their rationale, and their ethics than this man.

The President, indeed, took a big chance with this nomination because to have that much of a record and have a vote and all that goes with it here was, indeed, a giant risk. But it paid off because Judge Alito is what he purported to be—a scholarly, terrific judge, who is without any question, distinguished.

My second point concerns ''guarantees.'' I believe some members of the Judiciary Committee questioned this judge in an effort to get some guarantees about how he would vote. It is amazing to consider some of the Supreme Court Justices who have been approved by the Senate based on their testimony and their record, which were presumed to be commitments or guarantees as to how they would vote. We can look back to Justice Warren from California as well as two or three members of the Court right now. Those who voted for such judges could have, indeed, thought they were getting guarantees, and it has turned out not to be the case. Those judges' philosophy, their votes, and everything else has been different on the Court than what they appeared to be guaranteeing during the confirmation process.

There are no guarantees. Those who are making this a partisan fight won't say: We don't have any guarantees, on Roe v. Wade and many other issues, that Judge Alito will vote the way we want him to—they won't say they are doing that. They will use other words like ''I am bothered,'' but that is really their argument.

Now, as to the cloture vote this afternoon—we are going to do that. I have never had to make that vote in 34 years—on 11 Supreme Court nominees. I never had to make that vote. Why? Because this Senate has not used the filibuster on Supreme Court Justices. Some people say, oh, yes we have, or, yes, we almost did. But we did not, and we surely didn't when a majority was for the man or woman. That is the case here.

To have to take this route, I believe the process is headed in the wrong direction. To require cloture is not the way to do it. It is not in tune with the history of the Senate. It contradicts the significance of this body as a fair-minded, deliberative body. I regret to say that with no particular people in mind. If the shoe fits, fine. If it fits no one, fine. But this has turned into nothing more than a political war. Those who are going to vote to continue debate, many of them know that this man is as qualified as anyone we are going to get. He is as assured to make as good of decisions on behalf of the American people as anyone we are going to get. And he is equally as assured to vote different than many of us who will vote for or against him expect. Of that, I have no doubt.

I regret that it has taken us so long to confirm Judge Alito. I regret that it has turned into the spectacle that it has. But perhaps today we will invoke cloture, change things from where they are to where they should be, and with an up-or-down vote tomorrow, this deserving, honest, well-informed, good man will be confirmed.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. REID. Mr. President, the Presiding Officer knows that I don't always agree with him or he with me, but in response to the Senator from New Mexico about the process here, the Presiding Officer was exemplary in how Justice Breyer and Justice Ginsburg were chosen to be members of the Supreme Court. There have been books written about it and chapters of books written about it.

The Presiding Officer, as chairman of the Judiciary Committee, in communication with President Clinton, said: I don't like this person, this person, this person. And so there was a process set up, nonpublic in nature, where the chairman of the Judiciary Committee conferred with the President and his people and waded through lots of names that, in the judgment of the distinguished Senator from Utah, were not appropriate. Now we have two Members on the Supreme Court whom I think have distinguished themselves.

I wish we could have a procedure like that in the future. I think, I repeat, it was exemplary. That is the way things used to be done. I would hope in the future that the President's men and women would be willing to meet with their counterparts in the Senate and come up with a procedure that is somewhat along the lines of the distinguished Senator from Utah. I would hope that would be the case.

The hearings of Ginsburg and Breyer were short and directly to the point. I hope in the future we can do more of that. I extend my applause and congratulations to the Senator from Utah. No matter what happens in the future regarding the long career of the Senator from Utah in the Senate, this, as far as I am concerned, will be an important chapter in his public service.

THE PRESIDENT'S STATE OF THE UNION MESSAGE

Mr. President, tomorrow night, the President of the United States will come to the Capitol and deliver his fifth State of the Union Address. This is an important moment for the President and for the country. Some say, reading the op-eds over the last week or so, this may be the most difficult speech the President will ever give.

The President comes to the Capitol in the midst of also what some write about as the greatest culture of corruption since Watergate. Public trust has dropped significantly in this culture in Washington, and I need not run through all the problems, but I will run through some of them.

The majority leader in the House of Representatives was convicted three times of ethics violations. They even went so far as to change the rules so he could stay in his position after having been indicted. They changed the rules back because the hue and cry of the American people was so intense.

For the first time in 135 years, someone is indicted working in the White House. Mr. Safavian, appointed by the President to handle Government contracting—hundreds of billions of dollars a year—is led away from his office in handcuffs as a result of his dealings with Jack Abramoff and others.

So I think in his speech, the President is obligated to the American people to show that he is committed to restoring the bonds of trust and repairing the damage done by this corruption.

Americans know the country can do better today, and after the year we had, a year of trying to privatize Social Security, Katrina, failures in Iraq, Terri Schiavo, and a heavy heart I have, Mr. President, as a result of how a good woman was—I would not say destroyed because she was not; she is stronger than that. But Harriet Miers, how she was treated is unbelievable. A good woman was treated so poorly, and the people who tried to destroy her are the ones being rewarded now with the Alito nomination. Then, of course, this past year we had Medicare prescription drugs come into being, which is a puzzle that no one can figure out.

So the American people, after this year we have had, simply will no longer be able to blindly accept the President's promises and give him the benefit of the doubt.

Americans will be looking past his rhetoric tomorrow night and taking a hard look at the results he intends to deliver. The President's State of the Union Message is a credibility test. Will he acknowledge the real state of our Union and offer to take our country down a path that unites us and makes us stronger, or will he give us more of the same empty promises and partisanship that has weakened our country and divided Americans for the last 5 years?

If he takes the first approach, together, Democrats and Republicans can build a stronger America. If he gives us more of the same empty promises and Orwellian doublespeak, we know he intends to spend 2006 putting his political fortunes ahead of America's fortunes. We need a fresh start, and I hope President Bush realizes that tomorrow night.

There is much more at stake in his speech than poll numbers. Empty promises will no longer work. We need a credible roadmap for our future, and we need the President to tell us how together we can achieve the better America we all deserve.

Our first signal that the President intends to move our country forward will come in his assessment of the state of our Union. It is not credible for the President to suggest the state of the Union is as strong as it should be. The fact is, America can do much better. From health care to national security,

this Republican corruption in Washington has taken its toll on our country. We can see it in the state of our Union.

What is the state of our Union? The state of our Union is that we are less safe in this world than we were 4½ years ago because the White House has decided protecting its political power is more important than protecting the American people.

We are the wealthiest Nation in the history of the world. Shouldn't we be the healthiest? Frankly, we are not because this administration decided to take care of the big pharmaceutical companies, the drug companies, the HMOs, managed care, instead of 46 million uninsured.

We have a national debt climbing past $8 trillion. I have a letter I received a short time ago from the Secretary of the Treasury saying the debt is at $8.2 trillion and we need to raise it more. Over $9 trillion is what they are asking because the President squandered the strongest economy in the history of this country with reckless spending and irresponsible tax breaks for special interests and multimillionaires.

We have an addiction to foreign oil that has climbed steadily over the last 4 years and doubled the price of heat for our homes and gas for our cars because the Vice President let big oil companies write our energy policy. And we have too many middle-class families living literally on the financial cliff. All statistics show the rich are getting richer, the poor are getting poorer, and the middle class is squeezing smaller and smaller all the time.

The economic policies of this administration over 5 years has placed the needs of the wealthy and well connected ahead of working Americans.

If President Bush is committed to making America stronger, he will acknowledge these facts Tuesday night. He will admit the steep price Americans have paid for this corruption, and he will proceed to tell us how he can make our country stronger.

Our second clue that the President is committed to moving America forward will come in his remarks about national security. Tomorrow night, it is not credible for the President to tell us he has done all he can to keep Americans safe for the last 5 years. We know that because we have had vote after vote on the Senate floor to take care of our chemical plants, our nuclear power facilities, to check the cargo coming into this country, what is in the belly of that airplane in the cargo, and vote after vote, on a strictly party-line basis, we have lost.

For all of this tough talk, President Bush's policies have made America less safe. His failed record speaks for itself.

Osama bin Laden, the man who attacked us on 9/11, remains on the loose because, in his rush to invade Iraq, the President took his eye off the ball when we had him cornered in a place called Tora Bora, Afghanistan.

As a result, he is gone. We don't know where he is, and he continues to threaten us today in his taunting, vicious, evil manner.

Then there is the President's ''axis of evil.'' Four years ago, the President declared Iraq, Iran, and North Korea an ''axis of evil'' whose nuclear threats posed risk to the American people, and he was right. Well, mostly right. Instead of pursuing the correct policy to make it safer, he invaded Iraq. Now two members of the ''axis of evil''—North Korea and Iran—are more dangerous, and after spending billions of dollars and losing 2,300 American lives, we found out that the third, Iraq, didn't pose a nuclear threat at all.

Then there is what this President has done to our military. Not only has he failed to properly equip our troops for battle—we know the stories are all over the country about 80 percent of our people who have been injured—that is 18,000 and 2,300 dead—80 percent of them would have been hurt less, many lives would have been saved had they had the body armor that was available.

According to the Pentagon's independent studies, the Pentagon is stretched—stretched in a manner, as indicated in the paper today, as having mass advancements in rank, which they have never done before, because they are trying to keep people in the military, among other things. Our forces are stretched entirely too thin.

The President's poor planning and refusal to change course in Iraq has made progress in 2006 harder to achieve. He has made it more difficult to spread democracy around the world because he has been undermining it right here at home.

As Katrina made clear, he failed in the 4 years after 9/11 to prepare America for the threats we face. New Orleans could have been anyplace in America. The difference with Katrina is we had warning it was coming. But other threats, that won't be the case.

America can do better. Tomorrow night, the President needs to provide a new way forward. Partisan attacks will only divide us. What we need is for the President to rally the country around our most important goal: protecting our people and our way of life.

Democrats have always been willing to work with President Bush to make America more secure. We know our national security policy is not the place for political games. Democrats look forward to hearing how the Commander in Chief will govern and hope we have seen the swagger and partisanship of the ''campaigner in chief'' for the last time.

Our third signal that President Bush understands what it will take to make the State of the Union strong will come when he talks about health care. Again, we are the wealthiest Nation in the history of the world. Shouldn't we be the healthiest? We are not. Because of the President's inaction on health care over the last 5 years, America faces a health care crisis of staggering proportions. There are 46 million Americans with no health insurance and millions more who are underinsured.

The cost of health care premiums has doubled since 2001. Manufacturing giants, such as Ford and General Motors, are laying off tens of thousands of people for lots of reasons, but one reason is health care costs have skyrocketed.

With a record such as that, it is not credible for the President to claim he has a vision to make health care affordable. He needs to present us new ideas that will move America forward, not trot out the same tired old policies that serve special interests and not the American people. Press reports, I fear, indicate we are in for the same old tired ideas. It is rumored that President Bush will again focus on something called health savings accounts.

This administration has taught me that what I learned in college studying George Orwell has some validity today. We have Orwellian doublespeak such as the Healthy Forests Initiative, one piece of legislation that was for clearcutting of trees and other things to make our forests less healthy; our Clear Skies Initiative, which polluted the skies; Leave No Child Behind, which is leaving children behind; and the Deficit Reduction Act of 2005. Talk about Orwellian doublespeak; using the President's own numbers, the Deficit Reduction Act increased the deficit by $50 billion.

Now he comes up with Health Savings Accounts. That is classic Bush doublespeak. It is not a credible solution to the health care crisis. This plan will force most Americans to spend more on health care while making it less available to millions of others. HSAs are nothing more than another giveaway to the same people the President has favored over hard-working Americans for the past 5 years. In fact, remember Social Security privatization? HSAs, or Health Savings Accounts, are a lot like that. They do nothing to solve the real problem. They make the situation worse for the American people and they create a financial windfall for the President's friends: HMOs, insurance companies and, of course, Wall Street, that will set up all these accounts.

We do not need the President to offer more of the same on health care. We saw with the President's Medicare prescription drug plan that his policies too often put special interests ahead of the American people. Ask any senior citizen today about how the Medicare plan has helped them. Even if they could work a crossword puzzle out of the New York Times on Sunday, which is the hardest, day after day after day, they still couldn't solve the Medicare Program of President Bush. It is impossible.

What we need is a new direction, one that puts families first. Democrats believe that addressing the health care crisis is not just a moral imperative, but it is also vital to our economic security and leadership in the world.

Every day we go without reform is another day America takes another step backward from a position as global leader.

For our families, we must make health care affordable and accessible. For our businesses, we must remove the burden of skyrocketing costs that is holding our businesses, our economy, and our workers back in the global marketplace.

Our fourth clue that the President knows what America needs will come in his remarks about the economy. After all we have seen in the past 5 years, it will not be credible for the President to claim our economy is growing, that his plan to reduce his deficits—and I say his deficits—is working, and that Congress is to blame for spending and bad decisions. The truth is, the fiscal nightmare we see today belongs to President Bush and President Bush alone.

I love to watch golf on TV. I know I am not like a lot of people, I should be watching football or basketball or something. I love to watch golf on TV. It is a game of chess. Yesterday, Tiger Woods—this guy is fantastic. He is seven strokes behind after the first day. He has a bad day yesterday and wins the tournament. He has a bad day and wins the tournament.

I mentioned records—he holds all kinds of records. That was the 47th tournament he won—quicker than anyone else, of course. He just turned 30 years old. He won the Buick Open four times. That is what he won yesterday. He holds record after record. I mention these records because President Bush holds all the records. The highest deficit, he holds them all. There is not a close second. He has them all.

It is not a record the American people envy, such as that of Tiger Woods. His financial record has bankrupted this country. We are going to be asked in a couple of days to increase the deficit ceiling—over $8.2 trillion.

Here is another doublespeak Orwell would be proud of we are likely to hear tomorrow night. I am sure we are going to talk about the Bush competitive agenda. The President can talk all he wants about making America competitive, but for 5 years he has done nothing to keep America in the game. From what we have read in the press, this plan sounds like more empty rhetoric from a President who has spent 5 years slashing the funding we need to stay on the cutting edge. He shut the doors to thousands of college students by supporting cuts in student aid. He has allowed our country to fall further behind our trading partners. It is no accident what is happening in South America. President Reagan, President Clinton, and the first President Bush worked hard to democratize Central and South America. These countries are losing their democracy edge because we have so neglected them.

He has lavished billions on big oil instead of investing in American technology and know-how to make us more energy independent. We need to hear new economic ideas tomorrow night. The President needs to tell us how he is going to begin paying down the debt, his debt, so our children and our grandchildren do not pay the price for his reckless fiscal record.

It is so startling to me that Republicans—when I started my political career, they were the ones concerned about deficits. They have created them. They don't complain about them. It is stunning to me. The President has not vetoed a single spending bill. Of course, he hasn't vetoed anything, but why should he? We don't have separate branches of Government while he is here; the Republican Congress does whatever he wants. Maybe beginning the sixth year that will not be the case.

We need the President to speak honestly about tax relief, about middle-class families and how they deal with these energy prices. The truth about the Bush tax cuts is multimillionaires stand, with his newest proposal, to get over $100,000 while the average working family will receive pennies on that. The President's priorities are upside down. It is time for him to join us and bring fairness to our Tax Code.

Democrats are ready to work with President Bush, but he needs to commit to policies that put the needs of hard-working Americans first. One final signal that President Bush is committed to making America stronger will come on the issue of reform. Because of connections to the culture of corruption and stonewalling about Jack Abramoff, it is not credible for President Bush to claim the moral high ground on values as an honest government. President Bush needs to set an example, if he is going to lead our country forward tomorrow night. He needs to come clean about his connections to corruption, with Abramoff—as Republicans have called for. HAGEL, THUNE—Republican Senators have called for this. Too many Republicans have shown in recent days that we are going to obscure the facts and move on.

There is legislation pending. We do not need a task force. We need Senators LIEBERMAN and COLLINS to go ahead with the hearings and decide what needs to be done. Our legislation may not be perfect, but it is legislation we need to start with.

It is Republicans who control the White House where men are willing to break the law and ignore America's best interests so they can protect their political power. Safavian, Libby, Rove—it is Republicans who control the Congress which sold its soul to special interests and a Republican right-wing base, a base that has its sights set on stacking our courts with extremist judges. They have acknowledged that. It has been K Street, the so-called K Street Project, that has conspired with lawmakers to put the well connected first, going so far as having them not hire Democrats to work as representatives.

We have a plan to reform Washington. We need to bring it to the Senate floor. We need to do that. President Bush has to join with us. Anything less, we will know the President has no interest in changing his ways and making America stronger.

The President faces a tremendous test tomorrow night. It is up to him to prove to the American people he intends to denounce the culture of corruption that has come to Washington since he arrived and change direction in 2006. Democrats are ready to work with President Bush in order to move our country forward because we believe that together, America can do better. So tomorrow night I hope President Bush will join us in putting progress ahead of politics so we can have a State of the Union that is as honest and strong as the American people.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I rise today to discuss the President's nomination of Samuel A. Alito, Jr., to the Supreme Court of the United States. I am pleased to have an opportunity to discuss this and to present reasons why my conclusion is going to be as it is.

It is no secret that Judge Alito is from my home State and I was honored to introduce him to the Judiciary Committee. I talked with him privately in my office. He is an accomplished jurist from a distinguished family in New Jersey, and at that hearing our colleague from Pennsylvania, Chairman ARLEN SPECTER, asked me if I was endorsing Judge Alito for this position and I told him I was just presenting evidence to the committee and I will let the record speak for itself. I was not going to make any prejudgments. I wanted to hear from Judge Alito. I wanted to listen to his answers to my colleagues' questions.

This nomination, as all are when it comes to the Supreme Court, is an incredibly important moment for our Nation—particularly because Judge Alito has been nominated to replace Justice Sandra Day O'Connor. Justice O'Connor, over the past 25 years, has proven she is not an ideologically conservative Justice or a liberal Justice. She has not brought an agenda to the Court. That is why Justice O'Connor has been such an important swing vote—because she always studied the facts and the law and tried to apply them fairly.

I did not always agree with her. But, like many Americans, I knew she came at these legal questions fairly and with an open mind. She showed respect for precedent. She put the law above her personal beliefs. In my view, it is critical that we replace Justice O'Connor with someone who shares her open-minded approach of looking at the law and the facts with no political agenda. Even the mere threat of legal activism on this Supreme Court threatens the future of this country and the rights of our children, our grandchildren, and other generations.

Many legal experts—judges, lawyers, professors—have contacted me regarding this nomination. Some supported him, some opposed him. Many of these experts tried to convince me one way or the other. But when I listened to Judge Alito's hearings in the Judiciary Committee, I listened with the faces of my grandchildren in my mind; with the thoughts of ordinary people who depend on the fairness of our society. I was applying Judge Alito's philosophy to the real problems of everyday people—in New Jersey and across the Nation.

I often hear many concerns from my constituents about how powerless they feel in the face of insurance companies that are often indifferent to their plight, or as an employee unfairly treated in the workplace. What rights do everyday Americans have in the face of giant corporations or unchecked Government power? At the hearing, it was clear that Judge Alito almost always lined up against the little guy and with the big corporations and Government. That is the side he came out on. In fact, the Knight-Ridder study of Judge Alito's rulings showed that he ''seldom sided with . . . an employee alleging discrimination or consumers suing big business.''

The Washington Post analysis of all divided opinions on the Third Circuit involving Judge Alito found that he ''has sided against three of every four people who claim to have been victims of discrimination'' and ''routinely . . . defers to government officials and others in a position of government authority.''

I don't think that is what our Founders wanted when they designed the Constitution.

I want to give two examples. In Bray v. Marriott, an African-American motel worker in Park Ridge, NJ, alleged discrimination against her employer. The Third Circuit ruled that she deserved her day in court because there was enough evidence of discrimination. But Judge Alito dissented, citing concerns about the cost of trials to employers. Listen to that—citing concerns about the cost of trials to employers. I wonder if the Constitution makes any reference to that or does it say everybody should have equal rights when it comes to hearing their case in the courtroom?

The other judges in that case criticized Judge Alito's dissent, saying that if it were law, then the employment discrimination laws would have no real effect.

In another case, Sheridan v. Dupont, Judge Alito was the only judge of 11 judges who heard the case to find against a woman's claim of gender discrimination. Judge Alito stated that the alleged victim should not even get a trial. That is absolutely contrary to what our country is about. This is a nation of laws. The other judges were so distressed by Judge Alito's decision that they said ''the judicial system has little to gain by Judge Alito's approach.''

So if he is confirmed to the Supreme Court we ask ourselves the question: Will Judge Alito make it more difficult for the everyday people to protect themselves and their families against the power of big business and unchecked Government? Do they need the help? Is that what we are talking about when we enact laws here? I hope not.

Unfortunately, it appears almost certain.

Regarding individual rights, there was a very disturbing exchange in the hearing involving the Constitutional right to reproductive choice.

Senator DURBIN asked Judge Alito if he would agree with Chief Justice Roberts' statement that the right to choose is ''settled law.'' It seems to me that it was a ''no-brainer''—of course it is settled law. It has been on the books for 33 years and upheld 38 times.

You don't have to go to law school to figure that one out.

But Judge Alito refused to say it was ''settled law.'' To me it was a telling moment in the hearings.

I am not a lawyer, but I understand this: The right to choose is settled law. That means that is the law as it is seen by Judge Roberts, Chief Justice.

Judge Alito's refusal to acknowledge that the right to choose is settled law indicates to me that, even before he sits on the Supreme Court, he intends to overturn Roe v. Wade.

That is the interpretation I make from that.

For everyday New Jerseyans, especially our State's women, that would be the realization of a nightmare. We do not want to turn back the clock on women's rights. Even if abortions become illegal, they will still happen—but largely in unsafe conditions. It's a nightmare that I do not want to risk happening.

Then there is the issue of abuse of power and the power of the Presidency.

Growing up in New Jersey, it is clear that our state is proud of our role in the American War for Independence. More battles of the Revolutionary War were fought in New Jersey than in any other state. The most famous image of that war is George Washington crossing the Delaware River at Trenton.

New Jersey is a state of immigrants. Many New Jerseyans came to America to escape kings, despots and dictators. So we understand why we fought the War of Independence to get rid of King George.

America doesn't want a king or an ''imperial President.'' Neither does New Jersey. That's why we have three co-equal branches of government.

So when Judge Alito talked about his theory of a ''unitary executive''—a President above the other two branches of government—I found that very troubling.

The Father of our Nation, George Washington, warned the American people about allowing a leader to claim too much power. In his farewell address to the nation, Washington indicated his concern about the Presidency becoming too powerful.

He said we should avoid allowing:

> the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism.

Those are Washington's words. But they have a real resonance today.

The current administration claims a power beyond the laws that Congress has set. It is an administration that believes it can spy on Americans without a warrant, despite specific laws to the contrary. These are the kinds of abuses that caused the citizens of New Jersey and the other American colonies to rise up against King George

We don't want a King. And we don't want to create a Supreme Court that will crown this President—or any future President—Republican or Democratic.

The question before us is not a generic question of whether Judge Alito is qualified for the Supreme Court. The real question is whether Judge Alito is the right person for this seat on the Supreme Court. The seat at issue is Sandra Day O'Connor's seat. It is a seat held by a middle of the road, balanced justice.

As I noted during my testimony introducing Judge Alito to the Judiciary Committee: he is a young man. If the Senate confirms him for a lifetime appointment to the Supreme Court, he might serve for three decades—or even longer. His decisions would affect not only our rights, but also the rights of our children, our grandchildren and other future generations.

That's why, after careful consideration and deliberation, I have decided to vote no on the confirmation of Judge Alito. He is a good, decent man—an ethical man. I do not think he subscribes to any bigoted views. But I believe there is a grave risk that he carries a legal agenda with him, one that he will bring to the Supreme Court.

I don't think this is a black-and-white issue. I think it is a gray issue. If there is a gray issue, if there is doubt about where we are going to come out, I want to decide on protecting women's rights and protecting ordinary people in fairness before a court of law.

While there will be law professors and others who will disagree with my analysis, as I said before, I am more concerned about the effect of this nomination on everyday people in New Jersey and across the country.

I am proud that there is a Federal courthouse in Newark that carries my name. It was while I was absent from the Senate a while that that was done. But I fought hard to get an inscription placed on the wall of that courthouse. I wrote it. It reads:

> The true measure of a democracy is its dispensation of justice.

This Nation of laws has to continue to be just that, and people have to know that they are treated fairly and that their personal rights are protected and that they can bring courses of action if their rights are damaged.

I believe in that quote. It guides me today.

For the parents fighting an insurance company for access to health care for their child, for the blue-collar worker facing harassment in the workplace, for women who want government's hands off their bodies, for everyday people, I will oppose this nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. MENENDEZ. Mr. President, I rise, for the first time in this body, to speak on the nomination of Samuel Alito to serve on the Supreme Court of the United States. No matter one's political persuasion, we all take pride in the honor that has been bestowed on a fellow New Jerseyan.

Samuel Alito's story is one that rings familiar to so many New Jerseyans, including myself. His parents came to this country in search of opportunity, and worked hard to build a better life for their children. The son of immigrants, Judge Alito's life is a story that demonstrates the power of seizing opportunity and working hard.

Frankly, it is a story close to my own heart. I too, am the son of immigrants who came to New Jersey to seek a better life and greater opportunity. Thanks to their hard work, and my own, I was the first in my family to graduate from college and law school.

Yet home State pride is not a sufficient reason for supporting a nominee. For a Supreme Court appointment is a life-time appointment. When the Supreme Court decides, it is the law of the land and their decisions affect the lives of millions of Americans. So, it's not where you come from that matters, but where you will take the nation.

Sam Alito has served his entire legal career in public service, and for that he is to be commended. His work as a prosecutor and as an appellate judge for the past 15 years has given him substantial experience. In his hearings and his meeting with me, he demonstrated that he has a keen intellect. Judged simply by that standard, Sam Alito is ready to serve.

But competence and intellect is the very least we should expect from someone seeking a lifetime appointment to the highest court in the land. Indeed, competence alone might be enough for a nominee for one of a myriad of other appointments. But this is about the Supreme Court of the United States. The Supreme Court, alone among our courts, has the power to revisit and reverse its previous decisions. So surely, we should also demand that our justices fairly interpret the law, respect judicial precedent, and properly balance the rights of individuals and the power of the state. Above all, we should demand that they check their personal beliefs at the door.

The seat that Judge Alito hopes to fill is one of great importance. Justice O'Connor has been the deciding vote in key cases protecting individual rights and freedoms on a narrowly divided Court, and the stakes in selecting her replacement are high. I have not agreed with every one of her decisions. But she has shown throughout her tenure a respect for law over ideology and a commitment to deciding each case not on the personal views she brought to the bench, but on the facts before her. When some on the court sought to inject an activist political philosophy into judicial decision-making and to turn back the clock on the liberties afforded the American people under the Constitution, it was Justice O'Connor who blocked their path.

I had hoped Judge Alito would clearly demonstrate that he shares the commitment to protecting the individual rights and freedoms that Justice O'Connor so often cast the deciding vote to defend. Decades of progress in protecting basic rights, including privacy, women's rights, and civil rights, are at stake with this nomination. The burden was on Judge Alito to be forthright and unambiguous in his answers.

Unfortunately, his testimony was not reassuring and his record makes clear what kind of justice Judge Alito would be. A justice who would vote to overturn a woman's right to choose, a justice who has time and time again sided with corporations and against average Americans, a justice who would allow this administration to continue to stretch and potentially violate its legal and constitutional authority. Especially with the challenges our Nation faces today and will face tomorrow, America cannot afford that kind of justice.

We live in extraordinary times today. President Bush has sought the accumulation of unprecedented powers. He has asserted the authority to not only torture detainees and indefinitely detain American citizens as enemy combatants, but to also conduct warrantless wiretapping of American citizens.

At different times throughout our country's history, Presidents under the cloak of Commander-in-Chief have exercised excessive authority that has eroded individual rights and freedoms in the name of protecting the Nation. Over 200 years ago, our Founding Fathers purposely established our Nation's government with three distinct coequal branches to help prevent this concentration and abuse of power. An independent judiciary, part of our country's long and proud history of checks and balances, is the only thing that stands between the executive branch and these potential threats to our rule of law.

In 2004, the Supreme Court stood up for the rule of law when it found that the President cannot ignore the Constitution and confine American citizens indefinitely without the ability to challenge their detentions. Decisions such as this, which recognize that our Nation's security is enhanced rather than undermined by respect of the rule of law, are what has always made the United States the envy of people around the world.

The bias Judge Alito has shown in favor of the executive branch threatens to undermine the freedoms that our judiciary has historically protected. From his work as a government lawyer to a speech before the Federalist Society in 2000, he consistently favors the concentration of unprecedented power in the hands of the President, even endorsing the so-called ''unitary executive'' theory that even many conservatives view as being at the fringe of judicial philosophy. It virtually gives the presidency exclusive powers that historically have belonged to either Congress or the courts. This theory is an activist theory, not a theory that reflects mainstream American thinking or values. In fact, the Supreme Court has largely rejected it.

Judge Alito has also backed granting absolute immunity to high-ranking Government officials who authorized illegal, warrantless wiretaps of American citizens, which is another position the Supreme Court has rejected. As far back as the Reagan administration, he has advocated that the President issue signing statements in an effort to shape the meaning of legislation. President Bush has often used this practice, most tellingly in December when he claimed the administration could ignore the new law banning torture whenever he sees fit. This undermines one of the coequal branches of our government, the people's elected representatives of the United States Congress.

Judge Alito has found against congressional authority when he argued in dissent in United States v. Rybar against a ban on machine guns that five other appellate courts and the Third Circuit itself upheld. Judge Alito also authored the majority opinion in Chittister v. Department of Community and Economic Development, invalidating parts of the Family and Medical Leave Act for exceeding the bounds of congressional authority—a position the Supreme Court subsequently rejected.

Several in-depth reviews show, Judge Alito's rulings, especially his dissents, consistently excuse actions taken by the executive branch that infringe on the rights of average Americans. One study found that 84 percent of Judge Alito's dissents favor the government over individual rights. Another, the Alito Project at Yale Law School conducted a comprehensive analysis of the Judge's 15 years on the Federal bench. They found that ''Judge Alito has permitted individuals to be deprived of property or liberty without actual notice or a prior hearing.''

During his hearings and in my meeting with him, Judge Alito did nothing to distance himself from these positions; in fact, by refusing to candidly discuss where he stands on executive power, he only strengthened my concerns about his views.

If it's not where you come from that matters, but where you will take the

nation, does a Supreme Court with Justice Alito take the nation forward or move our Nation back?

Back to a time when a President suspended the writ of habeas corpus; back to a time when a President ordered the internment of individuals based upon their ethnicity; and back to a time when a President ordered the unlawful breakins and wiretaps against his opponents.

Our next Supreme Court justice must be a check and balance against broad Presidential powers that are inconsistent with our Constitution.

With respect to reproductive rights, Judge Alito told the members of the Judiciary Committee that he would look at such cases with an ''open mind.'' However, he has, throughout his career, written that the Constitution does not protect a woman's right to choose, worked to incrementally limit and eventually overturn Roe v. Wade, so narrowly interpreted the ''undue burden'' standard in one specific case as to basically outlaw this right for an entire group of women, and refused to state whether Roe is ''settled law.''

When asked by Judiciary Committee Chairman SPECTER whether he continues to believe that the Constitution does not protect the right to choose, as he wrote in his 1985 job application at the Department of Justice, Judge Alito acknowledged that it was his view in 1985, but refused to say whether or not he holds that view today. I found Judge Alito' s refusal to answer this question extremely troubling.

Later, as an Assistant Solicitor General, Judge Alito wrote a memo outlining a new legal strategy that the Reagan administration could use to ''advance the goals of bringing about the eventual overruling of Roe v. Wade and, in the meantime, of mitigating its effects.''

As a judge on the Third Circuit Court of Appeals, Judge Alito alone concluded that all of the Pennsylvania restrictions, including the spousal notification provision, should be upheld as constitutional in Planned Parenthood v. Casey. Ultimately, the Supreme Court found 5–4 that the spousal notification provision was unconstitutional. Justice O'Connor, who wrote the opinion, rejected Judge Alito's arguments and wrote that the spousal notification provision constituted an impermissible ''undue burden'' on reproductive rights. She concluded by saying ''Women do not lose their constitutionally protected liberty when they marry.''

During our meeting, when I asked Judge Alito, ''Do you believe Roe v. Wade is the 'settled law' of the land,'' he was unwilling to say that it is settled law. During the Judiciary Committee hearing, he said multiple times in response to questions from three of my distinguished colleagues on the Committee that the principle of stare decisis, or respect for precedent, is not an ''inexorable command.'' While this is undoubtly the case, this language is exactly what Justice Rehnquist used in his dissent in Planned Parenthood v. Casey when arguing that Roe should be overturned. Justice Rehnquist wrote, ''In our view, authentic principles of stare decisis do not require that any portion of the reasoning in Roe be kept intact. 'Stare decisis is not . . . a universal, inexorable command.' ''

Because I was concerned that his approach to these issues is far different than Justice O'Connor's, I gave Judge Alito every opportunity in our meeting to alleviate my concerns and those expressed by many New Jerseyans. I regret that he did not do so.

If it's not where you come from that matters, but where you will take the Nation, does a Supreme Court with Justice Alito take the nation forward or move our Nation back?

What does Morning in America look like after Judge Alito becomes a Supreme Court justice? Will it be an America where a woman's constitutional right to privacy is not acknowledged? Will it be an America where a woman does not have access to the best medical care? Will it be an America where women do not control their own bodies?

Our next Supreme Court justice must respect both the constitutional right to privacy and a woman's right to choose.

Our Nation's civil rights are needed to provide equal rights in employment, voting, or disability, they are designed to eliminate discrimination from our society and to provide equal opportunity and access. These laws are often the direct result of our country's civil rights movement.

Unfortunately, Judge Alito has consistently applied a narrow interpretation of civil rights laws. Over his 15-year judicial career, he has more often than not sided with corporations and against individuals.

In five split decisions involving a claim of sex discrimination, Judge Alito has sided with the person accused of the sex discrimination every time. In Sheridan v. E.I DuPont de Nemours, a woman brought a gender discrimination lawsuit after being denied a promotion. A jury ruled in her favor, but the trial judge threw out the verdict. The full complement of the Third Circuit voted 10–1 to reverse the judge's decision in this sex discrimination case and remand the case for reconsideration. Judge Alito wrote the lone dissent, arguing that the case should be dismissed. If Judge Alito's view was the law of the land, virtually no woman who has been wrongfully denied a promotion based upon her gender would have her day in court.

In the area of race discrimination, Judge Alito voted in dissent against the plaintiff in both split decisions cases. The Third Circuit held that the plaintiff in Bray v. Marriot Hotels had shown enough evidence of possible racial discrimination to merit a trial before a jury. As in Sheridan, Judge Alito dissented, saying that the plaintiff had not produced enough evidence even to get to a trial of a jury of their peers. If Judge Alito's view was the law of the land, virtually no person of color would be able to pursue discrimination based on race in the courts of our nation.

From the bench, Judge Alito has participated in five split decisions in the area of disability rights law and he sided with the defendant four out of the five times. In Nathanson v. Medical College of Pennsylvania, relating to a college's knowledge of and response to the disability needs of a student, the majority held that the facts required a jury to hear her claims. Judge Alito disagreed with the majority, writing that Nathanson failed to prove that the college acted unreasonably in its responses to her requests for alternative seating arrangements. If Judge Alito's view was the law of the land, virtually no disabled person denied alternative accommodations could seek relief from the court.

These are only symbolic of the many cases where Judge Alito would say no to the average American citizen.

If someone's daughter was seeking relief from discrimination based upon her gender, Judge Alito would say no. If an American of color was seeking relief from discrimination based upon their race, Judge Alito would say no. If someone's handicapped son was seeking relief from discrimination based upon his disability, Judge Alito would say no. Judge Alito would make it virtually impossible for an individual to go to court when his or her rights were violated, and have their day of judgment.

If it's not where you come from that matters, but where you will take the Nation, does a Supreme Court with Justice Alito take the Nation forward or move our Nation back?

Back to a time when there was not equal access to schools and government programs, back to a time when employers could fire employees without just cause; and back to a time when all citizens were not guaranteed the right to vote.

Our next Supreme Court justice must truly subscribe to the inscription above the entrance to the United States Supreme Court—''Equal Justice under Law.''

The confirmation of a Supreme Court justice is one of the two most important responsibilities that a Senator has, in my view. The first is a decision on war and peace, which is also about life and death. The other is deciding who will have a lifetime appointment to the Court that decides the laws of the land.

Make no mistake about it, Judge Alito is a decent, accomplished, intelligent man. A man who is proud to call our shared State of New Jersey home. But it is not enough to come from New Jersey—the test is—will you represent the values of New Jersey and this Nation on the highest court in the land?

In New Jersey we value creating opportunity, we cherish the idea of individual freedom and responsibility, and

we believe that justice is a force that should level the playing field between the individual and the powerful.

I have given careful consideration to this nomination, and I entered the process with hopes of supporting Judge Alito. This is my first vote in this Senate, and I had hoped to cast it in support of this nominee, but after reviewing his record, and his testimony before my fellow Senators, I cannot.

The question for me has been will he tilt the court in its ideology so far that he will place in jeopardy decades of progress in protecting individual rights and freedoms. I am afraid that answer is yes. In good conscience, I regrettably cannot support his nomination for a lifetime appointment to be an Associate Justice of the Supreme Court of the United States.

I yield the floor.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Missouri.

Mr. BOND. Mr. President, on the question of the confirmation of Judge Samuel Alito, when you boil everything down and clear away all of the other issues, the most important thing each of us wants from a judge is fairness and impartiality. None of us would want to go into a courtroom and think our judge had already made up his mind before hearing our case. Whether we are rich or poor, weak or strong, but especially if we are poor or weak, victim or defendant, we need to know we will get a fair trial.

We would not get a fair trial if we faced a judge who had already made up his mind. Not only would the deck be stacked against us, we would be dealt a losing hand if we had to face a judge with an agenda different from our case. That is what justice means—impartial and objective. That is the kind of judge we want hearing our case, and that is the kind of judge Sam Alito is.

Everything we have learned about Judge Alito, from his testimony before the Senate Judiciary Committee, his lengthy record of decided cases, to the testimonials of his colleagues and peers, tells us that Judge Alito will be a fair, impartial, and objective Justice.

Judge Alito has told us how he believes a judge cannot prejudge an issue, a judge cannot have an agenda, a judge cannot have a preferred outcome in any particular case.

I was so glad to see that during his confirmation hearing Judge Alito would not allow himself to be forced into prejudging any cases. Now, many tried. They went down their list of issues and asked whether Judge Alito agreed with their agenda. They wanted to know how he would rule on one kind of case or another. They wanted him to decide cases before he even heard them. That would not be justice, and that would not be Judge Alito.

Not only does Judge Alito know justice, Judge Alito knows democracy. Democracy means that laws governing the people can only be made by those elected by the people to make laws. He knows the Members of Congress are elected to make laws. The citizens of Missouri elected their Representatives and Senators to represent them in Congress, the legislative body. I am honored to be one of those so chosen. Judge Alito is not.

The citizens of Missouri are not electing Judge Alito to make laws. Judge Alito knows he will not have the power to make laws. Judge Alito knows he is neither a Congressman nor a Senator who can pass his own legislation from the bench. That is not the role of a judge.

Judge Alito knows he is not a politician advocating a program. That is not what a judge should do. He is not a politician responding to a stakeholder, carrying out the agenda of his constituency, whether it be New Jersey or any other State in the Nation, taking the pulse of voters or watching the polls. That is not how to be a judge.

Judge Alito has told us he will look at the facts with an open mind and then apply the Constitution and the laws as written. He will not make up the law when he wants, he will not change the law when he needs.

Judge Alito also knows the law, as many of my colleagues on the Senate Judiciary Committee found out. At every stage of his life, he has excelled at knowing and applying the law. As a law clerk to a Federal judge, Department of Justice official, Federal prosecutor, and now a Federal appellate judge with 15 years experience on the bench, Judge Alito is one of the most qualified ever nominated for the Supreme Court.

A very good friend of mine is an appellate judge, who in law school had the pleasure of supervising a legal document written by Judge Alito. He told me Judge Alito had the finest legal, judicial mind he had ever encountered. I trust his judgment.

Judge Alito's peers and colleagues all agree that Judge Alito is supremely qualified for the Supreme Court. He comes highly recommended by his colleagues and members of the legal profession because of his legal knowledge and experience. Even those who have worked with Judge Alito and disagree with him on the issues or the outcome of his rulings consider him fair-minded and evenhanded.

In short, Judge Alito will make a great Supreme Court Justice. Unfortunately, and regrettably, the Senate's vote will not reflect that. Perhaps it was a simpler time, less partisan, less subject to politics, less subject to the whims of shifting constituencies and pressure groups when we could overwhelmingly support those overwhelmingly qualified for the Court.

For example, both Justices Ginsburg and Scalia received unanimous or near unanimous approval. One came from the left, nominated by a Democratic President, and an advocate for the ACLU; another is a brilliant legal mind, supported by the right. Partisan politics were put aside when we voted for these Supreme Court nominees.

Unfortunately, there are those who want to use Judge Alito as a political football. I, for one, believe very strongly our judges and our justice system should be above partisan politics. Justice deserve better than to have the nominees dragged through the political mud.

My focus is on the nominee himself and on his legal knowledge and experience. In that regard, Judge Alito should be on the Supreme Court, and I will proudly vote to place him on the Supreme Court.

Every case he hears, he will approach with an open mind. Every case he considers, he will apply the law and Constitution as written. Every case he decides, he will check his personal feelings at the door and weigh the scales of justice.

We can expect, and should expect, nothing more from a Justice, and justice deserves nothing less.

I urge my colleagues to put aside partisan politics, to put aside pressure from special interests, to vote to invoke cloture, and then to vote on a majority vote to confirm Justice Alito to the Supreme Court.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I have in my hand a number of endorsement letters that have been written, starting with the Grand Lodge of the Fraternal Order of Police. I ask unanimous consent that these letters be printed in the RECORD.

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

GRAND LODGE,
FRATERNAL ORDER OF POLICE,
Washington, DC, November 18, 2005.

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

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

DEAR MR. CHAIRMAN AND SENATOR LEAHY: I am writing on behalf of the membership of the Fraternal Order of Police to advise you of our strong support for the nomination of Samuel A. Alito, Jr. to be an Associate Justice on the United States Supreme Court.

Judge Alito has a long and distinguished career as a public servant, a practicing attorney, and a Federal jurist. He currently serves as a justice on the U.S. Court of Appeals for the Third Circuit, the very same Circuit where he began his career as a law clerk for Judge Leonard I. Garth. Judge Alito spent four years as an Assistant U.S. Attorney before becoming an Assistant to the U.S. Solicitor General in 1981. During his tenure with the Solicitor's office, he argued thirteen cases before the United States Supreme Court, winning twelve of them. In 1985, he served as Deputy Assistant U.S. Attorney General before returning to his native New Jersey to serve as U.S. Attorney in 1990. Nominated by President George H.W. Bush to the Third Circuit, the Senate confirmed him unanimously on a voice vote.

The F.O.P. believes that nominees for posts on the Federal bench must meet two qualifications: a proven record of success as a practicing attorney and the respect of the law enforcement community. Judge Sam

Alito meets both of these important criteria. In his fifteen years as a Federal judge, he has demonstrated respect for the Consistution, for the rights of all Americans, for law, and for law enforcement officers, who often find it very difficult to successfully assert their rights as employees. Judge Alito demonstrated his keen understanding of this in a case brought by Muslim police officers in Newark, New Jersey (*Fraternal Order of Police Newark Lodge No. 12* v. *City of Newark,* 1999). The Newark Police Department sought to force these officers to shave their beards, which they wore in accordance with their religious beliefs. Judge Alito ruled in favor of the officers in this case, correctly noting that the department's policy unconstitutionally infringed on their civil rights under the First Amendment.

The F.O.P. is also very supportive of Judge Alito's decision in a 1993 decision filed by a coal miner seeking disability benefits under the Black Lung Benefits Act (*Cort* v. *Director, Office of Workers' Compensation Programs*). Judge Alito ruled in favor of a coal miner, holding that the Benefits Review Board which denied the miner's claim had misapplied the applicable law regarding disability. He ordered that the case be remanded for an award of benefits, instructing that the Board could not consider any other grounds for denying benefits. Members of the F.O.P. and survivor families who have been forced to appeal decisions which denied benefits under workers' compensation laws or programs like the Public Safety Officer Benefit (PSOB) know first-hand just how important it is to have a jurist with a working knowledge of applicable law and a strong identification with the claimants as opposed to government bureaucrats looking to keep costs down.

Judge Samuel A. Alito, Jr. has demonstrated that he will be an outstanding addition to the Supreme Court, and that he has rightfully earned his place beside the finest legal minds in the nation. We are proud to support his nomination and, on behalf of the more than 321,000 members of the Fraternal Order of Police, I urge the Judiciary Committee to expeditiously approve his nomination. Please do not hesitate to contact me, or Executive Director Jim Pasco, through our Washington office if we may be of any further assistance.

Sincerely,

CHUCK CANTERBURY,
National President.

NOVEMBER 9, 2005.

Hon. BILL FRIST,
Majority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.
Hon. HARRY REID,
Minority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.
Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.
Hon. PATRICK LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MAJORITY LEADER FRIST, MINORITY LEADER REID, CHAIRMAN SPECTER, AND RANKING MEMBER LEAHY: We are former law clerks of Judge Samuel A. Alito, Jr. We are writing to urge the United States Senate to confirm Judge Alito as the next Associate Justice of the United States Supreme Court.

Our party affiliations and views on policy matters span the political spectrum. We have worked for members of Congress on both sides of the aisle and have actively supported and worked on behalf of Democratic, Republican and Independent candidates. What unites us is our strong support for Judge Alito and our deep belief that he will be an outstanding Supreme Court Justice.

Judge Alito's qualifications are well known and beyond dispute. Judge Alito graduated from Princeton University and Yale Law School. Prior to his appointment to the bench, Judge Alito had a distinguished legal career at the Department of Justice, which culminated in his appointment as the U.S. Attorney for the District of New Jersey. Judge Alito has served on the United States Court of Appeals for the Third Circuit for 15 years and has more judicial experience than any Supreme Court nominee in more than 70 years. During his time on the bench, Judge Alito has issued hundreds of opinions, and his extraordinary intellect has contributed to virtually every area of the law.

As law clerks, we had the privilege of working closely with Judge Alito and saw firsthand how he reviewed cases, prepared for argument, reached decisions, and drafted opinions. We collectively were involved in thousands of cases, and it never once appeared to us that Judge Alito had pre-judged a case or ruled based on political ideology. To the contrary, Judge Alito meticulously and diligently applied controlling legal authority to the facts of each case after full and careful consideration of all relevant legal arguments. It is our uniform experience that Judge Alito was guided by his profound respect for the Constitution and the limited role of the judicial branch. Where the Supreme Court or the Third Circuit had spoken on an issue, he applied that precedent faithfully and fairly. Where Congress had spoken, he gave the statute its commonsense reading, eschewing both rigid interpretations that undermined the statute's clear purpose and attempts by litigants to distort the statute's plain language to advance policy goals not adopted by Congress. In short, the only result that Judge Alito ever tried to reach in a case was the result dictated by the applicable law and the relevant facts.

Our admiration for Judge Alito extends far beyond his legal acumen and commitment to principled judicial decision-making. As law clerks, we experienced Judge Alito's willingness to consider and debate all points of view. We witnessed the way in which Judge Alito treated everyone he encountered—whether an attorney at oral argument, a clerk, an intern, a member of the court staff, or a fellow judge—with utmost courtesy and respect. We were touched by his humility and decency. And we saw his absolute devotion to his family.

In short, we urge that Judge Alito be confirmed as the next Associate Justice of the Supreme Court.

Sincerely,

Signed by 51 former clerks.

EDWARDS ANGELL
PALMER & DODGE LLP,
New York, NY, November 23, 2005.

Re Samuel A. Alito.

U.S. Senate,
Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR MEMBERS OF THE SENATE JUDICIARY COMMITTEE: I am writing to express my enthusiastic and unqualified recommendation that Samuel A. Alito be confirmed as an Associate Justice of the United States Supreme Court.

I worked with Judge Alito in 1987. He was appointed United States Attorney for the District of New Jersey. At that time I was the Deputy Chief and Acting Chief of the Special Prosecutions Unit. I continued in that capacity for approximately eight months after Sam arrived at the U.S. Attorney's Office. He was an exemplary U.S. Attorney. He was also an exemplary boss. He was at all times knowledgeable, thoughtful and supportive of me and the other lawyers in the office. In his quiet and wryly humorous way, he demonstrated wonderful leadership. It was clear that he was very conscious of the responsibilities of that office and he fulfilled those responsibilities admirably. I was very proud to work for Sam Alito.

After leaving the U.S. Attorney's Office, I became a private practitioner. I have had the pleasure of appearing as an advocate before Judge Alito in the United States Court of Appeals for the Third Circuit in a number of cases. It is a pleasure to appear before Judge Alito due to his genial demeanor and obvious professionalism. His opinions—even when against my cause—were thoughtful, considerate, justifiable and well written.

Judge Alito did not ask me to write this letter; I volunteered. I am a lifelong Democrat. I am the President-elect of a national women's bar association. I chair the Corporate Integrity and White Collar Crime group at a national law firm. I do not speak on behalf of either my law firm or the women's bar association. I speak for myself only. But by providing my credentials as an outspoken women's rights advocate and liberal-minded criminal defense attorney, I hope you will appreciate the significance of my unqualified and enthusiastic recommendation of Sam Alito for the Supreme Court.

Sam possesses the best qualities for judges. He is thoughtful, brilliant, measured, serious, and conscious of the awesome responsibilities imposed by his position. I cannot think of better qualities for a Supreme Court Justice. It is my fervent hope that politics will not prevent this extraordinarily capable candidate from serving as Associate Justice on the United States Supreme Court.

I will be happy to provide any further details or information in any private or public forum.

Respectfully submitted,

CATHY FLEMING.

JANUARY 4, 2006.

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

DEAR MR. CHAIRMAN AND SENATOR LEAHY: We write in support of the nomination of Judge Samuel A. Alito, Jr. to the United States Supreme Court. Each of us has devoted a significant portion of our legal practice or research to appellate matters. Although we reflect a broad range of political, policy and legal views, we all agree that Judge Alito should be confirmed by the Senate. Judge Alito has a well-deserved reputation as an outstanding jurist. He is, in every sense of the term, a ''judge's judge.'' His opinions are fair, thoughtful and rigorous. Those of us who have appeared before Judge Alito appreciate his preparation for argument, his temperament on the bench and the quality and incisiveness of the questions he asks. Those of us who have worked with Judge Alito respect his legal skills, his integrity and his modesty. In short, Judge Alito has the attributes that we believe are essential to being an outstanding Supreme Court Justice and therefore should be confirmed. Thank you for considering our views.

Sincerely,

Signed by 206 lawyers.

Mr. CORNYN. Mr. President, I also have in my other hand a series of editorials, starting with a Dallas Morning News editorial entitled ''Confirm Alito.'' These are all editorials from newspapers around the country recommending that this body confirm Judge Alito. I ask unanimous consent that

these editorials be printed in the RECORD.

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

[From the Dallas Morning News, Jan. 14, 2006]

CONFIRM ALITO: NOMINEE DESERVES SENATE'S BACKING

After hearing Samuel Alito testify this week, this editorial board's assessment is that the appellate judge has the intellectual breadth and legal depth to sit on the Supreme Court. With few exceptions, he fielded Senate Judiciary Committee questions with a ready grasp of case law and nuance.

He also came across as quite reasonable. Just as Clinton nominee Stephen Breyer struck senators as a mainstream liberal, Mr. Alito resides within the 40-yard lines of conservatism.

We offer this conclusion—and our recommendation of him—after comparing his testimony with several questions we raised Monday.

First, his embrace of judicial precedent was persuasive enough to conclude he wouldn't rush to overturn Roe vs. Wade. He didn't go as far as John Roberts in saying the abortion rights case is settled law. But he repeatedly emphasized his belief in building upon previous decisions.

True, factors could lead him—or any justice—to reconsider a ruling, but they would be extraordinary ones. We'll sum it up this way: Based upon his testimony, we'd feel very misled and deeply disappointed if he joined in an overthrow of Roe.

Second, he allayed fears he wholly prefers presidential power. He left wiggle room on issues such as where the president can deploy troops without congressional authority. But he didn't live up to his billing as a justice who'd make light of checks and balances. Most notably, he agreed presidents don't possess unlimited power, even during war.

Third, his objections to the ''one man, one vote'' doctrine appeared mostly technical. For example, he wondered whether it meant congressional districts should have an exactly equal amount of voters each term. He unveiled no willingness to undo the ruling that ensures fair voting weight for minorities.

It was unsettling that some of the nominee's views appeared different from earlier speeches or writings. A couple of times, his answers had a disturbing then-and-now quality. But Samuel Alito's testimony showed he could become a thoughtful conservative justice. The Senate should give him that opportunity.

[From the Miami Herald, Jan. 24, 2006]

QUALIFIED TO SERVE ON THE SUPREME COURT

There is little doubt that in the coming days the Senate will confirm the nomination of Judge Samuel Alito to replace Justice Sandra Day O'Connor on the U.S. Supreme Court. He deserves to be confirmed. This is not an assessment of his judicial philosophy but of his undoubted qualifications for the job. He has the intellectual heft, judicial temperament and fealty to the U.S. Constitution that are prerequisites for a Supreme Court justice. In 15 years on the federal appellate bench, he has demonstrated a sure grasp of issues.

Critics have sought to paint Judge Alito as an ideologue whose views are out of the judicial mainstream. In the past, we have found this a reason to raise doubts about some of the more extreme nominations for the federal appeals courts. However, this is not a fair argument to raise against Judge Alito.

According to statistics compiled by the Court of Appeals for the Third Judicial Circuit, Judge Alito has dissented only 16 times in the last six years, fewer times than some of his colleagues. On civil-rights cases, his co-panelists agreed with Judge Alito's votes and written opinions 94 percent of the time. It is possible to take issue with some of his views in those instances where he was in dissent, but this isn't the record of a judge on the fringe of mainstream judicial thinking.

During 18 hours of hearings—almost twice as long as the interrogation of John Roberts—Judge Alito displayed a deep understanding of the legal issues the court is likely to confront and kept cool under fire. He did everything possible to avoid saying how he would rule on some of the controversial issues, but that is hardly surprising. Unfortunately, given the divisiveness in Washington today too much candor can prove fatal to a nominee.

In nominating Judge Alito, President Bush fulfilled a campaign promise to appoint judges who shared the views of Justices Clarence Thomas and Antonin Scalia. Thus, he delivered a candidate with sound credentials but a decidedly conservative record that many find troubling.

This record includes a narrow view of abortion rights, apparent support for the expansive powers of the presidency in wartime and a narrow interpretation of the regulatory authority of Congress. Judge Alito likely will help move the court rightward, and some senators, no doubt, will find this a compelling reason to vote against him.

No justice should be denied a seat on the court, however, solely on the basis of judicial philosophy, particularly someone of Judge Alito's proven ability and experience. The best way for critics—Democrats, mostly—to prevail when it comes to selecting federal judges is to prevail at the ballot box.

[From the Milwaukee Journal Sentinel, Jan. 15, 2006]

SUPREME COURT; ALITO DESERVES CONFIRMATION

Samuel Alito should be confirmed to the U.S. Supreme Court.

And, barring any last-minute disqualifying revelations, the first step toward that goal should be yes votes in the Senate Judiciary Committee, including from Wisconsin's two senators, both of whom sit on that committee.

Democrats are understandably concerned about specific red flags in Alito's record but should nonetheless reject a filibuster. Nor should they move, as it appeared likely late last week they would, to delay the committee's vote. Both would be antithetical to the democratic process in this specific case.

That's because, though we would have preferred Alito to be more open about his judicial philosophy, he did make one case quite effectively. He is a conservative jurist. This is what the electorate, albeit narrowly, indicated it wanted when it reelected George W. Bush as president in 2004. There can be no reasonable claim that voters did not know this to be a likely consequence of their votes.

Yes, Alito's views peg him as closer to a constitutional originalist than one with more expansive views of that document, a view we prefer. But Alito is likely not the wildeyed, knee-jerk ideologue his critics have depicted. Instead, a broad view of his writings, rulings and character indicate a judge capable of giving proper and due weight to the law. Alito is scholarly, intelligent and eminently qualified to sit on the bench, as attests his rating as such by the American Bar Association.

This is not to say that there isn't a roll-of-the-dice quality to this choice for the Supreme Court. But this is so with most, if not all, judicial nominations. Just ask Republicans, many of whom now have buyers' remorse over Justices David Souter and Anthony Kennedy.

Alito's 1985 stance, writing as a lawyer within the Reagan administration, that the Constitution does not support abortion rights is troubling. Unlike John Roberts during his recent chief justice confirmation hearings, Alito refused to state that Roe vs. Wade is settled law. He did assert that it is ''embedded in the culture'' and should be respected as precedent.

A stronger statement would have been more reassuring, but in a living, breathing Constitution, much, in fact, will not be settled. Were it so, then Plessy vs. Ferguson, which the Supreme Court used in 1896 to enable decades of segregation under a separate but equal rule, could not have been undone by the court in 1954.

Americans should take some comfort in Alito's acknowledgment of a right to privacy in the Constitution. His refusal to be pinned down more concretely on this point is defensible given that the court will rule on abortion.

Similarly, the public should take some solace from his contention that no president is above the law, given the controversies sparked by several presidential actions in the war on terrorism.

Wisconsin is fortunate to have two early votes on judicial nominations. Democratic Sens. Herb Kohl and Russ Feingold are both Judiciary Committee members. Both acquitted themselves ably in questioning the nominee. And both should vote the nominee out of committee.

Kohl properly probed on abortion and one-person, one-vote and inquired about glowing Alito comments on Robert Bork, denied a Supreme Court seat in 1987. Feingold asked necessary questions on executive powers, Alito's ruling in a case involving a mutual fund in which he invested and on the death penalty. Together, they helped ensure the hearings were more than a GOP lovefest for the nominee.

But Alito handled himself well in answering. If not as forthcoming as would be ideal, he offered enough assurances to warrant his confirmation. Democrats, however, are most upset over what Alito didn't say rather than what he did. This is not an entirely acceptable standard.

We're aware that this nomination carries a weighty significance because the nominee will replace Justice Sandra Day O'Connor, often a swing vote in a divided court. And Alito is still an open book on important issues. But, again, elections have consequences. Voters knew what these were, and Alito is not demonstrably beyond the pale of the U.S. mainstream.

Alito—and Roberts—could disappoint, of course, and renege on their own claims of open-mindedness. If they do, they will have betrayed a trust to the American people. But it is not at all as assured as critics have contended that Alito or Roberts will do this.

Confirm Alito. It's not risk-free, but it's the right thing to do.

[From the Philadelphia Inquirer, Jan. 15, 2006]

CONFIRM JUDGE ALITO

The Senate should confirm Judge Samuel A. Alito Jr., President Bush's nominee for the Supreme Court.

Alito, a member of the Philadelphia-based Third Circuit Court of Appeals, demonstrated during three days of questioning last week by the Senate Judiciary Committee that he does not bring a precast agenda to the job.

He does bring a cast of mind that causes some legitimate concern. But Alito showed he has the experience, modest temperament, reverence for the law, and mastery of his profession needed to serve on the high court.

A common complaint about confirmations has been that nominees stonewall the committee. Alito tried to answer nearly every question put to him. Democratic senators may not have liked his responses, but Alito dodged very few questions.

This endorsement is not enthusiastic. Alito is a more conservative nominee than anyone concerned with the nation's drift toward excessive executive power and disdain for civil liberties would prefer.

But the Supreme Court should not be stocked with justices all of the same political persuasion, left or right. As the replacement for a valuable centrist, Sandra Day O'Connor, Alito might very well move the court perceptibly to the right. But his methodical, just-the-facts approach to the law does not portend a shocking shift, and would not justify a filibuster of his nomination.

Alito did fail to allay some important concerns. On abortion, he rebuffed entreaties by Democrats to characterize Roe v. Wade as ''settled law.'' Chairman Arlen Specter (R., Pa.) commended Alito for discussing the issue in more depth than did Chief Justice John G. Roberts Jr., but this extended discourse was less than encouraging. Alito, who wrote in 1985 that the Constitution doesn't guarantee the right to abortion, would not say he feels differently today.

He pledged to ''keep an open mind'' on abortion cases. But he also said Supreme Court precedent is not ''an inexorable command.'' If Alito does consider the Constitution a living document, as he testified, he should weigh carefully the expressed desire of a majority of Americans to preserve reproductive freedoms.

On the question of presidential power, concerns linger that Alito would give undue deference to the executive branch. For all President Bush's talk about ''strict constructionism,'' his freewheeling notions about his powers would have appalled many of the Constitution's framers, who deeply feared an authoritarian executive.

At the hearings, Alito sought to temper the enthusiasm for presidential prerogative he showed in earlier writings with the statement that the president is not above the law. At least he is on the record with this view now. Being on the high court has been known to focus a justice's mind on the value of the judiciary's constitutional role as a check on the other two branches.

A distressing point was Alito's membership in the now-defunct Concerned Alumni of Princeton, a group created in 1972 to oppose the admission of women and minorities to the university. His protests that he knew little about the group's agenda, even though he touted his membership on a 1985 application for a job in the Reagan administration, were unpersuasive.

But the example of Alito's life must count for something, and that example diminishes the significance of the Princeton misstep. He is not a bigot. He has hired and promoted women and minorities. Colleagues testify to his basic decency and are mystified that he joined CAP. He has renounced the group's goals.

Alito has admitted that his failure to recuse himself in 2002 from a case involving Vanguard mutual funds, in which Alito had invested, was an ''oversight.'' It was a mistake, even though the conflict of interest was not significant. Investing in a mutual fund is not like owning stock in an individual company. But Alito had pledged to bow out of cases involving Vanguard, then didn't. That was wrong.

An analysis of Alito's written opinions shows his overriding respect for authority: for the police, for the government, for employers. Given all the recent evidence of how those parties commit deeds that damage individuals, you'd like the high court to take a more balanced view.

But Alito's cast of mind does not disqualify him. As pragmatic Judge Edward Becker of the Third Circuit testified, he and Alito disagreed only 27 times in 1,050 cases they heard together. Alito is not in the mainstream of judicial thought, but he is not too far to the right of it.

[From the Salt Lake Tribune, Dec. 7, 2005]

JUDGE ALITO IS NO IDEOLOGUE

(By Jeffrey N. Wasserstein)

As a former clerk for Judge Samuel Alito, I can tell you he is not the conservative ideologue portrayed in a recent article by Knight Ridder reporters Stephen Henderson and Howard Mintz (''Alito Opinions Reveal Pattern of Conservatism'').

I am a registered Democrat who supports progressive causes. (To my wife's consternation, I still can't bring myself to take my ''Kerry for President'' bumper sticker off of my car.) I clerked for Judge Alito from 1997 to 1998. Notwithstanding my close work with Judge Alito, until I read his 1985 Reagan job application statement, I could not tell you what his politics were. When we worked on cases, we reached the same result about 95 percent of the time. When we disagreed, it was largely due to the fact that he is a lot smarter than I am (indeed, than most people) and is far more experienced.

It was my experience that Judge Alito was (and is) capable of setting aside any personal biases he may have when he judges. He is the consummate professional.

One example that I witnessed of Judge Alito's ability to approach cases with an open mind occurred in the area of criminal law, an area in which Judge Alito—a former federal prosecutor—had particular expertise. One time, I was looking at a set of legal briefs in a criminal appeal. The attorney for the criminal defendant had submitted a sloppy brief, a very slip-shod affair. The prosecuting attorney had submitted a neat, presentable brief. I suggested (in my youth and naivete) that this would be an easy case to decide for the government.

Judge Alito stopped me cold by saying that that was an unfair attitude to have before I had even read the briefs carefully and conducted the necessary additional research needed to ensure that the defendant received a fair hearing before the court.

Perhaps not what one would expect from a conservative ideologue (and former federal prosecutor), but it is indicative of the way Judge Alito approaches each case with an open mind, and it is a lesson I've never forgotten.

Another example, which reached a result that would seem contrary to a conservative ideologue, was a case I worked on with Judge Alito (U.S. v. Kithcart) in which Judge Alito reversed a conviction of a black male, holding that an all-points-bulletin for ''two black men in a black sports car'' was insufficient probable cause to arrest the driver of the car. Notwithstanding the driver's guilty plea, Judge Alito reversed, finding that the initial arrest lacked probable cause, stating, ''The mere fact that Kithcart is black and the perpetrators had been described as two black males is plainly insufficient.''

This is hardly the work of a conservative ideologue.

As a former clerk to Judge Alito, I can attest to Judge Alito's deep and abiding respect for precedent and the important role of stare decisis—the doctrine that settled cases should not be continually revisited. Judge Alito has served on the U.S. Court of Appeals for the 3rd Circuit for 15 years, and has compiled a distinguished record that conclusively demonstrates respect for precedent.

The best indicator of how a justice may act on the Supreme Court is the judicial record the justice had before elevation to the court. In Judge Alito's case, one can clearly see a restrained approach to the law, deferring to a prior court decision even if he may have disagreed with its logic.

While a bald statement that ''the Constitution does not protect a right to an abortion'' in a vacuum might be cause for concern, Judge Alito's statement must be taken in context. Sen. Diane Feinstein, D-Calif., said after her meeting with Judge Alito that he explained that regardless of his statement on the job application, ''I'm now a judge, I've been on the Circuit Court for 15 years and it's very different. I'm not an advocate, I don't give heed to my personal views, what I do is interpret the law.'' Sen. Ted Kennedy, D-Mass., also noted that Judge Alito said ''he had indicated that he is an older person, that he has learned more, that he thinks he is wiser person (and) that he's got a better grasp and understanding about constitutional rights and liberties.''

Given Judge Alito's respect for precedent and stare decisis as demonstrated by actually adhering to precedent for 15 years while on the Court of Appeals—even in cases that reached results that would seem incorrect to a conservative—and the open mind with which I saw him approach cases, labeling Judge Alito an ''ideologue'' would be unfair and distorts his record on the bench.

Mr. CORNYN. Mr. President, I support the nomination of Sam Alito to the U.S. Supreme Court. The American people, in public opinion polls we have seen reported in the newspapers, indicate they also want Judge Alito on the Supreme Court. Yet we are here today, after extended debate, because there are a handful of Senators who are determined to stop Judge Alito's nomination from even receiving an up-or-down vote. Hence, at 4:30 we will have a vote on cloture, whether to close debate. It is my sincere hope that at least 60 Senators will vote to close debate so tomorrow morning we can have that up-or-down vote that this nominee deserves and that the Constitution requires.

There really is no pretense that this tactic of delay for delay's sake is needed for extended debate. Judge Alito was nominated months ago, and we have been debating this nomination without interruption since last Wednesday. Not only has Judge Alito been investigated by the FBI but also by the American Bar Association's Standing Committee on the Federal Judiciary. He has been investigated by the Senate Judiciary Committee, on which I am proud to serve, and been through extended televised hearings. The fact is, even the minority leader, the Democrat leader, conceded ''[t]here's been adequate time for people to debate'' this nomination.

So this is delay for delay's sake. Fortunately, there is no indication this delay tactic will succeed. Judge Alito's supporters in this body are so numerous that everyone has conceded—even the minority, who is determined to try to filibuster this nomination, concedes

the filibuster attempt is futile and this nominee will be confirmed.

So what could possibly be the motivation? The Senator from Missouri, who just spoke before me, alluded to this. I think it is common knowledge that it really is outside interest groups that are putting, in some cases, irresistible pressure on Senators to oppose this nomination, even though they realize the delay and the potential filibuster are futile. These are groups that have declared—and I quote, in one instance—''you name it, we'll do it'' to defeat Judge Alito. I am very sorry that some of my colleagues have fallen under the spell of some of these groups. In my view, it is wrong to place the wishes of these interest groups before the wishes of the American people.

I think it is also a mistake to waste the valuable time of the Senate, time we could be using to address other real and urgent needs that no doubt the President will address tomorrow night in his State of the Union speech and which are well known to each of us here. We have more important things to do than to stage events to facilitate fundraising by special interest groups. I urge all of my colleagues to stand up against the interest groups and to put the American people first by voting against the filibuster.

I also continue to be struck by the lengths some will go in order to defeat this good man and good judge. This raises the question of ''Why?'' Why do liberal special interest groups and their allies in this body oppose Judge Alito so vehemently?

I believe, at bottom, the reason they oppose his nomination is because he has refused to do their bidding. After all, Judge Alito is a judge who believes in judicial restraint, who understands the differences between the roles judges and legislators—elected representatives of the people—are to play in our government. He believes judges should respect the legislative choices made by the American people through their representatives. And he believes, as I do, judges have no warrant to impose their own beliefs on the rest of us under the guise of interpreting the Constitution.

It is sad but true that the prospect of a Supreme Court Justice who will respect the legislative choices of the American people scares the living daylights out of these interest groups and their allies. Why? Because the legislative choices of the American people are not the legislative choices of these interest groups.

There are some in this country who are entitled to their opinion but whose views are so extreme they will never prevail at the ballot box. The only way they could possibly hope to get their views enacted into law would be to circumvent the Democratic process and pack the courts with judicial activists who will impose their views on the rest of us.

What are these views? Well, one organization I think makes the point. The American Civil Liberties Union is one example. They represent child pornographers because they believe that child pornography is free speech. Yet at the same time, they litigate against schoolchildren who want to recite the Pledge of Allegiance because it invokes ''one nation under God.''

They believe the Constitution protects the right to end the life of a partially born child. Yet at the same time, they believe the Constitution does not protect marriage between only one man and one woman.

They seem to believe that criminals have more rights than victims. And they believe that terrorists should receive special rights never before afforded to enemy combatants during a time of war.

This is the hard left's version of America. It is a place where criminals and terrorists run free on technicalities, where pornographers may speak but people of faith must keep quiet, where traditional values are replaced by social experimentation.

The liberal special interest groups and those who agree with them in this body to oppose Judge Alito do so because Judge Alito's America is not the hard left's America.

What, then, is Judge Alito's America? Well, I found one of the best answers to that question in, of all places, the New York Times. On January 12, one of their columnists, David Brooks, wrote a column that captures perfectly the differences between Judge Alito's America and the America envisioned by some on the hard left.

He wrote:

If he'd been born a little earlier, Sam Alito probably would have been a Democrat. In the 1950s, the middle-class and lower-middle-class whites in places like Trenton, N.J., where Alito grew up, were the heart and soul of the Democratic party.

But by the late 1960s, cultural politics replaced New Deal politics, and liberal Democrats did their best to repel Northern white ethnic voters. Big-city liberals launched crusades against police brutality, portraying working class cops as thuggish storm troopers for the establishment.

The liberals were doves; the ethnics were hawks. The liberals had ''Question Authority'' bumper stickers; the ethnics had been taught in school to respect authority. The liberals thought that an unjust society caused poverty; the ethnics believed in working their way out of poverty.

Sam Alito emerged from his middle-class neighborhood about that time, made it to Princeton and found ''very privileged people behaving irresponsibly.''

Alito wanted to learn; the richer liberals wanted to strike. He wanted to join the ROTC; the liberal Princetonians expelled that organization from campus. He was orderly and respectful; they were disorderly and disrespectful.

Mr. Brooks continues:

If there is one lesson from the Alito hearings, it is that the Democratic Party continues to repel [middle-class white] voters just as vigorously as ever.

If you listened to the questions of [Republicans], you heard [Senators] exercised by the terror drug dealers can inflict on their neighborhoods. If you listened to the [Democrats], you heard [Senators] exercised by the terror law enforcement officials can inflict on a neighborhood.

If forced to choose, most Americans side with the party that errs on the side of the cops, not the criminals.

If you listened to [Republicans], you heard [Senators] alarmed by the threats posed by anti-American terrorists. If you listened to [Democrats], you heard Senators alarmed by the threats posed by American counterterrorists.

If forced to choose, most Americans want a party that will fight aggressively against the terrorists, not the [NSA].

He concluded:

Alito is a paragon of the old-fashioned working-class ethic. In a culture of self-aggrandizement, Alito is modest. In a culture of self-exposure, Alito is reticent. In a culture of made-for-TV sentimentalism, Alito refuses to emote. In a culture that celebrates the rebel, or the fashionable pseudorebel, Alito respects tradition, order and authority.

I read a lengthy excerpt from Mr. Brooks' column because I could not have said it better. This is Judge Alito's America. It is a place where if we err at all, we err on the side of the law, not on the side of those who break the law, where we fight terrorists, not those who try to stop those terrorists, where we work hard to get ahead, where we are more interested in getting the job done than getting credit for it. In other words, these are the middle-class traditional values of America, Sam Alito's America, and, I believe, our America. They are now apparently so foreign to many in the Democratic Party, particularly the liberal interest groups that seem to agitate for delay for delay's sake and to block an up-or-down vote on this nomination, that they will stop at nothing to oppose someone such as Judge Alito who embodies those values. You name it, whether smears, distortions or even denying the decency of an up-or-down vote, and some will do it. Judge Alito's treatment by this hard core of left-leaning groups and their supporters says more about them than it does Judge Alito.

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. HATCH. 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. HATCH. Mr. President, the Senate is about to vote on a motion to invoke cloture on the nomination of Samuel Alito to be an Associate Justice of the U.S. Supreme Court. We should not even have to take this step but should be voting instead on whether to consent to Judge Alito's appointment. But since we are being forced to take this unnecessary step, let me explain why I believe the case for both cloture and for confirmation is compelling.

Deliberation and debate are hallmarks of the Senate. Our tradition has been that once a judicial nomination

has reached the Senate floor, we debate and then we vote on confirmation. There is no need to revisit all of the arguments regarding judicial nomination filibusters. Suffice it to say that American history contains but a single example of failing to invoke cloture on and then failing to confirm a Supreme Court nomination. The 1968 nomination of Abe Fortas to be Chief Justice, however, bears no relationship to the current situation.

First, while the Fortas nomination did not have majority support, the Alito nomination clearly does. Judge Alito enjoys majority bipartisan support. I realize his opponents are not happy that Judge Alito will be confirmed; no one likes to lose. But the correct response to failure is to pick yourself up and try another day, not to rig the process to get your way.

Second, opposition to cloture on the Fortas nomination was almost evenly bipartisan, with 23 Republicans and 19 Democrats. As we are about to see, opposition to cloture on the Alito nomination will be entirely partisan. The most important reason why the Fortas cloture vote is no precedent for this one is that there had not yet been full and complete debate on the Fortas nomination when the vote ending debate occurred. Senator Robert Griffin of Michigan stated clearly at the time that not all Senators had had a chance to speak and that the debate was being kept squarely on the many serious issues and concerns raised by the Fortas nomination. Senators were debating, not obstructing, the nomination.

The same cannot be said today. Those raising this last-minute call for a filibuster have had a full and fair opportunity to air their views about this nomination. Let us not forget that debate over a nomination, especially to the Supreme Court, begins as soon as the President announces his intention to nominate. The Judiciary Committee chairman, Senator SPECTER, accommodated Democrats and waited to hold the hearing on the Alito nomination until January. In fact, the 70 days between announcement and hearing exceeded the average time for all of the current Supreme Court Justices by more than 60 percent. Nonetheless, committee Democrats insisted on delaying the nomination for an extra week.

The nomination has now been on the floor for nearly a week. While the Senator from Massachusetts, Mr. KENNEDY, says that Senators need still more time to debate, I recall the long, repeated quorum calls last week when Senators who could have spoken chose not to do so. I agree with the distinguished minority leader who last Thursday said that ''there has been adequate time for people to debate. No one can complain in this matter that there hasn't been sufficient time to talk about Judge Alito, pro or con.''

In fact, the last-ditch call for this filibuster came not from this floor or even from this country. The Senator from Massachusetts, Mr. KERRY, called for this filibuster from Switzerland. There is a difference between not having an opportunity to debate and not winning that debate. Nothing is being short circuited here. This floor has been wide open for debate. No one can even suggest that the debate has not been a full and fair one.

To their credit, some of my Democratic colleagues who oppose the nomination itself have nonetheless said that this 11th-hour filibuster attempt is not in the best interest of the Senate.

The Senator from Illinois, Mr. OBAMA, said over the weekend that the better course for Democrats is to win elections and persuade on the merits, rather than what he called overreliance on procedural maneuvers such as the filibuster. I agree.

We should not have to take this cloture vote today. It only further politicizes and distorts an already damaged judicial confirmation process. Moving beyond that, it is clear that the case for Judge Alito's confirmation is compelling. Last week I outlined three reasons why Judge Alito should be confirmed. He is highly qualified. He is a man of character and integrity, and he understands and is committed to the properly limited role of the judiciary, judges.

During the debate on this nomination, other Senators have explored these matters as well, including the Senator from Texas, Mr. CORNYN, who preceded me here today. Senator CORNYN is a distinguished member of the Judiciary Committee and a former State supreme court justice. His perspective and insight on judicial matters has been and is extremely valuable.

I wish to explore one specific issue that relates to Judge Alito's judicial philosophy which, unfortunately, has been the subject of a disinformation campaign by Judge Alito's opponents. That issue is Judge Alito's view on the role of precedent or prior judicial decisions in deciding cases. Judges settle legal disputes by applying the law to the facts in the cases that come before them. The law that judges apply to settle legal disputes comes in two basic forms.

There is the written law itself in the form of constitutional provisions, statutes, or regulations. Then there are past decisions in which the courts have addressed the same issue. The Latin phrase for following precedent or prior decisions is ''stare decisis,'' which means ''let the decision stand.'' Mr. President, every judge believes in the doctrine of stare decisis. Every judge believes that prior decisions play an important role in judicial decisionmaking. That includes Judge Alito.

As I will explain, Judge Alito's views on precedent are sound, traditional, and principled. When the Judiciary Committee hearing on this nomination opened, I outlined several rules which should guide the confirmation process. The first was that we should take parts or elements of Judge Alito's record on their own terms, in their own context for what they really are. That certainly applies to Judge Alito's views regarding the issue of precedent.

Rather than acknowledging what Judge Alito's views actually are, however, some of his opponents have created a caricature of those views, which serves their political purposes but which misleads our fellow citizens about both Judge Alito's record and this very important issue.

Let me start with Judge Alito's own words. No one expresses his view of precedent better than he does. On January 11, 2006, Judge Alito offered this summary of his views:

> I have said that stare decisis is a very important legal doctrine and that there is a general presumption that decisions of the Court will not be overruled. There needs to be a special justification for doing so, but it is not an inexorable command.

This view has several elements.

First, Judge Alito says plainly that stare decisis is a very important legal concept and doctrine. He described why he thinks precedent is so important. One of his points stood out, and I believe it is worth highlighting. Let me just refer to that point. He said:

> I think the doctrine of stare decisis is a very important doctrine . . . [I]t limits the power of the judiciary . . . it's not an inexorable command, but it is a general presumption that courts are going to follow prior precedent.

Precedent is an important element of judicial restraint. In contrast to the grandiose picture painted by some on the other side of the aisle, the judiciary doesn't exist to right all wrongs, correct all errors, heal social wounds, and otherwise usher in an age of domestic tranquility. Judges have a specific role to play, but, like legislators and the executive, they must stay in their proper place.

Judge Alito believes that giving precedent an important role in deciding cases limits the power of the judiciary. If his opponents believe instead that judges should have unlimited power and may disregard precedent at will, let them try to persuade the American people.

Let me refer again to Judge Alito's summary of his views on precedent. In addition to stare decisis being an important legal doctrine, Judge Alito also said that there is a general presumption that decisions of the Court will not be overruled. If that presumption did not exist, there would be little point in paying attention to prior decisions at all. In fact, it is that presumption which makes precedent useful in limiting the power of the judiciary.

Judge Alito also said that overruling a prior decision requires a special justification. Some of Judge Alito's opponents suggest that he has taken a careless or reckless attitude toward the precedents of the court on which he now sits. I assume that, by this suggestion, they want people to believe that

Judge Alito would play fast and loose with Supreme Court precedent once he joins the Court. The suggestion is certainly false.

Judge Alito has voted to overrule his own court's precedents only four times in the 15 years on the U.S. Court of Appeals—only four times. In each of those cases, in which all of the judges in the circuit participated, he was in the majority, and in two of them the decision was unanimous. Judge Alito has demonstrated his view that judges should not heedlessly overrule past decisions.

As he explained it, the factors helping judges to handle precedents, including ones to overrule or reaffirm them, include when a past decision has actually been challenged and the Court has decided to retain it. This would, of course, not include cases in which the validity of a prior decision was neither challenged nor decided. It is, after all, another fundamental principle of judicial restraint, which Judge Alito also endorsed, that courts should not decide constitutional questions unless absolutely necessary. That would include deciding whether prior decisions, especially on constitutional issues, should be overruled or reaffirmed.

Obviously, a court does not decide an issue unless it actually addresses and decides it, and a court cannot be said to reaffirm or uphold a prior decision unless it actually addresses or decides that issue.

That said, a court strengthens the presumption that a precedent will be followed when the court actually does reaffirm such a decision. At the same time, Judge Alito has said that adhering to prior decisions is not an inexorable command. Those are not his words. As he pointed out at his hearing, the Supreme Court has repeatedly used that language, holding over and over again that adherence to precedent is not an inexorable command.

This only makes sense. While following prior decisions is a presumption, it is a rebuttable presumption. Here is where Judge Alito's opponents cry foul the loudest and where they expose their real agenda.

Many of Judge Alito's opponents do not really care about legal doctrines; they only care about political agendas. For them, the political ends justify the judicial means, and so-called principles are infinitely flexible so long as the political goal is achieved. They do not care about precedents in general; they only care about certain precedents in particular.

While Judge Alito has presented a thoughtful, principled approach to handling any prior decision, his opponents have but one simple, hard, political rule: get your hands off the precedents we want to keep. Their rule seems to be stare decisis for me but not for thee. Reaffirm decisions we like; overrule ones we oppose. This one-way ratchet is simply a device for getting the courts to do the political heavy lifting and preserving particularly the Supreme Court's role as policymaker in chief.

The real issue for Judge Alito's opponents is not that he rules too often for this group or that group, as if judges are supposed to make the numbers satisfy some political interest group rather than faithfully apply the law. It is not really about theories such as what has been called the unitary executive, which to Judge Alito apparently means nothing more unusual than that the head of the executive branch should be able to control and lead the executive branch. It is not about guilt-by-association tactics—accusations of affiliation with groups wanting to preserve Princeton's all-male tradition made by Senators belonging to all-male clubs.

No, Mr. President, this is about abortion. That is the be-all and end-all issue of those who oppose Judge Alito. I admit there may be an exception or two over there, but I really believe it comes down to that. That is what is driving this, and that is what the outside special interests, the leftwing groups, are using to drive them. The 800-pound precedent in the room is Roe v. Wade. That is the decision Judge Alito's opponents want left alone at all costs.

Many Senators and leftwing interest groups have demanded to know whether Judge Alito, if confirmed, would ever vote to overrule Roe v. Wade. I applaud their creativity in getting as close as possible to directly asking him that question. For most of Judge Alito's opponents, whether Roe v. Wade was correctly decided doesn't matter. Whether it was a legitimate interpretation of the Constitution does not matter. No, abortion advocates take a fluidly flexible approach to precedent, at least until they get the one they want. Then they become the most rigid and doctrinaire defenders of precedent, insisting on keeping what they have. This all seems like a judicial version of ''heads I win, tails you lose.''

Mr. President, I am glad to say that Judge Alito follows principle rather than politics on the bench. Can you imagine if the attitude of his opponents regarding this one precedent, Roe v. Wade, actually prevailed across the board? What if adherence to prior decisions was actually an inexorable command? What if the Supreme Court's interpretation of the Constitution, once on the books, could never be changed? If the doctrine of stare decisis were an inexorable command, decisions such as Dred Scott v. Sanford and Plessy v. Ferguson would still be on the books.

Judge Alito put it:

I don't think anybody would want a rule in the area of constitutional law that . . . said that a constitutional decision once handed down can never be overruled.

The judiciary must be guided by principles, not by politics. The Supreme Court has repeatedly said that the role of precedent is actually the weakest in cases involving the Constitution for a very simple reason. When the Supreme Court construes one of our statutes incorrectly, we can correct that error in short order. When the Supreme Court interprets the Constitution incorrectly, correction comes only through the cumbersome constitutional amendment process or the Court's willingness to review its past decisions.

I ask unanimous consent that a list of Supreme Court decisions affirming the principle that precedent is weakest in constitutional cases be printed in the RECORD.

There being no objection, the material was ordered t9 be printed in the RECORD, as follows:

STARE DECISIS IS WEAKEST IN CONSTITUTIONAL CASES

Agostini v. *Felton*, 521 U.S. 203,235 (1997) (quoting *Payne* v. *Tennessee*, 501 U.S. 808,828 (1991))—Justice O'Connor.

''As we have often noted, '[s]tare decisis is not an inexorable command, . . .' That policy is at its weakest when we interpret the Constitution because our interpretation can be altered only by constitutional amendment or by overruling our prior decisions.''

Payne v. *Tennessee*, 501 U.S. 808,828 (1991) (quoting *Helvering* v. *Hallock*, 309 U.S. 196,119 (1940) and *Burnet* v. *Coronado Oil & Gas Co.*, 285 U.S. 393,407 (1932))—Chief Justice Rehnquist.

''Stare decisis is not an inexorable command; rather, it 'is a principle of policy and not a mechanical formula of adherence to the latest decision.' This is particularly true in constitutional cases, because in such cases 'correction through legislative action is practically impossible.' ''

Harmelin v. *Michigan*, 501 U.S. 957,965 (1991)—Justice Scalia.

''We have long recognized, of course, that the doctrine of stare decisis is less rigid in its application to constitutional precedents.''

Glidden Co. v. *Zdanok*, 370 U.S. 530,543 (1962)—Justice Harlan.

''. . . this Court's considered practice not to apply stare decisis as rigidly in constitutional as in nonconstitutional cases. . . .''

New York v. *United States*, 326 U.S. 572 (1946)—Justice Frankfurter.

''But throughout the history of the Court stare decisis has had only a limited application in the field of constitutional law. And it is a wise policy which largely restricts it to those areas of the law where correction can be had by legislation. Otherwise the Constitution loses the flexibility necessary if it is to serve the needs of successive generations.''

Smith v. *Allwright*, 321 U.S. 649,665 (1944)—Justice Reed.

''In constitutional questions, where correction depends upon amendment and not upon legislative action, this Court throughout its history has freely exercised its power to reexamine the basis of its constitutional decisions.''

St. Joseph Stock Yards Co. v. *United States*, 98 U.S. 38,94 (1936)—Justices Stone and Cardozo, concurring in the result.

''The doctrine of stare decisis . . . has only a limited application in the field of constitutional law.''

Burnet v. *Coronado Oil & Gas Co.*, 285 U.S. 393,407 (1932)—Justice Brandeis, dissenting.

''[I]n cases involving the Federal Constitution, where correction through legislative action is practically impossible, this court has often overruled its earlier decisions.''

Mr. HATCH. Mr. President, in some of these cases, the Justice whom Judge Alito would replace, Justice Sandra Day O'Connor, is the one repeating this principle.

Let me return once again to how Judge Alito summarized his own view

of precedent. It is a very important legal doctrine that serves to limit judicial power. There is a general presumption that past decisions will not be overruled, but this is not an inexorable command.

Judge Alito takes a sound, traditional, principled view of the role of precedent in judicial decisionmaking, and I hope my colleagues will consider Judge Alito's view for what it actually is.

In closing, let me say that the debate over this nomination has been going on for about 3 months. It has been long and vigorous, both inside the Senate and across the country. I wish to note some of the opinions outside of this body on the nomination before us.

Some of my colleagues on other side of the aisle are fond of quoting liberal law professor Cass Sunstein's statistical analysis about which sides have won or lost in different categories of cases before Judge Alito. They have often said it is in his dissent that we may find his true judicial philosophy. I wonder whether they will credit Professor Sunstein's conclusions about Judge Alito's dissents, published last November in the Washington Post.

Here is what he said on the contrary:

None of Alito's opinions is reckless or irresponsible or even especially far-reaching. His disagreement is unfailingly respectful. His dissents are lawyerly rather than bombastic. He does not berate his colleagues . . . Nor has Alito proclaimed an ambitious or controversial theory of interpretation. He avoids abstractions.

That was November 1, 2005.

Here is the conclusion of New York Newsday, which is titled ''Qualifications'':

Samuel Alito is a modest, decent man and an accomplished jurist, well within the country's conservative mainstream. On that basis he should be confirmed. But the Nation will need him to be a strong guardian of the constitutional rights and protections that make this country special.

I ask unanimous consent that three other editorials from the Washington Post, Chicago Tribune, and the Newark Star-Ledger be printed in the RECORD.

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

[From the Washington Post, Jan. 15, 2006]

CONFIRM SAMUEL ALITO

The Senate's decision concerning the confirmation of Samuel A. Alito Jr. is harder than the case last year of now—Chief Justice John G. Roberts Jr. Judge Alito's record raises concerns across a range of areas. His replacement of Justice Sandra Day O'Connor could alter—for the worse, from our point of view—the Supreme Court's delicate balance in important areas of constitutional law. He would not have been our pick for the high court. Yet Judge Alito should be confirmed, both because of his positive qualities as an appellate judge and because of the dangerous precedent his rejection would set.

Though some attacks on him by Democratic senators and liberal interest groups have misrepresented his jurisprudence, Judge Alito's record is troubling in areas. His generally laudable tendency to defer to elected representatives at the state and federal levels sometimes goes too far—giving rise to concerns that he will prove too tolerant of claims of executive power in the war on terror. He has tended at times to read civil rights statutes and precedents too narrowly. He has shown excessive tolerance for aggressive police and prosecutorial tactics. There is reason to worry that he would curtail abortion rights. And his approach to the balance of power between the federal government and the states, while murky, seems unpromising. Judge Alito's record is complicated, and one can therefore argue against imputing to him any of these tendencies. Yet he is undeniably a conservative whose presence on the Supreme Court is likely to produce more conservative results than we would like to see.

Which is, of course, just what President Bush promised concerning his judicial appointments. A Supreme Court nomination isn't a forum to refight a presidential election. The president's choice is due deference—the same deference that Democratic senators would expect a Republican Senate to accord the well-qualified nominee of a Democratic president.

And Judge Alito is superbly qualified. His record on the bench is that of a thoughtful conservative, not a raging ideologue. He pays careful attention to the record and doesn't reach for the political outcomes he desires. His colleagues of all stripes speak highly of him. His integrity, notwithstanding efforts to smear him, remains unimpeached.

Humility is called for when predicting how a Supreme Court nominee will vote on key issues, or even what those issues will be, given how people and issues evolve. But it's fair to guess that Judge Alito will favor a judiciary that exercises restraint and does not substitute its judgment for that of the political branches in areas of their competence. That's not all bad. The Supreme Court sports a great range of ideological diversity but less disagreement about the scope of proper judicial power. The institutional self-discipline and modesty that both Judge Alito and Chief Justice Roberts profess could do the court good if taken seriously and applied apolitically.

Supreme Court confirmations have never been free of politics, but neither has their history generally been one of party-line votes or of ideology as the determinative factor. To go down that road is to believe that there exists a Democratic law and a Republican law—which is repugnant to the ideal of the rule of law. However one reasonably defines the ''mainstream'' of contemporary jurisprudence, Judge Alito's work lies within it. While we harbor some anxiety about the direction he may push the court, we would be more alarmed at the long-term implications of denying him a seat. No president should be denied the prerogative of putting a person as qualified as Judge Alito on the Supreme Court.

[From the Chicago Tribune, Jan. 15, 2006]

CONFIRM JUDGE ALITO

Having survived the hazing ritual known as a Senate Judiciary Committee confirmation hearing, Judge Samuel Alito Jr. has demonstrated that he should be confirmed for the Supreme Court.

He had largely done so before the hearing. His record on the bench is strong. The American Bar Association determined he is highly qualified. But he had to go through the process of proving that he could remain calm through every contorted attempt by senators to challenge his character and fitness. He has done so.

So what did we learn from the hearing?

That Alito will not prejudge matters before the court, despite the Democrats' fervent demand that he declare abortion is a matter beyond judicial review. (Good judges, he pointedly said, ''are always open to the possibility of changing their minds based on the next brief that they read or the next argument that's made by an attorney who's appearing before them or a comment that is made by a colleague ... when the judges privately discuss the case.'')

That Alito finds repugnant the views of a long departed, long forgotten Princeton organization to which he, apparently, had the slimmest of connections.

That he believes judges should rule on the law, not make law.

If Democrats on the Judiciary Committee hoped to expose him as a right-wing ideologue, they failed. They did manage, as they did last year in the confirmation hearings for Chief Justice John G. Roberts Jr., to show how pious, preening and pompous they can be.

Alito probably won't get many Democratic votes, even though he deserves their support. We'll go through the ritual of opposition senators declaring that, after careful deliberation, they cannot vote for this nominee. They've already laid the foundation, as the lawyers say; several Democrats have announced that after more than 18 hours of testimony they still have doubts about his ''credibility.''

A week of hearings. Fifteen years of judicial opinions, all available for review. But in all that, Alito's opponents have failed to unearth anything damaging—or even to elicit an intemperate remark from the judge, though they did succeed in making his wife cry. It's a wonder anyone is willing to endure this process.

The special-interest campaigns will thunder on for a few more days. Some Democrats on the committee have demanded the vote be postponed while they ponder their next moves, including a possible filibuster. What a terribly destructive move that would be.

Alito's integrity, professional competence and judicial temperament ''are of the highest standing.'' That was the judgment of the American Bar Association, reached after interviewing 300 people who know Alito and evaluating 350 of his written opinions and dozens of unpublished opinions, oral arguments and memos.

He ''sees majesty in the law, respects it, and remains a dedicated student of it to this day.'' That, too, was the judgment of the ABA.

Alito is, as his colleague, federal Appellate Judge Edward R. Becker, testified, ''a real judge deciding each case on the facts and the law, not on his personal views, whatever they may be.''

He deserves every senator's vote.

[From the Newark Star-Ledger, Jan. 17, 2006]

CONFIRM ALITO TO THE COURT

The Senate Judiciary Committee hearings on Supreme Court nominee Samuel Alito Jr. have been a remarkable tutorial—not in the law but in just how low partisan politics have sunk.

Democrats have painted Alito as someone ready to turn back the clock 50 years on civil, reproductive and workers' rights. They have attempted to draw a public portrait of Alito, sometimes relying on half-truths, that those who know him best barely recognize. Republicans responded to this onslaught with a slew of softball questions designed not to elicit information but to present the nominee in the best possible light.

Neither side has served the public particularly well.

For their part, Senate Judiciary Committee members interjected a level of senatorial logorrhea that was stunning, droning on and on about matters that had nothing to

do with Alito's fitness to serve on the nation's highest court.

Despite the spectacle of the hearings, we are convinced Alito, a New Jerseyan who sits on the 3rd U.S. Circuit Court of Appeals, is eminently qualified to serve as an associate justice of the U.S. Supreme Court and should be confirmed by the committee and ultimately by the full Senate, and, yes, with the support of New Jersey's two Democratic senators.

Our support is not an uncritical ode to homegrown talent. It is based, in part, on the respect and praise Alito has garnered from those who have worked with him throughout his distinguished legal and judicial career. Democrats and Republicans, conservatives and liberals, many of whom, perhaps, philosophically disagree with Alito, have consistently maintained he is well-suited for the court.

We think they make a compelling case.

Among those who speak highly of him are Rutgers Law School Associate Dean Ronald Chen, an outspoken liberal who was just named by Gov.-elect Jon Corzine to be public advocate; retired Chief Judge John Gibbons of the 3rd Circuit Court of Appeals, who since leaving the bench has worked aggressively to eliminate the death penalty; well-known Democratic lawyer Douglas Eakeley, who was appointed by President Bill Clinton to the board of directors of the Legal Services Corp.; Democratic criminal defense attorney Joseph Hayden and former Attorney General Robert Del Tufo, who served in Democrat Jim Florio's cabinet and worked with Alito in the U.S. Attorney's Office.

None of these folks had to stand up for Alito, but they did.

Similarly, the judges who sit with Alito on the 3rd Circuit in Philadelphia came forth in an unprecedented show of support, insisting he was not an ideologue, had scrupulously adhered to precedent and had shown no signs of hostility toward a particular class of cases or litigants.

The American Bar Association declared Alito ''well-qualified''—the highest approval rating given by the ABA.

This is not to say we like everything we heard from Alito in the hearings.

Given our strong and long-standing support for abortion rights, we worry that Alito's refusal to describe Roe vs. Wade as settled law could mean he'll be inclined to take positions that chip away at a woman's right to abortion. At a time when questions are being raised about the abuse of presidential power in the war on terror, we're discomforted by Alito's expansive view of presidential authority.

The hard truth is that selecting nominees for the Supreme Court is a presidential choice. And it is reasonable and appropriate for a president to pick someone who reflects his values. During the 2004 presidential race, candidate George Bush made no bones about his intention, if given a chance, to select conservatives.

Some Democrats have argued against that standard. They've said nominees have to reflect a political ''mainstream.'' But if that were the case, Clinton's nomination of Ruth Bader Ginsberg would never have been confirmed by a 96–3 vote. Republicans overwhelmingly supported Ginsberg, even though she is the very picture of a left-wing ideologue. She was general counsel of the American Civil Liberties Union and directed the ACLU's Women's Rights Project, arguing numerous controversial abortion rights cases.

Alito is a conservative, but he is not an ideologue. He has demonstrated that he has the intellect and temperament to serve the nation well.

Mr. HATCH. Mr. President, I also note that the attorneys general of 20 States, Democrats and Republicans, have signed a letter urging this body to confirm Judge Alito. I am proud that Mark Shurtleff, attorney general of my home State of Utah, is among them. They write:

Judge Alito represents the best of the Federal bench and we believe he will be an excellent Supreme Court justice.

I agree, and I ask unanimous consent that this letter be printed into the RECORD.

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

JANUARY 6, 2006.

Re Judicial confirmation of Judge Samuel A. Alito, Jr., to the Supreme Court of the United States.

Hon. BILL FRIST,
Majority Leader, U.S. Senate, Washington, DC.
Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.
Hon. HARRY REID,
Minority Leader, U.S. Senate, Washington, DC.
Hon. PATRICK LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MAJORITY LEADER FRIST, MINORITY LEADER REID, CHAIRMAN SPECTER, AND RANKING MEMBER LEAHY: We, the undersigned Attorneys General of our respective states, are writing in support of the confirmation of Judge Samuel A. Alito, Jr., to serve as an Associate Justice on the Supreme Court of the United States.

We are confident that Judge Alito will bring to the Court not only years of legal experience and judicial temperament, but also modesty and great personal character.

We reflect diverse views and constituencies and are united in our belief that Judge Alito will be an outstanding Supreme Court Justice and should be confirmed by the United States Senate.

As the Senate prepares for the confirmation process of Judge Alito, it is important to look beyond partisan politics and ideology and focus on the judicial experience of this extremely well qualified nominee. Judge Alito has served the United States as an Assistant to the Solicitor General, as a United States Attorney, and for the past 15 years, as a Judge on the Third Circuit Court of Appeals.

Judge Alito's record on the Third Circuit Court of Appeals demonstrates judicial restraint. He has proven that he seeks to apply the law and does not legislate from the bench. Judge Alito's judgments while on the bench have relied on legal precedent and current law, and he has a long-standing reputation for being both tough and fair. In short, Judge Alito represents the best of the federal bench and we believe he will be an excellent Supreme Court Justice.

We urge the Senate to hold an up or down vote and confirm Judge Alito.

Sincerely,

John W. Suthers, Attorney General of Colorado; Troy King, Attorney General of Alabama; Charlie Crist, Attorney General of Florida; Lawrence Wasden, Attorney General of Idaho; Tom Corbett, Attorney General of Pennsylvania; David W. Márquez, Attorney General of Alaska; Mark J. Bennett, Attorney General of Hawaii; Stephen Carter, Attorney General of Indiana; Phill Kline, Attorney General of Kansas; Jon Bruning, Attorney General of Nebraska.

Wayne Stenehjem, Attorney General of North Dakota; Henry McMaster, Attorney General of South Carolina; Lawrence Long, Attorney General of South Dakota; Judith Williams Jagdmann, Attorney General of Virginia; Michael A. Cox, Attorney General of Michigan; George Chanos, Attorney General of Nevada; Jim Petro, Attorney General of Ohio; Greg Abbott, Attorney General of Texas; Mark Shurtleff, Attorney General of Utah; Rob McKenna, Attorney General of Washington.

Mr. HATCH. Mr. President, the votes we take today and tomorrow give us an important opportunity. The Los Angeles Times editorial of January 15, 2006, got it right, saying that trying to derail this nomination by filibuster rather than on the merits is wrong.

I urge my colleagues to preserve this body's tradition by rejecting this desperate filibuster attempt, and then in a vote tomorrow, I urge my colleagues to honor the judiciary's important but limited role in our system of government by confirming this qualified and honorable man to the Supreme Court of the United States of America.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, it is time for the debate on the nomination of Judge Alito to end. It is time for the Senate to act on the President's nomination of Samuel Alito to serve as a Justice on the U.S. Supreme Court.

We have had ample time to review this nomination. The Judiciary Committee has conducted a thorough review of Judge Alito's background and qualifications. Senator SPECTER, as chairman of the Judiciary Committee, ensured that all the questions that should be asked of this nominee were asked and answered.

The Judiciary Committee thoroughly reviewed the story of Judge Alito's life and questioned him on a wide range of issues. In the process, Judge Alito demonstrated his ability, intelligence, and his fitness to serve as a Justice on the U.S. Supreme Court.

In almost 3 months of intense scrutiny and over 18 hours of personal testimony before the Senate Judiciary Committee, Judge Alito provided clear and candid answers to all the questions that were asked.

All Senators have had an opportunity to meet with Judge Alito, to review the opinions he has written, to read the articles he has written in law reviews and other publications, to become familiar—as familiar as anyone can—with his thinking, his judicial philosophy, his past performance as a judge, as a solicitor, as a lawyer in private practice, as a student in law school, and as a fellow judge. Judge Alito has more judicial experience than any Supreme Court nominee in over 70 years.

In my opinion, the most impressive and persuasive testimony at the hearings in the committee came from the panel of judges with whom he served on the Third Circuit Court of Appeals. They testified before the committee

and discussed the way Judge Alito approached questions before that court, the way he acted during deliberations among other members of the court about the decision that should be reached in each case, and generally the way he went about discharging the enormously important duties he had as a member of that court. And despite differences in politics and viewpoints and backgrounds among some of the judges with him, they were all enthusiastically supporting his confirmation for service on the Supreme Court.

Judge Alito has earned the respect of those who know him best—his colleagues on the Federal courts, as well as his current and former law clerks, and the members of the bar who have appeared before him in court. He is widely respected for his even temperament, his integrity, his sound legal judgment, and his respect and courtesy for others.

I am confident Judge Alito will serve with great distinction as a Justice on the Supreme Court. I think reciting Judge Alito's own words is the best way for me to conclude my remarks. He said:

> Fifteen years ago, when I was sworn in as a judge of the Court of Appeals, I took an oath. I put my hand on the Bible, and I swore that I would administer justice without respect to persons, that I would do equal right to the poor and the rich, and that I would carry out my duties under the Constitution and the laws of the United States. And that is what I have tried to do to the very best of my ability for the past 15 years. And if I am confirmed, I pledge to you that that is what I would do on the Supreme Court.

It is time to end this debate. It is time to confirm the President's nomination of Judge Samuel Alito.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I know there are a number of people who wish to speak on Judge Alito. I want to add a few comments of my own on this nomination. If I may inquire of the Chair, is there time that needs to be yielded?

The PRESIDING OFFICER. The Senator may speak up until 4 o'clock.

Mr. BROWNBACK. I thank the Chair.

Mr. President, I sat in on the hearings for Judge Alito. I personally interviewed Judge Alito. I talked with him in my office. I sat through the hearings and was able to question him in the Judiciary Committee. I am on the Judiciary Committee, so I sat through those hearings to hear his testimony. I feel as if we had a good chance to take the measure of the man, and he is outstanding. I believe he is going to be an outstanding jurist.

He answered hundreds of questions, more than I believe any prior nominee has answered in the history of the Republic. He answered them deftly. He answered them with an encyclopedic knowledge of the law. It was amazing to me to see that he did not have a note in front of him the whole time, and if you asked him any constitutional question on any case at any time in the history of the Republic, he would say here are the facts of that case, here is how the law was decided, this case is still in question or it isn't. He is a brilliant jurist. He wasn't particularly good on international law, and I was particularly glad to hear he wasn't good on law, on what would happen in other countries.

He has a long history on the bench which I think is important. For a series of years now, only so-called stealth candidates could be approved. Judge Alito is a man with years of experience on the Third Circuit Court of Appeals. He has written a number of opinions that we could dissect them and see. People were looking into his background, trying to determine does he lean this way or that way, but he has hundreds of published opinions, and through them we can see which way he leans.

He is a known commodity—well known, well respected, and well regarded across the board. I do think where he is going to contribute to the country, the Republic, is in the areas of religious freedom and free expression. This has not gotten much play at all in the media or in much of the hearings, but it is one of the areas he has written the most extensively on and in which he is a legal scholar.

He believes in a robust public square, a public square where we can celebrate faith, and where faith can be presented. He believes in this for all faiths and faith traditions. You see that in cases where he has ruled in favor of menorah candles being put forward, Christmas trees, and Muslim police officers being able to dress appropriately to their religion and still be able to be police officers.

He believes in a separation of church and state, but he also believes this is a country full of people of faith and that they should, under the free expression clause, be allowed to express and to live that faith and to be able to show it. I think he is very clear and thoughtful.

If there is an area of the law that needs clarity, it is this because we have rules and tests all over the country. I think he is going to contribute in this area. This is one of the areas that did not get much review, it did not get much comment, but I think he is going to make a clear impression, and I think he is going to make a very helpful impression for this Nation whose motto, as the Chair looks at it, is ''In God We Trust.''

There is a reason for that. This is a nation of faith. It is one we seek to celebrate, not have an imprimatur from the state saying this is the religion or that is the religion, but rather saying we want you all to be here, have your own faith, be able to celebrate it, and be able to bring it forward in this Nation. I think he is going to contribute greatly in this particular category.

The area of abortion got the most review, and it is unknown how he would rule in the case of Roe v. Wade or anything along that line. He did not state an opinion one way or the other. It is an area of open case law. It is an area, in my opinion, that is not in the Constitution. There is no constitutional right for a woman to abort her child. I believe it to be a matter that should be decided by bodies such as this, or in States around the country.

I remind my colleagues, as they all know, if Roe v. Wade or any portion of it were overturned, the issue goes back to the States. That is the group, that is the body that resolves this issue. It is not something where the ruling automatically shuts everything down. What happens is it goes back and California decides its rules and New York, Florida, Kansas, Minnesota, and other States decide theirs.

I don't see what is so untrustworthy about States resolving this issue. They did prior to 1973, and we didn't have near the level of conflict or difficulty in this country on those laws when the States were resolving these issues.

I strongly doubt all the States would resolve them the same. I doubt a State in a certain part of the country would be identical to another one. Yet I do think it would reflect the will of the people. But we do not know how Judge Alito he will rule on this issue. The Democrats don't know, the Republicans don't know, I don't know. This is an issue I care deeply about, and we don't know. That is probably as it should be because it is an area of active case law and one that is going to come in front of us.

The other area he was challenged so much on was Executive rights and privileges. I believe this man will be very clear in standing up to the executive branch when the executive branch needs to be held in check. I have no doubt at all about that.

One area we talked about that has not again gotten much review, but needs a lot, is the area of judicial restraint. We need a judiciary that will restrain itself. There are three separate branches of Government, each having a sphere and not to overlap the other. The judiciary has not restrained itself in the past. Judge Alito, along with John Roberts, previously coming before the committee and this body, both spoke significantly and clearly about the need for judicial restraint. I believe if we don't start seeing a judiciary that shows some restraint and says it is not an all-powerful judiciary in every area, it cannot appropriate money, that is left to the Congress, that we will start to see these bodies remove judicial review by the Congress, as is allowed in the Constitution. It is not an area that has been used much, but I think we are going to start seeing it used much

more, if the judiciary does not show some level of restraint. This has been expressed by both John Roberts and Samuel Alito.

I believe Judge Alito will be an outstanding jurist if we are able to get cloture in this body to end debate, to get the 60 votes necessary to end debate. He is one of the most qualified individuals we have had. His is a beautiful story of immigrant parents coming to the United States and working hard to get a good education.

He is one of sterling character. Probably one of the saddest chapters that has taken place is the challenge to his character, which is nothing short of sterling. This is a gentleman who has worked all his life to uphold the traditions of his family, to make his family proud and see his dad pleased that his son stood for right against wrong.

At the end of the day, I believe he will exercise justice and righteousness, doing both what is just and what is right. That is what we need in this country, a country that is both just and right.

In the greatest traditions of this Nation, we need to do what is right, and we need to be just to the strong, to the weak, to those who cannot speak for themselves. We need to stand up and speak for their rights even if they cannot speak for their own.

I support the nomination and yield the floor.

The PRESIDING OFFICER. Under the previous order, the hour of 4 p.m. having arrived, the Democratic leader or his designee shall be recognized for 15 minutes.

Mr. KERRY. Mr. President, I yield myself 7 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I have heard a lot of my colleagues rely on the ABA's determination that Judge Alito is ''well qualified'' as a reason—sometimes as reason enough—to vote for his confirmation. But there is a reason why an ABA ranking alone is not all that is required to be confirmed to the bench, let alone the highest Court in the land.

With a decision as fundamental—as irrevocable—and as important to the American people as the confirmation of a Supreme Court Justice, it is important we tell the Americans the full story about the ABA and those rankings.

When making its determination, the ABA considers analytical skills. They consider knowledge of the law. They consider integrity, professional competence, and judicial temperament. But United States Senators must consider more than these criteria.

What the ABA does not look at is the balance of the Supreme Court. What they do not look at is ideology. What they do not look at is judicial activism. What they do not look at is the consequences of a judge's ideologically driven decisions for those who have been wronged and who just want to get their day in court. No matter how smart he may be, no matter how cleverly his opinions may be written, no matter how skillfully he manipulates the law, their standards don't consider the impact of his decisions on average Americans. In short, they don't measure what will happen to average Americans if Judge Alito becomes Justice Alito. That is our job.

None of these measurements consider whether Judge Alito routinely cuts off access to justice for the most disadvantaged Americans—those that need it the most. They don't ask whether he consistently excuses excessive government force when it intrudes into the privacy of individuals. They don't consider that the only statement he has ever made about a woman's right to privacy is that she doesn't have one.

These are things that we must consider here in the United States Senate. These are things that are on the line in this vote this afternoon. And these are the things that I believe most Americans want us to consider. We have to consider whether a judge we confirm to a lifetime appointment to the Supreme Court will undermine the laws that we have already passed that benefit millions of Americans, like the Family Medical Leave Act. We have to consider whether Judge Alito will place barriers in the way of addressing discrimination, whether he will serve as an effective check on the abuse of executive power, whether he will roll back women's privacy rights or whether he will enforce the rights and liberties that generations of Americans have fought and bled and even died to protect. None of the rights we are talking about came easily in this country. There were always those in positions of power who fought back and resisted. What we need in a Justice is somebody who is sensitive to that history. Senator after Senator has described specific cases and the way in which Judge Alito has had a negative impact in these areas—often standing alone, in dissent against mainstream beliefs.

This long record is a record that gave the extreme right wing cause for public celebration with his nomination. That just about tells you what you need to know. The vote today is whether we will take a stand against ideological courtpacking.

Nothing can erase Judge Alito's record. We all know what we are getting. No one will be able to say, in 5 to 10 years, that they are surprised by the decisions Judge Alito makes from the bench. People who believe in privacy rights, who fight for the rights of the most disadvantaged, who believe in balancing the power between the President and Congress need to take a stand now.

I understand that, for many, voting for cloture on a judicial nomination is a very difficult decision, particularly on this Supreme Court nominee. I also understand that, for some, a nomination must be an ''extraordinary circumstance'' in order to justify that vote. Well, I believe this nomination is an extraordinary circumstance. What could possibly be more important than this—an entire shift in the direction of the Court?

This is a lifetime appointment to a Court where nine individuals determine what our Constitution protects and what our laws mean. Once Judge Alito is confirmed, we can never take back this vote. Not after he prevents many Americans from having their discrimination cases heard by a jury. Not after he allows more government intrusions into our private lives. Not after he grants the President the power to ignore Federal law rather than protecting our system of checks and balances. These questions do not arise out of speculation. They do not arise out of mere statement. They arise out of the record the judge has carved for himself.

These issues and the threat that Judge Alito's nomination poses to the balance that the Supreme Court has upheld in all the years that Justice O'Connor has served there—all of this constitutes an ''extraordinary circumstance.''

I understand that many Senators oppose this nomination, and I believe the vote tomorrow will indicate that if we are not successful today. They say that they understand the threat Judge Alito poses, but they argue that somehow a vote to extend debate, when there have been a mere 30 hours or so of debate, is different. I do not believe it is. I believe it is the only way that those of us in the minority have a real voice in the selection of this Justice or any Justice. It is the only way we can fully complete our constitutional duty of advice and consent. It is the only way we can be a voice for those Americans who do not have a voice today. It is the only way we can stop a confirmation that we feel will certainly cause irreversible harm to the principles and values that make a real difference in the lives of average Americans. It is the only way we can keep faith with our belief, and the Constitution's promise, of equal justice. That is a position that we can and we should defend anywhere, at any time.

I thank those who have stood to be counted in this effort and who will continue to take a stand with their vote. I particularly thank my senior colleague from Massachusetts, Senator KENNEDY.

I think the remainder of the time Senator KENNEDY will use.

Mr. KENNEDY. I have 7½ minutes, am I correct in that?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. I will yield myself 7 minutes.

First of all, I thank my friend, Senator KERRY, for his strong commitment on this issue and his eloquence, passion, and support of this position. This is a time in the Senate that a battle needs to be fought. This vote that we are casting with regard to Judge Alito is going to have echoes for years and years to come. It is going to be a defining vote about the Constitution of the

United States, about our protections of our rights and our liberties in the Constitution of the United States.

People in my State at this particular time are concerned about the difficulties they are having with prescription drugs. They are concerned about the problems they are having in paying their oil bills. They are concerned about their problems in paying for the education of their children. They are troubled by what they see as a result of Katrina. They are bothered by what they hear about the corruption in Washington and are deeply troubled by what is happening in Iraq. They have not had a chance to focus on what is the meaning of this vote in the Senate this afternoon.

But all you have to do is look back into history. Look back into the history of the judiciary. Look back to the history of the Fifth Circuit that was making the decisions in the 1950s. Look at the record of Justice Wisdom, Judge Tuttle, Judge Johnson of Alabama and the courage they demonstrated that said at last we are going to break down the walls of discrimination in this country that have gripped this Nation for 200 years. Our Founding Fathers failed the test when they wrote slavery into the Constitution. Abraham Lincoln pointed the way, and we passed the 13th, 14th, and 15th amendments and had a Civil War, but we did not resolve this issue. It was only until the courage of members of—what branch of Government? Not the Congress. Not the Senate. Not the executive. The judiciary, the Fifth Circuit. We are talking now about the Supreme Court, but they are the ones who changed this country inevitably with what we call the march toward progress, the march toward knocking down the walls of discrimination that permitted us to pass the 1964 Civil Rights Act in public accommodations, so people whose skin was not White could go into restaurants and hotels—public accommodations; the 1965 act for voting, voting rights; the 1968 act on public accommodations; the 1973 act to say that women are going to be treated equally; the Americans with Disabilities Act that say the disabled are going to be part of the American family. All of that is the march to progress. My friends, the one organization, the one institution that protects it is the Supreme Court of the United States.

Too much blood has been shed in those battles, too much sweat, too many tears, to put at risk that march for progress. And that is what we are doing with this nominee. He failed to demonstrate before the Judiciary Committee that he was committed to the continued march toward progress. He doesn't have to say how he is going to vote on a particular case, but he has to make it clear that he understands what this Nation is all about, why we are the envy of the world with the progress that we have made to knock down the walls of discrimination and prejudice and open up new opportunities for progress for our people. That is the definition of America.

Why are we going to put that at risk by putting someone on the Supreme Court who is not committed to that progress? We are not asking that they take a particular position on an issue. That is what is before us. We have a responsibility to try to present this to the American people. Our constituents who are working hard, taking care of their kids, trying to do a job across this country—they are beginning to focus on it. It came to the Senate floor last Wednesday. Today is Monday. What is the next business? What is the next measure on the calendar? Asbestos? Isn't that interesting? Is there anything more important than spending time and permitting the American people to understand this issue? I don't believe so, and that is what our vote at 4:30 is about.

If you are concerned and you want a Justice who is going to stand for the working men and women in this country—it is not going to be Judge Alito. If you are concerned about women's privacy rights, about the opportunity for women to gain fair employment in America—it is not Judge Alito. If you care about the disabled, the Rehabilitation Act that we passed, the IDEA Act to include children in our schools, that we passed, that has been on the books for 25 years, the Americans with Disabilities Act that we have passed to bring all of the disabled into our society, if you are looking for someone who is going to be a friend of the disabled—it is not going to be Judge Alito.

Finally, if you are looking for someone who is going to be willing to stand up to the executive branch of Government at a time that he is going to exceed his power and authority and the law of this country—it is not going to be Judge Alito. It is not going to be. He is not going to be similar to Sandra Day O'Connor who, in the Hamdi case, said: Oh, no. No President, even in times of war, is above the law in this country. He is not going to be similar to Warren Burger, who said ''No, Mr. President. No, you have to surrender the papers,'' at the time of the Watergate break-ins. ''No, Mr. President.''

This is the time. This is the issue. This happens to be the wrong judge at the wrong time for the wrong Court.

I hope this body will give us the time to be able to explain this in greater detail to our fellow Americans so a real vote can be taken. When it is, I believe this nominee will not be approved.

I understand my time has expired.

Mr. LEAHY. Mr. President, I began the hearing on this nomination by putting forward what for me was the ultimate question during the consideration of a successor to Justice Sandra Day O'Connor: Would Judge Alito, if confirmed by the Senate to the Supreme Court, protect the rights and liberties of all Americans and serve as an effective check on government overreaching?

Since this debate began last Wednesday, I have posed the fundamental question that this nomination raises for this body: whether the Senate will serve its constitutional role as a check on Executive power by preserving the Supreme Court as a constitutional check on the expansion of Presidential power.

This is a nomination that I fear threatens the fundamental rights and liberties of all Americans now and for generations to come. As astonishing as the facts may seem, it does not overstate them to point out that the President is in the midst of a radical realignment of the powers of the government and of its intrusiveness into the private lives of Americans. This nomination is part and parcel of that plan. I am concerned that if confirmed, this nominee will further erode the checks and balances that have protected our constitutional rights for more than 200 years. This is a critical nomination, one that can tip the balance on the Supreme Court radically away from constitutional checks and balances and the protection of Americans' fundamental rights.

The procedural vote just taken was in large measure symbolic. Its result was foreseen by Senators on both sides of the aisle and on both sides of the question. The next vote the Senate takes on this critical nomination is not symbolic. It has real consequences in the lives of the 295 million Americans alive today, and it will influence the lives of generations of Americans to come. It will affect not only our rights but the fundamental rights and liberties of our children and our children's children. In short, it matters, and it matters greatly. The vote the Senate will take tomorrow will determine whether Samuel A. Alito, Jr., replaces Justice Sandra Day O'Connor on the Supreme Court of the United States.

I appreciate why Senators who voted against cloture believe this matter deserves more searching attention by Senators and the American people. Among Democratic Senators, each is voting his or her conscience and best judgment. There will be many Democratic Senators who, like the Democratic members of the Judiciary Committee who have closely studied the record of this nominee, will be voting against the nomination. There will be some Democratic Senators who will vote to confirm the nominee. Among those voting against, there are some who believe that it is not appropriate to withhold the Senate's consent by extending debate. The Senate debated Chief Justice Roberts' nomination during 8 days and over a 10-day calendar period. Although much more divisive and controversial, the Alito nomination will be debated for just 5 days over a 7-day calendar period by the time the vote is called tomorrow.

It is true that Democratic Senators do not all vote in lockstep. Each Democratic Senator individually gives these questions serious consideration. They honor their constitutional duty. I am

proud of the Democratic members of the Judiciary Committee for the statements they made last week when the committee considered this nomination and during the course of the last few days. Their hard work in preparing for three Supreme Court nominations over the last few months is to be commended. I thank and commend the many Democratic Senators who came to the floor, who spoke, who set forth their concerns and their views. That includes Democratic Senators opposing the nomination and those in favor. It is quite a roster: Senators KENNEDY, DURBIN, MIKULSKI, CLINTON, KERRY, NELSON of Florida, REED, MURRAY, FEINSTEIN, INOUYE, HARKIN, BINGAMAN, LINCOLN, LIEBERMAN, SALAZAR, CARPER, LEVIN, OBAMA, DAYTON, FEINGOLD, JOHNSON, SARBANES, STABENOW, LAUTENBERG, MENENDEZ, and, in addition, Senator JEFFORDS. These Senators approached the matter seriously, in contrast to those partisan cheerleaders who rallied behind this White House's pick long before the first day of hearings.

I respect those Senators who are giving this critical nomination serious consideration but come to a different conclusion than I, just as I continue to respect the 22 Senators who voted against the Roberts nomination. I have candidly acknowledged that over the course of history, their judgment and vote may prove right. I took Judge Roberts at his word in the belief that his words and the impressions he understood them to be creating had meaning. I continue to hope that as Chief Justice he will fulfill his promise and steer the Court to serve as an appropriate check on abuses of Presidential power and protect the fundamental liberties and rights of all Americans.

Filibusters of judicial nominees—and, in particular, of Supreme Court nominees—are hardly something new. When Justice Fortas was nominated by President Johnson to be the Chief Justice, a filibuster led by Strom Thurmond and the Republican leader resulted in an unsuccessful cloture vote and in that nomination being withdrawn. That was the most recent successful filibuster of a Supreme Court nominee. But that was not the first or last Supreme Court nomination to be defeated. President George Washington, the Nation's first and most popular President, saw the Senate reject his nomination of John Rutledge to the Supreme Court at the outset of our history. Over time approximately one-fifth of Presidents' Supreme Court nominees have not been confirmed.

The last time the country was faced with the retirement of the pivotal vote on the Supreme Court was when Justice Lewis Powell resigned in 1987. A Republican President sought to use that opportunity to reshape the U.S. Supreme Court with his nomination of Judge Robert Bork. Judge Bork had been a law professor, a partner in one of the Nation's leading law firms, a judge on the DC Circuit for 5 years, and he had served as Solicitor General of the United States and even as the Acting Attorney General at a critical juncture of our history.

Many myths have arisen about why the Senate rejected that nomination. I was here and, along with the other Senators, both Republican and Democratic, who voted to defeat that nomination, I know that the nominee's views were the decisive factor in his failure. His rejection of the constitutional right to privacy was a large part of his own undoing. Soon thereafter, President Reagan announced and withdrew the nomination of Judge Ginsburg and then turned to a conservative Federal appellate court judge from California named Anthony Kennedy. Justice Kennedy, though conservative, was confirmed overwhelmingly and in bipartisan fashion. He continues to serve as a respected Justice who has authored key decisions protecting Americans from unfair discrimination because of their sexual orientation.

When the Senate was considering a successor to Justice Powell almost 20 years ago, I said that I believed a Supreme Court nominee's judicial philosophy should play a central role in our consideration. I noted:

> There is no question that the nominee who is confirmed to succeed Justice Lewis Powell will be uniquely influential in determining the direction of the Supreme Court's interpretation of the Constitution for years to come. There can hardly be an issue closer to the heart of the Senate's role than a full and public exposition of the nominee's approach to the Constitution and to the rule of the courts in discerning and enforcing its commands. That is what I mean by judicial philosophy.

The same remains true today as we consider a successor to Justice Sandra Day O'Connor. I strongly believe that Judge Alito's judicial philosophy is too deferential to the government and too unprotective of the fundamental liberties and rights of ordinary Americans for his nomination by President Bush to be confirmed by the Senate as the replacement for Justice O'Connor.

Judicial philosophy comes into play time and again as Supreme Court justices wrestle with serious questions about which they do not all agree. These include fundamental questions about how far the government may intrude into our personal lives. Senators need to assess whether a nominee will protect fundamental rights if confirmed to be on the Supreme Court.

Several Republican Senators said that judicial philosophy and personal views do not matter because judges should just apply the rule of law as if it were some mechanical calculation. Senator FEINSTEIN made this point exceptionally well during the debate. Personal views and judicial philosophy often come into play on close and controversial cases. We all know this to be true. Why else did Republican supporters force President Bush to withdraw his previous nominee for this vacancy, Harriet Miers, before she even had a hearing? She failed their judicial philosophy litmus test.

Indeed, Harriet Miers is the most recent Supreme Court nominee not to have been confirmed. It was last October that President Bush nominated his White House Counsel Harriet Miers to succeed Justice O'Connor. He did so after the death of the Chief Justice and withdrawing his earlier nomination of Judge Roberts to succeed Justice O'Connor. The democratic leader of the Senate quickly endorsed the selection of Ms. Miers as the kind of person, with the kind of background, he found appealing. Democratic Senators went about the serious business of preparing for hearings on the Miers nomination. But there were those from among the President's supporters who castigated Ms. Miers and the President for the nomination. The President succumbed to the partisan pressure from the extreme rightwing of his own party by withdrawing his nomination of Harriet Miers to the Supreme Court after repeatedly saying that he would never do so. In essence, he allowed his choice to be vetoed by an extreme faction within his party, before hearings or a vote. As Chairman SPECTER has often said, they ran her out of town on a rail. In fact, of course, she has remained in town as the President's counsel, but his point is correct. Like the more than 60 moderate and qualified judicial nominees of President Clinton on whom Republicans would neither hold hearings or votes, the Miers nomination was killed by Republicans without a vote—by what was in essence a pocket filibuster. That eye-opening experience for the country demonstrated what a vocal faction of the Republican Party really wants. Their rightwing litmus test demands justice and judges who will guarantee the results that they want. They do not want an independent federal judiciary. They want certain results.

Instead of uniting the country through his third choice to succeed Justice O'Connor, the President has chosen to reward one faction of his party, at the risk of dividing the country. Those so critical of his choice of Harriet Miers as a nominee were the very people who rushed to endorse the nomination of Judge Alito. Instead of rewarding his most virulent supporters, the President should have rewarded the American people with a unifying choice that would have broad support. America could have done better through consultation to select one of the many consensus conservative Republican candidates who could have been overwhelmingly approved by the Senate. Instead, without consultation, the President withdrew the Miers nomination and the next day announced that his third choice to succeed Justice O'Connor was Judge Alito.

At his hearing, Judge Alito began by asking how he got this critical nomination. Over the course of the hearings, I think we began to understand the real answer to that question. It has little to do with Judge Alito's family story and a great deal to do with the pressures

that forced the President to withdraw the nomination of Harriet Miers and this President's efforts to avoid any check on his expansive claims to power.

This is a President who has been conducting secret and warrantless eavesdropping on Americans for more than 4 years. This President has made the most expansive claims of power since American patriots fought the war of independence to rid themselves of the overbearing power of King George III. He has done so to justify illegal spying on Americans, to justify actions that violate our values and laws against torture and protecting human rights, and in order to detain U.S. citizens and others on his say so without judicial review or due process. This is a time in our history when the protections of Americans' liberties are at risk as are the checks and balances that have served to constrain abuses of power for more than 200 years.

Judge Alito's opening statement skipped over the reasons he was chosen. He ignored his seeking political appointment within the Meese Justice Department by proclaiming his commitment to an extreme and activist rightwing legal philosophy. His testimony sought to minimize the Federalist Society and his seeking to use membership in Concerned Alumni of Princeton for advancement. He attempted to revise and redefine the theory of the ''unitary executive.'' That is a legal underpinning being used by this President and his supporters to attempt to justify his assertions of virtually unlimited power. The President wanted a reliable Justice who would uphold his assertions of power, his most extreme supporters want someone who will revisit the constitutional protection of privacy rights, and the business supporters wanted someone favorable to powerful special interests.

Supreme Court nominations should not be conducted through a series of winks and nods designed to reassure the most extreme Republican factions while leaving the American people in the dark. No President should be allowed to pack the courts, and especially the Supreme Court, with nominees selected to enshrine Presidential claims of government power. The checks and balances that should be provided by the courts, Congress, and the Constitution are too important to be sacrificed to a narrow, partisan agenda. The Senate stood up to President Roosevelt when he proposed a court-packing scheme and should not be a rubberstamp to this President's effort to move the law dramatically to the right. I do not intend to lend my support to an effort by this President to undermine checks and balances or to move the Supreme Court and the law radically to the right.

So what do we know about the Samuel Alito who graduated from Princeton University and Yale Law School and obtained a plum job in the office of the Solicitor General of the United States? We know that he wanted political advancement and was committed to the radical legal theories of the Meese Justice Department. The job application that was the subject of some question at the hearing is most revealing. I will ask that a copy of that job application be printed in the RECORD at the conclusion of my statement so that the American people can see it.

This confirmation process is the opportunity for the American people to learn what Samuel Alito thinks about their fundamental constitutional rights and whether he will serve to protect their liberty, their privacy and their autonomy from Government intrusion. The Supreme Court belongs to all Americans, not just the person occupying the White House, and not just to a narrow faction of a political party.

We have heard from Judge Alito's supporters that those opposing this nomination were ''smearing'' him by asking substantive and probing questions at the hearing and by addressing concerns about his record during this debate. The Republican leader opened the debate with that attack. He said this before a single minute of debate or opening statement by any Democratic Senator. These Republican talking points ring hollow and are particularly inappropriate after President Bush was forced by an extreme faction in his own party to withdraw his nomination of Harriet Miers.

Democratic Senators should not be criticized for taking seriously their constitutional role in trying to assess whether Judge Alito is suitable for a lifetime position on the Supreme Court. Democrats also asked tough questions of Justices Ginsburg and Breyer during their confirmation hearings, which is in stark contrast to the free pass given to Judge Alito by Republican Senators during his hearing.

Those critical of the Democrats have a short and selective historical memory. Republican Senators engaged in a party-line vote in committee against the nomination of Louis Brandeis to the Supreme Court. Republican Senators, in an unprecedented party-line vote, blocked the nomination in 1999 of Missouri Supreme Court Justice Ronnie White, an extremely qualified nominee for a Federal district court judgeship. In fact, Republicans pocket-filibustered more than 60 of President Clinton's judicial nominees by holding them up in the Judiciary Committee.

This President continues to choose confrontation over consensus and to be a divider rather than being the uniter that he promised to be. This is in stark contrast to President Clinton's selection of Justices Ginsburg and Breyer after real consultation. In his book, ''Square Peg,'' Senator HATCH described how in 1993, as the ranking minority member of the Senate Judiciary Committee, he advised President Clinton about possible Supreme Court nominees. Senator HATCH recounted that he warned President Clinton away from a nominee whose confirmation he believed ''would not be easy.'' He wrote that he then suggested the names of Stephen Breyer and Ruth Bader Ginsburg, both of whom were eventually nominated and confirmed ''with relative ease.'' President Bush, who had promised to be a uniter, not a divider, failed to live up to his promise or to the example of his predecessor, as described by Senator HATCH. The result is that, rather than sending us a nominee for all Americans, the President chose a divisive nominee who raises grave concerns about whether he will be a check on Presidential power and whether he understands the role of the courts in protecting fundamental rights.

The Supreme Court is the ultimate check and balance in our system. Independence of the courts and its members is crucial to our democracy and way of life. The Senate should never be allowed to become a rubberstamp, and neither should the Supreme Court.

This is a nomination to a lifetime seat on the Nation's highest Court that has often represented the decisive vote on constitutional issues. The Senate needs to make an informed decision about this nomination. This process is the only opportunity that the American people and their representatives have to consider the suitability of the nominee to serve as a final arbiter of the meaning of Constitution and the law. Has he demonstrated a commitment to the fundamental rights of all Americans? Will he allow the government to intrude on Americans' personal privacy and freedoms?

In a time when this administration seems intent on accumulating unchecked power, Judge Alito's views on government power are especially important. It is important to know whether he would serve with judicial independence or as a surrogate for the President who nominated him. Based on a thorough review of his record and that from his hearing, I have no confidence that he will act as an effective check on government overreaching and abuses of power.

As we began the hearings, I recalled the photograph that hangs in the National Constitution Center in Philadelphia, PA. It shows the first woman ever to serve on the Supreme Court of the United States taking the oath of office in 1981. Justice Sandra Day O'Connor served as a model Supreme Court Justice.

She is widely recognized as a jurist with practical values and a sense of the consequences of the legal decisions being made by the Supreme Court. I regret that some on the extreme right have been so critical of Justice O'Connor and have adamantly opposed the naming of a successor who shares her judicial philosophy and qualities. Their criticism reflects poorly upon them. It does nothing to tarnish the record of the first woman to serve as an Associate Justice of the Supreme Court of the United States. She is a Justice whose graciousness and sense of duty

fuels her continued service nearly 7 months after she announced her intention to retire.

As the Senate prepares to vote on President Bush's current nomination—his third—for a successor to Justice O'Connor, we should be mindful of her critical role on the Supreme Court. Her legacy is one of fairness that I want to see preserved. Justice O'Connor has been a guardian of the protections the Constitution provides the American people.

Of fundamental importance, she has come to provide balance and a check on government intrusion into our personal privacy and freedoms. In the Hamdi decision, she rejected the Bush administration's claim that it could indefinitely detain a U.S. citizen. She upheld the fundamental principle of judicial review over the exercise of government power and wrote that even war ''is not a blank check for the President when it comes to the rights of the Nation's citizens.'' She held that even this President is not above the law.

Her judgment has also been crucial in protecting our environmental rights. She joined in 5-to-4 majorities affirming reproductive freedom, religious freedom, and the Voting Rights Act. Each of these cases makes clear how important a single Supreme Court Justice is.

It is as the elected representatives of the American people—all of the people—that we in the Senate are charged with the responsibility to examine whether to entrust their precious rights and liberties to this nominee. The Constitution is their document. It guarantees their rights from the heavy hand of government intrusion and their individual liberties to freedom of speech and religion, to equal treatment, to due process and to privacy.

The Federal judiciary is unlike the other branches of Government. Once confirmed, Federal judges serve for life. There is no court above the Supreme Court of the United States. The American people deserve a Supreme Court Justice who inspires confidence that he, or she, will not be beholden to the President but will be immune to pressures from the government or from partisan interests.

The stakes for the American people could not be higher. At this critical moment, Democratic Senators are performing our constitutional advice and consent responsibility with heightened vigilance. I urge all Senators—Republicans, Democrats and Independents—to join with us. The Supreme Court is the guarantor of the liberties of all Americans. The appointment of the next Supreme Court Justice must be made in the people's interest and in the Nation's interest, not to serve the special interests of a partisan faction.

I have voted for the vast majority of President Reagan's, President Bush's, and President Bush's judicial nominees. I recommended a Republican to President Clinton to fill Vermont's seat on the Second Circuit, Judge Fred Parker, and recommended another Republican to President Bush to fill that seat after Judger Parker's death, Judge Peter Hall. I voted for President Reagan's nomination of Justice Sandra Day O'Connor, for President Reagan's nomination of Justice Anthony Kennedy, for President Bush's nomination of Justice Souter, and for this President's recent nomination of Chief Justice Roberts. In fact, I have voted for eight of the nine current Justices of the Supreme Court.

I want all Americans to know that the Supreme Court will protect their rights and will respect the authority of Congress to act in their interest. I want a Supreme Court that acts in its finest tradition as a source of justice. The Supreme Court must be an institution where the Bill or Rights and human dignity are honored. In good conscience, based on the record, I cannot vote for this nomination. I urge all Senators to use this last night of debate to consult their consciences and their best judgment before casting their votes tomorrow. That vote will matter.

In my 30 years in the Senate, I have cast almost 12,000 votes here in the Senate. Few will be as important as the vote we cast tomorrow.

Mr. President, I now ask unanimous consent that the application to which I referred be printed in the RECORD.

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

PPO NON-CAREER APPOINTMENT FORM

From: Mark R. Levin.

To: Mark Sullivan. Associate Director, PPO.

Date Sent: 11/18/85.

Canadidate: Samuel A. Alito, Jr.,

Department: Department of Justice.

Job Title: Deputy Assistant Attorney General.

Grade: ES–I.

Supervisor: Charles J. Cooper.

Race: White.

Sex: Male.

Date of Birth: Apr. 1, 1950.

Home State: New Jersey.

Previous Government Service: Yes.

If yes, give departments, dates career or non-career positions held: Assistant to the Solicitor General, Dept. of Justice, 1981 to present; Assistant U.S. Attorney, N.J., 1977–1981; Law clerk to Judge Leonard I. Garth, U.S. Court of Appeals, Third Cir., 1976–1977,

A complete Form 171, political and personal resumes, complete job description, and letters of support must be included for White House clearance to begin.

1980 Domicile (State): New Jersey.

Please provide any information that you regard as pertinent to your philosophical commitment to the policies of this administration, or would show that you are qualified to effectively fill a position involved in the development, advocacy and vigorous implementation of those policies.

Have you ever served on a political committee or been identified in a public way with a particular political organization, candidate or issue?

(Please be specific and include contacts with telephone numbers.)

I am and always have been a conservative and an adherent to the same philosophical views that I believe are central to this Administration. It is obviously very difficult to summarize a set of political views in a sentence but, in capsule form, I believe very strongly in limited government, federalism, free enterprise, the supremacy of the elected branches of government, the need for a strong defense and effective law enforcement, and the legitimacy of a government role in protecting traditional values. In the field of law, I disagree strenuously with the usurpation by the judiciary decisionmaking authority that should be exercised by the branches of government responsible to the electorate. The Administration has already made major strides toward reversing this trend through its judicial appointments, litigation, and public debate, and it is my hope that even greater advances can be achieved during the second term, especially with Attorney Meese's leadership at the Department of Justice.

When I first became interested in government and politics during the 1960s, the greatest influences on my views were the writings of William F. Buckley, Jr., the National Review, and Barry Goldwater's 1964 campaign. 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. I discovered the writings of Alexander Bickel advocating judicial restraint, and it was largely for this reason that I decided to go to Yale Law School.

After graduation from law school, completion of my ROTC military commitment, and a judicial clerkship, I joined the U.S. Attorney's office in New Jersey, principally because of my strong views regarding law enforcement.

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

As a federal employee subject to the Hatch Act for nearly a decade, I have been unable to take a role in partisan politics. However, I am a life-long registered Republican and have made the sort of modest political contributions that a federal employee can afford to Republican candidates and conservative causes, including the National Republican Congressional Committee, the National Conservative Political Action Committee, Rep. Christopher Smith (4th Dist. N.J.), Rep. James Courter (12th Dist. N.J.), Governor Thomas Kean of N.J., and Jeff Bell's 1982 Senate primary campaign in N.J. I am a member of the Federalist Society for Law and Public Policy and a regular participant at its luncheon meetings and a member of the Concerned Alumni of Princeton University, a conservative alumni group. During the past year, I have submitted articles for publication in the National Review and the American Spectator.

Applicant Signature: Samuel A. Alito, Jr.

Date: Nov. 15, 1985

Associate Director Recommendation: Approved, Mark Sullivan.

Mr. DORGAN. We work on many important issues here in the Congress, but none more important than choosing a Justice to serve on the Supreme Court.

Providing a lifetime appointment to the U.S. Supreme Court is a very serious matter for both the President and the U.S. Senate. Our choice will impact

our country well beyond the term of office for the President and for most of the Senate.

Those nominations are also very important to the citizens of our country and my State of North Dakota, many of whom—on both sides—have contacted my office and whose counsel I have heard and valued.

This is the second nomination for the U.S. Supreme Court that has been sent to the Senate by President Bush in the span of a few short months.

During consideration of the nomination of Judge John Roberts to become Chief Justice of the Supreme Court, I studied his record carefully. I reviewed the hearing records of his appearance before the Senate Judiciary committee as well as his record as a Federal judge on the Circuit Court.

And in the end, I voted to confirm Judge Roberts. I concluded that he was very well qualified, and I also felt after meeting with him that he would not bring an ideological agenda to his work of interpreting the U.S. Constitution.

In short, I felt he would make a fine Chief Justice.

The Supreme Court nomination we are now considering is that of Judge Samuel Alito.

This has been a difficult decision for me.

Judge Alito has substantial credentials. His education, work history, and his 15 years of service on the Circuit Court are significant.

However, in evaluating Judge Alito's rulings, writings, and his responses during his nomination hearings, I have been troubled by several things.

First, he has a clear record over many years of a tendency to favor the big interests over the small interests. That is, when an individual is seeking justice in the courts by taking on the government or a large corporation, Judge Alito's rulings are often at odds with the rulings of his colleagues on the Court and tend to overwhelmingly favor the government or the big interests.

People who live in small States like North Dakota have, over many years, found it necessary to use the courts to take on the big economic interests. Whether it is taking on big corporations, the railroads, big financial interests, or the U.S. Government, as farmers have had to do in recent decades, I think it is important that a Supreme Court Justice be someone who will give the people a fair hearing.

Judge Alito's rulings on the circuit court have, I believe, tilted heavily on the side of the big interests.

One of the key questions for me about a new Justice for the Supreme Court is ''will this person interpret the Constitution in a manner that expands personal freedom and liberty, or will this person interpret it in a way that restricts personal freedom and liberty?''

I believe Judge Alito's record is one that leans in the direction of restricting the freedom and liberty of individual citizens.

I am also concerned by Judge Alito's view of what is referred to as the unitary executive. This is an issue about Presidential power in our form of government. The judicial branch of Government is designed to be a check and balance on the expansion of Presidential powers. I believe Judge Alito's answers in the Judiciary Committee to questions about the unitary executive tilt toward showing deference toward expanded and unchecked Presidential authority. His views on this issue concern me.

For all of these reasons, I have decided to cast my vote against the nomination of Judge Samuel Alito. I take no joy in opposing his nomination, but for the reasons I have mentioned above, I am not comfortable voting to confirm him for a lifetime appointment on our Nation's highest Court.

Over the years, I have supported about 97 percent of the nominees for the Federal court sent to us by President Bush. My record has been one of substantial support for the President's nominees.

But for me, a nomination to the Supreme Court carries much more weight and greater potential consequences for the country.

Judge Alito is replacing Justice Sandra Day O'Connor on the Court. Justice O'Connor has been a key swing vote on so many issues that have been decided by a 5-to-4 vote in recent years.

I believe that Judge Alito's nomination, if approved by the Senate, would tilt that Court in a direction that will restrict personal freedoms, strengthen the role of government and corporations in our lives, and allow the expansion of power of the Presidency.

For those reasons, I have decided to vote no on this nomination.

Mr. ROCKEFELLER. Mr. President, I rise today to share my thoughts and concerns about the President's nomination of Samuel Alito to be an Associate Justice on the U.S. Supreme Court.

It goes without saying that the decision whether to confirm a nominee for a lifetime position on the Supreme Court is among the Senate's most serious and solemn constitutional obligations.

My ultimate test for whether to support a nominee to the Supreme Court rests with two questions: will the nominee protect the best interests of West Virginians and will the nominee uphold the fundamental rights and freedoms of all Americans that are set out in the Constitution and in our laws. It is a high standard, as it must be for a lifetime appointment to the highest Court in the land.

In the last few weeks and months, through careful consideration, I have attempted to answer those two questions. I have concluded that Judge Alito's judicial record, his writings, and his statements portray a man who will not do enough to stand up against power when the rights of average Americans are on the line and who will not do enough to stand up against the President when the checks and balances in our Constitution are on the line.

I will not support a filibuster because I see it as an attempt to delay his certain confirmation. But I will register my grave concerns about Judge Alito's nomination to the Supreme Court by voting against confirmation when that final vote is before us.

My decision is the result of a long and deliberative process.

As my record plainly shows, I have never applied a partisan or ideological litmus test to nominees. George W. Bush was elected as a conservative President, and I have supported his conservative choices at every level. On the judiciary alone, I have voted to confirm 203 out of 212 judges nominated by President Bush. Just 4 months ago, I voted in support of Chief Justice John Roberts, a true conservative, because I concluded that he would consider fully the lives of average people, the lives of those in need and those whose voices often are not heard. I believed on balance that he would be his own man in the face of inevitable outside pressures.

In recent weeks and months, I have heard from hundreds of West Virginians through letters, telephone calls, and personal conversations. Many have expressed strong opposition to Judge Alito, and many have expressed strong support for him. I have weighed all of their views carefully.

I also have labored over Judge Alito's record—his early writings, his rulings, his speeches, and his Senate testimony—and I met personally with Judge Alito. I wanted to hear directly from him, in his own words, what kind of an Associate Justice he would be.

There is no question he is an intelligent man with a deep knowledge of our legal system. During our conversations, he was a gentleman in every sense of the word. But for me these important character traits are not enough to warrant elevation to the U.S. Supreme Court.

I have concluded that although Judge Alito is a well-qualified jurist, I cannot in good conscience support a nominee whose core beliefs and judicial record exhibit simply too much deference to power at the expense of the individual.

Particularly in the committee hearings, when pressed on issues such as individual rights and Presidential powers, Judge Alito's answers troubled me—they were limited and perfunctory. I was left with a strong sense of his ability to recite and analyze the law as it stands but with very little sense of his appreciation for the principles and the real people behind those laws.

Unfortunately, Judge Alito's record does not allay those concerns. As a government lawyer, a Federal prosecutor, and a 15-year Federal judge on the Third Circuit, with lifetime tenure, Judge Alito has repeatedly sided against people with few or no resources. The average person up against a big corporation, an employer, or even

the government itself, all too often comes out on the short end of the stick in front of Judge Alito.

I am particularly troubled by one case, RNS Services v. Secretary of Labor. In RNS Services, Judge Alito argued, in a lone dissent, against protecting workers in a Pennsylvania coal plant by not enforcing the jurisdiction of the Mine Safety and Health Administration, MSHA. Judge Alito claimed that the coal processing plant was closer to a factory than a mine, and therefore should be governed by the more lenient Occupational Safety and Health Administration, OSHA, standards. Fortunately for the miners, the majority of judges in the case did not agree with Judge Alito, and MSHA's standards prevailed.

Outside the courtroom, Judge Alito has at various times in his career suggested, directly and indirectly, that he supports a disproportionately powerful President and executive branch. As a mid career government lawyer, his writings showed a solicitous deference to the executive branch and a willingness to undercut the constitutional authority of Congress. As recently as 2000, Judge Alito forcefully argued in support of a controversial theory known as the ''unitary executive'' which would allow the President to act in contravention of the laws passed by Congress in carrying out his duties.

As vice chairman of the Senate Intelligence Committee, I have developed an even greater appreciation for the wisdom of our Nation's Founders in creating a system of checks and balances among the judicial, executive and legislative branches of Government. The interaction between the President and the Congress on matters of national security, classified and unclassified, is incredibly important to our safety and our future. Today there is a serious legal and constitutional debate going on in our country about whether the President, who already has enormous inherent powers as the leader of our country, has expanded his executive reach beyond the bounds of the law and the Constitution. The fact is the President does not write the laws, nor is he charged with interpreting them—the Constitution is unequivocally clear that lawmaking resides with the Congress and interpretation resides with the courts—yet this President, on many fronts, is attempting to do both.

This alarming trend has been exacerbated by the fact that we have a single party controlling both the White House and the Congress, resulting in minimal congressional oversight of an overreaching executive branch.

The Supreme Court, in the coming months and years, will be forced to rule on any cases related to expansion of Executive power. This nominee will play a pivotal role in settling the legal questions of today and charting a course for the legal questions of our children's and grandchildren's generations.

These are core questions: What is the scope of presidential power under the Constitution? What is the appropriate balance between the President and the Congress? When must the constitutionally protected rights of average Americans—workers' rights, families' rights, and individuals' rights—prevail?

At the end of the day, I am left with the fear that Judge Alito brings to the Court a longstanding bias in favor of an all-powerful presidency and against West Virginians' basic needs and interests.

Mr. LEVIN. Mr. President, while I had expected that the Senate would move directly to an up-or-down vote on Judge Alito's nomination to the Supreme Court without a vote on cloture, because I strongly oppose this nomination, as I explained in my remarks last week, and because the filibuster has been a time-honored and accepted part of the checks and balances on the President's appointment powers, I will vote against cloture on this nomination.

Mr. GREGG. Mr. President, I rise today to speak on the nomination of Judge Samuel A. Alito, Jr., to become an Associate Justice of the Supreme Court. After following the confirmation process and reviewing Judge Alito's qualifications, I am pleased to support this nomination and congratulate President Bush on another outstanding pick for our Nation's highest Court. Although there are no guarantees about how any judicial nominee will carry out his or her responsibilities once confirmed, I believe that Judge Alito will serve our country well as Justice Sandra Day O'Connor has done for almost a quarter of a century on the Supreme Court.

To explain why I support the nomination of Judge Alito, let me first begin my remarks by referring to article II of the U.S. Constitution—in particular, section 2, which states that it is up to the President to appoint individuals to our highest Court. As he pledged to the voters who elected him, President Bush has exercised his appointment powers to pick someone who firmly believes in the rule of law, the importance of protecting the rights of all Americans, and the Founding Fathers' wisdom of leaving policy decisions to the elected branches of Government. The President has followed through on his promise to the American people by choosing Judge Alito.

With that said, Judge Alito is not simply the fulfillment of a campaign promise—he is also one of the sharpest legal minds in the Federal appellate ranks and a dedicated public servant. A former editor of the Yale Law Journal and Army reservist, Judge Alito has served as a law clerk for Judge Leonard Garth of the Third Circuit, an assistant U.S. attorney for New Jersey, an Assistant to the Solicitor General, Deputy Assistant Attorney General in the Department of Justice's Office of Legal Counsel, and the U.S. attorney for New Jersey. After his first 15 years of public service, he then went on to serve as a judge on the Third Circuit, for which he was unanimously confirmed by the Senate in 1990. In total, Judge Alito has served our Nation for 30 years, using his legal experience and talents for public good rather than for personal profit. We should all applaud and support such a record of public service, especially when you consider the fact that Judge Alito has more judicial experience than any Supreme Court nominee in over 70 years.

Unfortunately, however, there are a number of my colleagues from across the aisle who somehow believe that this record of public service is something to deride and distort. Forget the fact that nearly everyone who has worked with Judge Alito or has taken an impartial review of this man's record and credentials, such as the American Bar Association, supports this nomination wholeheartedly. Forget the fact that Judge Alito has garnered the near unanimous support of his colleagues on the Third Circuit and lawmakers from both parties—including Governor Ed Rendell of Pennsylvania—who know him best. Forget the fact that Judge Alito has ruled in favor of minorities who have alleged racial discrimination or were convicted of crimes. Forget that Judge Alito is known by those who have worked with him as a good and decent man who does not put ideology over public responsibility. Some of my colleagues do not want to consider any of these facts, or they somehow distort all of them as they try to smear the President's nominee. And why? Well, because Judge Alito is simply that; he is President Bush's nominee.

As someone who supported both of President Clinton's nominations to the Supreme Court, I find this type of partisanship appalling. Instead of accepting the obvious fact that Judge Alito is more than well qualified to serve on the Supreme Court, some of my colleagues want to cherry-pick and distort a few opinions out of the hundreds that he has written, hype up his alleged relationship with a university organization, or huff and puff about the Vanguard recusal matter even though the American Bar Association and most well regarded legal ethics experts have found nothing unethical. As opposed to qualifications, some of my colleagues across the aisle want to focus solely on these petty matters that are borne simply out of personal vendetta or the echo chamber of liberal blogs. They now want the Senate and the American people to forget everything else and base this important vote on a few dubious claims.

None of this is healthy for the Senate or for our Nation. It does not take a genius to realize that most Americans are tired of this petty partisanship, and the personal attacks on Judge Alito and the distortion of his record will only further discourage, not encourage, future nominees who have lengthy records of public service and judicial experience. This is troubling, and I hope that the previous few months are

not more evidence of a trend towards partisanship at all costs. Whether some may like it or not, President Bush was elected by the American people. His nominees therefore deserve fair and dignified consideration by the Senate, even by those who opposed the President's election or his views on certain issues.

Perhaps these past few months should not have been a surprise to people like me who believe that the Senate should not let politics or ideology stand in the way of qualified nominees. After all, maybe all of this was foreseen by the Founding Fathers when they established the nomination process in article II, section 2 of the Constitution and gave the Senate only a limited advice and consent role. As Edmund Randolph noted, ''Appointments by the Legislatures have generally resulted from cabal, from personal regard, or some other consideration than a title derived from the proper qualifications.'' Looking at how some of my colleagues have approached the nomination of Judge Alito, I believe that Mr. Randolph, sadly, may have been right when he said this more than 200 years ago.

Fortunately, there are a greater number of colleagues here in the Senate who do view the issue of judicial nominations as being about qualifications, not politics. They include the majority leader and the chairman of the Judiciary Committee, who have both done a commendable job of moving this nomination forward and giving us the opportunity to have an up-or-down vote. I congratulate them on their efforts and look forward to casting my vote in support of Judge Alito. He certainly deserves it, as well as the support of the rest of the Senate.

Ms. COLLINS. Mr. President, I rise today to speak in favor of the nomination of Samuel Alito to serve as Associate Justice of the Supreme Court.

The Supreme Court is entrusted with an enormous power—the power to interpret the Constitution, to say what the law is, to guard one branch against the encroachments of another, and to defend our most sacred rights and liberties.

The decision of whether to confirm a nominee to the Supreme Court is a solemn responsibility of the Senate and one that I approach with the utmost care. It is a duty that we must perform despite the fact that nominees are constrained in the information they can provide us.

Some interest groups, and even some of my colleagues, have called on nominees to promise to vote a certain way; they demand allegiance to a particular view of the law or a guarantee in the outcome of cases involving high-profile issues. These efforts are misguided.

To avoid prejudging and to ensure impartiality, a nominee should not discuss issues in areas of the law that are ''live''—where cases are likely to come before the Court. Parties before the Court have a right to expect that the Justices will approach their case with a willingness to fully and fairly consider both sides.

The cases that come before the Supreme Court each year present legal issues of tremendous complexity and import, and Justices should not be asked to speculate as to how they would vote, or make promises in order to win confirmation. Justice Ginsberg stated during her hearing that a nominee may provide ''no hints, no forecasts, no previews'' on issues likely to come before the Court. As Justice Ginsberg's statement underscores, the Justices should reach a conclusion only after extensive briefing, argument, research, and discussion with their colleagues on the Court.

We must also recognize that there are limits to our ability to anticipate the issues that will face the Court in the future. Twenty years ago, few would have expected that the Court would hear cases related to a Presidential election challenge, would try to make sense of copyright laws in an electronic age, or would face constitutional issues related to the war on terrorism.

While we cannot know with certainty how a nominee will rule on the future cases that will come before him or her, we are not without information on which to base our judgement. We must engage in a rigorous assessment of the nominee's legal qualifications, integrity, and judicial temperament, as well as the principles that will guide the nominee's decisionmaking. In fact, in Judge Alito's case, I note that we have significantly more information on which to base our judgement than with other nominees, given his long tenure as a judge on the Third Circuit Court of Appeals.

The excellence of Judge Alito's legal qualifications is beyond question. Even his fiercest critics acknowledge that he is an extraordinary jurist with an impressive knowledge of the law, a conclusion also reached by the American Bar Association, ABA.

The ABA Standing Committee on the Judiciary conducted an exhaustive review of his qualifications. During this process, the Committee contacted 2,000 individuals throughout the Nation, conducted more than 300 interviews with Federal judges, State judges, colleagues, cocounsel, and opposing counsel, and formed reading groups to review his published opinions, unpublished opinions, and other materials. Based on its review, the committee found Judge Alito's integrity, his professional competence, and his judicial temperament to be of the highest standard, and decided unanimously to rate him ''well qualified''—the highest possible rating.

When asked at his hearing what type of Justice he would be, Judge Alito directed Senators to his record as a judge on the Third Circuit. I agree this is the appropriate focus.

During his 15 years of service on the Third Circuit, Judge Alito has voted in more than 4,800 cases and has written more than 350 opinions. His record on the bench is one of steady, cautious, and disciplined decisionmaking. He is careful to limit the reach of his decisions to the particular issues and facts before him, and he avoids inflammatory or politically charged rhetoric. And despite this extensive record, there is no evidence that his decisions are results-oriented. For example, in the area of reproductive rights, I note that he has reached decisions favoring competing sides of the political debate.

After reviewing Judge Alito's dissenting opinions, Cass Sunstein, a well-known liberal law professor from the University of Chicago, reached the following conclusion: ''None of Alito's opinions is reckless or irresponsible or even especially far-reaching. His disagreement is unfailingly respectful. His dissents are lawyerly rather than bombastic. . . . Alito does not place political ideology in the forefront.''

During his hearing, the committee heard the testimony of seven judges from the U.S. Court of Appeals for the Third Circuit, the court on which Judge Alito currently serves. The panel was comprised of current and retired judges, appointed by both Democratic and Republican Presidents, and holding views ranging across the political spectrum.

Who better to know how Judge Alito thinks, reasons, and approaches the law, than those with whom he worked so closely over the past 15 years? And it is significant that these colleagues were unanimous in their praise of Judge Alito—in his legal skills, his integrity, his evenhandedness, and his dedication to precedent and the rule of law.

As Judge Becker commented, ''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. I have never seen him exhibit a bias against any class of litigation or litigants.''

Judge Aldisert, who was appointed by President Johnson, had this to say: ''The great Cardozo taught us long ago the judge, even when he is free, is not wholly free. He is not free to innovate at pleasure. This means that the crucial values of predictability, reliance and fundamental fairness must be honored. . . . And as his judicial record makes plain, Judge Alito has taken this teaching to heart.''

Judge Lewis, a committed human rights and civil rights activist who described himself as ''openly and unapologetic pro-choice,'' said: ''I cannot recall one instance during conference or during any other experience that I had with Judge Alito . . . when he exhibited anything remotely resembling an ideological bent. . . . 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.''

Judge Alito's colleagues provided compelling testimony of his deep and abiding commitment to the rule of law, the limited role of a judge, and the obligation to decide the case based on the facts and the record before him. They also testified that Judge Alito's decisions have been constrained by established legal rules and specifically by a respect for the rules of precedent. The weight of their testimony is substantial—they know far more about Judge Alito's judicial philosophy than we could hope to learn in a few days of public hearings.

A nominee's judicial philosophy matters to me. When I met with Judge Alito, I specifically asked him about his views on the importance of precedent and stare decisis—the principle that courts should adhere to the law set forth in previously decided cases.

During both our meeting and his hearing, Judge Alito evidenced a strong commitment to the principle of stare decisis. Judge Alito acknowledged the importance of this principle to reliance, stability, and settled expectations in the law.

At his hearing, Judge Alito, referring to the landmark Roe v. Wade decision, testified as follows: ''[I]t is a precedent that is protected, entitled to respect under the doctrine of stare decisis. . . .''

Similarly, Chief Justice Roberts, who was confirmed with a strong bipartisan support, made a nearly identical statement at his hearing. He said that Roe is ''a precedent of the court, entitled to respect under the principles of stare decisis.''

After a careful comparison of these statements and others, I find that on substance, there is little that distinguishes the two nominees' statements on this issue. Both nominees clearly acknowledged the importance of precedent, the value of stare decisis, and the factors involved in analyzing whether a prior holding should be revisited. Both agreed that the Constitution protects the right to privacy, and that the analysis of future cases involving reproductive rights begins not with Roe but with the Casey decision, which reaffirmed Roe's central holding. And both testified that when a case has been reaffirmed multiple times, as Roe has, this increases its precedential value.

Despite the strong testimony of both Chief Justice Roberts and Judge Alito, the reality is that no one can know for certain how a Justice will rule in the future. History has shown us that many predictions about how other Justices would decide cases have proven wrong.

At her hearing in 1981, Justice O'Connor vigorously defended her belief that abortion was wrong and stated that she found it ''offensive'' and ''repugnant.'' Justice Souter once filed a brief as a State attorney general opposing the use of public funds to finance what was referred to in the brief as the ''killing of unborn children.'' Justice Kennedy once denounced the Roe decision as the ''Dred Scott of our time.''

Yet, in 1992, all three of these Justices joined together to write the joint opinion in Casey reaffirming Roe based on the ''precedential force'' of its central holding.

Based on my review of his past decisions, I doubt that I will agree with every decision Judge Alito reaches on the Court, just as I do not agree with all of his previous decisions. I anticipate, however, that his legal analysis will be sound, and that his decisionmaking will be limited by the principle of stare decisis and the particulars of the case before him.

Judge Alito has demonstrated his fitness for this appointment with his clear dedication to the rule of law. After an exhaustive review process, the ABA has given him its highest possible rating. His colleagues on the Third Circuit, both Republican and Democrat appointees alike, have been unqualified in their praise of his nomination.

Based on the record before me, I believe that Judge Alito will be a Justice who will exercise his judicial duties guided not by personal views, but based on what the facts, the law, and the Constitution command.

For these reasons, I will vote to confirm Judge Alito. I hope and expect that he will prove his critics wrong and that his record on the Supreme Court will show the same deference to precedent, respect for the limited role of a judge, and freedom from ideologically driven decisionmaking that he has demonstrated during his tenure on the Third Circuit.

Mr. KYL. Mr. President, I explained last Wednesday that I would support the nomination of Judge Alito. Since then, I have been somewhat frustrated at how this Senate debate has progressed. Time and time again, some Senators have mischaracterized the cases and record of Judge Alito. I would like to take a few minutes and walk through just a few of those misstatements.

First, let me address the case of Sheridan v. DuPont.

On January 26, the junior Senator from Colorado indicated that Judge Alito was unlikely to support principles of diversity because he ruled against a female plaintiff in a gender discrimination case. The Senator said, ''In Sheridan, Judge Alito registered the lone dissent among thirteen judges voting to prevent a woman who had presented evidence of employment gender discrimination from going to trial.'' The Senator's summary of the case requires additional elaboration, though.

According to the record of that case, the plaintiff, Barbara Sheridan, was employed as head captain of the Green Room restaurant in the Hotel DuPont. Initially, she received good performance reviews, but DuPont claimed that her performance began to deteriorate in 1991. At that point, her manager met with her to ask her to stop using the restaurant bar for smoking and grooming. Apparently Sheridan was frequently late to work, and other employees had complained about food and drinks she gave away. In February 1991, the hotel decided to reassign Sheridan to a nonsupervisory position that did not involve the handling of cash. She would not suffer any reduction in pay because of this job transfer. Rather than accept reassignment, Sheridan resigned in April 1992 and sued for gender discrimination.

When the case came before him on appeal, Judge Alito joined a unanimous three-judge panel that ruled for Ms. Sheridan. He held that her case should go to trial because it was plausible that a jury could agree with her. Judge Alito explained, ''a rational trier of fact could have found that duPont's proffered reasons for the constructive termination were pretextual.''

Later, however, the case was heard by the full Third Circuit. At that time, Judge Alito expressed doubt about the applicable Third Circuit precedent. Hesitant about the court's broad rule that affected all cases with varying factual situations, he explained that when the employee makes out a case like this, she should usually, but not always, be accorded a trial. He reached this conclusion after parsing the Supreme Court's 1993 decision in St. Mary's Honor Center v. Hicks. And most importantly for present purposes, the Supreme Court later agreed with Judge Alito's view in a unanimous opinion authored by Justice O'Connor. That case, Reeves v. Sanderson Plumbing Products, can be found at 533 U.S. 133, and was decided by the Supreme Court in 2000.

The job of an appellate court judge is to faithfully interpret the Constitution and the Supreme Court's interpretations of statutes. The history of this case demonstrates that Judge Alito got it right when he examined pleading standards in title VII cases.

Let's move on to another case, the 1996 case of U.S. v. Rybar, in which Judge Alito dissented.

On January 25, the Senior Senator from Rhode Island said that Judge Alito ''advocated striking down Congress's ban on the transfer and possession of machine guns.'' He further said that Judge Alito had argued that he was ''not convinced by Congress' findings on the impact of machine guns on interstate commerce. He substituted his own policy preferences in a way that the Third Circuit majority found was, in their words, counter to the difference that the owes to its two coordinate branches of government.''

I discussed this case with Judge Alito during his confirmation hearings. The description we have just heard does not tell the whole story.

Judge Alito's dissent in that case had nothing to do with being ''convinced'' by Congress's findings. Rather, Judge

Alito based his dissent, in part, on the fact that Congress made no explicit findings regarding the link between the intrastate activity regulated by these laws, the mere possession of a machine gun, and interstate commerce. Note that this case was about possession, not transfer or commercial activity.

Second, the dissent had nothing to do with Judge Alito's own policy preferences regarding the possession of machine guns. Rather, it was a careful application of the then-recent decision in United States v. Lopez, which reminded courts to take seriously the limits of Congress's powers under the commerce clause. In Lopez, the Supreme Court had held that Congress's power to regulate commerce among the several States did not include the power to regulate possession of a gun near a school where the gun never crossed State lines. It was for the Third Circuit to decide whether Congress's power to regulate interstate commerce included the power to regulate possession of a machine gun where the machine gun never crossed State lines. In Judge Alito's view, the Supreme Court's decision ''require[d] [the court] to invalidate the statutory provision at issue.'' He relied on and cited Lopez at least 22 times in his 9-page dissenting opinion.

Again, this is the job of an appeals court judge: to interpret Supreme Court precedent and apply it to new cases.

I should also point out that Judge Alito's dissenting opinion provided a virtual roadmap for how Congress could regulate the possession of guns in a way consistent with the Constitution and Supreme Court case law. This is hardly the behavior of someone bent on imposing a ''policy preference'' against regulating machine guns. According to Judge Alito, all Congress had to do was make findings as to the link between the possession of firearms and interstate commerce or add a requirement that the government prove that the firearm moved across State lines.

Let me add one last word on the Rybar case. It is often said that Judge Alito always sides with the government. Well, this case was called ''United States versus Rybar,'' and Judge Alito was on the side of Mr. Rybar. Of course, he did not think of himself being on anyone's side. He was just doing as he believed the Constitution and Supreme Court required. And he would have felt the same way if the law required the opposite conclusion.

Let us now move on to another case, that of Riley v. Taylor.

Speaking at the executive business meeting for the nomination of Judge Alito, the senior Senator from Illinois left a misimpression of the facts of this case, so I would like to clear up any confusion.

In that case, Judge Alito found there was insufficient evidence to support a criminal defendant's claim that the prosecutor had violated his constitutional rights by striking three minorities from the jury pool. The Senator said that the prosecutor had ''in three previous murder cases, used every challenge they had to make certain that only white jurors would stand in judgment of black defendants.'' That is not accurate. While it is true that the criminal defendant relied heavily on the anemic evidence that in three previous trials no African Americans ended up on the jury, it is also the case that the prosecutor had struck both Blacks and Whites from those juries. Indeed, Judge Alito pointed out in his decision that, of the excluded jurors in the previous trials, only 24 percent were African Americans. He suggested that this might not even be disproportionately high in a county where the most recent census indicated that 18 percent of the population was Black.

Most importantly, Judge Alito's opinion rejected the selective use of statistics based upon the sample size of three trials. In so ruling, Judge Alito was in agreement with multiple State and Federal judges who had heard the case before him. On the full Third Circuit, four other judges, half of them Democratic appointees, joined in his opinion on this point. Not a single judge thought the statistical argument settled the case.

As a postscript, when Riley was given a new trial by the Third Circuit, he was again convicted of all charges. When he again appealed, the Delaware Supreme Court found that his petition was ''wholly without merit.''

Let me turn to another case, one also discussed by the senior Senator from Illinois, but during his January 25 floor speech, that of Pirolli v. World Flavors.

The Senator from Illinois stated: ''Another case involved an individual who was the subject of harassment in the work place. This person had been assaulted by fellow employees. He was a mentally retarded individual.'' The Senator continued, ''His case was dismissed by a trial court, and it came before Judge Alito to decide whether or not to give him a chance to take his case to a jury. And Judge Alito said no. The man should not have a day in court.''

Several corrections are needed here.

First, the plaintiff in this case did have his day in court; he just did not reach a jury. During the course of the proceedings, the plaintiff presented his argument to not one, but four judges—one district court judge and three appellate court judges. The rules of the Third Circuit require that a plaintiff present his case in a minimally adequate fashion in order to be considered. The plaintiff must, at a minimum, state what happened to him and provide the basis for his claim. But the plaintiff in this case, a man who had a lawyer, never did that. The Third Circuit judges in this case were not provided with enough facts to make an adequate and informed decision. Judge Alito emphasized, ''I would overlook many technical violations of the Federal Rules of Appellate Procedure and our local rules, but I do not think it is too much to insist that Pirolli's brief at least state the ground on which reversal is sought.''

Second, with regard to the plaintiff's sexual harassment claim, Judge Alito refused to accept the arguably demeaning stereotype which the plaintiff's lawyer advanced, which was ''that retarded persons are any more (or less) sensitive to harassment than anyone else.'' Judge Alito required evidence on which to base his ruling and refused to rely on the proposed stereotype.

Let's move on to another case, that of Doe v. Groody.

This case was mentioned by several Senators but in particular by the Junior Senator from Massachusetts on January 25. The Senator said that Judge Alito did not support individual rights because he dissented in Doe v. Groody. He said, ''Judge Alito's hostility to individual rights isn't limited to civil rights. He consistently excuses government intrusions into personal privacy, regardless of how egregious or excessive they are. In Doe v. Groody,'' the Senator from Massachusetts argued, ''dissented from an opinion written by then-Judge Michael Chertoff because he believed that the strip search of a ten year-old was reasonable.''

First, let's get the legal question straight. The issue in Doe v. Groody was whether police officers should be able to be personally sued for money damages when they misunderstand the scope of the search warrant they were given.

Second, let's look at what happened during the event in question. On March 6, 1998, as a result of a long-term investigation of a John Doe for suspected narcotics dealing, officers of the Schuylkill County Drug Task Force sought a search warrant for Doe and his residence. The typed affidavit in support of the warrant stated, among other things, that a reliable confidential informant had purchased methamphetamine on several occasions from John Doe at his residence. The affidavit sought permission to ''search all occupants of the residence and their belongings.''

However, the printed sheet entitled ''Search Warrant and Affidavit'' contained an entry naming only John Doe under the question, ''specific description of premises and/or persons to be searched.'' When the officers entered the house to commence the search, they decided to search Jane Doe and her daughter, Mary, age 10, for contraband. A female officer removed both Jane and Mary Doe to an upstairs bathroom where she searched them for drugs. No contraband was found. Once the search was completed, both mother and daughter returned to the ground floor to await the end of the search.

As a matter of policy, the sad reality is that drug dealers often hide weapons and drugs on children in the home. Judge Alito acknowledged in his opinion that he found the fact that the

search occurred to be unfortunate. Accordingly, police officers sometimes request warrants that allow them to search all persons found during a drug bust.

The Does sued the police officers personally for money damages. The issue was how to read the warrant in light of the affidavit. And the legal question question was whether a reasonable officer could have believed that the search warrant allowed the officers to search everyone in the house. Two judges on the panel said no, while Judge Alito said yes.

Why did Judge Alito believe that the police officers should not be liable personally? He concluded that a reasonable police officer could think that the warrant should be read in conjunction with the attached affidavit. Judge Alito reasoned that a ''commonsense and realistic'' reading of the warrant authorized a search of all occupants of the premises. Judge Alito found that the officers in this case ''did not exhibit incompetence or a willingness to flout the law. Instead, they reasonably concluded that the magistrate had authorized a search of all occupants of the premises.''

So, on the law, Judge Alito did not, as he has been accused repeatedly over the past few days, authorize the strip-search of a 10-year-old girl. He just tried to sort out a practical, on-the-ground problem for law enforcement. It is sad but predictable that this case, with its inflammatory facts, would come up repeatedly, but repetition is not going to change the record of what happened.

Mr. President, let's move on.

I want to address a claim by the junior Senator from Illinois in a January 26 speech that, whenever Judge Alito has discretion, he will rule against an employee or a criminal defendant. To quote, the Senator said, ''If there's a case involving an employer and employee and the Supreme Court has not given clear direction, Judge Alito will rule in favor of the employer. If there's a claim between prosecutors and defendants if the Supreme Court has not provided a clear role of decision, then he'll rule in favor of the state.''

This just is not the case. There are 4,800 cases that could be reviewed to demonstrate the inaccuracy of that claim, but let's just look at a few.

In Zubi v. AT&T, an employee claimed that AT&T had fired him based on his race, but the record was far from clear. Judge Alito clearly had room to rule against the employee. After all, the other two judges deciding the case on appeal did so and threw out the employee's claim. They held that the employee had waited too long to bring his claim. In contrast, Judge Alito issued a lone dissent arguing that the employee was entitled to bring his discrimination claim. Later, the Supreme Court unanimously vindicated Judge Alito's view.

As another example to counter the Senator from Illinois's claim, consider the case of United States v. Igbonwa. There, a criminal defendant argued that the prosecutor had failed to honor his plea agreement. The majority of the court voted against the defendant and in favor of the prosecutor. Clearly, Judge Alito had legal grounds to do the same. Instead, Judge Alito issued a lone dissent arguing that the prosecutor was required to fulfill this promise to the defendant.

In yet another example, in Crews v. Horn, Judge Alito ruled that a prisoner was entitled to more time to bring his habeas petition. Again, the Supreme Court and Third Circuit had never decided the question, and the statute was unclear. Judge Alito could have ruled either way, yet he ruled in favor of the prisoner's claim.

This is a good time to remind the Senate what Third Circuit Judge Edward Becker, who served with Judge Alito for 15 years, had to say on this point. He testified, ''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. I have never seen him exhibit a bias against any class of litigation or litigants.'' As Judge Becker summarized Judge Alito's career, ''His credo has always been fairness.''

Mr. President, I want to turn to some of the mischaracterizations of Judge Alito's past record as a government official.

In her January 25 speech, the junior Senator from New York said that Judge Alito had written that ''in his estimation it is not the role of the federal government to protect the health, safety, and welfare of the American people.''

As best I can tell, the Senator is referring to a 1986 document addressing the Truth in Mileage Act, a bill to require States to change their automobile registration forms to include the mileage of the car every time it was sold. That document did not, as the Senator said, offer Alito's ''estimation'' on anything. Judge Alito was drafting a veto message for President Reagan. Accordingly, he drafted that message in President Reagan's voice and restated President Reagan's policy on federalism. The first-person pronoun in that message is President Reagan, not Alito.

It is also worth nothing that Judge Alito did not challenge Congress's powers. His cover memo acknowledged that ''Congress may have the authority to pass such legislation.'' He did point out that the legislation was ''in large part unnecessary since only five states and the District of Columbia do not already have'' title forms that meet this requirement.

Let's move to another statement from the Senator from New York. She stated that Judge Alito's ''time on the bench shows an unapologetic effort to undermine the right to privacy and a woman's right to choose.''

In fact, Judge Alito's record confirms that he is not an ideologue on a crusade to curtail Roe v. Wade. In his 15 years on the bench, he has confronted seven restrictions on abortion, and he struck down all but one. Judge Alito has upheld a woman's right to choose even when he had the discretion to limit abortion rights.

For example, in the 1995 case of Elizabeth Blackwell Health Center for Women v. Knoll, Judge Alito struck down two abortion restrictions by the State of Pennsylvania. The first provided that a woman who became pregnant due to rape or incest could not obtain Medicaid funding for her abortion unless she reported the crime to the police. The second provided that if a woman needed an abortion to save her life, she had to obtain a second opinion from a doctor who had no financial interest in the abortion. The question was whether these laws conflicted with a Federal regulation issued by the Secretary of Health and Human Services. There was no binding Supreme Court precedent on point, and Judge Alito easily could have upheld the abortion restrictions if he had such a preset agenda. But Judge Alito voted to strike down both laws in favor of a woman's right to choose. This is not the behavior of someone bent on chipping away at Roe v. Wade. This is the behavior of a jurist who understands the importance of precedent.

The junior Senator from New Jersey came to the floor earlier today and criticized the work Judge Alito had done on behalf of the Reagan Justice Department on abortion cases. He suggested that those efforts showed a bias against Roe v. Wade that would matter in the future. But the record shows just the opposite, as discussed above. How else to explain the Knoll case? Moreover, the Senator said that Judge Alito would not describe Roe v. Wade as, quote, ''settled law.'' Judge Alito addressed this question repeatedly during the hearing. A judge cannot call an area of law ''settled'' when it is likely that cases dealing with that area will come before him. This demand to say that Roe is settled is little more than a desire to prejudge all those cases, including cases pending before the Supreme Court today. Judge Alito simply cannot do that without violating his judicial ethics and depriving those litigants of their fair day in court.

I will move on.

Earlier today, the junior Senator from Michigan said that Judge Alito had ''been criticized by his colleagues for trying to legislate from the bench in order to reach the result that he desires.'' I am not aware of a single example of any member of the Third Circuit, or of any other court in the Nation, claiming that Judge Alito had any tendency toward quote, ''legislating from the bench.''

In fact, just the opposite is true. It is especially surprising to hear such a claim given the testimony of Judge Alito's colleagues on the Third Circuit.

Would seven current and former Third Circuit judges testify for Judge Alito if they believed he was a judicial activist or otherwise unqualified for the bench? Those listening now or reading the CONGRESSIONAL RECORD in future years should go to the Judiciary Committee records on the Internet and read what those judges had to say when they testified on January 12. When I spoke last week, I entered in the RECORD a series of excerpts from that testimony that the Senate Republican Policy Committee, which I chair, had compiled. The complete testimony is worth reviewing, too. Again, I am not aware of a single time that any judge has accused Judge Alito of legislating from the bench.

As one last point, I must address this unitary executive issue. The senior Senator from New Jersey and others have said that Judge Alito somehow believes in making the executive more powerful than the legislative and judicial branches. One wonders how many times this misstatement has to be corrected. Judge Alito made clear during his testimony that his past comments regarding the unitary executive theory only—only, Mr. President—dealt with who has the power to control executive agencies. As he said repeatedly, insofar as this theory deals with the scope of Presidential power, he does not—repeat, does not—subscribe to it. What else can he say? He has made this extremely clear. He has said it repeatedly.

Mr. President, there have been other misstatements and mischaracterizations of Judge Alito's record. I can only respond to so many. I will simply encourage future students of this debate to look at the cases in question, and to carefully review the Committee record, before reaching conclusions based on floor debate.

I look forward to Samuel Alito serving on the Supreme Court for many years to come.

The PRESIDING OFFICER. Under the previous order, the majority leader or his designee will be recognized for the final 15 minutes prior to the vote on the motion to invoke cloture.

Mr. KENNEDY. 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. SPECTER. 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.

Mr. SPECTER. Mr. President, I urge my colleagues to invoke cloture on the nomination of Judge Alito to the Supreme Court and to support him on the final vote.

As the chairman of the Judiciary Committee, I sat through every minute of the proceedings, reviewed in advance some 250 cases of Judge Alito's, his work in the Justice Department, his work as U.S. Attorney, as Assistant U.S. Attorney, his academic record, and I found him to be eminently well qualified.

The objections which have been raised to the nomination turn on those who think he should have been more specific on answering certain questions. But to have been more specific, he would have had to in effect state how he would rule on cases to come before the Court, and that is going too far. He went about as far as he could go.

With the critical question of women's right to choose, his testimony was virtually identical to Chief Justice Roberts, and he affirmed the basic principles of stare decisis, a Latin phrase which means ''let the decision stand.''

He is not an originalist. He characterized the Constitution as a living document, as Cardozo did, reflecting the values of our country, the importance of the reliance on precedent, and articulated those views. He also indicated that he had an open mind on the issue of a woman's right to choose, notwithstanding what he had done in an advocacy role for the Department of Justice, notwithstanding any views he had expressed at an earlier date.

When it came to the critical question of Executive power, as to how he would handle cases, he subscribed to Justice Jackson's concurrence in the steel seizure cases, which is the accepted model. And here again, he went about as far as he could go in discussing the considerations and the factors which would guide his decisions.

When it came to Executive power, again he discussed the considerations which would guide him on his decisions but necessarily stopped short of how he would decide a specific case.

He disagreed with the Supreme Court of the United States, which has declared acts of Congress unconstitutional because of our method of reasoning, saying that our method of reasoning somehow was defective compared to the Court's method of reasoning. Judge Alito rejected that.

Perhaps most importantly in evaluating the prospects as to how Judge Alito will rule, we have to bear in mind that history shows the rule to be that there isn't a rule. Justice Sandra Day O'Connor, Justice Anthony Kennedy, Justice David Souter before coming to Court all expressed their sharp disagreement with abortion rights; once they got to the Court they have upheld a woman's right to choose. Then there is the classic case of President Truman's nominees on the big Youngstown case on steel seizure, voting contrary to what the President, their nominator, had expected.

We heard enormously powerful testimony coming from seven circuit judges, some past, some senior, and some currently active who have worked with Judge Alito. There were precedents for other judges coming forward to testify on behalf of a nominee—but not quite in this number, not quite in this magnitude. The seven judges were uniform in their assessment that Judge Alito has no agenda and has an open mind. These are jurists who know his work well, jurists who go with him after oral arguments into a closed room—no clerks, no secretaries, no recording—they see how he thinks and how he considers cases.

I think two judges were especially significant. The first was Judge Edward R. Becker, the winner of the Devitt Award as the outstanding Federal jurist a couple of years ago. Judge Becker has sat with Judge Alito on more than 1,000 cases. He is well known as a centrist and is a highly respected judge. He testified that Judge Alito and he had disagreed on a very small number of cases, about 25. The second was Judge Timothy Lewis, an African American who identifies himself as being very strongly pro-choice, very strong for civil rights. He was seated on the left-hand side of the panel—he made a reference to that reflecting his position on the philosophical spectrum—and testified very strongly on Judge Alito's behalf, saying that if he did not have every confidence in Judge Alito he would not have appeared as a witness in the proceeding.

The prepared statement which I filed in the record last week details a great many cases where Judge Alito has decided in favor of the so-called little guy.

In the context of the hundreds of decisions that Judge Alito has written and the thousands of cases where he has sat, you could pick out a few and put him with any position on the philosophical spectrum of the court.

Candidly, it is a heavy responsibility to cast a vote on a Supreme Court nominee, especially one who is taking the place of Justice O'Connor, a swing vote. But when we look at the traditional standard as to intellect, this man is an A plus. When we look at the traditional standard of character, again he is an A plus. When you look at the standard of experience and public service, he is an A plus. When you look at his analytical style as a jurist, again he is an A plus.

Some have objected to nominees because, as some have put it, there is no guarantee. Guarantees are for used cars and washing machines, not for Supreme Court nominees.

I believe Judge Alito is well qualified to receive an affirmative vote by the Senate and be confirmed as an Associate Justice of the Supreme Court.

I note the distinguished majority leader on the floor. The time left before the cloture vote—almost a full minute—I yield to Senator FRIST.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, I will be using some leader time. For my colleagues, the vote will be in about 10 minutes or so.

In a few moments the Senate will decide whether to invoke cloture to close debate on the nomination of Sam Alito to be the 110th Associate Justice of the Supreme Court.

Before we vote, I want to take a minute to reflect just a bit on the progress that we have made in this overall judicial confirmation process over the last 12 months.

In the Senate, I really wear three hats. One is the Senator from the great State of Tennessee; second, the Republican leader; and third, majority leader. Wearing the third hat as majority leader, I have become a steward of our institution, steward in the sense of its rules and its precedents, its practices and the customs of this Senate.

My job is to bring Senators together, both sides of the aisle, to govern. That is why we are here, to govern with meaningful solutions to people's real problems, problems today, problems in the future, to identify what those problems are and then to resolve them and to secure America's future by honoring its past and by building on a record of accomplishment every day as we move forward.

Three years ago, when I assumed this position as majority leader, there was probably no single greater challenge or obstacle than the judicial confirmation process. In a word, it was broken. The minority party had decided to put partisanship first in the judicial confirmation process by, at that time, orchestrating regular, almost routine filibusters to block what we all know were highly qualified nominees from getting fair up-or-down votes. This partisan obstructionism began in 2001, it continued into 2002, in 2003, and then 2004.

If we look back to the 108th Congress alone, the Senate voted 20 times to end debate on 10 different nominees. Each time, cloture failed. We spent more time debating judicial nominations during those 2 years than in any previous Congress. This partisan obstructionism was unprecedented. This routine use of the filibuster was wrong. Never in 214 years had a minority denied a nominee with majority support that fair up-or-down vote. The minority had used the filibuster to seize control of the appointments process. They used it unfairly to apply a new political standard to judicial nominees and to deny a vote to any nominee who did not subscribe to a liberal, activist, ideological agenda.

To justify this unprecedented obstruction, Democratic leaders unfairly attacked the character of these nominees. They sought to paint them as extremists and radicals and threats to our society and our institutions. But the American people saw through the attacks. They saw them for what they were, purely partisan.

Finally, early this year the Republican leadership said: Enough is enough; enough obstruction, enough partisanship, enough disrespect to these good, decent, and accomplished professionals. We put forward a very simple, straightforward principle. A nominee with the support of a majority of Senators deserves a fair up-or-down vote. And we led on that principle. Because we did that, seven nominees who had been previously filibustered, or blocked, obstructed in the last Congress—and we were told at the time would be blocked in this Congress—got fair up-or-down votes and were confirmed and now sit on our circuit courts. A new Chief Justice of the United States, Chief Justice Roberts, now sits at the helm of the High Court.

If we had not led on principle, there would have been no Gang of 14. Filibusters would have become even more routine and led to more obstruction. However, the sword of the filibuster has been sheathed because we are placing principle before politics, results before rhetoric.

With the nomination of Sam Alito before the Senate, this Senate must again choose principle or partisanship. Should we choose to lead on the principle that judicial nominees, whether nominated by a Republican or a Democrat, deserve an up-or-down vote, or should we revert to the partisan obstructionism of the past? I believe a bipartisan group of Senators will choose today to put principle first.

Last week, the distinguished minority leader said there has been adequate time for people to debate. No one can complain in this matter that there has not been sufficient time to talk about Judge Alito, pro or con. I could not agree more with my colleague and friend. It is time to end debate. It is time to move on. Since President Bush announced Judge Alito's nomination on October 31, Senators have had 91 days to review his nomination, to review his records, his writings.

To put that in perspective, Chief Justice John Roberts' confirmation took 72 days, even including an extra week's delay to pay respects to his predecessor, Chief Justice Rehnquist. Justice O'Connor, who Judge Alito will replace, was confirmed in 76 days. President Clinton's two Supreme Court nominees, Justices Ginsburg and Breyer, got a fair up-or-down vote in an average of 62 days. Judge Alito today is at 91 days.

During this 3-month period since Judge Alito was nominated, Members have had an abundance of his written materials, documents, and opinions to review. They have had over 4,800 opinions from his tenure on the Third Circuit Court of Appeals spanning 27,000 pages; another 1,000 pages of documents from Judge Alito's service at the Department of Justice; numerous speeches and news articles. The list goes on and on.

Members have had 30 hours of testimony from Judge Alito's judicial committee hearings; statements of 33 witnesses, including 7 who are Judge Alito's colleagues on the Third Circuit; Judge Alito's answer to over 650 questions, doubling the number of questions that either of President Clinton's Supreme Court nominees answered; and 4 days of debate in the Senate.

Despite all this, some Members have launched a partisan campaign to filibuster this nominee and have forced the Senate to file cloture which we will be voting on. Certainly, it is any Senator's right to force this vote, but it sets an unwelcome precedent for the Senate.

As a reminder to my colleagues, the Senate did not have a cloture vote on any of the nine Justices currently sitting on the Supreme Court. Judge Alito has majority support. A bipartisan majority of Senators stands ready to confirm him and have announced their support. Judge Alito deserves to be Justice Alito. He has the professional qualifications, the judge temperament and integrity our highest Court deserves.

Whether Members agree with me, whether Members support him, we should not prevent Judge Alito from getting a vote. I urge my colleagues to join me in voting for cloture. It is our constitutional obligation of advise and consent, because it is fair and because it is the right thing to do.

Senators stand for election; judges should not. Absent some extraordinary evidence, we should not challenge a nominee's personal character, credibility, or integrity. Continuing down this path could deter qualified men and women from putting their names forward for nomination, from volunteering to serve their country as Federal judges. It could threaten the quality Americans most desire in their judiciary: fairness and independence.

A vote today for cloture is a vote to support all we have done over the past 3 years to repair what was broken. True, it is a vote to bring Sam Alito's nomination to a fair up-or-down vote, but it is also a vote that is so much more. It is a vote to demonstrate Members working together to end partisan obstructionism and to lead on that simple principle that every judicial nominee, with majority support, deserves a fair up-or-down vote.

In closing, if I may borrow the words of my good friend Senator KENNEDY from 1998:

> We owe it to Americans across the country to give these nominees a vote. If our [colleagues] don't like them, vote against them. But give them a vote.

I agree with Senator KENNEDY's statement. I say to my colleagues, if you do not like Judge Alito, vote against him. That is your right. But let's give him a vote. That is our constitutional duty.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Mr. President, I will use leader time.

I want the record spread with the fact that Senator ENSIGN will miss the vote today. The Senate is very fortunate. He was in a head-on collision in Las Vegas going to the airport to return to Washington, DC. I spoke to him from the hospital. He is going to be fine. He has no head injuries. The bags inflated, and I am sure saved him great bodily pain. I talked to him. He was under some medication. He said he is sore but he is going to be fine.

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

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

CLOTURE MOTION

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

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

The legislative clerk read as follows:

CLOTURE MOTION

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

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

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

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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

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

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

[Rollcall Vote No. 1 Ex.]

YEAS—72

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

NAYS—25

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

NOT VOTING—3

Ensign	Hagel	Harkin

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

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

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

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

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

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

The Senator from South Carolina is recognized.

STATE OF THE UNION ADDRESS

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

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

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

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

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

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

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

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

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

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

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

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

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

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