criticism of the Warren Court and its reapportionment decisions. It is critical that Senators explore these and other areas thoroughly at Judge Alito's upcoming confirmation hearings in order to understand his views and his judicial philosophy on these important issues.

Working families are struggling mightily against an assault on our hard-won gains in the legislative arena and at the bargaining table. Wages are being cut, pensions and health benefits are being drastically reduced or eliminated and job security is vanishing. Now more than ever, workers need the protections offered to them under the laws passed by Congress to protect their pay, benefits, retirement security, and health. Working families need and deserve Supreme Court justices who understand and respect the importance of our hard-fought rights and protections, not justices who take an unduly narrow view of the law, and of our rights. Judge Alito's judicial philosophy is one that appears to be at odds with workers' interests. Given the current composition of the Supreme Court, and the absence of even a single justice with a worker advocacy background, we cannot afford to have the Court

further skewed against working families' interests.

In recent years, many cases have been decided in the Supreme Court by a one-vote margin. The Supreme Court decided, by one-vote margins, two cases involving the question of whether certain groups of workers were protected under the National Labor Relations Act. Millions of state employees were deprived of their ability to seek relief in court under the Fair Labor Standards Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act because of decisions decided by a one-vote margin. The Court issued a decision restricting states in their ability to adopt their own workplace safety laws, again by a one-vote margin. By a one-vote margin, the Supreme Court excused employers from having to pay back pay when they are found to have discriminated against union supporters who happen to be undocumented workers. The importance of this nomination to the rights and protections of working families is clear.

The AFL–CIO urges you to oppose Judge Alito's nomination and to insist on a more moderate nominee with a record demonstrating greater respect for workers' rights.

Sincerely,

JOHN J. SWEENEY,
President.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW,
Washington, DC, December 19, 2005.

DEAR SENATOR: Next month the Senate is expected to consider the nomination of Judge Samuel Alito to be an Associate Justice on the U.S. Supreme Court. Based on our review of his past writings and judicial decisions, the UAW opposes his confirmation.

While serving on the Third Circuit Court of Appeals, Judge Alito's opinions have consistently reflected a narrow, constricted interpretation of statutes protecting worker rights. In particular, his opinions have excluded state employees from coverage under the Family and Medical Leave Act, denied overtime to newspaper reporters, vacated OSHA citations, absolved corporate officers from liability for unpaid wages, and exempted a company from having to notify workers about an impending plant closing. He even issued a solitary dissenting opinion that would have criminalized ''no docking'' rules that have been a common industrial practice.

In addition, Judge Alito's opinions in race and gender employment discrimination cases have reflected a restrictive interpretation of civil rights laws that would make it much more difficult for women and minorities to obtain remedies when they are the victims of discrimiation. We are especially troubled by Judge Alito's statement in a 1985 job application that he was ''particularly proud'' of his work in the Reagan Administration to restrict affirmative action and limit remedies for racial discrimination. We are also disturbed by his 1985 writings disagreeing with the concept of ''one man, one vote''.

The UAW believes that nominees to the Supreme Court must demonstrate that they hold views that are within the judicial mainstream, and are committed to supporting the rights of workers, minorities and women. Unfortunately, we believe that Judge Alito fails to meet this essential test. Accordingly, the UAW urges you to oppose his nomination to the Supreme Court.

Thank you for considering our views on this important issue.

Sincerely,

ALAN REUTHER,
Legislative Director.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL–CIO,
Washington, DC, December 19, 2005.

DEAR SENATOR: On behalf of the 1.7 million members of the American Federation of State, County and Municipal Employees (AFSCME), I am writing to announce our opposition to the nomination of Judge Samuel Alito to be an Associate Justice on the U.S. Supreme Court. We have reviewed his record and determined that his views are far too extreme and out of the mainstream of judicial philosophy. His presence on the Supreme Court therefore would further divide the country and disenfranchise even more average citizens and working Americans.

We believe that working people who are already seeing their rights and protections under attack would not fare well if Judge Alito was elevated to the Supreme Court. Judge Alito has authored a number of decisions and dissenting opinions contrary to the rights of employees and individuals. Of particular concern to our members is Judge Alito's established practice of ''closing the court-room door'' to victims of civil rights violations by substantially increasing the burden of proof placed on plaintiffs prior to their cases ever getting to a jury of his or her peers. In evaluating plaintiffs' discrimination claims, he has also repeatedly taken a high-handed approach in dismissing the merit and weight of their evidence and has been chastised by his colleagues on the Third Circuit for doing so.

As a judge on the 3rd Circuit Court of Appeals in Philadelphia, Alito's extreme views can be seen in his rulings where he consistently limits Congress' authority to enact laws that protect the rights of workers and individuals, including the Americans with Disabilities Act (ADA) and the National Labor Relations Act. And, although the majority of his fellow judges disagreed with him, Alito set a standard so high that victims of sex discrimination would find it virtually impossible to prove their case. In one such case, Alito denied a female police officer's sexual harassment claims despite overwhelming evidence that she had indeed been victimized.

Public employees also have not been spared under Judge Alito. He wrote an opinion in a Pennsylvania case where he stated that the Family and Medical Leave Act (FMLA) did not apply to state employees. Rightfully so, the Supreme Court ruled in disagreement with Alito, upholding the family care provision of the FMLA. Several courts since then, including the very conservative Fourth Circuit Court of Appeals, have concluded that state employees should have access to the entire range or protections under the FMLA, thus rejecting Alito's earlier ruling.

Perhaps most disturbing about Judge Alito's judicial philosophy is his narrow reading of our civil rights laws, notably Title VII of the Civil Right Act of 1964, which bars various forms of discrimination in employment. Even when plaintiffs in these cases come forward with substantial evidence of title VII violation, Judge Alito voted—often in dissent—to deny relief without even letting juries decide whether discrimination occurred. In addition, in reviewing a plaintiff's evidence, he has on several occasions improperly assumed the role of jury or trial judge by casting judgment on the weight and merits of the evidence and the credibility of a witness' testimony.

As U.S. citizens, we are concerned on several other fronts as well. Alito consistently ruled against victims of discrimination based on a disability. His philosophy would restrict Congress' power to enact disability rights laws and few if any such cases would survive under Judge Alito. Also, he ruled to significantly reduce the ability of citizens to bring suit against polluters under the Clean Air Act.

While Alito's 15 years as a Judge raises major concerns, the time he spent as a Presidential appointee in the Reagan White House is equally disturbing. When Alito was a Justice Department lawyer in the 1980s he urged President Reagan to veto legislation that would have protected consumers from crooked car dealers by making odometer fraud more difficult. Alito wrote that protecting Americans is not the federal government's job. He said in his memo, ''After all, it is the states, and not the federal government, that are charged with protecting the health, safety, and welfare of their citizens.'' This philosophy is extremely harmful to state employees who deserve to have federal worker protections apply to them as well.

Judge Alito clearly is a staunch advocate of the federalism movement which poses a tremendous threat to employees of state governments. State and local governments, like private sector companies and non-profit organizations, are also employers. And, as employers they should be required to adhere to the same laws and regulations that all other employers are subject to. Unfortunately, Judge Alito and the federalism movement seek to limit the power of the federal government to protect individuals who happen to be employees of state governments, in effect, making state employees second class citizens.

We strongly urge the Senate to insist that all of the relevant information about Judge Alito be released, particularly the Solicitor General and the Office of Legal Counsel memoranda. We believe that there are underlying reasons why the Administration continues to resist releasing this vital information.

Judge Alito's record is extremely troubling to AFSCME and the workers we represent. He is one of the most extreme federal judges in the whole country. If confirmed, Alito would tilt the court further to the right and place in jeopardy decades of progress protecting individual rights and freedoms.

For the forgoing reasons, AFSCME strongly urges the Senate to reject Judge Alito's nomination. President Bush should nominate an individual that does not pose such an enormous threat to the rights and freedoms of working men and women.

Sincerely,

GERALD W. MCENTEE,
International President.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I thank my colleague from Massachusetts, my colleague and my friend, Senator KENNEDY.

Mr. President, how much time do I have?

The PRESIDING OFFICER. The time of the minority is open until 5 minutes after 4 p.m. The Senator has 41 minutes.

Mr. BYRD. Mr. President, I take this opportunity to offer a few observations on the manner in which the Senate has conducted its inquiry into the qualifications of Judge Samuel A. Alito, Jr., to serve on the U.S. Supreme Court.

Regardless of any Senator's particular view of Judge Alito, I think we can all agree that there is room for improvement in the way in which the Senate and, indeed, the Nation have undertaken the examination of this

nominee. Let me be clear. I mean no criticism of the chairman of the Senate Judiciary Committee or any particular member of that committee.

I feel compelled to address this issue, not to point fingers, not to scold, not to assign blame, but only to address specific, sincere, heartfelt concerns that have been brought to my attention, by the people of West Virginia in particular. Many people, including foremost, as I say, the people of West Virginia, in no uncertain terms were, frankly, appalled by the Alito hearings. I don't want to say it, but I must. They were appalled.

In the reams of correspondence that I received during the Alito hearings, West Virginians—the people I represent—West Virginians who wrote to criticize the way in which the hearings were conducted used the same two words. People with no connection to one another, people of different faiths, different views, different opinions, independently and respectively, used the same two words to describe the hearings. They called them an ''outrage'' and a ''disgrace.''

These were not form letters, ginned up by special interest groups on either the right or the left. These were handwritten, contemplative, old-fashioned letters written on lined paper and personal stationery. They were the sort of letters that people write while watching television, in the comfort of their living rooms, or sitting at the kitchen table.

It is especially telling that many who objected to the way in which the Alito hearings were conducted do not support Judge Alito. In fact, it is sorely apparent that even many who opposed Judge Alito's nomination also opposed the seemingly ''made for TV'' antics that accompanied the hearings.

It is not just the Senate as an institution which is to blame. The virulence of some outside groups from both sides of the political spectrum added fuel to the fire. Multimillion-dollar advertising campaigns either to proclaim or to denigrate Judge Alito's fitness for the position raged across the airwaves.

A solemn constitutional responsibility is not helped when it takes on such a tone.

And then there were the media and the media's contribution to the deterioration of this very important constitutional process.

Was it necessary to subject Mrs. Alito to the harsh glare of the television klieg lights as she fled the hearing room in tears, fighting to maintain her dignity in response to others with precious little of their own? Have we finally come to the point where our Nation's assessment of its Supreme Court nominee turns more on a simple-minded sound bite or an exploitive snapshot than on the answers provided or withheld by the nominees?

Obviously, something is wrong with our judicial nomination process, and we in the Senate have the power to fix it.

The Framers of such a great document presumably had something better in mind when they vested the Senate with the authority to confirm Justices of the Supreme Court. In fact, we know they did. In 1789, Roger Sherman of Connecticut defended the role of the Senate in confirming Presidential appointments. He wrote: It appears to me that the Senate is the most important branch in the government . . . The Executive magistrate is to execute the laws. The Senate, being a branch of the legislature, will naturally incline to have them duly executed and, therefore, will advise to such appointments as will best attain the end.

Alexander Hamilton also had high hopes for the Senate's ability to render its advice and consent function. He proclaimed: It is not easy to conceive a plan better calculated than this to promote a judicious choice of men for filling the offices of the Union.

Exactly what did the Framers mean when they gave the Senate the power to ''consent'' to the confirmation of the judicial nominees?

Historically, a majority of the Framers anticipated that the Senate's confirmation or rejection of a judicial nominee would be based on the fitness of the nominee, not on partisan politics or extraneous matters.

Based on these assumptions, the Framers presumably did not expect the Senate to spend its allotted time on a nominee staging partisan warfare instead of examining his or her qualifications.

Yet the Framers probably also would never have expected that a Senator of a nominee's own party would refuse to ask the candidate meaningful questions. They certainly did not intend for Senators of the nominee's own party to sit silently in quiet adulation, refusing to seek the truth, while smiling indulgently; thus, accomplishing nothing.

The Framers expected the Senate to be a serious check—a serious check—on the power of the President. The Framers clearly thought that the Senate's confirmation process ought to be fair, ought to be impartial, ought to be thorough, and ought to exhibit appropriate respect for solemn duty and the dignity of both the process and the nominee.

I regret that we have come to a place in our history when both political parties—both political parties—exhibit such a ''take no prisoners'' attitude. All sides seek to use the debate over a Supreme Court nominee to air their particular wish list for or against abortion, euthanasia, Executive authority, freedom of the press, freedom of speech, wiretapping, the death penalty, workers' rights, gun control, corporate greed, and dozens of other subjects. All of these issues should be debated, but the battle lines should not be drawn on the judiciary. They should be debated by the people's representatives in the legislative branch.

However, too many Americans apparently believe that if they cannot get Congress to address an issue, then they must take it to the Court. As the saying goes, ''If you can't change the law, change the judge.''

This kind of thinking represents a gross misinterpretation of the separation of powers. It is the role of the Congress—the role of the legislative branch—to make and change the laws. Supreme Court Justices exist to interpret laws and be sure that they square with the Constitution and with settled law.

A better understanding of the Court's role would do much to diminish the ''hype'' that now accompanies the judicial nomination process. The role of the Senate in the Alito debate is not to push legislation or to score points for those who either support or oppose specific legislative proposals. The purpose of the current debate is to evaluate the fitness of Judge Samuel Alito to sit on the highest Court of our land, which includes his temperament, his intellectual ability, and his record.

In a perfect world, this heavy constitutional responsibility of the Senate would have little to do with party affiliation.

Unfortunately, during the first administration of George Washington, as far back as 1795, a bruising confirmation battle over the nomination of John Rutledge to be the Chief Justice of the Supreme Court established that the same Senators would consider not merely the qualifications but also the political views of a nominee in deciding whether to support or reject his nomination.

I am a Senator who takes this Constitution seriously. I refuse simply to toe the party line when it comes to Supreme Court Justices. And I will make up my own mind after careful contemplation. The President of the United States said partly in jest that he wanted to call me to lobby me on the nomination. I said: Mr. President, I don't lobby very easily. I take my Constitutional duties seriously. I will listen to what anybody has to say, and then, Mr. President, I will make up my own mind.

I am a registered Democrat. Everybody knows that. But when it comes to judges, I hale from a conservative State. Similar to a majority of my constituents, I prefer conservative judges. I have been saying that for years and years. That is, judges who do not try to make the law.

I was once approached by President Richard Nixon to inquire about my interest in being a U.S. Supreme Court Justice. I was proud to be considered. Whether I would have been nominated, I have no way of knowing. But as I said to my wife: I don't think I would like that position. I would not like that kind of cloistered life. I like the rough-and-tumble of the legislative branch. She said: Then you had better let the President know that.

I said the same thing to Senator John Pastore, and he responded in the same way. He said: You had better let the President know that.

I declined so that I might continue to serve the people of West Virginia, regardless of what the President may have in his heart and in his mind. This is not to say that I would vote for any judge just because he is a conservative. No. No, sir. If I think a conservative judge is unqualified, I will not vote for him, nor would any other Senator vote for a nominee in that situation.

I have voted against judges on both sides of the political spectrum, who leaned too heavily on their political views rather than on existing law, precedents and on the Constitution and who seemed to have a political agenda.

Much has been made of the fact that Judge Alito has expressed support of the concept of the ''unitary executive.'' Many are afraid his support for this concept means that he favors a broad expansion of Presidential power. And I shared some of that concern. Judge Alito, however, has stated repeatedly that his support for the concept of the unitary executive does not refer to broadening the scope of the power of the President.

Instead, Judge Alito says that this theory refers to the way in which the President utilizes his existing power to faithfully execute the law as it applies to administrative agencies within the executive branch. In describing the unitary executive in his speech before the Federalist Society, Judge Alito stated article II, section 3 of the Constitution provides that the President ''shall take care that the laws be faithfully executed.'' ''Thus,'' he said, ''the President has the power and the duty to supervise the way in which the subordinate executive branch officials exercise the President's power of carrying Federal law into execution.''

Before the Judiciary Committee, Judge Alito was asked point blank whether he thought the concept of the unitary executive refers to expanding the scope of Presidential power, or instead to the President's control over the executive branch. As I understood it, Judge Alito confirmed he was speaking of the latter.

Judge Alito was also asked whether he would support an expansion of the scope of Presidential power. Specifically, he was asked if he thought the President should have more power than he is expressly given under the Constitution and by law. Judge Alito stated several times that he would not support that point of view, and he noted, again, that the ''scope'' of the power of the President has nothing to do with the unitary executive.

I met with Judge Samuel Alito. I spent close to 2 hours with him. I asked him what he thought about the establishment clause and the free exercise clause and the power of the purse and the congressional power over the purse. I told him that I believed the Supreme Court has gone too far in prohibiting the free exercise of religion in this country. He listened respectfully and said that he understood. He did not pledge to overrule precedent, but he made it clear that he understood and respected my viewpoint.

I also advised him of my view that the executive branch is continually and improperly seeking to grab power, more power and more power, and that the separation of powers requires the judiciary to be ever vigilant in stopping the abuse of power by the President and in protecting the powers of the other two branches.

I urged Judge Alito, as I urged Judge Roberts before him, to recognize the importance of maintaining the equality of the three branches of our Government, protected by our Constitution. I stressed that he ought to be a Justice who will not forget the people's branch, the legislative branch, the first branch, the primary branch mentioned in the Constitution under article I; the executive is mentioned later on in article II.

I requested he not rule in a way that would expand the authority of an already expansionist executive. I reiterated that the Framers did not place the greatest power in the executive but, instead, the Framers put the greatest power in the people—the people, like you and me. The first three words in the preamble of the Constitution are, we all know, ''We, the People.'' The Framers ensured that the people, through us, their elected representatives in the Congress, would have the greatest power in our Government. In response, Judge Alito told me he respected the separation of powers and would not rule in support of a power-hungry President. I liked that answer. I liked Judge Alito. He struck me as a man of his word, and I intend to vote for him.

I believe strongly that the Senate has a responsibility to provide its advice and consent with respect to a particular nominee based on the merits or demerits of that nominee, not on focus groups, celebrity endorsements, binders filled with innuendo and slanted analysis or White House photo opportunities.

In truth, there is absolutely no way of knowing what any nominee for our Nation's highest Court will do after that nominee is confirmed. One could cite many examples of Justices who surprised the President who nominated them, as well as the Members of the Senate who supported or opposed their confirmation. Once a man or woman has achieved the high honor of a lifetime appointment to our Nation's highest Court, a transformation may occur. The awesome responsibility of protecting our Constitution and preserving the checks and balances for succeeding generations of Americans must elevate and sharpen one's judicial temperament in profound ways. The duty to preserve the freedom of our citizens as enshrined in our magnificent Bill of Rights must ennoble even an already noble mind and character.

In the end, the heavy duty borne by Members of the Senate to evaluate and reject or approve the President's nominees for the High Court should come down to each Senator's personal judgment of the man or woman before us, augmented, of course, by such judicial records and writings as may exist. I may not know exactly what kind of Justice Samuel Alito will be. No one does. No one does. My considered judgment, from his record, from his answers to my own questions, from his obvious intelligence, and from his obvious sincerity, leads me to believe him to be an honorable man, a man who loves his country, loves the Constitution, and a man who will give of his best. Can we really ask for more?

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Mr. President, I rise today to explain why I will vote against Judge Samuel Alito's nomination for Associate Justice to the U.S. Supreme Court.

After reviewing his record, I believe Judge Alito will move the Supreme Court too far to the conservative side of American jurisprudence. I believe Judge Alito's judicial philosophy will also dangerously increase Executive power, injuring the checks and balances built into our Constitution that protect all of us. Judge Alito's confirmation may roll back important civil rights protections, protections which were achieved in our country through the sacrifices of many and are crucial to the future of the United States.

I hope, if Judge Alito is confirmed, history will prove my concerns wrong. But given his record, including his extensive written record, I cannot in good conscience support him.

I thank the Senate Judiciary Committee. It held fair, serious, and dignified hearings. Chairman SPECTER, Ranking Member LEAHY, the members of the committee, and the majority and minority staff have again earned our gratitude.

Judge Alito's confirmation vote is particularly important for our country because this seat on our Supreme Court has been held by a champion of justice and mainstream America for a quarter century: Justice Sandra Day O'Connor. Our Nation owes Justice O'Connor a great debt of gratitude. Justice O'Connor served as an exemplary role model for all of us, including women succeeding at the very highest level of our National Government.

Unfortunately, this nomination signals an undesirable retreat from diversity on the U.S. Supreme Court. Women make up more than half of the people of our country. Yet women have been represented in the Supreme Court in our entire history for more than two centuries by only two female Justices—Justice O'Connor and Justice Ginsburg. Now Justice Ginsburg is left to be the only role model on the Court for the hopes and aspirations of women and for all of us in America who believe that all men and all women are truly created equal.

I regret that result, especially after it was the radical right of America that derailed the nomination of Harriet Miers. We all know there are thousands of highly qualified women lawyers and judges across America, and they could have provided exceptional service to the United States on the Supreme Court. Regardless of the merits or demerits of Judge Alito, I am saddened, at the daybreak of the 21st century, that the United States has retreated from a cause that rightfully embraces the inevitability of the equality of women in our society.

Beyond the principle of gender diversity, Justice O'Connor consistently defined the center of the Supreme Court on many issues. She used her wisdom and her judgment to advance reasonable, commonsense, and mainstream legal doctrines that affect the lives of all Americans. That is why the choice of the replacement for Justice O'Connor is so important for our collective future.

The confirmation of a Supreme Court Justice is a solemn task. It is among the most important constitutional duties of the Senate. I have evaluated Judge Alito's qualifications using the same criteria I used to evaluate Chief Justice John Roberts for whom I voted. I have reviewed Judge Alito's record for evidence of his fairness, impartiality, and his proven record of upholding the law. However, I have decided that my concerns require that I vote against him.

My concerns with Judge Alito start with the 1985 memorandum he included with his job application to the White House. Judge Alito was then 35 years old. To me, this document is a very powerful document. It is evidence of how Judge Alito the man views the law and the Supreme Court. The document is very carefully written. It is packed full of Judge Alito's political and jurisprudential ideas which he has adhered to over the years. In that memorandum, Judge Alito declared he strongly disagreed with the opinions of the Warren Court. Those opinions are now and then widely accepted. They encompass important constitutional protections such as opinions on reapportionment in Baker v. Carr, the case that established the principle of one person, one vote. They concern well-established rules about the relationship between church and state. I find Judge Alito's views to be outside the mainstream of legal thought in 1985.

Since that time, based upon his decisions as an appellate judge and in his other writings, Judge Alito has ruled consistently with the legal philosophy he described in 1985. I believe that legal philosophy is wrong for our Nation. Specifically, I believe Judge Alito's legal philosophy about the structure of our government under our Constitution will harm our country if ultimately adopted by the Supreme Court.

The Framers of our Constitution were geniuses. They created a legal structure for our country that has endured and prospered for more than two centuries. The Framers were not successful because they were abstract thinkers; they were successful because they were practical thinkers, practical Americans. The Framers knew human nature. Their view of human nature focused on the common frailties of people placed in positions of great power, human desires to gather more power, human tendencies to credit one particular view of the world above all others, and a very human unwillingness to understand the perspectives of others.

Out of their genius, the Framers created a system of checks and balances. The Framers made rules which require that the power must be shared. They created a system with three coequal branches. They then distributed the powers of Government among and within the three branches. They created a system with explicit and implicit limits for the power of each branch. They created a system where the people who govern the United States are in constant tension with and against each other, always limiting and checking excesses that are all too human.

Judge Alito's judicial philosophy will diminish our system of checks and balances. He will expand the powers of the executive branch to an extent that is dangerous to us all. I believe Judge Alito would grant the Executive power to overwhelm the congressional and judicial branches.

Let me cite a few examples from his record.

First, I am troubled by Judge Alito's 1984 brief in the Mitchell case in which he asserted absolute immunity for high Government officials accused of illegal wiretapping.

I am troubled by his support in 1986 for the idea that Presidential signing statements—a President's remarks accompanying the signing of a bill—can change the intent of Congress, which debated and passed the bill into law. A President executes the law; a President does not rewrite or alter the law.

I am troubled by Judge Alito's firm belief in a unitary executive—in an unwillingness to acknowledge checks and balances that exist within the executive branch itself.

I am troubled by Judge Alito's pattern of great deference to the executive branch. Judge Alito's judicial philosophy in this area is particularly striking against the backdrop of current events. The current administration has adopted a widespread, concerted legal strategy to increase Executive power under our Constitution. It is wrongly pushing beyond the well-established edges of Executive power in many cases, based on a carefully calculated position that the current concentration of political power allows the executive branch to transcend the rule of law. This is not a ''strict construction'' of our Constitution; it is the opposite. It is an activist legal strategy to expand beyond reason our constitutional law that has served our country very well for more than 200 years.

Let me be clear. My concerns are not based exclusively on my view of the current President or my ideas about how he would or would not wield dominant Executive power. We are talking about changes in the Court that could affect our Government for decades, as Presidents of both parties take office and govern.

Dominant Executive power is not a ''safe bet'' for anyone, regardless of one's views of the current President. When considering a potential Supreme Court Justice, we must look beyond the politics of our time and we must protect the basic structure, the system of checks and balances among coequal branches. Administrations of varied ideology and vision must recognize that system of checks and balances.

I briefly want to turn to civil rights.

When I rose on this floor on September 27 of last year to speak on behalf of Chief Justice Roberts, I spoke of the ''age of diversity'' in this country. I spoke of this country's long history of slavery and our lengthy struggles—including our own Civil War—to put behind us the unequal treatment of our citizens.

I talked about Brown v. Board of Education and the central role our Supreme Court played to guide our country on to the path of equality and equal treatment for all. I spoke of the growing diversity of people in our country, and of the need to foster all the powerful strengths our diversity brings to our Nation—a richness of cultures and spirit, a wealth of ideas, and a widely varied community bound together by the common values of truth, honesty, and fair dealing among ourselves.

My life experiences and my years of public service convince me that recognizing and encouraging the strengths of diversity is the true constitutional path for our country. I also believe in the very practical wisdom of this approach. In fact, I believe it is the only way our country will thrive and prosper over the long run. I will vote against Judge Alito because I am convinced he is unlikely to support these principles of diversity.

Here is only a small part of the evidence that Judge Alito will lead our Nation in the wrong direction on issues of equal opportunity and diversity:

In Riley v. Taylor, Judge Alito was overturned by the entire Third Circuit when he, alone, concluded it was proper to exclude all Black jurors from sitting in judgment of a Black man.

In Sheridan v. E.I. DuPont de Nemours, Judge Alito registered the lone dissent among 13 judges, voting to prevent a woman who had presented evidence of employment gender discrimination from going to trial.

In PIRG of New Jersey, Judge Alito again denied access to the courts for a group of environmental plaintiffs who had won below.

In Doe v. Groody, Judge Alito would have upheld the strip search of a 10-

year-old girl, denying her access to relief in the courts.

And in Chittester, Judge Alito would have precluded State employees from seeking damages in court under the Federal Medical Leave Act.

Analyses discussed during the Judiciary Committee hearing show Judge Alito almost never ruled for African Americans in employment discrimination cases. Analyses also show Judge Alito rarely sided with individuals in their cases against large and powerful institutions and corporate interests.

I believe Judge Alito will continue to rule that way on the U.S. Supreme Court. I think that is wrong because it will usher in an era of insensitivity to the weakest and the poorest among us. I hope and I pray I am wrong.

In conclusion, I believe Judge Alito will move the Supreme Court too far to the conservative side of American legal jurisprudence. Judge Alito's judicial philosophy will dangerously increase Executive power, injuring the checks and balances built into our Constitution to protect us all.

And Judge Alito's confirmation will roll back important civil rights protections—protections that were achieved in our country through the sacrifices of many and which are critical to our Nation's future.

I, therefore, will vote against this nomination.

Mr. President, I ask unanimous consent that two letters be printed in the RECORD concerning Judge Alito. One is a letter from the League of United Latin American Citizens, and the other is a letter from the Colorado Hispanic Bar Association, in which they raise their opposition to the confirmation of Judge Alito.

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

LEAGUE OF UNITED
LATIN AMERICAN CITIZENS,
Washington, DC, January 13, 2006.

Re Nomination of Samuel A. Alito to the United States Supreme Court

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary,
Dirksen Senate Office Building, Washington, DC.

Hon. PATRICK LEAHY,
Ranking Member, Committee on the Judiciary,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATORS: We write to you as representatives of the millions of American members of the immigrant, Latino, and faith communities who are extraordinarily concerned about the nomination of Judge Samuel Alito to the Supreme Court. We believe that all Americans should be able to count on the Supreme Court to uphold their rights, opportunities, and legal protections, and we are worried that Judge Alito's record demonstrates that millions of Americans would not be able to count on him or the Court if he were confirmed.

While we have many concerns about Judge Alito's record, we are especially troubled by recent reports that Judge Alito, during his time in the Reagan administration, contended that undocumented immigrants and nonresident aliens from other countries have limited or ''no due process rights'' under the Constitution. Judge Alito advocated this view in a memo he wrote in 1986 regarding FBI activities. In a Nov. 29 Washington Post article that focused on this 1986 document, even the very conservative constitutional analyst Bruce Fein, who served with Judge Alito in the Reagan administration, seemed surprised by how extreme Judge Alito's position was. ''He seems to be saying that there is no constitutional constraints [sic] placed on U.S. officials in their treatment of nonresident aliens or illegal aliens,'' Fein told the Post. ''Could you shoot them? Could you torture them? . . . It's a very aggressive reading of cases that addressed much narrower issues.''

This is part of a deeply disturbing pattern of rulings and memos from Judge Alito's record indicating that he gives great deference to the government's police powers and shows little concern for protecting the rights of individuals. He has tried to make it harder for people who believe they have faced discrimination on the job to even have their case heard in court. He has seen no problem in some cases with racial discrimination on juries—or with keeping Spanish speakers off juries in a case where some evidence was in Spanish. He has also tried to undermine the Family and Medical Leave Act, which allows people to keep their jobs and take care of family members in need.

Three times, President Bush has passed up the opportunity to nominate a Latino to the Supreme Court. At the very least, we had hoped he would avoid nominating someone hostile to the basic interests of our communities, but it appears Judge Alito may be such a nominee. That Judge Alito has actually expressed views so extreme that they would deprive many immigrants of basic human rights is extremely troublesome. Such views are legally wrong, and they run counter to our basic moral values.

Our rights are too important to entrust to someone who has seemingly indicated he thinks they don't exist. We urge you to hold Judge Alito responsible for his views, and to take our strong concerns into account when you vote on whether to confirm him to the Supreme Court.

Sincerely,
Center for New Community.
Hispanic Association of Colleges and Universities.
Hispanic Federation.
The PRLDEF Institute for Puerto Rican Policy.
Latino Caucus in Official Relations with the American Public Health Association.
Labor Council for Latin American Advancement.
League of United Latin American Citizens.
National Farm Workers Ministries.
National Hispanic Environmental Council.
National Latina Institute for Reproductive Health.
National Latina-o Law Students Association.
National Network for Immigrant and Refugee Rights.
National Day Laborers Organizing Network.
SisterSong Women of Color.
Reproductive Health Collective.
United Farm Workers of America.

CHBA, COLORADO HISPANIC BAR ASSOCIATION,
January 10, 2006.

Senator KEN SALAZAR,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR SALAZAR: The Colorado Hispanic Bar Association (CHBA), expresses its opposition to the confirmation of Samuel Alito as Associate Justice of the United States Supreme Court. After review of his opinions written during his tenure on the United States Court of Appeals for the Third Circuit, the CHBA is concerned that Judge Alito has not displayed sufficient respect for two fundamental legal principles: (1) the role of the jury to resolve disputed questions of fact; and (2) the restraints that stare decisis imposes upon a judge's decision-making. Both of these principles recognize the important—but limited—role that an individual judge plays in our justice system. Judge Alito's resistance to these tenets is troubling and counsels against his confirmation to the highest court in the land. Although a detailed discussion of Judge Alito's writings is beyond, thee scope of this message, the CHBA offers a few examples to illustrate its concerns.

In a 1996 case brought under Title VII of the Civil Rights Act of 1964, an employee alleged that her employer had discriminated against her on the basis of sex. *Sheridan* v. *E.I. DuPont de Nemours & Co.*, 100 F.3d 1061 (3rd Cir. 1996). At issue was the minimum evidentiary showing the plaintiff must make in order to permit the jury to decide her case. All of the reviewing judges agreed that the plaintiff had presented both a prima facie case of illegal discrimination and enough evidence to permit the jury to disbelieve the employer's proffered nondiscriminatory reason (for the adverse employment action) as merely a pretext. In an en banc proceeding, the Third Circuit held, by an 11-to-1 vote, that the plaintiff presented sufficient evidence to permit the jury's verdict in her favor to stand. The court emphasized that ''determining whether the inference of discrimination is warranted must remain within the province of the jury . . . not the court.'' Id. at 1071–72. Alone among the 12 judges, Judge Alito dissented and expressed an extreme view of the plaintiff's evidentiary burden, requiring something akin to the largely discredited ''pretext-plus'' requirement. Id. at 1070, 1078–88. Rather than defer to the jury's role as factfinder, Judge Alito would have thrown out the jury's verdict and granted judgment as a matter of law to the employer.

In another Title VII case, Judge Alito, again in dissent, showed similar disregard for the jury's role, voting to keep the case from the jury. *Bray* v. *Marriott Hotels*, 110 F.3d 986 (3rd Cir. 1997). Referring to Judge Alito's analysis of the evidence, the majority of the court explained that a ''factfinder may well agree with that interpretation, but that is not for us to decide.'' Id. at 992. His fellow judges also found that ''Title VII would be eviscerated'' under Judge Alito's analysis of the law. Id. at 993.

Moreover, Judge Alito has displayed a tendency to disregard stare decisis (adherence to the rule announced in prior cases). For example, in a death penalty case, the en banc Third Circuit granted the defendant a writ of habeas corpus because the prosecution had violated the Equal Protection Clause by striking black jurors on account of their race. *Riley* v. *Taylor*, 277 F.3d 261 (3rd Cir. 2001). The court noted that its analysis was guided by several prior opinions. See id. at 290. Judge Alito dissented again. According to his colleagues, Judge Alito, rather than following precedent, ''accord[ed] little weight to these authorities.'' Id. The court also took issue with Judge Alito's attempt to analogize the statistical evidence of the use of peremptory challenges to strike black jurors to the percent of left-handed presidents. Id. at 292. The Third Circuit found that Judge Alito had ''overlooked the obvious fact that there is no provision in the Constitution that protects persons from discrimination based on whether they are right-handed or left-handed.'' Id. Further, his fellow judges found that Judge Alito had

''minimize[d] the history of discrimination against prospective black jurors and black defendants which was the raison d'etre of the [U.S. Supreme Court decision barring the use of peremptory challenges on the basis of race].'' Id.

These are but a few examples of Judge Alito's seeming reluctance to recognize the limits of stare decisis and his willingness to invade the jury's province. Judge Alito's opinions reveal a consistent and discomforting inclination to arrogate undue authority to individual judges such as himself. Judge Alito' s activist streak stands in sharp contrast to the cautious pragmatism of Justice Sandra Day O'Connor, whom he would replace on the Court.

The CHBA is particularly troubled by the addition of Judge Alito's unrestrained view of judicial authority to a Supreme Court on which Hispanics are not represented. Given that the Hispanic community has no direct voice on the Court, Hispanics should be very concerned if the Court were to embark on an era in which it feels free to upset settled law and to assume new powers within our justice system. Hispanics expect this institution to operate within the well-recognized limits on its authority. Accordingly, unless and until Judge Alito sufficiently addresses the concerns outlined herein, the CHBA opposes his elevation to the United States Supreme Court.

Thank you for your kind consideration of our message as you perform the Senate's constitutional duty to evaluate carefully the nominees to the Court.

Sincerely,

VICTORIA LOVATO,
President.

Mr. FEINGOLD. Mr. President, making a decision on a Supreme Court nomination is truly among the most important responsibilities of the Senate. I have given the nominations the President has sent to us in the past 6 months serious and careful consideration.

The scrutiny to be applied to a President's nominee to the Supreme Court is the highest of any nomination. I have voted for executive branch appointees, and even for court of appeals nominees, whom I would not necessarily vote to put on the Supreme Court.

The Supreme Court, alone among our courts, has the power to revisit and reverse its precedents, and so I believe that anyone who sits on that Court must not have a preset agenda to reverse precedents with which he or she disagrees and must recognize and appreciate the awesome power and responsibility of the Court to do justice when other branches of Government infringe on or ignore the freedoms and rights of all citizens.

This is not a new standard. It is the same standard I applied to the nomination of Chief Justice Roberts. In that case, after careful consideration, I decided to vote in favor of the nomination. In the case of Judge Samuel Alito, after the same careful consideration, I must vote no.

Judge Alito has an impressive background and a very capable legal mind, but I have grave concerns about how he would rule on cases involving the application of the Bill of Rights in a time of war. Some of the most important cases that the Supreme Court will consider in the coming years will involve the Government's conduct of the fight against terrorism. It is critical that we have a strong and independent Supreme Court to evaluate these issues and to safeguard the rights and freedoms of Americans in the face of enormous pressures.

Confronted with an executive branch that has jealously claimed every possible authority that it can, and then some, the Supreme Court must continue to assert its constitutional role as a critical check on Executive power. Just how ''critical'' that check is has been made clear over the past few weeks, as Americans have learned that the President thinks his Executive power permits him to violate explicit criminal statutes by spying on Americans without a court order.

With the executive and the legislature at loggerheads, we may well need the Supreme Court to have the final word in this matter. In times of constitutional crisis, the Supreme Court can tell the executive it has gone too far, and require it to obey the law. Yet Judge Alito's record and testimony strongly suggest that he would do what he has done for much of his 15 years on the bench: defer to the executive branch in case after case at the expense of individual rights.

Although he has not decided cases dealing with the Bill of Rights in wartime, he has a very long record on the bench of ruling in favor of the government and against individuals in a variety of contexts. Indeed, this is an important distinction between Judge Alito and Chief Justice Roberts. Our new Chief Justice had a very limited judicial record before his nomination. Judge Alito has an extensive record. There is no better evidence of what kind of Justice he will be on the Supreme Court than his record as a court of appeals judge. He told us that himself.

A whole series of analyses by law professors and news organizations has shown that Judge Alito is very deferential toward the government, and one detailed analysis by the Washington Post concluded that he is more deferential than his Third Circuit colleagues and even than Republican-appointed appeals judges nationwide. This vividly demonstrates the concern I have about this nomination. Judge Alito is not simply a conservative judge appointed by a conservative President. His record is that of a jurist with a clear inclination to rule in favor of the government and against individual rights.

In particular, Judge Alito's record in fourth amendment cases shows a recurring pattern. In almost every fourth amendment case in which Judge Alito wrote an opinion, he either found no constitutional violation or argued that the violation should not prevent the illegally obtained evidence from being used. In more than a dozen dissents in criminal or fourth amendment cases, not once did Judge Alito argue for greater protection of individual rights than the majority.

In one case that he was asked about on several occasions at his hearing, Judge Alito, in dissent, argued that the strip search of a 10-year-old girl and her mother passed constitutional muster, even though they were not suspected of any crime or specifically mentioned in the search warrant. Judge Alito's answers to questions at the hearing about this case only reinforced concerns identified by outside scholars that he seems to ignore the serious interests of privacy and personal dignity protected by the fourth amendment and instead relies on technical readings of warrants so that he can authorize the government action.

Cases challenging government power comprise nearly half of the current Supreme Court's docket. A Supreme Court Justice should protect individual freedoms against government intrusion where justified, and, specifically, should appreciate that the fourth amendment serves to limit government power. As Yale Law School Professor Ronald Sullivan testified:

> In the United States, perhaps no right is more sacred—more worthy of vigilant protection—than the right of each and every individual to be free from government interference without the ''unquestionable'' authority of the law. Judge Alito . . . shows an inadequate consideration for the important values that underwrite these norms of individual liberty—the very norms upon which this constitutional democracy relies for its sustenance. . . . [T]his Senate's decision on whether to consent to Judge Alito's nomination will profoundly impact how liberty is realized in the United States.

At the hearing, I and many other Senators repeatedly asked Judge Alito whether the President can violate a clear statutory prohibition, such as the Foreign Intelligence Surveillance Act and the ban on torture. He never answered the question. He returned again and again to a formulaic response that told us nothing at all: he said that the President must follow the Constitution and must follow the laws that are consistent with the Constitution. Any first-year law student could tell you that. That kind of stock phrase, which Judge Alito repeated over and over, tells us absolutely nothing about his view of whether the President can, consistent with the Constitution, violate a criminal law.

Judge Alito did point to Justice Jackson's three-part analysis in Youngstown. That is an appropriate framework, but merely citing Youngstown doesn't tell you anything about how he would apply that framework. Even when presented with the alarming hypothetical of whether a President can authorize a murder in the United States, Judge Alito would say no more.

These practiced and opaque responses gave me no reassurance about Judge Alito's views on these issues. What troubled me even more was that he repeatedly, and in some cases gratuitously, raised issues of justiciability

and the political question doctrine—that is, he seemed to question whether the courts can even weigh in on these serious legal battles between the legislature and the executive. Although he said he thought the courts could address questions involving individual rights, Judge Alito's instinct in discussing these historic issues was to focus on whether the courts even had a role to play. It wasn't to talk about the gravity of the issues at stake for our system of government, but to question whether he as a judge could even participate in the resolution of such critical constitutional conflicts.

I found that very disturbing, and it has played a significant role in my decision to vote against him. Judge Alito's record and his testimony have led me to conclude that his impulse to defer to the executive branch would make him a dangerous addition to the Supreme Court at a time when cases involving executive overreaching in the name of fighting terrorism are likely to be such an important part of the Court's work.

I am also concerned about Judge Alito's record and testimony on cases involving the death penalty. The Supreme Court plays a crucial role in death penalty cases. Judge Alito participated in five death penalty cases that resulted in split panels, and in every single one of those he voted against the death row inmate. A Washington Post analysis found that he ruled against defendants and for the government in death penalty cases significantly more often than other judges. And his testimony gave me no reason to believe that he will approach these cases any differently as a Supreme Court Justice.

To be blunt, I found Judge Alito's answers to questions about the death penalty to be chilling. He focused almost entirely on procedures and deference to state courts, and didn't appear to recognize the extremely weighty constitutional and legal rights involved in any case where a person's life is at stake.

I was particularly troubled by his refusal to say that an individual who went through a procedurally perfect trial, but was later proven innocent, had a constitutional right not to be executed. The Constitution states that no one in this country will be deprived of life without due process of law. It is hard to even imagine how any process that would allow the execution of someone who is known to be innocent could satisfy that requirement of our Bill of Rights. I pressed Judge Alito on this topic but rather than answering the question directly or acknowledging how horrific the idea of executing an innocent person is, or even pointing to the House v. Bell case currently pending in the Supreme Court on a related issue, Judge Alito mechanically laid out the procedures a person would have to follow in State and Federal court to raise an innocence claim, and the procedural barriers the person would have to surmount.

Judge Alito's record and response suggest that he analyzes death penalty appeals as a series of procedural hurdles that inmates must overcome, rather than as a critical backstop to prevent grave miscarriages of justice. The Supreme Court plays a very unique role in death penalty cases, and Judge Alito left me with no assurance that he would be able to review these cases without a weight on the scale in favor of the government.

One important question that I had about Judge Alito was his view on the role of precedent and stare decisis in our legal system. At his hearing, while restating the doctrine of stare decisis, Judge Alito repeatedly qualified his answers with the comment that stare decisis is not an ''inexorable command.'' While this is most certainly true, his insistence on qualifying his answers with this formulation was troubling. Combined with a judicial record in which fellow judges have criticized his application of precedent in several cases, Judge Alito's record and testimony do not give me the same comfort I had with Chief Justice Roberts that he has the respect for and deference to precedent that I would like to see in a Supreme Court Justice.

With respect to reproductive rights, Judge Alito said that he would look at any case with an ''open mind.'' That promise, however, is not reassuring given his prior denunciations of Roe, his legal work to undermine Roe, and his failure to disavow the strong legal views he had expressed in the 1980s when given the opportunity at his hearing. In his 1985 Justice Department job application, Judge Alito wrote that he believed that the Constitution does not protect a right to abortion, and, as an Assistant to the Solicitor General, he wrote a memo advocating a strategy for the Reagan administration to chip away at Roe v. Wade, with the ultimate goal of overturning that decision. Since he refused to say that he changed his mind, despite numerous chances, one can only think that he still believes what he said in 1985. And his opinions as a Third Circuit judge raise a legitimate concern that he will, if given the opportunity, be inclined to narrow reproductive rights.

I want also to say a brief word about ethics. The Vanguard case could have been disposed of fairly easily if Judge Alito had only admitted his mistake up front. Under questioning, Judge Alito finally admitted that there is no evidence that he followed through on his 1990 promise to the Judiciary Committee to recuse himself from any cases involving Vanguard. He also said that some of the explanations that he and his supporters gave for his failure to recuse from the Vanguard case in 2002—such as a ''computer glitch'' or the fact that his promise to the committee was somehow time-limited—were not in fact the true reasons that he failed to recuse himself from the 2002 case.

While I am not basing my vote on this matter, it continues to trouble me. First, it is not clear to me that Judge Alito took his 1990 promise to the Judiciary Committee seriously. Second, Judge Alito failed to clear up the inconsistent explanations before or at the outset of his hearing, even after documents revealed that those explanations were implausible and even though he knew that they were not the real reasons that he failed to recuse himself in 2002.

The concept of recusal, which recognizes that from time to time the public might reasonably believe that judges' biases or interests may cast doubt on the integrity of a judicial decision, is part of ensuring due process and protecting the public's confidence in the integrity of our system of justice. Despite numerous other reports of Judge Alito's honesty and integrity, I am not satisfied that he appreciates the importance of recusal.

His written answer to my question about how he would analyze recusal motions related to the Third Circuit judges who testified on his behalf raises concerns about his approach to conflicts of interest. Judge Alito wrote that he thinks Supreme Court Justices have ''less latitude to err on the side of recusal'' than other judges, because recusal could lead to evenly divided decisions. But when Congress amended the Federal recusal law in 1974, it specifically removed any so-called ''duty to sit'' in favor of a general standard requiring recusal if there is a reasonable basis for doubting the judge's impartiality. The purpose of that change was to enhance public confidence in the impartiality and fairness of the judicial system. In my view, Supreme Court Justices should have no more latitude in interpreting ethics rules than other judges; indeed, the recusal statute specifically applies to Supreme Court Justices.

I would argue that treating recusal issues seriously is even more important for Supreme Court Justices since they are solely responsible for their recusal decisions. There is no judicial review of their decisions, no formal procedure for the full Court review of such decisions, and, when a Justice improperly participates, a tainted constitutional decision cannot be undone. That is why it is so important to have Justices who adhere to the highest ethical standards. Judge Alito repeatedly told us that he seeks to carry out his duties in accordance with both the letter and spirit of all applicable rules of ethics and canons of conduct. He wrote in a letter to the chairman of the Judiciary Committee: ''[M]y personal practice is to recuse myself when any possible question might arise.'' Unfortunately, his description of how he would handle recusal motions as a Supreme Court Justice does not seem consistent with those statements.

It gives me no pleasure or satisfaction to vote against a nominee to the Supreme Court. If confirmed, he may well serve for over 20 years. I would very much like to have confidence that

this new Justice, who plainly has a keen legal mind, would be the kind of impartial, objective, and wise Justice that our Nation needs. But I do not, so I will vote no.

Mr. JEFFORDS. Mr. President, there is no higher legal authority in the United States than the U.S. Supreme Court. It is the final arbiter on the meaning of laws and the U.S. Constitution. The Supreme Court gives meaning to the scope of the right of privacy; whether Vermont's limits on campaign contributions and spending are constitutional; what is an unreasonable search and seizure; how expansive the power of the President can be; and whether Congress exceeded its power in passing a law.

A Supreme Court Justice could serve for the life of the nominee, thus the consequences of confirming a Supreme Court justice last well beyond the term of the President who makes the nomination, a Senator's term, and maybe even the Senator's own life. Therefore, one of the most important votes a Senator takes is the confirmation of a U.S. Supreme Court Justice.

I have carefully considered the appointment of Judge Samuel Alito to the Supreme Court and have concluded I cannot support his nomination.

My first step in evaluating a nominee is to consider whether the nominee is appropriately qualified and capable of handling the position for which he or she has been nominated. Looking over Judge Alito's qualifications, it is clear this minimum standard has been met. Judge Alito has served in the U.S. Department of Justice, has been a U.S. Attorney, and for the last 15 years has been a judge on the Third Circuit Court of Appeals. However, while I use this minimum standard in my evaluation of executive branch nominees, there are additional factors to be considered in my evaluation of a judicial nominee.

The Framers of our Constitution recognized the limits of democracy and created three coequal branches of government. They realized that passion and whim could cause the elected representatives to enact legislation on the cause of the day, which treads near or on constitutional rights. In addition, while the diversity of Congress can stop most of these ideas before they are adopted, no such check exists on the executive branch of our government. Thus, the third branch of government, the judiciary, was created. This branch was to be independent, unaffected by the public's whim and opinion, and serving the law and the public.

The Framers split the responsibility of filling the judiciary between the executive and legislative branches. The President nominates an individual to be a judge, while the Senate has the duty to advise and consent on each nominee. This framework was established to ensure that the executive branch could not exercise so much control over the nominating process that the judiciary would lose its independence and become ideologically driven.

While the Senate's duty is to evaluate a nominee, the Constitution provides no guidance as to what exactly Senators should take into account. This decision is up to each individual Senator. I have already touched on one factor I consider, ''qualified and capable of handling the duties of the position.''

An additional consideration is the judicial philosophy of the nominee. Many of my colleagues argue that this factor should have no part in the Senate's consideration of a nominee to the Supreme Court. However, if judicial philosophy is the determining factor in the choice the President makes from a list of many qualified candidates, the Senate should also be allowed to consider this factor when deciding whether to approve or disapprove the nominee. Not allowing the Senate to consider this factor would shift the careful balance the Framers put in our Constitution away from equal partners toward giving the executive branch an unfair advantage.

In addition to considering the individual's judicial philosophy as a standalone matter, we must also consider the cumulative effect our approving a nominee will have on the Supreme Court. In the recent past, Republican Presidents have made 15 of the last 17 nominations to the Supreme Court. The Republican stamp on the current Court is undeniable. Consider the prospects for the Court in the coming years based on the ages of the sitting Justices and their years of service:

Justice	Date of birth	Current age	Years on court	Appointment age
Stevens	April 20, 1920	85	30	55
Ginsburg	March 15, 1933	72	12	60
Scalia	March 11, 1936	69	19	50
Kennedy	July 23, 1936	69	17	52
Breyer	Aug. 15, 1938	67	11	56
Souter	Sept. 17, 1939	66	15	51
Thomas	June 28, 1948	57	14	43
Roberts	Jan. 27, 1955	50	<1	50

This information clearly shows that the prospects of the Court becoming more moderate in the near future are unlikely, as the more liberal to moderate members are the more likely to be replaced.

The table also clearly lays out a concern about the shift in the balance of the court by replacing Justice O'Connor with a younger, more conservative Justice.

This concern is also made clear by looking at some important cases where Justice O'Connor provided the critical fifth vote for a moderate, common sense position. These cases include:

Alaska Department of Environmental Conservation v. EPA (2004): The Court held that the Environmental Protection Agency can enforce the Clean Air Act and overrule a State decision to allow a major pollutant emitting facility to build a power generator when the State agency is not doing an adequate job of enforcement.

Stenberg v. Carhart (2000): The Court upheld the principles that, before viability, women can choose to have an abortion, and that any restriction on the right to an abortion must have an exception for the mother's health.

Tennessee v. Lane (2004): The Court held that as part of its enforcement power under the 14th amendment, Congress has the right under the Americans with Disabilities Act to force States to provide physical access to the courts.

McConnell v. Federal Election Commission (2003): The Court upheld as a valid exercise of congressional power the soft money and electioneering communications restrictions enacted by Congress as part of the Bipartisan Campaign Reform Act of 2002.

Upon this backdrop, I have evaluated the decisions and writings of Judge Alito, closely watched the nomination hearing in the Senate Judiciary Committee, and listened to the statements of many colleagues on his nomination. I am concerned that Judge Alito did not provide complete answers on many important topics such as: Is Roe settled law, or what are the limits of the executive branch's power? On the other hand, Chief Justice Roberts did provide answers to these questions during his nomination hearing and I voted for Justice Roberts. Given the importance of a Supreme Court Justice replacing Sandra Day O'Connor, we should expect even more complete answers than we received from Judge Alito.

After careful deliberation, I have concluded that the addition of Judge Alito to the Supreme Court would unacceptably shift the balance of the Court on many critical questions facing our county: Are there limits on the power of the presidency? Can the Congress regulate the activities of the States? How expansive is the right to privacy? What deference should be given to legislative acts of the Congress? While many of my colleagues will disagree with my assessment of Judge Alito, this will be a lifetime appointment and a lifetime is too long to be wrong.

Mr. JOHNSON. Mr, President, there are few decisions of more lasting and profound consequence that a U.S. Senator must make than the decision whether to vote to confirm a nominee to a lifetime appointment to the U.S.

Supreme Court. Accordingly, I have reviewed the record and the commentary relative to the Samuel Alito nomination with great care and deliberation. The decision on the Alito nomination is more difficult than was the case for now Chief Justice John G. Roberts inasmuch as Judge Alito's long record raises concerns across a broad range of areas. Clearly, he would not have been my pick for the Supreme Court.

Nonetheless, I must conclude that Judge Alito possesses a high level of legal skill, is a man of solid personal integrity, and that his views fall within the mainstream of contemporary conservative jurisprudential thinking. At the conclusion of Senate floor debate, I will oppose any effort to filibuster his nomination, and I will vote to confirm Judge Alito's nomination to the Supreme Court.

While it is not the role of the Senate to ''rubberstamp'' any President's judicial nominations, it is also true that any President's choice deserves due deference. Judge Alito deserves the same deference that Republican Senators accorded the Supreme Court nominees of President Clinton. I am mindful that Justice Ginsberg, a former counsel to the ACLU, was confirmed with 96 Senate votes in her favor.

I do not believe that simple political ideology ought to be a deciding factor so long as the nominee's views are not significantly outside the mainstream of American legal thinking. I also believe that the judicial nomination and confirmation process in recent years has become overly politicized to the detriment of the rule of law.

I am troubled by Judge Alito's apparent views on matters such as Executive power, his past opposition to the principle of one person, one vote, and his narrow interpretation of certain civil rights laws. Even so, I cannot accept an argument that his views are so radical that the Senate is justified in denying his confirmation.

The PRESIDING OFFICER (Mr. ENSIGN). The minority's time has now expired.

Who yields time?

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I have been asked by the majority leader to come to the floor, as manager of the proceedings, in my capacity as chairman of the Judiciary Committee, to see if we can have a vote on Judge Alito. We have informed the Democrats of our interest in having a unanimous consent, but we will not ask for one until their leader is here. He is on his way, and I will await his arrival. In the interim, the acting leader, Senator SALAZAR, is on the floor, so he can always protect their interests. But I shall not move in a way precipitously until Senator REID arrives.

I am advised we do not have any speakers for the Democrats tomorrow. We are now in the second full day of our discussion. The rules of the Senate require either that we speak or we vote. If there are no further speakers for the proceedings, then it would be my inclination we ought to follow regular order, we ought to vote. Either we speak or we vote. So long as there is somebody to speak, there is the right of unlimited debate, as we all know, and we respect that.

This is a lifetime appointment, and it is a controversial appointment. There is no doubt about that. But if we are not going to have debate, then, in my capacity as manager, as chairman of the Judiciary Committee, it seems to me we ought to vote. We have a lot of other pressing business for the Senate.

I have just left the conference of the Republican Party where there had been a plan, months ago, to be out of town so we could make plans for the second session of this Congress. Because the nomination of Judge Alito is on the floor, we have altered those plans, I might say at considerable financial loss since reservations had been made. But our duty is to be here, and we are not complaining about that. We are here to move the business of the Senate along.

There are a number of pressing matters which we could take up tomorrow or yet today, such as the issue of appropriations of some $2 billion for LIHEAP. That is a matter for assistance for fuel in a cold winter. It is a cold day out there today. It is cold in Pennsylvania. It is colder in Vermont. It is colder yet in Maine. We need to resolve that issue.

We also have the PATRIOT Act, which is due to expire on February 3, a week from tomorrow. That is a very important matter both for security in our law enforcement fight against terrorism and also for a balance on civil rights. And we now have a motion to reconsider the cloture vote pending before the U.S. Senate.

There have been discussions about what to do. It is my hope that we would yet approve the conference report. We face the alternative of having the PATRIOT Act expire, which no one wants. We have the suggestion made for a 4-year extension of the current PATRIOT Act which, in my view, is much less desirable than having the conference report enacted. The conference report on a new PATRIOT Act gives much more for civil rights than does the existing act. It is not as good as the Senate bill, the bill that came out unanimously from the Judiciary Committee and was passed by unanimous consent, but the conference report is a lot better than the current bill. So there are other important matters that we could address.

UNANIMOUS CONSENT REQUEST

Now that the distinguished Democratic leader is on the floor, on behalf of the majority leader, I ask unanimous consent that at 5:30 on Monday, January 30, the Senate proceed to a vote on the confirmation of the pending nomination of Samuel Alito.

And before the Chair rules, I would reiterate that we are prepared to debate the nomination through the weekend if Senators have additional comments or have not yet delivered their statements.

Now, Mr. President, I am glad to yield to my distinguished colleague, Senator REID.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Mr. President, reserving the right to object, we have seven speakers lined up this afternoon. We hope they will all show up. I am confident they will.

LIHEAP is something the distinguished majority leader and I have spoken of several times. We know it is an important issue. We have made commitments to the Senator from Maine, Senator SNOWE, and the Senator from Rhode Island, Senator REED. It is something we need to do as soon as we can.

In regard to the PATRIOT Act, I had a number of conversations, again, with the distinguished majority leader. Also, I spoke yesterday afternoon to Senator SUNUNU, who indicated he has been in conversations with the White House and is confident he is not far away from working out that matter with the other interested parties, one of whom is, of course, the chairman of the Judiciary Committee.

I also have had a number of conversations with the distinguished majority leader as to how we should move forward on the matter relating to Judge Alito, and there are a number of possibilities. I think we are at a point now where we may well enter into a unanimous consent later today. I would hope so.

Based on that, and based on the fact I have not spoken to Senator FRIST yet today—we spoke several times yesterday—I object.

The PRESIDING OFFICER. Objection is heard. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, may I inquire of the distinguished Democratic leader whether there will be speakers on his side of the aisle to speak tomorrow, Friday, or Saturday, or Sunday, or Monday, if we are to remain in session without voting on this nomination?

Mr. REID. Mr. President, I am happy to respond to my friend. We will have speakers tomorrow. The weekend will be another item. We will talk about that later, whether that is necessary.

Mr. SPECTER. Mr. President, may I further inquire of the distinguished Democratic leader when his side of the aisle would be prepared to vote on the nomination?

Mr. REID. As I indicated, I have spoken to the distinguished majority leader on several occasions—not today. Yesterday we had a number of conversations, in fact into the evening last night, and I think it would be best for Senator FRIST and me to talk about this rather than now.

Mr. SPECTER. I thank the Democratic leader for those comments. But