they have reversed previous law. So the executive branch and our military was operating under what they had every right to consider to be the settled law of the land.

So the Court comes in and changes that law. I do not believe our military should be condemned or criticized for taking action they felt, and had every right to believe, was legitimate when they took it.

Now, it is important to remember that the detainees at Guantanamo Bay are the most dangerous people who we have captured on the battlefield pursuant to executive war-making power. They have been determined to be ''alien enemy combatants'' and the courts have absolutely no role to play, in my view, in trying to second-guess the wartime decisions made by the executive branch, especially where Congress has given their stamp of approval to the process. It is not the Supreme Court's role to micromanage this war by making decisions that fall outside the scope of congressional authority.

The decisions made by the Supreme Court have long-lasting effect and are not easily undone. If we are unhappy with present foreign policy, Congress can cut off funds for the war or people can vote the President out of office. I would note President Bush was reelected on a promise to continue to pursue with vigor the war against terrorism and the war in Iraq.

Supreme Court Justices are appointed for life and are supposed to adjudicate the constitutionality of laws passed by Congress, not to legislate from the bench or to set foreign policy. This setting of foreign policy and conducting military operations are powers squarely within the purview of the executive branch not nine individuals with lifetime appointments sitting on a Court with black robes.

It is not within the court's jurisdiction to decide on war-making decisions but simply the constitutional power. It is important to note the Justices lack the knowledge, in many cases, to address the matter, or have any experience to make these decisions. Have any of them ever served on the frontlines during war, or if they have, have they ever served in a war on terrorism or been a JAG officer or been a company commander, someone who captured enemy prisoners?

A Court's opinion or personal views about this are not a matter that is impressive to me. We expect them to rule and to find Congress's statutes—we expect them to enforce the Constitution. But just to flip-flop around and try to decide that they do not like the way something is done at Guantanamo, and to issue an opinion, would be troubling to me. Hopefully, we will not get to that.

It has to be clear, as I have shown, that if we apprehend enemy combatants in the theater of war, it is within the executive branch's power to detain them until the hostilities are over. This is a separation of powers issue, and the courts should recognize that. Congress has already addressed what should be done with those detained at Guantanamo Bay. Last October, we granted those detainees unprecedented rights that have never before been provided to prisoners detained during war.

Under the current system that we have provided them, detainees have essentially five layers of protection when challenging detention or determinations made by the Government. All of this is already covered by current law. It was never the intent of Congress, however, to endow the statutory guarantee of habeas corpus to alien enemy combatants held during a time of war.

So if we proceed with the amendment that is before us, we are not restoring the right of habeas corpus; we are effectively overturning 800 years of legal authority and precedent in this area. To quote the distinguished ranking member of the Judiciary Committee, I submit that 800 years of American and English court history certainly constitutes ''super duper'' precedent.

Allowing terrorists to challenge their detention through habeas petitions filed in the DC Circuit courts would undermine military decisions made by the Executive and essentially put wartime decisions regarding the detention of those apprehended while engaged in hostilities toward this country in the hands of judges who are not qualified to make the decisions. They are not empowered to make the decisions. This is exactly why the Founders vested the Executive with this type of decision-making authority—decisiveness and ability to act quickly—and to undermine this power would be to trample on the Constitution we are sworn to defend.

Voting in favor of this amendment would be undermining the Executive authority in times of war by making it virtually impossible for the military to detain dangerous terrorists affiliated with al-Qaida and with the Taliban during the war on terror and allowing Federal judges to force the release of detainees whom the military have determined to be extremely dangerous. It is just that simple.

I am disappointed the Senate is proceeding forward with this amendment. I do not believe it is the right thing. It would result in an unprecedented grant of constitutional protection to those suspected of being terrorists.

This further indicates to me that our Congress is not in full comprehension of the seriousness of the war we are engaged in and the determination of those who are determined to kill us. It shows this body is, frankly, often unable to execute a military operation. We cannot get 535 people to execute a military operation and decide who ought to be detained and who ought not to.

The military could go out and conduct a raid, and a firefight could break out, and eight people be killed and eight people captured. Thirty seconds before, they could have killed all 16. Now, if we detain them, we have to bring soldiers from the war field, present evidence of some kind, gather evidence to try to justify the detention. We all know quite a large number of those who have been released from Guantanamo have reappeared and been captured again on the battlefield trying to kill us. That is a fact. We are not making that up.

I wish these people in Guantanamo were the kind of people who would not go back to the battle. I wish they were all wrongly held so we could let them go home. But what if their determination is to continue to attack American soldiers, and it is your son out there, your daughter out there on the battlefield, and somebody says in the U.S. Congress, ''We don't think you have enough evidence to hold them''? What do we know about what happened?

We have given that power to the executive branch to conduct the war. That is who is supposed to be making those decisions. That is who is required to preserve and protect the security of the American people. I do not think that makes sense. It is not a little matter. It will set a precedent for future times. We are eroding the ability of the leadership of this country to execute and carry out a military operation, which by its very nature involves death and destruction of an enemy.

So I have to say to my colleagues, we need to think this issue through. This may be a political deal now that we can use to beat up President Bush, but let me say to my colleagues, you had your victory in the last election, if not in 2004. We will have a new President soon. We need to get away from this personal and political perspective. We need to be thinking about the long-term history of the United States. We need to be thinking about other wars we may be involved in in the future. We need to be asking ourselves: Are we creating a circumstance in which a devious, skillful, malicious enemy can utilize our very laws to destroy us, place at risk our own soldiers, place at risk American citizens, place at risk our people serving in military bases around the world?

Let's be careful about that. We have provided them, by statute last year, a procedure to contest their detention. Large numbers of those who have been detained have already been released, and quite a number of those have been recaptured on the battlefield attempting to destroy America and what we stand for, attacking our own sons and daughters.

I urge my colleagues to be careful. To say we need to restore the right of habeas corpus is not correct. We have never provided habeas corpus to enemies of the United States, for heaven's sake. I share again the overall concept that we are in a difficult new world. The Constitution provides for reasonable searches and seizures and such things as that.