



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, FIRST SESSION

Vol. 151

WASHINGTON, TUESDAY, JUNE 7, 2005

No. 74

Senate

The Senate met at 9:45 a.m. and was called to order by the Honorable JOHN ENSIGN, a Senator from the State of Kansas.

PRAYER

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

Let us pray.

God of all mercies, open our hearts to the forgiving, healing work of Your Spirit that we may find our greatness in serving You and bringing good into the hearts and homes and work and play of others.

Sustain the Members of this body in their labors today. May they so strive to please You that even enemies will be transformed into friends. Remind them that a love of justice brings true power. Help them to speak with such kindness that others will want to listen. Teach them that though they make important decisions, You alone determine what happens.

God of grace and mercy, so bless our land that the people of the Earth will glorify Your name.

Amen.

PLEDGE OF ALLEGIANCE

The Honorable JOHN ENSIGN led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant legislative clerk read as follows:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 7, 2005.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby

appoint the Honorable JOHN ENSIGN, a Senator from the State of Nevada, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. ENSIGN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. FRIST. Mr. President, this morning we will resume the debate on Executive Calendar No. 72, the nomination of Janice Rogers Brown to be a U.S. circuit judge for the DC Circuit. The cloture vote is scheduled for noon today. We will have a debate equally divided until then. I expect that cloture will be invoked, and once that vote is concluded, I will discuss with the Democratic leader a time for the up-or-down vote on Janice Rogers Brown. I remind everyone that following that confirmation vote, we will proceed to the cloture vote on the Pryor nomination.

Again, I hope we can expedite the final vote on each of these nominations once the cloture votes have been completed. We have other nominations to consider this week, including the additional judicial nominations that have time agreements already locked in place.

VISIT BY TURKISH PRIME MINISTER RECEP TAYYIP ERDOGAN

Mr. FRIST. Mr. President, on Wednesday, I will have the honor of meeting with Turkish Prime Minister Recep Tayyip Erdogan here in the Capitol. We will be meeting to discuss the importance of the United States-Turkish relationship and the ways in which

we can strengthen that bond to achieve our common goals. I have had the opportunity to meet with the Prime Minister twice before over the past 12 months.

During a trip to the Middle East this spring, I sat down with Prime Minister Erdogan in Jerusalem. Prior to that, we met in Istanbul in the summer of 2004.

I look forward to continuing our dialog on the importance of the Turkish-American relationship. Turkey is a critical NATO ally and an indispensable partner in the global war on terror.

Despite our two countries' strong ties and close cooperation, there have been strains in the recent past that began with the liberation of Iraq in the spring of 2003. Some in the press speculate that Istanbul and Washington are going their separate ways. This is simply not the case.

It is true that March of 2003, the Turkish parliament rejected our request to permit the deployment of U.S. troops to Turkey in order to open a northern front against Saddam's forces. Clearly, we were not pleased. However, Turkey's subsequent offer to send troops to Iraq and President Bush's visit to Turkey last June moved our partnership beyond that matter.

Turkey has granted coalition forces overflight rights through Turkish airspace throughout the war in Iraq and has permitted the use of its ports, airbases, and roads for resupplying coalition troops an supporting reconstruction efforts in Iraq. Because of its proximity, Turkey's Incirlik airbase has also served as a vital transit location for coalition troops rotating in and out of Iraq. In fact, from January to April 2004, half of all U.S. troops rotating in and out of Iraq went through Incirlik, and Turkey recently agreed to allow coalition forces to use the base as a logistics hub. Turkey's assistance and support has been invaluable.

Turkey has also been a leader in Iraq's reconstruction efforts. At the

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



Printed on recycled paper.

S6115

2003 Madrid donors' conference, Turkey generously pledged to donate \$50 million in aid over 5 years. In addition, Turkish businesses are functioning in Iraq and helping to provide fuel, electricity, and water to the Iraqi people. And many brave Turkish men and women have given the ultimate sacrifice to help build Iraq's nascent democracy. We honor them for their courage.

Turkey's contribution to the reconstruction project in Afghanistan must also not be overlooked. Turkey has taken the lead for the International Security Assistance Force twice in the last 3 years, most recently in February of this year.

And we must not forget that Turkey had been challenged by terrorism at home by the PKK for years before 9/11. Turkey is threatened today as well. Some PKK terrorists are seeking safe haven in northern Iraq, and so I urge the administration and the Iraqi government to take more aggressive action against the terrorists, and deny them any safe haven from which to launch attacks.

Since 9/11, Turkey has also been the target of al-Qaida. In November 2003, 62 people were killed and more than 700 injured in multiple bombings in Istanbul. It was a tragic event that saddened and angered the world, and fortified our resolve to win the war on terror.

Turkey has been a dedicated and reliable ally. Our intelligence communities are in close contact in this war, and Turkey has been instrumental in capturing terrorists, disrupting their logistics and planning, and dismantling their vast financial networks.

I am confident that Turkey will remain determined and resolute in the war on terror, and that enhanced cooperation between our two countries will prove to be fruitful. Turkey's role as a vital and strategic ally can only be enhanced by its membership in the European Union. The United States strongly supports this.

On December 17 last year, EU member states accepted the recommendation of the European commission for the commencement of accession negotiations with Turkey. These talks are scheduled to begin in October. In order to reach this stage, the Turkish government has undertaken sweeping reforms to fulfill the political and economic criteria for membership in the EU.

Since October of 2001, the Turkish parliament has passed nine reform packages to bring Turkish laws into line with EU benchmarks—five under the leadership of Prime Minister Endrogan. Reforms include the legalization of Kurdish broadcasting and education, the enhancement of freedoms of speech and association, greater civilian control over the military, and more thorough and transparent investigations into allegations of human rights abuses. It is crucial that Turkey continue to take steps to meet all of

the EU's criteria. This will allow the United States to remain a steady and effective supporter of Turkey's ambitions to join the EU.

Turkey's accession to the EU will have a profound impact on Muslim populations within Europe, in the broader Middle East and beyond. It will further demonstrate that democratic governance and respect for the rule of law are not unique to one religion or one culture, but are the birthright of all peoples everywhere. Just as the people of Iraq, Lebanon, and Afghanistan are setting a remarkable example for the entire Middle East, Turkey's membership in the EU will inspire hope throughout the entire Muslim world.

And, finally, as a secular democracy with a predominantly Muslim population, Turkey's membership in the EU—as in NATO—will demonstrate the United States' and Europe's commitment to diversity and tolerance.

We may not always agree on the same course of action—and sometimes we may not agree on the same ends—but Turkey has, for decades, been a friend. And it has consistently expressed its dedication to the values, ideals, and interests that the United States holds dear.

Like the United States, Turkey is committed to a democratic Iraq that respects the rights of its own people and is at peace with its neighbors. It is committed to a just resolution to the Israeli-Palestinian conflict in which two democratic states, Israel and Palestine, live side-by-side in peace and security. It stands against Iran's nuclear ambitions, and squarely for victory in the war against terror.

The United States and Turkey share the same objectives: peace, security, and the spread of freedom and opportunity.

The partnership between the United States and Turkey has survived disagreements in the past and has been consistently vital in the pursuit of our shared interests. The key has always been strong leadership at the highest levels that articulates our partnership and defends the bilateral ties that help us advance our common goals.

Today, we face a golden opportunity to move beyond recent tensions and strengthen our partnership. The first step is for Prime Minister Erdogan to speak clearly in defense of our partnership, and to dispel a wave of anti-Americanism that runs counter to the last 5 decades of cooperation.

I'm confident that the prime minister will do so during his visit this week, and when he returns home to Turkey. And I'm confident that the United States-Turkish partnership will endure as we confront the challenges of the 21st century together.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Illinois is recognized.

Mr. DURBIN. Will the Chair inform me as to what the situation is concerning morning business or debate.

The ACTING PRESIDENT pro tempore. We are supposed to go into executive session at this time.

Mr. DURBIN. I thank the Chair.

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

NOMINATION OF JANICE ROGERS BROWN TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will go into executive session to resume consideration of calendar No. 72, which the clerk will report.

The assistant legislative clerk read the nomination of Janice Rogers Brown, of California, to be United States Circuit Judge for the District of Columbia Circuit.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 12 noon shall be equally divided for debate between the two leaders or their designees, provided that the last 20 minutes prior to the vote be divided, with 10 minutes under the control of the Democratic leader or his designee, to be followed by 10 minutes under the control of the majority leader or his designee.

The assistant Democratic leader is recognized.

Mr. DURBIN. Mr. President, under the order, the time is equally divided; is that right?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. DURBIN. I seek recognition under the terms of that order.

The ACTING PRESIDENT pro tempore. The Senator from Illinois, the assistant Democratic leader, is recognized.

Mr. DURBIN. Mr. President, I am sorry that this day has come. Janice Rogers Brown is one of President Bush's most ideological and extreme judicial nominees. This is not just my opinion. I invite anyone, please, read her speeches, read her opinions. They reflect the views of a judicial activist and a person who is, in fact, an ideological warrior. They reflect the views of someone who is outside of the mainstream of American thought. They reflect the views of someone who should not be given a lifetime appointment to the second highest court in America—a court second only to the United States Supreme Court.

I am a member of the Senate Judiciary Committee. I served as the ranking Democrat at Justice Brown's hearing in October of 2003. I asked her a lot of questions. Her answers offered little assurance that she will be anything but a judicial activist with a far-right agenda.

She is a very engaging person. She has a great life story. You cannot help but like her when you first meet her. But then, as you read what she has said and ask her questions about it, you cannot help but be troubled, if you are looking for someone who is moderate and centrist and who will be fair in the way they view the most important cases coming before the court.

Do not take my word for that. Listen to the words of George Will, one of the most well-known, conservative voices in America. Two weeks ago in the *Washington Post*, George Will wrote the following:

Janice Rogers Brown is out of that mainstream. That should not be an automatic disqualification, but it is a fact: She has expressed admiration for the Supreme Court's pre-1937 hyper-activism in declaring unconstitutional many laws and regulations of the sort that now define the new post-New Deal regulatory state.

I agree with George Will. So do hundreds of other individuals and organizations. Newspaper editorial boards across America are deeply troubled about her nomination by President Bush.

Justice Brown's ideological rants about the role of government in our society are found most often in her speeches. She called the year of 1937 "the triumph of our own socialist revolution." Socialism in America, in the eyes of Justice Brown. Why? Because the Supreme Court decisions that year upheld the constitutionality of Social Security and other major parts of the New Deal. So in the eyes of Justice Brown, the New Deal and Social Security are socialist ideas? That shows how far removed she is from the reality of thinking in America.

She stated:

Where Government moves in, community retreats, civil society disintegrates, and our ability to control our own destiny atrophies.

That is a wonderful line to throw in a novel but to announce that as your philosophy as you take off to preside over a bench making decisions involving the lives of hundreds of thousands of Americans is just too extreme.

Justice Brown has praised an infamous case, *Lochner v. New York*. It is a 100-year-old case. The Supreme Court struck down maximum-hour laws for bakers and ruled that Government regulations interfered with the constitutional right to "freedom of contract." The *Lochner* case has been repudiated by both liberals and conservatives. They said it went too far. They believed it was extreme, but not Justice Brown. She not only accepts the *Lochner* decision, she embraces it.

In another speech, Justice Brown said our Federal Government is like slavery. She said:

We no longer find slavery abhorrent. We embrace it. We demand more. Big government is not just the opiate of the masses. It is the opiate.

Think about these words. Interesting things to read. You might want to read them from time to time and say, let's

see what the far right thinks about things, except these are the words of a woman who is seeking to bring her views to a lifetime appointment on the Federal bench.

She has blasted Government programs that help seniors, and here is what she said:

Today's senior citizens blithely cannibalize their grandchildren because they have a right to get as much "free" stuff as the political system will permit them to extract.

Think about that. Think of the cynicism in that remark and think about whether she is the judge you would want to face with a critical decision involving your life, your family, your community, or our country—Janice Rogers Brown.

She rebuked elected officials for "handing out new rights like lollipops in the dentist's office." She has complained that "in the last 100 years, and particularly in the last 30, the Constitution has been demoted to the status of a bad chain novel."

Think about that. Is *Roe v. Wade* chapter 1 of Justice Brown's bad chain novel? How about *Brown v. Board of Education*, Justice Brown? Is that another bad chapter in America's novel? How about *Miranda*, a decision which has now been accepted across America, another bad chapter in America's novel?

Justice Brown just does not get it. America has changed, thank God, in recognizing the right of privacy, in recognizing that we are putting behind us segregation, separate but equal schools, in recognizing that when it comes to the power of the State, there are limitations and there are rights of individuals. For Justice Brown, these are part of a bad chain novel. What a choice of words.

Justice Brown's rhetoric suggests she is guided more by "The Fountainhead," "Atlas Shrugged," and "The Road to Serfdom" than by our Constitution and Bill of Rights. And she wants a lifetime appointment on the bench?

The *Washington Post* asked a question in an editorial this morning of Republicans in the Senate: If you truly want moderate people who are not activist, who do not come to the bench with an agenda, how can you support Justice Brown? When you take a look at what she has done and said, how can you honestly believe she is going to be moderate in her approach on the bench?

The question is whether Republican Senators will march in lockstep because President Bush says take it or leave it. It is Justice Janice Rogers Brown, you have to have her. If they take it, they are basically turning their backs on the fact they have argued against activism on the bench. Hers is activism from the right, not from the left. But if you are opposed to judicial activism, how could you support her based on what she said?

In her confirmation hearing, Justice Brown dismissed her speeches. She said

they were just an attempt to stir the pot. They did more than stir the pot. They set the kitchen on fire. Her speeches show she has the temperament and ideology of a rightwing radio talk show host, not of a person we want to serve on the second highest court of the land for a lifetime—a lifetime.

Justice Brown's nomination to the DC Circuit of all courts is particularly troubling. The DC Circuit is a unique court. It is the court that most closely oversees the operations of Government, such as dealing with worker safety and unfair labor practices. It is the only appellate court with exclusive jurisdiction over many aspects of environmental and energy laws. How ironic and unfortunate to have someone considered for that position who is so openly hostile to the role of the Government when it comes to the environment, when it comes to protecting individual rights.

As a member of the California Supreme Court, Justice Brown has put her theories into practice. In case after case, Justice Brown has sided with anti-Government positions, and she has sided consistently against victims seeking rights and remedies. She is a tough judge. Sometimes you want a tough judge, but you also want a balanced judge, one who is going to be fair in what they do on the bench.

Oftentimes she is the lone dissenter—remarkable—because the California Supreme Court has six Republicans and only one Democrat. Senator BARBARA BOXER of California has counted at least 31 cases where Justice Brown was the sole dissenter. Let me give a few examples.

She was the only member of the California Supreme Court to find the California Fair Employment and Housing Commission did not have the authority to award damages to housing discrimination victims.

She was the only member of the court to conclude that age discrimination victims should not have the right to sue under common law, an interpretation directly contrary to the will of the California Legislature.

She was the only member of the California Supreme Court who voted to strike down a San Francisco law that provided housing assistance to displaced low-income, elderly, and disabled people.

In a case last year, Justice Brown was the sole member of her court who voted to strike down a law that required health insurance plans that cover prescription drugs to include prescription contraceptives in that coverage. Her open hostility to access to contraception is particularly worth noting today, June 7, 2005. Today is the 40th anniversary of the landmark Supreme Court case *Griswold v. Connecticut*, which established a constitutional right to marital privacy. That case really was a watershed decision.

In the State of Connecticut and several other States, a religious group had been successful in convincing the State

legislature to dramatically limit the availability of birth control and contraception. Forty years ago, some of us did not know it was happening, but it was happening. In some States, you could not buy birth control because the legislature said no. That is a decision the State had decided that you could not make as an individual.

The Griswold case overthrew that law and said that your personal right to privacy trumped State rights when it came to access to contraception.

It turns out that Justice Brown's hostility to access to contraception runs counter to 40 years of thinking in America about our rights as individuals to privacy and to make those decisions involving personal responsibility. Justice Janice Rogers Brown might take that right away.

To reward her for this extreme and fringe view, President Bush wants to give her a lifetime appointment to the second highest court of the land. There she will sit day after day, week after week, and month after month making decisions that affect the lives of individuals. It is her point of view that will prevail. She has shown no inclination toward moderation. She will push that agenda on that court, and people will come into that courtroom and wonder what country they are living in, where this court might be meeting because it is so inconsistent with what America has stood for.

In another case, Justice Brown was the only member of the California Supreme Court who voted to make it easier to sell cigarettes to minors. Isn't that perfect? She wants the Government to invade your privacy when it comes to the decisions about birth control and your family, but she does not want the Government to stop the gas station down the street from selling cigarettes to a 12-year-old.

She was the only member of her court who dissented in two rulings that permitted counties to ban guns or gun sales on fairgrounds or other public property.

She was the only member of her court who voted to overturn the rape conviction of a 17-year-old girl because she believed the victim gave mixed messages to the rapist. She was the only member to dissent. She read the facts and concluded that she sided with the rapist and not the victim—the only member to dissent.

She was the only member of her court who concluded there was nothing improper about requiring a criminal defendant to wear a 50,000-bolt stun belt at his trial—the only member of the court, a court of six Republicans and one Democrat. In many of these cases, there were clear precedents, decisions by the court which Justice Brown chose to ignore. Her personal philosophy was more important to her than the law. That is known as judicial activism. That is what Republicans have condemned, and that is what they will endorse if they vote for her nomination.

Why does she ignore the law so often? It gets in the way of her personal beliefs. Those are the most important things from her point of view.

This is not a new revelation about Justice Brown. Back in 1996, the California State Bar Commission rated Justice Brown as "not qualified"—not qualified—for the California Supreme Court. Here is what they said about her: She had a tendency "to interject her political and philosophical views into her opinions." No surprise. Read what she has done on that court. Read what she said about the law. And do not be a bit surprised when she comes to this DC Circuit Court, if she is approved by the Senate for a lifetime appointment, and does exactly the same thing. It is not as if we can say 2 years from now: Well, we guessed wrong; she is not independent, she is not moderate, she is an activist, we will remove her. No way. This is a lifetime appointment to this court by the Bush administration, just the kind of ideologue they want to put on that bench to influence decision after decision as long as she lives.

Nine years later, the American Bar Association, in evaluating Justice Brown for the position we are voting on today, gave her the lowest passing grade. Several members of the ABA screening committee rated Justice Brown "not qualified" again.

In the editorial I mentioned earlier, entitled "Reject Justice Brown," the Washington Post today asserted:

No Senator who votes for her will have standing any longer to complain about legislating from the bench.

And the Washington Post is right. Do not complain about judicial activism if you vote for Janice Rogers Brown. She is a judicial activist. She has an agenda, and she has been loyal to it on the California Supreme Court. There is no reason to expect anything different on the DC Circuit Court.

A Los Angeles Times editorial entitled "A Bad Fit for a Key Court" stated:

In opinions and speeches, Brown has articulated disdainful views of the Constitution and Government that are so strong and so far from the mainstream as to raise questions about whether they would control her decisions.

That is from a Los Angeles Times editorial which, incidentally, is her home State newspaper. They know her best.

The New York Times stated that Justice Brown "is an outspoken supporter of a radical movement to take constitutional law back to before 1937, when the Federal Government had little power to prevent discrimination, protect workers from unsafe conditions or prohibit child labor."

The Detroit Free Press put it this way:

Since her appointment to the State court in 1996, Brown has all but hung a banner above her head declaring herself a foe to privacy rights, civil rights, legal precedent and even colleagues who don't share her extremist leanings.

Over 100 organizations oppose Justice Brown. It takes something in this town to get 100 groups to oppose someone. She pulled it off, including almost every major African-American organization in America, despite the fact that Janice Rogers Brown is an African American.

Dr. Dorothy Height, the great civil rights leader, recipient of the Congressional Gold Medal, attended a press conference before the Judiciary Committee vote on Justice Brown in November of 2003 and said this:

I cannot stand by and be silent when a jurist with the record of performance of California Supreme Court Justice Janice Rogers Brown is nominated to a Federal court, even though she is an African-American woman. In her speeches and decisions, Justice Janice Rogers Brown has articulated positions that weaken the civil rights legislation and progress that I and others have fought so long and hard to achieve.

How hard it must have been for Dorothy Height, this great civil rights leader, to come out and publicly say that this African-American woman, Janice Rogers Brown, was not the right choice for the DC Circuit Court, the same city that Dorothy Height calls home.

The Senate rejected the nomination of Janice Rogers Brown in 2003. Her renomination this year is less about confirmation than it is about confrontation. It is evident the White House wants to pick a fight over this nomination. Well, they will get their wish today.

This White House strategy of confrontation does a great disservice to the American people, who have every right to expect their elected representatives to work together to address the real problems facing our Nation, rather than fighting the same battles over and over.

I know my colleagues across the aisle have steadfastly supported President Bush's judicial nominees, but I urge them to at least stand up to the President on this one.

I ask them to consider the story of Stephen Barnett, a distinguished constitutional law professor at the University of California at Berkeley. Professor Barnett enthusiastically endorsed Janice Rogers Brown before her October 2003 hearing, and Senator HATCH specifically mentioned Professor Barnett and his endorsement in his opening statement at Justice Brown's hearing.

But Professor Barnett changed his mind after he learned more about her record. After the Brown confirmation hearing, Professor Barnett sent a letter to Senator HATCH withdrawing his support. Here is what he said:

Having read the speeches of Justice Brown that have now been disclosed, and having watched her testimony before the Committee on October 22, I no longer support the nomination. Those speeches, with their government-bashing and their extreme and outdated ideological positions, put Justice Brown outside the mainstream of today's constitutional law.

I urge my colleagues across the aisle, who were initially inclined to support

the Brown nomination, like Professor Barnett, to reconsider. Federal judges serve for life. The views of Janice Rogers Brown are too extreme and too radical for a lifetime of service on the second highest court in America.

It is well known that the last time the nomination of Janice Rogers Brown came before the Senate, it was filibustered. I voted to continue that filibuster because I do not believe she is the right person for the job. There was a big controversy over the use of the filibuster, and a decision was reached that Janice Rogers Brown would not be subject to a filibuster when she came up this week. That is an effort to move the Senate forward, to put the nuclear option and that constitutional confrontation behind us.

I urge my colleagues who believe in good faith we need to be bipartisan to show that bipartisanship today. Take an honest look at her record. Understand she is not a good person for a lifetime appointment. Join us in defeating the nomination of Janice Rogers Brown.

I yield the floor.

The PRESIDING OFFICER (Mr. VITTER). The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I rise to speak on the same subject as my good colleague from Illinois. I hope everyone heard his outstanding comments on Janice Rogers Brown. If there were ever a nominee who is out of the mainstream of every nominee of all the 219 who have come before us, there is no one more extreme than Janice Rogers Brown.

I have a special plea today. It is to my moderate colleagues across the aisle. They have stood with their party and their President on wanting an up-or-down vote, but that does not mean they have to vote yes. If there was ever a nominee whose views are different from theirs, it is Janice Rogers Brown. She is so far out of the mainstream that conservative commentators such as George Will who have defended the other nominees have said that she is out of the mainstream.

She is so far out of the mainstream that she makes Justice Scalia look like a liberal. She is so far out of the mainstream that she wishes to roll back not 20, not 40, not 60, not 80, but 100 years of law and jurisprudence. She is typical of the kind of nominee we should not have on the bench, whether they be far right or far left, someone who thinks their own views ought to take precedence over the views of the law, over the views of the people, over the views of the legislature and the President.

There is no doubt that Janice Rogers Brown is smart and accomplished. There is no doubt that she rose from humble beginnings, and that is truly impressive, but none of that can offset her radical and regressive approach to the law. None of that can mitigate her hostility to a host of litigants who have appeared before her. The biog-

raphy, as wonderful as it is, is no justification to put on the courts someone who clearly does not belong there. Particularly to place such a nominee on the DC Court of Appeals, the second highest court in the land, would be one of the worst wrongs we would have done in the short span of the 21st century for which this Congress has met.

To my mind, Janice Rogers Brown is the least deserving of all of President Bush's appeal court nominees. Before I review the reasons I will vote against her, I wish to ask a question that continues to nag at me. I asked it yesterday, but let me ask it again in a different way because I do not have a good answer, and I do not think there is a good answer. Why are even moderate Republican Senators boarding the Brown bandwagon when clearly her views are so far away from what any moderate, Democrat or Republican, believes? A second question: Why are so many self-described conservatives voting for her when she stands against all the things this conservative movement has said they believe in?

Does this nominee embody the conservative ideal of an appellate judge? If the rhetoric from the President and the Republican leadership is to be believed, a conservative nominee must be at least three things: He or she must be a strict constructionist, he or she must be judicially restrained, and he or she must be mainstream.

I ask my friends on the other side of the aisle to take this little multiple-choice quiz before they vote for Janice Rogers Brown. Which of these describes the nominee? Is she a strict constructionist if she says the whole history of the New Deal should be washed away? Is she a strict constructionist if she says zoning laws, which have been with us for over 100 years, are unconstitutional? Is she judicially restrained when she says that the elderly are cannibalizing the young because they want benefits? Is she mainstream when she asks question after question and then takes views that 99.9 percent of the American people would oppose?

I would argue, and I do not think there is very little dispute, that Janice Rogers Brown is not a strict constructionist, is not judicially restrained, and is not mainstream.

Let us see if she is a proud and principled strict constructionist, and let us use President Bush's definition of what a strict constructionist is. It is a judge who will not legislate from the bench. Well, Janice Rogers Brown is no more of a strict constructionist than I am a starting center for the New York Knicks.

Listen to what a conservative commentator, Ramesh Ponnuru of the National Review, wrote about her:

Republicans, and their conservative allies, have been willing to make . . . lame arguments to rescue even nominees whose jurisprudence is questionable. Janice Rogers Brown . . . has argued that there is properly an extra constitutional dimension to constitutional law. . . .

Well, I say to my conservative strict constructionist colleagues, if they are

opening the door to this extra constitutional dimension, they are going to reap what they have sown. They are going to find someone sooner or later put on the court who is way to the left and says there is an extra constitutional dimension. My guess is that some of their allies on the hard right already think that has happened in, say, Justice Kennedy's decision in *Lawrence*. But what is good for the goose is good for the gander.

Ponnuru goes on to write:

. . . She has said that judges should be willing to invoke a "higher law" than the Constitution.

Let me repeat that. Janice Rogers Brown has said that judges should be willing to invoke a higher law than the Constitution. Does she want a theocracy? Does she want a dictatorship? The Constitution is our highest law. We may have many other beliefs, and the Constitution protects our right to practice those beliefs, but for a judge to say they will invoke a higher law than the Constitution—how can any conservative stand here with a straight face and tell us that they are for Janice Rogers Brown?

Let us look at her own words. Here is what she said about California proposition 209. She decided she should "look to the analytical and philosophical evolution of the interpretation and application of Title VII to develop the historical context behind proposition 209.

Not what the people voted for, not strict constructionism, but her own view.

Let us go to the next choice. Is she otherwise a dependable warrior against the scourge of conservatives everywhere—judicial activism? Well, here are her own words:

We cannot simply cloak ourselves in the doctrine of *stare decisis*.

[I am] disinclined to perpetuate dubious law for no better reason than it exists.

Please. This is not someone who is a strict constructionist. It is somebody who is saying, with, I might say, intellectual arrogance, that her views supersede the views of the law. For those who did not go to law school or school where they learned Latin, "*stare decisis*" means decisions that have been already made by the courts, and they imply a grand tradition often going back to England and Anglo-Saxon law to the 1200s.

We cannot cloak ourselves in the doctrine of *stare decisis*? Again, what does Janice Rogers Brown want to be nominated for—dictator or grand exalted ruler? Please. How can a conservative who believes we are to follow the rule of law, who believes that there should be strict constructionism and is against activist judges, support someone who says, "I am disinclined to perpetuate dubious law for no better reason than it exists"?

What arrogance. What gall. And most importantly, why would we even think—why did President Bush think and why do my colleagues think—of

putting someone on the bench who says that? Whether you are the most conservative Republican or the most moderate Republican, whether you are the most liberal Democrat or the most moderate Democrat, we don't believe this. None of us believe this. This is against our entire American tradition, from the Magna Carta, through common law, through our Constitution, through the next wonderful 200 years.

The California State Bar Judicial Nominees Commission, which gave her a "nonqualified" rating when she was first nominated to the court in 1996, said that the rating was in part because of complaints that she was "insensitive to legal precedent."

Here is what Andrew Sullivan says, another conservative writer. This is not CHUCK SCHUMER, Democrat of Brooklyn, NY. This is Andrew Sullivan, conservative writer. He said there is a very good case to be made for the:

. . . constitutional extremism of one of the president's favorite nominees, Janice Rogers Brown. Whatever else she is, she does not fit the description of a judge who simply applies the law. If she isn't a "judicial activist," I don't know who would be.

My colleagues, whether you are here in the Senate or out in the conservative movement, you spent a 20-year battle fighting judicial activism, but all of a sudden you are saying: Never mind. If we like the views of the nominee, strict construction goes out the window, and we will put in our own variety of judicial activist.

That is not going to bode well for consistency in your arguments, but more importantly for the Republic, and for the keystone of article 3, the article 3 branch of Government, the judiciary, which is that judges interpret the law and follow the precedent of law and do not make law.

Mr. Ponnuru, the National Review writer, said:

She has said that judicial activism is not troubling per se. . . .

Here is the point of Mr. Sullivan, who was the author of this other quote. He said:

I might add, I am not unsympathetic to her . . . views. But she should run for office, not the courts.

I couldn't say it better myself. This is somebody who has such passionate views that she has to take those views, which are so radically different—our Constitution says our way of governing is you do not do that from the bench. You do it by running for office.

My guess is if she actually ran for office—of course she ran for judge, but she was unopposed. I am sure if right now you asked the people of California, Who is Janice Rogers Brown, maybe 3 or 4 percent would know and they might not know her views.

You run for office.

What about her substantive views, are they mainstream? To call Justice Brown mainstream is a distortion of her record. No one is further from the mainstream. I cannot think of a single

Clinton nominee who is as far to the left as Janice Rogers Brown is to the right. I cannot think of a single George Bush nominee, George Bush 41; I cannot think of a single Ronald Reagan nominee; I cannot think of a single nominee, in at least my lifetime, who is more out of the mainstream than Janice Rogers Brown.

But don't take my word for it. How about George Will—hardly a leftwing liberal—on the approach of this nominee? Here is what he said:

Janice Rogers Brown is out of the mainstream of conservative jurisprudence.

It is a fact: She has expressed admiration for the Supreme Court's pre-1937 hyper-activism in declaring unconstitutional many laws and regulations of the sort that now define the post-New Deal regulatory state.

There may be some people who feel we should go back before the New Deal, where the rich and powerful got their way almost all the time. But, again, as was said by Andrew Sullivan, if she believes that, let her run for office. But here is the dirty little secret of those on the hard right who believe, as Janice Rogers Brown does, that the New Deal was wrong, the Commerce Clause should be dismantled and wages and hours laws are unconstitutional. The dirty little secret is they know they cannot win in the court of public opinion, and their plan is to impose their views on the rest of us by capturing the judiciary. Nobody—nobody personifies those views more than Janice Rogers Brown.

Let me go over a few other of her views before I conclude. She has described the New Deal as the "triumph" of America's "socialist revolution." Does that place her in the mainstream?

She has said the *Lochner* case—which said basically that wage-and-hours laws passed by the States are unconstitutional—was correct. Does that place her in the mainstream, taking a case from 1906 that has been repudiated from the 1930s onward and saying that it was correctly decided?

On another occasion she said that:

Today's senior citizens blithely cannibalize their grandchildren because they have a right to get as much free stuff as the political system will permit.

I would like the senior citizens of America, whether they be liberal Democrats or conservative Republicans, to answer the question: Is she out of the mainstream? By getting Social Security, is she asking are they cannibalizing the young? Or Medicare? Because I don't know what other benefits senior citizens get.

Janice Rogers Brown, by this quote, seems to believe we should not have Social Security. It is probably part of the New Deal Socialist revolution. We should not have Medicare. That is part of Lyndon Johnson's furtherance of the Socialist revolution. How mainstream is that?

Again, I want to ask my moderate colleagues—not only the 7 who signed the document but the 10 or 12 others—how can you vote for her? I mean, I un-

derstand marching in lockstep. I understand we are going to have different views on a whole lot of judges. But how about once—once showing a little independence. Because I know that Janice Rogers Brown's views are not your views. She is not nominated for a district court. She is nominated for the second highest court in the land, where those views will be heard over and over and over again.

I am left with the same question. It is clear that her record shows she is not strict in her constructionism; she is not mainstream in her conservatism; and she is not quiet about her activism. Again, let me ask the question: Why is Janice Rogers Brown touted as the model of a conservative judge when she is anything but conservative in her judicial approach?

I believe there are many Senators across the aisle who would vote against such a candidate because her judicial philosophy could not be more out of sync with theirs. But we know there is tremendous political pressure, party pressure on the moderate Senators.

We have a new chart because we have had a few new votes. Of all the votes we have had on judicial nominees, cloture and up-or-down votes, here is how the Republican side of the aisle has stacked up: 2,811 to 2. Only twice in all the votes, 2,813, has any Member of the other side voted against; once, when TRENT LOTT voted against Judge Gregory, and just last week on Justice Owen, Senator CHAFEE voted against her.

If we want up-or-down votes, doesn't that imply some independence of thought? Doesn't that imply we not march in lockstep? Doesn't that imply, when somebody is so far out of the mainstream, such as Janice Rogers Brown, that there will be some opposition to her from the other side of the aisle?

Senator FRIST, last week, or a few weeks ago, spoke about leader-led filibusters of judges—whatever that means. Is the vote for Janice Rogers Brown not a leader-led rubberstamping of nominees, nominees who have not even convinced conservatives that they belong on the bench?

I continue to believe Judge Brown was the least worthy pick this President has made in the appellate courts, and that is based on her record—not her background, not her story, not her race, not her gender. We should vote for judges based on their record, and I, once again, ask my colleagues across the aisle to look at that record.

If my colleagues across the aisle ask three simple questions—Is the nominee a strict constructionist? Is the nominee a judicial activist? And is the nominee a mainstream conservative?—I don't believe many could bring themselves to vote for Janice Rogers Brown.

I could not support Judge Brown's nomination the first time. I cannot support it now. I urge my colleagues, particularly my moderate friends from the other side of the aisle, to vote against her this afternoon.

I yield the floor and suggest the absence of a quorum and I ask the time of the quorum be charged equally to each side as the quorum moves forward.

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

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

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

Mr. SESSIONS. Mr. President, I would like to share a few thoughts about the nomination of Janice Rogers Brown, one of the best nominations the President has made. She is a woman of integrity and ability, with proven skill as an appellate jurist. She has won the support and admiration of her colleagues on the California appellate courts with whom she served and has won the support of the people of California, as evidenced by her being re-elected to the California Supreme Court with 76 percent of the vote.

What do we hear from my colleague, the great advocate that he is, and my friend, Senator SCHUMER? It is sad. He uses words of radicalism to declare that she is outside the mainstream. He says she is far over and out of the mainstream; her radical and regressive approach to the law is so off the charts; she expresses hostility to a host of litigants; the most out of the mainstream; a radical. Everything she believes in is what they believe—he is talking about President Bush, I suppose, and Republicans. He says she is no more a strict constructionist than he is a second baseman for the New York Yankees. This morning he said that she is no more a strict constructionist than he is a center for the New York Jets.

Saying it does not make it so. There has been a systematic effort—and I have watched with amazement—to declare this fine justice on the California Supreme Court an extremist. Get past the allegations of extremism, the charges, and the mud throwing—extremist, radical, out of the mainstream. This morning, Senator SCHUMER used words that were interesting: Did she want to be a dictator? What in her record indicates she wants to be a dictator?

Then he said this: Did she want to be a grand exalted ruler? Was that some reference to the Ku Klux Klan? This African American from my home State of Alabama left as a teenager. I am sure one reason she went to California was for discrimination and segregation that existed in rural Alabama where she grew up at that time. She is the daughter of sharecroppers. To have it suggested that somehow her ideas are consistent with the Ku Klux Klan is offensive. It ought to be offensive to Americans.

Where is the meat? What is it that shows Justice Brown is not fair, that she is incapable? I don't see it. As a matter of fact, they have examined her record in great detail, every speech she has given, everything she has done in her life, remarks she has made, opin-

ions she has written. She is a restrained jurist, respected by her colleagues and the people before whom she practices. She is one of the most deserving nominees. I am proud of her. I am proud she came from Alabama. I am sorry she left the State of Alabama. I am proud of what she has accomplished in the State of California.

She currently serves as an associate justice on the California Supreme Court and has held that job since 1996. Prior to that, she served for 2 years as an associate on the Third District Court of Appeals.

Let me add, if she is such a radical dictator, grand exalted ruler, if that is her mentality and way of doing business, would every member of the Third District Court of Appeals with whom she served and four of her six fellow justices on the California Supreme Court write a letter to Senator HATCH, then Chairman of the Senate Judiciary Committee, saying to confirm this wonderful woman, asking that she be confirmed, and saying glowing things about her? One of the justices on the California Supreme Court who supports her is Justice Stanley Mosk, one of the most liberal justices in America, recognized in that vein throughout the country. Why would Justice Mosk and the others support Janice Rogers Brown if she is such an out-of-the-mainstream radical justice? The truth is, she is not. This has been conjured up by certain groups, left-wing attack groups who have been smearing and besmirching and sully the reputation of excellent nominees for many years. It is not right what is being done to this lady. She is a person of sterling character. She writes beautifully. She is respected by her colleagues. She is very much appreciated by the people of California. Four judges were on the ballot when she ran for reelection, and she got the highest number of votes of any.

We have Senators from California telling us she is out of the mainstream. Maybe she believes in carrying out the duly elected death penalty statutes of California. Maybe she believes the constitutional amendment they passed, Proposition 209, ought to be enforced. Maybe she believes the Pledge of Allegiance shouldn't be struck down as unconstitutional. Maybe that is what they want. Maybe that is what they think is a mainstream judge. I don't think she is there. She is the kind of judge President Bush promised to appoint. It was an important issue in this past election. The people of America debated and discussed it and spoke clearly in the reelection of President Bush that they want judges who enforce the law and follow the law—not make the law.

They say she is out of the mainstream, but in 2002 on the California Supreme Court—surely everyone recognizes California is not a right-wing State. It is a State in which a higher percentage voted for John Kerry. But in 2002, her colleagues on the California Supreme Court asked her to write the

majority opinion for the court more times than any other justice on the court. Why would they do that if she is out of the mainstream? Why would they have written letters on her behalf?

The way it works on the court, the justices meet and they discuss a case, then the justices indicate how they are going to decide the case, what their decision is, a majority gets together, and someone is asked to write the opinion for the majority. The rest of the justices sign onto the majority opinion, if they agree to it. Sometimes they will file a separate concurrence if they do not agree with everything in the opinion. In 2002, she was asked by her colleagues to write more majority opinions than any other justice on the court. That speaks well for the respect they have for her.

There has been much distortion of her record in an attempt to justify these mud-slinging charges that have been made against her. Senator SCHUMER and others have cited the High-Voltage Wire Works case, saying she dissented in this case. They claim that she dissented from it and that shows her to be a radical judge, because it dealt with affirmative action and quotas and the California constitutional amendment that was passed by the people of California to eliminate quotas in California.

Let me state the truth: She did not dissent. She anchored and wrote and authored the unanimous decision of the California Supreme Court. They asked her to write this affirmative action / California constitutional amendment / Proposition 209 opinion. Her colleagues asked her to write it. She wrote it. They all joined in. It was a unanimous opinion. It was based on California Proposition 209 that said:

The State shall not discriminate against, or grant preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

The case involved the city of San Jose. They had a minority contracting program that required minority contractors bidding on the city projects to either utilize a specified percentage of minority and women contractors or document efforts to include women and subcontractors in their bids.

Every judge who reviewed the case, including the trial judge, the intermediate appellate court judges where she previously sat, and the California Supreme Court Justices, agreed that the San Jose program constituted "preferential treatment" within the meaning of Proposition 209. They struck down the program.

And they suggest somehow she is against all affirmative action programs in America and that she does not believe in those things. She has explicitly stated otherwise. For example, in the High-Voltage Wire Works opinion she explicitly stated this: "equal protection does not preclude race-conscious

programs." In other words, she is saying that there can be race-conscious programs in legislation under the equal protection clause, but they cannot be too broadly used. It is a dangerous trend. You have to watch it and be careful. This is what the Supreme Court has said about it. She also said there are many lawful ways for businesses to reach out to minorities and women. She favors that. That is mainstream law in America. I don't know what they are talking about when they suggest her opinion, joined by all the justices of the California Supreme Court, was out of the mainstream. That is beyond the pale.

It is suggested she does not believe in stare decisis, the doctrine that courts should tend to follow the previous opinions of courts. But all of us know, and I know Senator SCHUMER and anyone who believes in civil liberties knows, a court opinion is not the same thing as the Constitution of the United States. Some prior court opinions have been rendered and made the law of the land which were not consistent with the Constitution of the United States.

What about Plessy v. Ferguson? Justice Harlan dissented from that opinion, which said separate but equal was constitutional. Justice Harlan believed that separate but equal was unconstitutional. Were the judges who later reversed Plessy v. Ferguson activists? I don't think so. I think they were acting consistent with a clearer understanding of the equal protection clause and the due process clause of the Constitution of the United States than the Court in Plessy. Why attack her on that basis? It is not legitimate.

The twelve judges on the California Third District Court of Appeals wrote on her behalf. They said:

Justice Brown has served California well. She has written many important decisions establishing and reaffirming important points of law. Her opinions reflect her belief in the doctrine of stare decisis.

So the 12 judges who wrote on her behalf say she is a believer in stare decisis. Yet we have one or two Senators standing up and saying she does not believe in that. Not so. In fact, she has a proven record of following and showing respect for precedent.

For example, in *Kasler v. Lockyer*, Justice Brown, in a California opinion, wrote the majority opinion for the court upholding an assault weapons ban. She followed a prior decision by the California Supreme Court even though she believed that prior decision was wrongly decided and had dissented in it. But when it came back up, and the case had been decided, she deferred to the California Supreme Court's decision even though that wasn't her personal view. Doesn't that show she is properly respectful of precedent?

Sometimes it is important that cases be challenged and judges overrule a prior decision. Sometimes, even if you think it is wrong, it is better to let it stand just to provide stability in the law. Judges have to make that call frequently.

Senator SCHUMER says Justice Brown is an extremist and "President Clinton would never have nominated someone like this." But he has probably forgotten Judge Paez, who was nominated to the Ninth Circuit Court of Appeals by President Clinton. This is what a real activist is. This speaks to what an activist judge is. This is what Judge Paez, who we confirmed, says about his judicial philosophy: It includes "an appreciation of the courts to act when they must, when the issue has been generated as a result of the failure of the political process to resolve a certain political question" because in such instances, Judge Paez says, "there's no choice but for the courts to resolve the question that perhaps ideally and preferably should be resolved through the legislative process."

I see the Presiding Officer, Senator VITTER, listened to that phrase. That is what activism is. It is a belief that a judge can act even though the legislature does not. It is a belief that if the legislature does not act, the judge has a right to act. That is a stated judicial philosophy of activism. Janice Rogers Brown never said anything like that, nothing close to that.

So I repeat again, this is a nominee with a sterling record. She has served on the Third District Court of Appeals in California. She served in the attorney general's office of the State of California where she wrote appellate briefs to the appellate courts and argued cases involving criminal justice to defend convictions in the State. She now serves on the Supreme Court of California. She was reelected by an overwhelming vote, the highest vote of any judge on the ballot. We have received a letter on her behalf from all of the court of appeals justices who have served with her on the court of appeals, and four of the six justices on the California Supreme Court, including the liberal icon, Justice Stanley Mosk.

I think this is a nominee who is worthy of confirmation. I am disappointed and hurt by some of the mischaracterizations of her record and her philosophy. I believe if Senators review this nominee's record, they will see she will make an outstanding justice. I am pleased she is a native of my State, and I wish her every success.

Mr. President, I yield the floor.

THE PRESIDING OFFICER (Mr. BARR). The Senator from Utah.

Mr. HATCH. Mr. President, I thank my colleague from Massachusetts for allowing me to go out of turn. I will be fairly short.

Mr. President, we have been debating the circuit court nominations of Justice Janice Rogers Brown and too many other nominees for way too long. Justice Brown was first nominated to the DC Circuit Court of Appeals in July of 2003.

Over the years, I have grown accustomed to the talking points of Brown's liberal opposition. I think I have them committed to memory now. Some liberal elitists charge she is extreme.

Some liberal elitists charge she is out of the mainstream. Some liberal elitists charge she is a radical conservative.

This same broken record has been spun now for too many years, and with too many nominees. Here is what is left out of this tired song and dance.

Justice Janice Rogers Brown is a proven jurist. Her credentials and her character are beyond reproach. She is a lifetime public servant committed to the extension of civil rights and equal justice under law, and there can be no doubt that these deep commitments grew in part out of a childhood that witnessed the true evil of Jim Crow segregation.

She came up the hard way. She served for 2 years as an associate justice on California's Third District Court of Appeals prior to being appointed to the California Supreme Court.

What has her record been there? To listen to the interest groups, you would think she has led a one-woman crusade to destroy the civil rights of all Californians. Given Justice Brown's background, I have to say this is an astonishing charge.

In order to once again dispel the false charge that Justice Janice Rogers Brown is extreme, consider the following facts.

In 2002, Justice Brown's colleagues on the California Supreme Court turned to her more than any other justice to write the majority opinion for the court. Is this out of the mainstream?

When Justice Brown was retained with 76 percent of the vote in her last election, were the people of California installing a radical revolutionary on the bench? Were there any mainstream Californians who voted for her? That is a pretty impressive majority. After all, the junior Senator from California, who has spoken vociferously against Justice Brown, and many of the other of the President's circuit court nominees, one of Justice Brown's most vocal critics, once, I might say, won reelection with only 53 percent of the vote.

Truth be told, there is nothing radical about Janice Rogers Brown. She refuses to supplant her moral views for the law she is charged with interpreting as a judge. Maybe the refusal to engage in activist decisionmaking is radical at some predominantly liberal law schools, but it is fully within the mainstream of American jurisprudence.

We have heard a lot about the background of Janice Rogers Brown in this debate. I have been at the forefront of discussing her rise from the Jim Crow South to her appointment as the first African-American woman to serve on the California Supreme Court. We talk about her background because her story demonstrates that while America is not perfect, its commitment to the preservation and extension of civil rights is without parallel in the history of the world.

Let me also add that no party has a monopoly on the promotion of diversity. Yet, unfortunately, some of those who frequently speak about the need for diversity on the bench have a rather limited definition of diversity. As we saw with several other recent nominees, apparently some believe only liberal minorities are sufficiently diverse for high Federal office, especially the Federal courts.

In the end, it is hard to avoid the conclusions of Justice Brown's colleagues. I have here a letter written to me in my former capacity as chairman of the Judiciary Committee from a bipartisan group of Justice Brown's colleagues, including all of her former colleagues on the California Court of Appeals and Third Appellate District, as well as four current members of the California Supreme Court.

Let me take a second or two and read you their assessment of Justice Brown.

Dear Mr. Chairman:

We are members of and present and former colleagues of Justice Janice Rogers Brown on the California Supreme Court and California Court of Appeals for the Third Appellate District. Although we span the spectrum of ideologies, we endorse her for appointment to the U.S. Court of Appeals for the D.C. Circuit.

Much has been written about Justice Brown's humble beginnings, and the story of her rise to the California Supreme Court is truly compelling. But that alone would not be enough to gain our endorsement for a seat on the federal bench. We believe that Justice Brown is qualified because she is a superb judge. We who have worked with her on a daily basis know her to be extremely intelligent, keenly analytical, and very hard working. We know that she is a jurist who applies the law without favor, without bias, and with an even hand. Because of these qualities, she has quickly become one of the most prolific authors of majority opinions on the California Supreme Court.

Although losing Justice Brown would remove an important voice from the Supreme Court of California, she would be a tremendous addition to the D.C. Circuit. Justice Brown would bring to the court a rare blend of collegiality, modesty, and intellectual stimulation. Her judicial opinions are consistently thoughtful and eloquent. She interacts collegially with her colleagues and maintains appropriate judicial temperament in dealing with colleagues, court personnel and counsel.

Mr. President, I ask unanimous consent that the entire letter be printed in the RECORD.

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

MCDONOUGH HOLLAND & ALLEN PC
ATTORNEYS AT LAW,
October 16, 2003.

Re Nomination of Justice Janice Rogers Brown to the U.S. Court of Appeals for the D.C. Circuit

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: We are members of and present and former colleagues of Justice Janice Rogers Brown on the California Supreme Court and California Court of Appeal for the Third Appellate District. Although we span the spectrum of ideologies, we en-

dorse her for appointment to the U.S. Court of Appeals for the D.C. Circuit.

Much has been written about Justice Brown's humble beginnings, and the story of her rise to the California Supreme Court is truly compelling. But that alone would not be enough to gain our endorsement for a seat on the federal bench. We believe that Justice Brown is qualified because she is a superb judge. We who have worked with her on a daily basis know her to be extremely intelligent, keenly analytical, and very hard working. We know that she is a jurist who applies the law without favor, without bias, and with an even hand. Because of these qualities, she has quickly become one of the most prolific authors of majority opinions on the California Supreme Court.

Although losing Justice Brown would remove an important voice from the Supreme Court of California, she would be a tremendous addition to the D.C. Circuit. Justice Brown would bring to the court a rare blend of collegiality, modesty, and intellectual stimulation. Her judicial opinions are consistently thoughtful and eloquent. She interacts collegially with her colleagues and maintains appropriate judicial temperament in dealing with colleagues, court personnel and counsel.

If Justice Brown is placed on the D.C. Circuit, she will serve with distinction and will bring credit to the U.S. Senate that confirms her. We strongly urge that the Senate take all necessary steps to approve her appointment as expeditiously as possible.

Joining me in this letter are Justices Marvin R. Baxter, Ming W. Chin and Carlos R. Moreno of the California Supreme Court and Presiding Justice Arthur G. Scotland and Justices Rodney Davis, Harry E. Hull, Jr., Daniel M. Kolkey, Fred K. Morrison, George W. Nicholson, Vance W. Ray and Ronald B. Robie of the California Court of Appeal, Third Appellate District.

I am informed that Justice Joyce L. Kennard of the California Supreme Court has already written a letter in support of Justice Brown's nomination.

Chief Justice Ronald M. George and Justice Kathryn M. Werdegar of the California Supreme Court are not opposed to Justice Brown's appointment but it is their long standing policy not to write or join in letters of support for judicial nominees.

Thank you for your consideration of this letter.

Very truly yours,
ROBERT K. PUGLIA,
Retired Presiding Justice, Court of
Appeal, Third Appellate District.

Mr. HATCH. Let me put in the RECORD a couple comments by Ellis Horvitz and Regis Lane. Ellis Horvitz, a Democrat, one of the deans of the Appellate Bar in California, has written in support of Justice Brown, noting:

In my opinion, Justice Brown possesses those qualities an appellate justice should have. She is extremely intelligent, very conscientious and hard working, refreshingly articulate, and possessing great common sense and integrity. She is courteous and gracious to the litigants and counsel who appear before her.

Mr. President, I ask unanimous consent that the entire letter be printed in the RECORD.

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

HORVITZ & LEVY LLP,
Encino, CA, September 29, 2003.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Re Justice Janice Rodgers Brown nomination.

DEAR CHAIRMAN HATCH: This letter is sent in support of President Bush's nomination of Justice Janice Rodgers Brown to the District of Columbia Court of Appeal.

Let me first introduce myself. I have been practicing law in California for more than fifty years, almost all of that time as a civil appellate specialist. Our firm of more than thirty lawyers specializes in civil appeals. We appear regularly in the California Court of Appeal and in the California Supreme Court.

I have followed Justice Brown's career since she was appointed to the California Supreme Court. Our firm has appeared before her on many occasions. I have appeared before her on several occasions. We have also studied her opinions, majority, (concurring and dissenting), in many civil cases.

In my opinion, Justice Brown possesses those qualities an appellate justice should have. She is extremely intelligent, very conscientious and hard working, refreshingly articulate, and possessing great common sense and integrity. She is courteous and gracious to the litigants and counsel who appear before her.

I hope your Committee will approve her nomination expeditiously. The President has made an excellent choice.

Very truly yours,
ELLIS J. HORVITZ.

Mr. HATCH. Regis Lane, the executive director of Minorities in Law Enforcement, a coalition of minority law enforcement officers in California, wrote:

We recommend the confirmation of Justice Brown based on her broad range of experience, personal integrity, good standing in the community and dedication to public service. . . .

In many conversations with Justice Brown, I have discovered that she is very passionate about the plight of racial minorities in America, based on her upbringing in the South. Justice Brown's views that all individuals who desire the American dream, regardless of their race or creed, can and should succeed in this country are consistent with MILE's mission to ensure brighter futures for disadvantaged youth of color.

Mr. President, I ask unanimous consent that the entire letter be printed in the RECORD.

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

MINORITIES IN LAW ENFORCEMENT,
Sacramento, CA.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Executive Board and members of the Minorities In Law Enforcement organization (MILE), we recommend that you confirm President George W. Bush's nomination of California Supreme Court Associate Justice Janice Rogers Brown to the United States Circuit Court of Appeals for the District of Columbia. MILE is a coalition of ethnic minority law enforcement officers in California dedicated to ensuring brighter futures for disadvantaged youth and ensuring that no child is left behind.

We recommend the confirmation of Justice Brown based on her broad range of experience, personal integrity, good standing in the community and dedication to public service. Justice Brown's powerful and exhilarating display of jurisprudence exhibited in the written legal opinions she has issued as a California Supreme Court justice, is respected by all, regardless of race, political affiliation, or religious background. Justice Brown is a fair and just person with impeccable honesty, which is the standard by which justice is carried out.

In many conversations with Justice Brown, I have discovered that she is very passionate about the plight of racial minorities in America, based on her upbringing in the south. Justice Brown's views that all individuals who desire the American dream, regardless of their race or creed, can and should succeed in this country are consistent with MILE's mission to ensure brighter futures for disadvantaged youth of color.

It is with great honor and pleasure that MILE and our members urge you to confirm President Bush's nomination of California Supreme Court Associate Justice Janice Rogers Brown to the United States Circuit Court of Appeals for the District of Columbia.

Respectfully submitted,

REGIS LANE,
Executive Director.

Mr. HATCH. Well, she is not, as represented, a radical revolutionary bent on undoing the American dream. Who are you going to believe? I say you should believe those who served with her on the bench in California, and that is over a period of years.

Because of the astonishing failure to give Justice Brown an up-or-down vote, I have had ample time to review her record, and it is clear to me, without any doubt, that those who worked with her every day on these courts have it right. She is a model jurist. You cannot have anybody who has been in court as long as she has that somebody cannot pluck cases out of the air and distort them or find some fault with them. I am sure I can find fault with some of her cases. But the point is, this is a woman who does what is right.

Justice Brown would be a welcome addition to the DC Circuit Court of Appeals. I look forward to finally closing the debate on this nomination, bringing her nomination to a vote, and seeing her on the Federal bench.

Now, let me close by saying that voting for cloture is the right thing to do on the nomination of Justice Janice Rogers Brown and the rest of the President's judicial nominees. Allowing an up-or-down vote on these nominees will return us to the Senate's 214-year tradition. So I ask my colleagues to vote yea on cloture, and hopefully we can have an up-or-down vote in a short time after that.

Mr. President, again, I thank my colleague and yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as I understand it, there is 7 minutes remaining.

The PRESIDING OFFICER. That is correct.

Mr. KENNEDY. Mr. President, I yield myself all 7 minutes, and I ask if the Chair will be kind enough to let me know when there is 1 minute left.

The PRESIDING OFFICER. The Chair will so notify.

Mr. KENNEDY. Mr. President, I think it is important for those watching the debate to understand this decision is not a decision about the life history of Janice Rogers Brown. What we are voting on in this particular decision is, on the DC Circuit Court, whether the nominee is going to speak for the struggling middle class of Americans, whether they are going to speak for minorities who have been trying to be a part of the American dream, whether they are going to speak for the rights and liberties of working families, particularly those who are covered by the Occupational Safety and Health Act who work hard every day and have had their lives threatened with inadequate kinds of protection, whether that voice is going to be standing up for children whose lives are going to be affected by the Clean Air Act, or whether they are going to stand up for the children whose lives will be affected by the Clean Water Act.

So many of the important decisions that we have addressed in the Senate over the last 30 years, in order to make this a fairer country, a more just Nation, to advance the cause of economic progress and social justice, ultimately come to the DC Circuit. In many instances, the DC Circuit is the final arbiter of these issues. That is why this is so important. Any judge is important, but I think, for most of us, we raise the level when we consider who is going to serve on the Supreme Court, since that will be a defining aspect of the laws of this country, and a defining voice in terms of the rights and liberties of this Nation as defined in the Constitution of the United States.

It seems to me it is fair enough to ask someone who wants a job on the DC Circuit whether they have a core commitment to these fundamental acts of fairness and justice and basic liberty, and if there are indications during their service on the court that this jurist has demonstrated a hostility toward these basic principles.

That is really the basic issue. I am going to have more time this afternoon to get into the particulars, but it is enormously important that the American people understand that this is not just another circuit court, as important as that is. This is the very specialized DC Circuit Court that has special responsibilities in interpreting the laws, many cases of which never go to the Supreme Court, and, therefore, we should take a careful view of this nominee. When we take a careful view of the nominee, we find that this nominee fails the standard by which we ought to judge advancement to the second most important and powerful court in the land, and that is the DC Circuit Court.

That is true on the issue of civil rights. No one can seriously contend that the overwhelming opposition to her nomination from the African-American community is motivated by bias against Blacks. She is opposed by respected civil rights leaders, including Julian Bond, Chairman of the NAACP; by Dorothy Height, President Emeritus of the National Council of Negro Women, a leader in the battle for equality for women and African Americans over her lifetime, an outstanding and distinguished American who happens to be Black but has struggled to make this a fairer and more just country—for Black women in particular—for all Americans. She is universally admired and respected by Republicans and Democrats. She believes that we would make a major mistake by promoting this nominee to the DC circuit.

She is opposed by the Reverend Joseph Lowery, President Emeritus of the Southern Christian Leadership Conference, who was there with Dr. Martin Luther King, Jr., during the most difficult and trying times in the late 1950s and the early 1960s. I believe, unless I am wrong, he was there at the time of Dr. King's death. He is one of the giants in awakening America to be America by knocking down walls of discrimination. Joseph Lowery believes we should not promote this individual. He has been a leader in the civil rights movement and has worked tirelessly for many years to make civil rights a reality for all Americans.

She is opposed by the Congressional Black Caucus, the Leadership Conference on Civil Rights, and many others concerned with the rights of minorities.

The PRESIDING OFFICER. The Senator from Massachusetts has 1 minute remaining.

Mr. KENNEDY. Mr. President, I will have the opportunity to go into the reasons these individuals and organizations take exception to this nominee. It isn't just those I have mentioned but other important leaders who have a keen awareness and understanding of the record and history of the decisions of this jurist. I do not believe she has demonstrated the kind of core commitment to constitutional values which are so essential on such a major and important court. She fails that test. She should not be promoted. There are other distinguished jurists across the country of all different races, religions, and ethnic backgrounds who have demonstrated a core commitment to these values over a long time and are in the mainstream of judicial thinking. We ought to have such a nominee. This nominee does not meet that criteria and, therefore, should not be accepted.

The PRESIDING OFFICER. The time of the minority has expired. Who yields time?

The Senator from South Carolina.

Mr. DEMINT. Mr. President, it is often said that politicians are out of touch with the average citizen. In fact, media outlets have been reporting that

Congress's approval ratings are at record lows. I am not one to put much stock in one poll or another, but I do believe Americans are frustrated with politics here in our Nation's Capital. Americans are dealing with record gas prices, yet Congress can't find the time to debate and pass an energy bill that was proposed years ago. Americans see weekly reports about scandals and backroom deals at the United Nations, yet we can't find the time to vote yes or no on the President's nominee to the United Nations. And a strong majority of Americans who just elected President Bush to a second term now cannot understand why his judicial nominees can't get a timely up-or-down vote.

A perfect example of the frustration the American people have with Congress can be found in the nomination of Justice Janice Rogers Brown. Justice Brown is the daughter of a sharecropper who grew up in rural Alabama and attended segregated schools. She went on to become the first African-American woman to serve on the California Supreme Court after being overwhelmingly elected by more than three-quarters of California voters. Despite this extraordinary success story, Democrats have used filibusters for more than a year and a half to deny Justice Brown a simple and fair vote.

I am pleased that a few of my colleagues on the other side choose to allow a vote on Justice Brown. Now I hope we can give her actual record a fair assessment instead of relying on the heated rhetoric of the past year and a half.

Justice Brown recently stated:

It may sound odd to describe a judge as both passionate and restrained, but it is precisely this apparent paradox—passionate devotion to the rule of law and humility in the judicial role—that allows freedom to prevail in a democratic Republic.

This paradox is a good description of our Nation's leading jurists, including, in my opinion, Justice Brown. I believe men and women of intellectual and judicial passion are necessary to the continued strength of our legal system. Those jurists whose names still ring through history—Marshall, Holmes, Cardozo—suffered no shortage of passion. Yet, as Justice Brown reminds us, such passion would corrupt the very system it sustains were it not tempered by restraint and humility.

The tension between passion and restraint has been a feature of our legal system since its beginning. In fact, it was enshrined in the Constitution itself. The Founders created the framework for a Federal judiciary that would be unaffected by the political storms raging at any given time. Thanks to their lifetime appointment, Federal jurists are free to interpret and apply the laws of this land without fear of political repercussions. At first glance, such an arrangement places a great deal of power in the hands of a select few who attain the Federal bench. The Founders, however, were mindful of such concerns. They placed

two popularly elected institutions at the gates of the Federal bench so that admission would be denied to those who would use their judicial power to override Congress's exclusive power to create the law. They invested the President with the power to nominate individuals worthy of the Federal bench. They endowed Congress's deliberative body, this very Senate, with the responsibility to review the President's nominees and consent to the confirmation of only those with properly restrained judicial passions.

When in the past a President has nominated an individual of unchecked passion, it has fallen to the Senate to deny his or her confirmation. This is how our constitutional system has functioned for over 200 years. Unfortunately, the nomination and appointment of Federal jurists has recently become a game of political dodge ball, with Democrats throwing heated rhetoric at nominees, hoping to take them out of the game.

As the deliberation over judicial nominees has boiled over, the term "judicial activist" has surfaced as the preferred slur used by critics harboring political animosity toward a particular nominee, regardless of whether that nominee is objectively qualified for the job. In my mind, the term "judicial activist" signifies one who has or would use the bench as a platform for promoting their own agenda and personal opinions. Such a person is in need of the restraint identified by Justice Brown and is, therefore, unsuited for the Federal bench. The nomination of a judicial activist is a nomination that deserves the opposition of every Member of this body, regardless of the political connection between the nominee and any particular Member. According to the Constitution, we as Senators stand here to guard the Federal bench from the confirmation of any judicial activist who would seek to infringe upon our constitutional role.

I believe Justice Brown has proven she is not an activist judge. Her critics have labeled her such simply because she has deeply held personal beliefs that are not shared by many Democrats. This is precisely the type of partisan game that is causing Americans to become disinterested and disillusioned with politics in Washington. Americans fairly elected President Bush, and his nominations deserve a fair debate and a fair vote.

People sitting at home watching the nomination process on TV see that it has gotten out of control. If we allow the President's judicial nominees to continue to be blocked and delayed because they have deeply held beliefs, many good judges will be disqualified, and many more will refuse to be considered. A person with strong beliefs and personal convictions should not be barred from being a judge. In fact, I would rather have an honest liberal serve as a judge than one who has been neutered by fear of public opinion. We need judges who have demonstrated in-

tegrity in how they live their lives as well as consistency in how they interpret the law.

Justice Brown has demonstrated this kind of integrity. I believe she should be confirmed immediately. Some Democrats may enjoy calling Justice Brown an activist for the media sound bite it creates, but calling the Earth flat does not make it so. There is overwhelming evidence that during her time on the California Supreme Court, Justice Brown has exercised her judicial authority with restraint and humility. While she would likely describe herself as a person who believes in small government and limited regulations, she regularly votes against her personal beliefs when justice and legal precedent require her to do so.

For example, Justice Brown has voted consistently to uphold economic, environmental, consumer, and labor regulations. She joined in an opinion upholding the Safe Drinking Water and Toxic Enforcement Act of 1986 and interpreted the act to allow the plaintiffs to proceed with their case. She upheld the right of a plaintiff to sue for exposure to toxic chemicals using the Government's environmental regulations. She joined in an opinion validating State regulations regarding overtime pay. She upheld California's very stringent standards for identifying and labeling milk and milk products, thereby ensuring that the government has a role in protecting the safety of children.

It is fundamental to the judicial structure to have judges who respect the Constitution and judicial precedent. Justice Brown believes that the role of courts and the rule of law are deeply rooted in the Constitution.

In a recent column, law professor Jonathan Turley, a self-described pro-choice social liberal, points out that "Brown's legal opinions show a willingness to vote against conservative views . . . when justice demands it."

In a letter to the Senate Judiciary Committee, 12 bipartisan judges who served on the bench with Justice Brown said the following:

We who have worked with her on a daily basis know her to be extremely intelligent, keenly analytical, and very hard working. We know that she is a jurist who applies the law without favor, without bias, and with an even hand. Because of these qualities, she has quickly become one of the most prolific authors of the majority opinions on the California Supreme Court.

Arguments that Justice Brown is a judicial activist amount to nothing more than empty rhetoric. She is a jurist of great intelligence and achievement, with views about interpreting the law that are sensible and reliable.

After many hours of debate, the main criticisms I have heard of Justice Brown have nothing to do with her judicial decisions but with her personal beliefs that have been expressed in speeches and comments outside the courtroom. This Senate should not confirm or reject judges based on their personal beliefs. We should confirm

Justice Brown based on the fact that her judicial performance has been documented by colleagues and critics alike and because she understands that her job is to interpret the law, not to invent the law.

Americans are tired and frustrated with Congress spending its time on partisan games. They want the Senate to give the President's judicial nominees a timely up-or-down vote.

Justice Brown's nomination has been pending for more than a year and a half without any evidence that she lacks integrity, intellect, or experience. There has been plenty of time for debate, and now it is time to vote.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. DEMINT). Without objection, it is so ordered.

Mr. BURR. Mr. President, I rise today in support of Janice Rogers Brown to the DC Appellate Court. I also rise today as a proud North Carolinian of those who served in this Chamber before me. In the heat of debate, Senator SCHUMER from New York suggested that Senator Helms, our former Member from North Carolina, was a racist; that, in fact, he objected to the nomination of Roger Gregory to the appellate court, the Fourth Circuit Court in Richmond, because he was a minority.

It is unfair to characterize that of Senator Helms. I am personally offended by the comments of Senator SCHUMER, and so are North Carolinians.

At the time of Roger Gregory's nomination to the Fourth Circuit Court in Richmond, the Fourth Circuit Court had the largest makeup of minorities of any appellate court in the country. The seat for which Roger Gregory was nominated was intended to be filled by a North Carolinian. There is only one problem—Roger Gregory was from Virginia, and he was so thought of that he was even introduced by Senator George Allen in his first speech on the Senate floor.

Roger Gregory was not from North Carolina, he was from Virginia. Senator Helms argued that North Carolina was underrepresented on the Fourth Circuit Court and that if any nominee was necessary for the Fourth Circuit Court, he or she should come from North Carolina. Senator Helms opposed Roger Gregory because Senator Helms had nominated Terrance Boyle, and that nomination had been blocked for several years at that time by Democrats. Terrance Boyle was originally nominated by George H. W. Bush, 41, long before Roger Gregory was nominated.

I might add, Terrance Boyle still is a judicial nominee judge for the Fourth

Circuit Court. He has never made it through this process.

Former Judiciary Chairman HATCH, who spoke earlier, maintained at the time that judicial nominees favored by each party should have to move forward together and that political games should not be played with judicial nominees. Senator Helms agreed there should be no movement on other judges until Judge Boyle received the attention of this body, the Senate.

How did it end up? President Clinton, bypassing Congress, made a recess appointment of Roger Gregory, and it was seen as a swipe to Senator Helms.

I am not here today to suggest Roger Gregory was not a good pick. I am here to tell you we have an obligation on this floor to speak factually. History does not prove that Senator Helms' objection was over anything other than to receive the attention of his nominee to the Fourth Circuit Court, to allow North Carolina, which was underrepresented, to be represented fully on the Fourth Circuit Court.

Today I am proud to suggest that we should all support Janice Rogers Brown. We should have her confirmed, not because she is minority, but because she is qualified, because she meets the threshold of what America expects out of the judges who sit on the bench.

I am confident this body will do the right thing on cloture, and I am confident she will serve on the DC Circuit Court.

I thank the President, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BURR). Without objection, it is so ordered.

Mr. LEAHY. Mr. President, recently 14 of our colleagues brought to us a bipartisan plan to avoid what I thought was the majority leader's shortsighted bid for one-party rule. As part of the plan to avert the nuclear option, which would have changed more than 200 years of Senate tradition and precedent, rules protecting minority rights and checks and balances, those Senators have agreed to vote for cloture on this controversial and divisive renomination. I have no doubt they will follow through on their commitment, but in all likelihood, it is going to result in the appointment for life of a judge for Court of Appeals for the DC Circuit whose disturbing view of the Constitution would set back life for American workers and consumers more than 100 years and remove protections for people and their communities we now take for granted. The preservation of our system of checks and balances in connection with the appointment of lifetimers to the Federal judiciary requires that all Senators, both Repub-

licans and Democrats, take seriously the Senate's constitutionally mandated role as a partner in making these determinations.

So again I urge all Senators of both parties to take these matters seriously and vote their conscience. Senators need to evaluate with clear eyes the fitness of Justice Janice Rogers Brown for the lifetime appointment. My opposition to her, as it has always been, has been based on her long and troubling record. I will be speaking about this more in the future, but apparently she will be treated far more fairly than President Clinton's nominees to the court.

The Senate has already considered one of the three controversial nominees mentioned in part IA of the Memorandum of Understanding our colleagues brought us. We are now beginning consideration of the second, and I expect the third will follow shortly. What I do not expect is any repeat by Democrats of the extraordinary obstruction by Republicans of President Clinton's judicial nominees. For example, I do not expect any of the tactics used by Republicans during the extensive delay in Senate consideration of the Richard Paez nomination. Judge Paez waited more than 4 years before we were able to get a vote on his confirmation, and even then Republicans mounted an extraordinary motion after the filibuster of his nomination was broken to indefinitely postpone the vote—a last-ditch, unprecedented effort that was ultimately unsuccessful.

More than 60 of President Clinton's moderate and qualified judicial nominations were subjected to a Republican pocket filibuster, including nominees to the DC Circuit. First we were told by the Republicans that we do not need more judges added, but that changed dramatically once they had a Republican President in power. But they also blocked by committee filibusters highly qualified people for that circuit. Allen Snyder, for example, who was nominated by President Clinton, was a former clerk to Chief Justice Rehnquist—no wide-eyed liberal, he—and he was a widely respected and highly regarded partner at the law firm of Hogan & Hartson. He was filibustered by pocket filibuster by the Republicans and not allowed to come to a vote. Elena Kagan was pocket filibustered by the Republicans, not allowed to have a vote for the DC Circuit. Her qualifications: She is now a dean of the most prestigious law school in this country, Harvard Law School. They were each nominated to vacancies on the DC Circuit. They were not allowed to have either a committee vote or Senate consideration.

The bipartisan coalition of Senators who joined together last month to avert an unnecessary showdown in the Senate over the White House-inspired effort to invoke the nuclear option was right to include in the agreement the following provision:

We believe that under Article II, Section 2, of the United States Constitution, the word

"Advice" speaks to consultation between the Senate and the President with regard to the use of the President's power to make nominations. We encourage the Executive branch of government to consult with members of the Senate, both Democratic and Republican, prior to submitting a judicial nomination to the Senate for consideration.

Such a return to the early practices of our government may well serve to reduce the rancor that unfortunately accompanies the advice and consent process in the Senate.

We firmly believe this agreement is consistent with the traditions of the United States Senate that we as Senators seek to uphold.

I agree with their fundamental point. I have served here with six Presidents. Five of them did consult on major judicial nominations. They consulted with members of both parties. That included President Ford, President Carter, President Reagan, former President Bush, and President Clinton. In this case, there was no meaningful consultation with the nomination of Janice Rogers Brown. Maybe that is one reason neither of her home State Senators support her. In the past, Republicans always said if home State Senators do not support a nominee, we cannot go forward. All of these rules changed with a different President. There was no consultation with these Senators in this case.

But I am hoping things may be better. I was pleased to see President Bush respond to a question in a news conference last week. He has agreed to consult with the Senate about his nomination should a vacancy arise in the Supreme Court. I see that as a positive development, and I am hoping that now that he has been reelected, he may take the opportunity to be a uniter and not a divider on these issues. Certainly I, as one on this side of the aisle, will be happy to work with him in that regard. If he does, as the other five Presidents I have served with have done, I believe it would be a good sign for the country but especially for our Federal judiciary.

In advance of any vacancy on the Supreme Court, I would urge the President to follow through on his commitment to consult with the Senate. In the next few weeks, the U.S. Supreme Court will complete its current term. Speculation will soon accelerate, again, about the potential for a Supreme Court vacancy this summer. In advance of any such vacancy, I urge the President to follow through on his commitment to consult with the Senate. As I said, previous Presidents of both parties have set constructive and successful examples by engaging in meaningful consultation with the Senate, including both Republicans and Democrats, no matter who was in the majority or the minority, before deciding on nominees. It would be shortsighted to ignore such an established and successful precedent.

It would be wise for the President to follow the precedent set by distinguished Presidents of both parties, and I stand ready to work with him in that regard. I stand ready to work with the

President to help select a nominee to the Supreme Court who can unite Americans. I know that the Democratic leader is likewise ready to be helpful. After all, Senator REID and I joined in an April 11 letter to the President offering our help in facilitating his identification, selection, and nomination of lower court judges to the 28 vacancies without a nominee that then existed throughout the Federal judiciary. Regrettably, the President did not respond to our previous offer, and the vacancies without a nominee have since grown to 30.

Some Presidents, including most recently President Clinton, found consultation with the Senate in advance of a nomination most beneficial in helping pave the way for a smooth and successful process. President Reagan, on the other hand, disregarded the advice offered by Senate Democratic leaders and chose a controversial, divisive nominee who was ultimately rejected by the full Senate.

In his book "Square Peg," Senator HATCH tells how, in 1993, as the ranking minority member of the Senate Judiciary Committee, he advised President Clinton about possible Supreme Court nominees. In his book, Senator HATCH recounts that he warned President Clinton away from a nominee whose confirmation he believed "would not be easy." Senator HATCH goes on to describe how he suggested the names of Stephen Breyer and Ruth Bader Ginsburg, both of whom were eventually nominated and confirmed "with relative ease." Indeed, 96 Senators voted in favor of Justice Ginsburg's confirmation, and only 3 Senators voted against; Justice Breyer received 87 affirmative votes, and only 9 Senators voted against.

In its report on the Supreme Court appointment process, the Congressional Research Service of the Library of Congress has long noted:

It is common practice for Presidents, as a matter of courtesy, to consult with Senate party leaders as well as with members of the Senate Judiciary Committee before choosing a nominee.

What I am suggesting has been standard and accepted practice. Thorough bipartisan consultation would not only make the choice a better one, it would also reassure the Senate and the American people that the process of selecting a Supreme Court Justice has not become politicized. The Supreme Court often serves as a final arbiter and protector of our individual rights and freedoms. Decisions regarding nominees are too important to all Americans to be unnecessarily embroiled in partisan politics.

Though the landscape ahead is sown with the potential for controversy and contention over vacancies that may arise on the Supreme Court, confrontation is unnecessary and consensus should be our goal. I would hope that the President's objective will not be to send the Senate nominees so polarizing that their confirmations are eked out

in narrow margins. This would come at a steep and gratuitous price that the entire Nation would have to pay in needless division. It would serve the country better to choose a qualified consensus candidate who can be broadly supported by the public and by the Senate.

The process begins with the President. He is the only participant in the process who can nominate candidates to fill Supreme Court vacancies. If there is a vacancy, the decisions made in the White House will determine whether the nominee chosen will unite the Nation or will divide the Nation. The power to avoid political warfare with regard to the Supreme Court is in the hands of the President. No one in the Senate is spoiling for a fight. Only one person will decide whether this will be a divisive or unifying process and nomination. If consensus is a goal, bipartisan consultation will help achieve it. I believe that is what the American people want and what they deserve.

Over the last several years I have stressed the need for consultation and moderation as two guiding principles for selecting judicial nominees. I have been largely disappointed up to this point, but if there is a vacancy on the Supreme Court of the United States, I hope that the President will live up to his pledge to consult with Senators of both parties to identify consensus nominees who will unite us instead of divide us. There is no need to pit Republicans against Democrats or to divide the American people.

This is a difficult time for our country and we face many challenges. Providing adequate health care for all Americans, improving the economic prospects of Americans, defending against threats, the proliferation of nuclear weapons, the continuing upheaval and American military presence in Iraq, are all fundamental matters on which we need to improve. It is my hope that we can work together on many issues important to the American people, including our maintaining a fair and independent judiciary. I am confident that a smooth nomination and confirmation process can be developed on a bipartisan basis if we work together. The American people we represent and serve are entitled to no less.

The decisions of the Supreme Court have a lasting effect on the meaning of the Constitution and statutes intended by Congress to protect the rights of all Americans, such as the right to equal protection of the laws and the right to privacy, as well as the best opportunity to have clean air and clean water ourselves and in future generations. This is the forum where Federal regulations protecting workers' rights will be upheld or overturned, where reproductive rights will be retained or lost and where intrusive Government action will be allowed or curtailed. This is the Court to which thousands of individuals will appeal in matters affecting their health, their lives, their liberty, and their financial well-being.

If the President chooses a Supreme Court nominee because of that nominee's ideology or record of activism in the hopes that he or she will deliver predetermined political victories, the President will have done so with full knowledge that he is starting a confirmation confrontation. The Supreme Court should not be an arm of the Republican Party, nor should it be a wing of the Democratic Party. If the right-wing activists who were disappointed that the nuclear option was averted convince the President to choose a divisive nominee in order to tilt the ideological balance on the Supreme Court, they will not prevail without a difficult Senate battle. And if they do, what will they have wrought? While they would celebrate the ideological takeover of the Supreme Court, the American people will be the losers: The legitimacy of the judiciary will have suffered a damaging blow from which it may not soon recover. Such a contest would itself confirm that the Supreme Court is just another setting for partisan contests and partisan outcomes. People will perceive the Federal courts as places in which "the fix is in."

Our Constitution establishes an independent Federal judiciary to be a bulwark of individual liberty against incursions or expansions of power by the political branches. The independence of our Federal courts has been called by Chief Justice Rehnquist the crown jewel of our justice system, but that independence is at grave risk when a President seeks to pack the courts with activists from either side of the political spectrum. One of the most serious mistakes a President can make is the partisan engineering to take over the Supreme Court. Even if successful, such an effort would lead to decision-making based on politics and forever diminish public confidence in our justice system.

I urge, respectfully but emphatically, that the President in advance of any nomination consult with Senators from both parties and seek consensus. The American people will cheer if the President chooses someone who unifies the Nation. This is not the time and a vacancy on this Supreme Court is not the setting in which to accentuate the political and ideological division within our country. In our lifetimes, there has never been a greater need for a unifying pick for the Supreme Court. The independence of the Federal judiciary is critical to our American concept of justice for all. We should expect and accept nothing less. We all want Justices who exhibit the kind of fidelity to the law that we all respect. We want them to have a strong commitment to our shared constitutional values of individual liberties and equal protection. We expect them to have had a demonstrated record of commitment to equal rights. There are many conservatives who can meet these criteria and who are not rigid ideologues.

Two years ago, I was invited to address the National Press Club on this

topic and noted that the Supreme Court confirmation process does not have to be a political Armageddon. I continue to believe that and I urge the President to take the course that would better serve the American people and the Supreme Court. I was encouraged by the President's recent statement indicating he will consult with leaders in the Senate on both sides of the aisle in advance of a nomination. That should allow him to bring forward a consensus nominee able to unite all Americans and who could be confirmed by the Senate with 95 to 100 votes. At a time when too many partisans seem fixated on devising strategies to force the Senate to confirm the most extreme candidate with the least number of votes possible, I have been urging cooperation and consultation to bring the country together. There is no more important opportunity than this to lead the Nation in a direction of cooperation and unity. I hope this President heeds the lesson of history set by his predecessors who chose the good of the country over the good of a political party.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, in a few moments, we will vote to conclude debate on the nomination of Janice Rogers Brown to serve on the Court of Appeals for the DC Circuit. I do want to thank the chairman and ranking member for getting us to this point. It has taken awhile for us to reach this point, and I am pleased that in an orderly process and regular order, we are on the way to getting an up-or-down vote for Janice Rogers Brown.

It has been nearly 2 years since President Bush first nominated Justice Brown as a Federal judge. During those 2 years, she has been thoroughly debated, exhaustively investigated in committee and on the Senate floor. She has endured more than 5 hours of committee hearings, answered more than 180 questions, submitted 33 pages of responses to an additional 120 written questions, has set aside weeks at a time to personally meet with individual Senators, has waited patiently while the Judiciary Committee debated and voted on her nomination. On the Senate floor, we have debated her nomination for over 50 hours. That is more time than the Senate debated any one of the current Supreme Court Justices, but still as of yet she has not received an up-or-down vote on her nomination on the floor, not one. Why? Because of an orchestrated campaign of obstruction that has denied her that up-or-down vote until now. So she has been waiting for far too long for a simple up-or-down vote on the Senate floor. As a matter of principle, as a matter of fairness, as a matter of our constitutional duties as Senators to give up-or-down votes, it is time to bring the debate to a close and to vote.

Fairness is not just about the process of a vote. It is about treating a good, decent, hard-working American with

the respect and the dignity she deserves.

Justice Brown is an inspiration. All of us have heard her story, how she was born the daughter of an Alabama sharecropper and educated in segregated schools; how she worked her way through college and law school; how she has dedicated her life to public service and to others, having spent all but 2 years of her 26-year legal career as a public servant; how she is the first African-American woman to serve as an associate justice on the California Supreme Court, the State's highest court. We have heard about her exemplary qualifications and credentials, including her 8 years of experience on the California appellate bench. We have heard about her impressive record and her commitment to judicial restraint and the rule of law. We have heard the bipartisan praises of Justice Brown from those who know her best: her current and former colleagues on the California Supreme Court and California Court of Appeals. They agree that Janice Rogers Brown is a superb judge and have said she is a jurist who applies the law without favor, without bias, and with an even hand.

We have heard the people of California speaking with their votes. As a justice on the California Supreme Court, she was retained by 76 percent of the electorate, the highest vote percentage of all justices on the ballot. If 76 percent of the people of California voted for Janice Rogers Brown, how can she be considered out of the mainstream, as some of our colleagues on the other side of the aisle have suggested? Are 76 percent of the California voters out of the mainstream? Janice Rogers Brown is in the mainstream.

The overwhelming support of the people of California and the support of her colleagues proves her nomination transcends partisan labels and ideology. Janice Rogers Brown is a distinguished mainstream jurist. She deserves to be treated fairly. She has been investigated and debated thoroughly. Now she deserves the courtesy of a vote. Vote yes or no. Vote to confirm or reject, but let us vote.

I remain optimistic the Senate is moving in a new direction on judicial nominees, rejecting the partisan obstructionism of the past and embracing the principle that all judicial nominees deserve a fair up-or-down vote. I urge my colleagues to join me in bringing debate on this nomination to a close and ensuring that Judge Brown will get an up-or-down vote.

CLOTURE MOTION

The PRESIDING OFFICER. All time has expired. Under the previous order, the hour of 12 noon having arrived, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

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 Senate, do hereby move to

bring to a close debate on Executive Calendar No. 72, the nomination of Janice R. Brown, of California, to be United States Circuit Judge for the District of Columbia.

Bill Frist, Arlen Specter, Trent Lott, Lamar Alexander, Jon Kyl, Jim Talent, Wayne Allard, Richard G. Lugar, John Ensign, C.S. Bond, Norm Coleman, Saxby Chambliss, James Inhofe, Mel Martinez, Jim DeMint, George Allen, Kay Bailey Hutchison, John Cornyn.

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

The question is, Is it the sense of Senate that debate on Executive Calendar No. 72, the nomination of Janice R. Brown, of California, to be the U.S. circuit judge for the District of Columbia Circuit, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Vermont (Mr. JEFFORDS), the Senator from Wisconsin (Mr. KOHL), and the Senator from New Jersey (Mr. LAUTENBERG) are necessarily absent.

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

The yeas and nays resulted—yeas 65, nays 32, as follows:

[Rollcall Vote No. 130 Ex.]

YEAS—65

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

NAYS—32

Akaka	Dorgan	Mikulski
Baucus	Durbin	Murray
Bayh	Feingold	Obama
Biden	Feinstein	Reed
Bingaman	Harkin	Reid
Boxer	Johnson	Rockefeller
Cantwell	Kennedy	Sarbanes
Clinton	Kerry	Schumer
Corzine	Leahy	Stabenow
Dayton	Levin	Wyden
Dodd	Lincoln	

NOT VOTING—3

Jeffords	Kohl	Lautenberg
----------	------	------------

The PRESIDING OFFICER. On this vote, the yeas are 65, the nays are 32. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The Republican whip.

ORDER OF PROCEDURE

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Sen-

ate stand in recess until 2:15 today and that the time during the recess count under the provisions of rule XXII; provided further that the vote on the confirmation of the Brown nomination occur at 5 p.m. tomorrow, Wednesday, with all time until then equally divided in the usual form.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. The Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:31 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. THUNE).

EXECUTIVE SESSION

NOMINATION OF JANICE ROGERS BROWN TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA—Continued

The PRESIDING OFFICER. The Senator from North Carolina.

NATIONAL HUNGER AWARENESS DAY

Mrs. DOLE. Mr. President, for the past two years I have come to the Senate floor on National Hunger Awareness Day to talk about the battle against hunger, both here in America and around the world. In fact, I reserved my maiden speech for this topic—one of my top priorities as a U.S. Senator. I have stated over and over again that the battle against hunger is one that can't be won in a matter of months or even a few years but it is a victory that we can claim if we continue to make the issue a priority.

As Washington Post columnist David Broder said about hunger, "America has some problems that seem to defy solution. This one does not. It just needs caring people and a caring government, working together." I could not agree more.

Last year on Hunger Awareness Day, Senators SMITH, DURBIN, LINCOLN, and I launched the Senate Hunger Caucus, with the express purpose of providing a bi-partisan forum for Senators and staff to engage each other on national and international hunger and food insecurity issues. By hosting briefings and disseminating information, the caucus has been striving to bring awareness to these issues, while at the same time finding ways to collaborate on legislation. I want to thank 34 of my colleagues for joining the Senate Hunger Caucus and their staffs for their diligent work. In addition, I am excited to see our friends in the House of Representatives start their own Hunger Caucus and I look forward to working with them as both houses of Congress continue to find solutions to eliminating hunger.

It is truly astounding how so many of our fellow citizens go hungry or are liv-

ing on the edge of hunger each and every day. Thirteen million of these hungry Americans are deemed to be children.

As we know, when children are hungry they do not learn. This is a travesty that can and should be prevented. Currently over 90,000 schools and 28 million children participate each school day in the School Lunch Program. The children of families whose income levels are below 130 percent of poverty are eligible for free school meals and those families whose income levels are between 130 percent of poverty and 185 percent of poverty are eligible for reduced price meals.

Unfortunately, many State and local school boards have informed me that parents are finding it difficult to pay the reduced fee, and for some families the fee is an insurmountable barrier to participation. That is why I am a strong supporter of legislation to eliminate the reduced price fee and harmonize the free income guideline with the WIC income guideline. I am proud to say that a pilot program to eliminate the reduced price fee in up to five states was included in last year's reauthorization of Child Nutrition and WIC. I have encouraged the Appropriations Committee to include funding for this pilot program, and I look forward to working with them on this very important issue which touches so many families going through difficult times.

In my home State of North Carolina, more than 900,000 of our 8.2 million residents are dealing with hunger, according to the most recent numbers from the U.S. Department of Agriculture. Our State has faced significant economic hardship over the last few years as once thriving towns have been hit hard by the closing of textile mills and furniture factories. And this story is not unlike so many others across the country.

Many Americans who have lost their manufacturing jobs have been fortunate enough to find new employment in the changing climate of today's workforce. Simply being able to hold down job doesn't necessarily guarantee your family three square meals a day. But there are organizations who are addressing this need as a mission field.

Groups like the Society of St. Andrew, the only comprehensive program in North Carolina that glean available produce from farms, and then sorts, packages, processes, transports and delivers excess food to feed the hungry. In 2004, the Society gleaned more than 4.2 million pounds of food—or 12.8 million servings. Incredibly—it only costs one penny a serving to glean and deliver this food to those in need. And all of this work is done by the hands of the 9,200 volunteers and a tiny staff.

Gleaning is a practice we should utilize much more extensively today. It's astounding that the most recent figures available indicate that approximately 96 billion pounds of good, nutritious food—including that at the farm and retail level—is left over or thrown

away. A tomato farmer in western North Carolina sends 20,000 pounds of tomatoes to landfills each day during harvest season.

This can't be good for the environment. In fact, food is the single largest component of our solid waste stream—more than yard trimmings or even newspaper. Some of it does decompose, but it often takes several years. Other food just sits in landfills, literally mummified. Putting this food to good use through gleaning will reduce the amount of waste going to our already overburdened landfills. And I am so appreciative of my friends at Environmental Defense for working closely with us on this issue.

Like any humanitarian endeavor, the gleaning system works because of cooperative efforts. Clearly private organizations and individuals are doing a great job, but they are doing so with limited resources. It is up to us to make some changes on the public side and help leverage scarce dollars to feed the hungry.

I continue to hear that transportation is the single biggest concern for gleaners. I am proud to say that with the help of organizations such as the American Trucking Association, the Society of Saint Andrew and America's Second Harvest, we are taking steps to ease that transportation concern. In February of this year, I reintroduced a bill that will change the tax code to give transportation companies tax incentives for volunteering trucks to transfer gleaned food. I am proud to have the support of my colleagues, Senators DODD, BURR, LUGAR, ALEXANDER, SANTORUM, DURBIN, LAUTENBERG, and LINCOLN, original cosponsors, and I look forward to working with them on passage of this important bill.

I am also privileged to work with Senators LINCOLN and LAUTENBERG on a soon-to-be-introduced bill to provide up to \$200,000 per fiscal year to eligible entities willing to carry out food rescue and job training. Entities like the Community Culinary School of Charlotte, a private, non-profit organization in my home State that provides training and job placement in the food service industry for people who are employed or underemployed.

Here is how it works. The Community Culinary School recruits students from social service agencies, homeless shelters, halfway houses and work release programs. They then work in collaboration with food rescue agencies in the area to provide meals to homebound individuals and to local homeless shelters. The food they rescue is donated and picked up from restaurants, grocers and wholesalers. The students then prepare nutritious meals using the donated food while at the same time developing both culinary and life skills.

Take a young lady from this program named Sibyl. After years of drugs, prisons and unplanned pregnancies, Sibyl entered the Community Culinary School of Charlotte. Her willingness

and determination made her the top student of her class and she is today working full time as a chef.

Or take Bobby, who also graduated from the program. Bobby went from unemployment and homelessness to becoming a top graduate, now working two jobs and living independently. Our bill is intended to complement these kinds of private efforts that support food rescue and job skills that can make the greatest impact on individual lives.

In Deuteronomy 15:7, the Bible tells us, "If there is among you a poor man, one of your brethren, in any of your towns within your land which the Lord your God gives you, you shall not harden your heart or shut your hand against your poor brother." So, as our fellow citizens in the private sector continue to be a giving people, let us find ways as public servants to once again harness the great public-private effort, and fight as one to end hunger in America. I again thank my colleagues who have worked so hard to build these partnerships. And I implore our friends on both sides of the aisle—as well as the good people throughout this great country—to join in this heartfelt mission—this grassroots network of compassion that transcends political ideology and will provide hope and security not only for those in need today—but for future generations as well. I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

Mrs. LINCOLN. Mr. President, due to his graciousness, I ask unanimous consent that Senator KENNEDY be allowed to speak directly after I complete my remarks.

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

Mrs. LINCOLN. Mr. President, I want to pay a tremendous compliment with a huge sense of gratitude to my colleague from North Carolina for her tirelessness with regard to this issue. She has been such an incredible fighter against the issue of hunger among Americans and really among her fellow man globally. I compliment her and thank her so much for the opportunity to work with her on something in which she has been a true leader. I am looking forward to many more things that we can do together, but she has made a huge effort in eliminating hunger.

We are here today to refocus ourselves and rededicate ourselves to bringing about a tremendous awareness to hunger as it exists in our Nation and certainly as it exists among our fellow man across the globe. I thank the Senator from North Carolina for all of her hard work.

I do come to the floor to join my colleague from North Carolina on an issue that I take very seriously. Thirty-six million Americans, including 13 million children, live on the verge of hunger. It is absolutely phenomenal to me, growing up as a farmer's daughter in the Mississippi Delta where there was

such plenty in the fields, as I drive past them, to think that there are Americans, particularly American children, who go hungry every day not because we don't have the means but because we don't organize ourselves and set the priority of making sure these future generations, the future leaders of this great Nation, can at least have their tummies full enough that they can pay attention in school, grow healthy to become the kind of leaders that we want and need for our great Nation.

Today is National Hunger Awareness Day. It is a time when Americans are called to remember the hungry children and adults living across our Nation. We have all just come from our weekly caucus lunches. We have had plenty at this time. We are thinking about the opportunities that lie ahead of us, particularly the fun things that children do in the summertime. Yet we forget that there are many who have not had a good lunch today, or perhaps we forget that as school is letting out, those children who normally get a nutritious meal at school will not be getting those nutritious meals during the summertime while school is out.

Most importantly, it is a day when we are called to put our words into action, to help end hunger in our communities and across this great land.

At this time last year, Senators SMITH, DURBIN, DOLE, and myself formed the Senate Hunger Caucus to forge a bipartisan effort to end hunger in our Nation and around the world. I am so proud to be working with these three other Senators in moving this caucus forward. Our staffs have worked tirelessly in bringing us together, along with the other Members of the Senate, in order to make a difference. We are working with local, State, and national antihunger organizations to raise awareness about hunger, build partnerships, and build solutions to end hunger.

We have many challenges that face our Nation, and so many challenges that face this body itself. Yet this is one problem we know has an answer. And we know how to end hunger.

Recently I introduced, with Senators DURBIN, SMITH, and LUGAR, the Hunger-Free Communities Act of 2005. This bill calls for a renewed national commitment to ending hunger in the United States by 2015, reaffirms our congressional commitment to protecting the funding and integrity of Federal food and nutrition programs, and it creates a national grant program to support community-based antihunger efforts. I urge all of our colleagues to support this worthy and commonsense legislation. It sets a goal for a monumental concern and problem that we have in this Nation. It presents the answer, and it sets the time in which we want to reach that goal.

Mr. President, I want to take this opportunity to talk about the 36 million Americans, including 13 million children, who live on the verge of hunger.

Some people may ask—what can I do to help end hunger in America? I want to talk about some of the ways Americans can help join the hunger-relief effort. Acting on this call to feed the hungry requires the effort of every American and every sector of the economy.

The backbone of this effort is the willingness of Congress and the American people to support the Federal food and nutrition programs. These programs provide an essential safety net to working Americans, preventing the most vulnerable among us from suffering, and even dying, from malnutrition. Our continued investment in these programs is vital to the health of this nation.

The most significant of these programs, the Food Stamp Program, provides nutritious food to over 23 million Americans a year. More Americans find themselves in need of this program every year. Despite this growing need, the Administration proposes to cut the Food Stamp Program by \$500 million over the next 5 years by cutting more than 300,000 low-income people off the program in an average month.

I understand our current budget constraints. However, even in these tight fiscal times, I believe that we must maintain our commitment to feed the hungry.

Therefore, we must first protect programs like the Food Stamp Program, the National School Breakfast and Lunch Program, Summer Feeding Program, WIC, and the Child and Adult Care Food Program. I urge Americans to contact their congressional representatives to voice their support for these programs. I urge my colleagues to support these programs and protect them from cuts and structural changes that will undermine their ability to serve our Nation's most vulnerable citizens.

In addition to the Federal food programs, eliminating hunger in America requires the help of community organizations. Government programs provide a basis of support, but they cannot do the work alone. Community and faith-based organizations are essential to locating and rooting out hunger wherever it persists. We rely on the work of local food banks, food pantries, soup kitchens, and community action centers across America to go where government cannot. I will do all I can to provide the resources these community organizations need to continue with the difficult but necessary work they perform.

Private corporations and small businesses also have a role to play in eliminating hunger in America. Our corporations and small businesses generate most of our Nation's wealth and have throughout history supported many of our greatest endeavors. Many corporations and businesses already contribute to efforts to eliminate hunger, and I hope others will begin to participate as opportunities to do so present themselves in the future.

A great example of how businesses and non-profits can partner to feed hungry people occurred this past Friday in Little Rock. Arkansas-based Tyson Foods and Riceland Foods, along with Jonesboro's Kraft Foods Post Division and Nestle's Prepared Foods Facility, donated truck loads of food as a special donation in honor of National Hunger Awareness Day. This food will go to the Arkansas Rice Depot, Potluck, Inc. and the Arkansas Hunger Relief Alliance, which represents six food banks located across Arkansas. These organizations will in turn use the food to help feed hungry Arkansans. I am grateful to these companies and non-profit organizations for their leadership in this effort to feed the over 450,000 Arkansans who have limited access to food.

Ending hunger in America requires the commitment of individual Americans. Our greatest national strength is the power that comes from individual initiatives and the collective will of the American people. I believe we are called by a higher power to care for our fellow men and women, and as a part of my Christian faith I know we are called to serve the poor and the hungry. I know it is a common denominator among almost all of our faiths that it is those, the poor and the hungry, the orphaned and the widowed, whom we are here, as our fellow man, to take care of, to help to lift them up.

If we believe in this call, we must live it every day—in our schools and in our homes, in our workplaces, our places of worship, in our volunteering, and, yes, in our prayers. This personal responsibility is a great one, but it holds tremendous power. It is a common denominator that can bring us together, the one problem that we all agree on and to which we know there is a solution. For as we have seen throughout American history, when individuals in this Nation bind together to serve a common cause, they can achieve the greatest of accomplishments. By sharing the many blessings and resources our Nation provides, I am confident that we can alleviate hunger at home and abroad.

I thank the Chair. I yield the floor.

Mr. KENNEDY. Mr. President, today is National Hunger Awareness Day, and it is an opportunity for all of us in Congress to pledge a greater effort to deal effectively with this festering problem that shames our Nation and has grown even more serious in recent years. It is a chance to live out our moral commitment to care for our neighbors and fellow citizens who have fallen on hard times.

The number of Americans living in hunger, or on the brink of hunger, now totals 36 million, 3 million more since President Bush took office. That total includes 13 million children, 400,000 more since 2001.

Day in and day out, the needs of millions of Americans living in hunger are widely ignored, and too often their voices have been silenced. Their battle

is a constant ongoing struggle. It undermines their productivity, their earning power, and their health. It keeps their children from concentrating and learning in school. We all need to do more to combat it—government, corporations, communities, and citizens must work together to develop better policies and faster responses.

In Massachusetts, organizations such as the Greater Boston Food Bank, Project Bread, the Worcester County Food Bank, and many others serve on the frontlines every day, and they deserve our full support, but they should not have to wage the battle alone.

In 1996, the Clinton administration pledged to begin an effort to cut hunger in half in the United States by 2010, and the strong economy enabled us to make significant progress toward that goal. Hunger decreased steadily through 2000. We now have 5 years left to fulfill that commitment.

The fastest, most direct way to reduce hunger in the Nation is to improve and expand current Federal nutrition programs. Sadly, the current Administration and the Republican Congress propose to reduce, not increase, funds for important programs such as Food Stamps, and the Community Nutrition Program.

The Food Stamp Program is designed to be available to all eligible individuals and households in the United States. It provides a basic and essential safety net to millions of people. In 2003, on average, over 21 million Americans received food stamp benefits. Over half of all food stamp recipients are children.

Now, the administration plans to reduce, or even cut off, food stamps for recipients who rely on Medicare to afford the prescription drugs they need.

That is why I have introduced legislation to ensure that individuals who receive Medicare prescription drug benefits do not lose their food stamps. This legislation ensures that seniors do not have to choose between food and medicine. I urge my colleagues to support this important legislation.

It is time to do more for the most vulnerable in our society. National Hunger Awareness Day is our chance to pledge to eradicate hunger in America and to mean it when we say it.

Mr. President, I would like to congratulate Senator DOLE and Senator LINCOLN for giving focus and attention to National Hunger Awareness Day and for all they do on this particular issue. I had the opportunity yesterday to visit The Greater Boston Food Bank in Massachusetts—a successful food bank. We have 517,000 people who are hungry in eastern Massachusetts alone, over 173,000 of those individuals are children, and over 50,000 are elderly.

One thing we know how to do in this country is grow food. We can do that better than any other place in the world. Secondly, we know how to deliver packages of food with Federal Express, other kinds of delivery services, virtually overnight. The fact that we

have hunger in this Nation, we have children who are hungry, frail elderly who are hungry, working families who are hungry, or other homeless people who are hungry, we as a nation are failing our humanity. We know what can be done. It needs the combination of a governmental framework, private framework, and a very important involvement from the nonprofit framework and other groups at the local level, religious groups that have done such important work.

So I commend my friends and colleagues for bringing focus and attention to this issue. It has enormous implications. We find out in terms of education provided to the children, the needy children at breakfast for them early in the morning, the results in terms of their willingness, ability, and interest in cooperating with their teacher and learning go up immensely. We have information that documents all of that. Try to teach a hungry child to learn, and any teacher will tell you the complexities and difficulties and the frustrations in doing that.

I thank my two friends and others who are part of this movement. I look forward to working with them on a matter of enormous importance and consequence.

Mr. DURBIN. Mr. President, I rise today to note National Hunger Awareness Day.

I am meeting today with 35 people here from Illinois who came to Washington to remind us that hunger is not a Democratic or Republican issue.

Basic sustenance ought to be a guarantee in a civilized society, not a gamble.

If children—or adults—are hungry in America, that's a problem for all of us. And it is a problem we can do something about.

For instance, we know that Federal nutrition programs work. WIC, food stamps, school lunch and breakfast programs, and other Federal nutrition programs are reaching record numbers of Americans today, and making lives better.

The problem is we are not reaching enough people. There are still too many parents in this country who skip meals because there is not enough money in the family food budget for them and their children to eat every night.

There are still too many babies and toddlers in America who are not getting the nutrition their minds and bodies need to develop to their fullest potential. There are still too many seniors and children who go to bed hungry.

There are 36 million Americans who are hungry or at risk of hunger. In the richest Nation in the history of the world, that is unacceptable.

Last week, I joined with several of my Senate colleagues to introduce the Hunger-Free Communities Act.

The bill is designed to promote local collaboration in the fight against hunger. But it also reminds us that we as a country are committed to ending

hunger. We know how. We need to muster the political will.

We started this week by challenging our own offices to participate in a Senate food drive. I commend Senators LINCOLN, SMITH, and DOLE for their help in collecting food that will be donated to the Capitol Area Community Food Bank.

I look forward to working with people in the anti-hunger community and with my colleagues to eliminate domestic hunger in our lifetime.

Mr. SALAZAR. Mr. President, I rise to commend the efforts of our Nation's civic, business and faith leaders to call attention to the increasing number of Americans who are unable to put food on their tables. Today, on National Hunger Awareness Day, I am proud to join with communities in every region of my State that are taking on the charge to end hunger in the United States.

Growing up in Colorado's San Luis Valley, one of the poorest regions in the country, my family did not have electricity or running water in our home. But our family farm ensured that my brothers and sisters and I never went to bed hungry or arrived at school on an empty stomach. My classmates were not always as fortunate. Sadly, not much has changed since my youth.

Currently, in Conejos County, where my family's farm is located, one in four residents are living in poverty. That is twice the national average, and three times our State poverty rate. And increasingly, the stories behind these numbers are of working poor households who struggle to pay their mortgages, escalating electricity bills and fuel costs. In Colorado Springs, the Care and Share Food Bank estimated that close to 50 percent of the households receiving their emergency food assistance last year had at least one working parent. More and more, these families need to turn to their local food bank or church pantry in the very same communities where food is harvested; serving as a sad reminder that there is much more work to be done.

When speaking with hunger relief organizations throughout Colorado, they express concern when forced to turn families away, and the number of people they cannot help continues to grow. For example, the Marian House, which is operated by Catholic Charities of Colorado Springs, serves approximately 600 meals. Over the past several years, they have seen the daily number of people coming into food banks nearly double.

Unfortunately, their stories of growing demands reflect the problems facing much of the rural West. In fact, according to the U.S. Department of Agriculture, 16 percent of households in this region did not know where their next meal would come from—that is the highest rate of so-called "food insecurity" in any region of the country.

In the face of these staggering statistics, Coloradans are doing their part to

eliminate hunger. Whether it is organizing a food drive in their school or office, volunteering at a soup kitchen, or donating to their local food bank, they are answering the call to reduce the number of hungry Americans. In Denver, where poverty is also on the rise, groups like the Food Bank of the Rockies have stepped up their food distribution. In 2004, hard-working, committed workers and volunteers distributed over 16 million pounds of food and essential household items, more than ever before.

However, today is a special day, where national, regional and local organizations collectively are raising awareness of hunger in America. I am particularly proud that National Hunger Awareness Day events have been organized in communities throughout Colorado, including Colorado Springs, Denver, Fort Collins, Grand Junction, Greeley, and Hot Sulphur Springs. I applaud Coloradans involved in these activities, and all those participating in the day's related events. I look forward to working with the Senate Hunger Caucus and the Senate Agriculture Committee in the movement to end hunger.

Mr. SMITH. Mr. President, I rise today to speak about a problem impacting communities across the United States and throughout the world. As many of my colleagues know, today is National Hunger Awareness Day. It is a day meant to focus our attention on those for whom putting food on the table continues to be a daily struggle.

For the last several years, my home State of Oregon has been at or near the top of repeated nationwide studies of hunger and food insecurity in the United States. While we have made some progress in fighting hunger in Oregon, there is still a long way to go to ensuring that children and families in my State and around the country do not go to bed hungry. According to the U.S. Department of Agriculture's Economic Research Service, in 2003, approximately 36.3 million Americans lived in households that at some point during the year did not have access to enough food to meet their basic needs. Of those 36.3 million, 3.9 million were considered hungry.

In 2003, Oregon State University published a study on food insecurity and hunger in Oregon. The study found that pressures related to the high-cost of housing, health care, and the high-level of unemployment all contribute to food insecurity and hunger in our State. One of the more striking findings in the report is that underemployment is also a major factor leading to hunger and food insecurity; working families throughout Oregon are having a difficult time accessing food.

On the horizon, Oregon's economy appears to be brightening. While there are no quick fixes, I believe that solving hunger is within our grasp. Federal nutrition programs certainly serve an important safety net role in combating hunger; however, they are only one

piece of the puzzle. Community organizations, churches, business groups, and private citizens all have a part to play. Ultimately, winning the fight against hunger in Oregon and around the country requires that families are able to provide for themselves—that means having access to living wage jobs.

Many of my colleagues will remember that last year I asked them to join me in forming a Senate caucus devoted to raising awareness of the root causes of hunger and food insecurity. I appreciate very much the work of my Senate Hunger Caucus cochairs Senator LINCOLN, Senator DOLE, and Senator DURBIN—in helping to get the caucus off the ground. I am proud to say that today, the Senate Hunger Caucus counts 34 members, with both Republicans and Democrats.

This is clearly not a battle that will be won overnight, but it is something about which our conscience calls us to act. If we are to end hunger, we must work to address its root causes. Being successful in this mission will require that we are innovative and find new ways of doing things. I look forward to continuing to work with my colleagues in Congress and groups in Oregon to win this fight.

UPWARD MOBILITY

Mr. KENNEDY. Mr. President, before speaking on what I want to address to the Senate, and that is the pending business on the nominee, I want to bring to the attention of my colleagues an excellent editorial in the *New York Times* today: "Crushing Upward Mobility." It is basically an analysis of a regulation that was put forward by the Department of Education that will save the Department of Education some resources, but at the cost of those middle-class families, working families, who are eligible for student loan programs. That is not the direction in which we should be going.

At the current time, we have a number of these young students who are paying 9.5 percent on guaranteed student loans. Can you imagine having a deal like that? You put out money and the Federal Government guarantees that you have nothing to lose, and it still costs these students 9.5 percent. We ought to be doing something about that, like taking the profits and making a difference in terms of lowering the burden on working families and middle-income families who are trying to help their children go on to college, rather than put more burden on them.

This is an excellent article. I ask unanimous consent that the editorial be printed in the RECORD.

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

[From the *New York Times*]

CRUSHING UPWARD MOBILITY

The United States is rapidly abandoning a long-standing policy aimed at keeping college affordable for all Americans who qualify academically. Thanks to a steep decline in aid to poor and working-class students and lagging state support for the public college

systems that grant more than two-thirds of the nation's degrees, record numbers of Americans are being priced out of higher education. This is an ominous trend, given that the diploma has become the minimum price of admission to the new economy.

Greg Winter of *The Times* reported yesterday that the federal government has rejiggered the formula that determines how much families have to pay out of pocket before they become eligible for the student aid package, which consists of grants and low-interest loans. The new formula, which will save the government about \$300 million in federal aid under the Pell program, will cause some lower-income students to lose federal grants entirely. The families of others will have to put up more money before they can qualify for financial aid. Perversely, single-parent household will have to pay more than two-parent households before they become eligible.

The federal Pell Grant program, which is aimed at making college possible for poor and working-class students, has fallen to a small fraction of its former value. The states, meanwhile, have trimmed aid to public colleges, partly as a consequence of soaring Medicaid costs. The states have deepened the problem by shifting need-based tuition to middle-class and upper-class students under the guise of handing out so-called merit scholarships.

The political clamor around the new formula is likely to lead to changes, but they will be aimed at upper-income families who are most able to pay. Tinkering with formulas in Washington will not solve this problem. The nation as a whole has been disinvesting in higher education at a time when college has become crucial to work force participation and to the nation's ability to meet the challenges of global economic competition.

Until the country renews its commitment to making college affordable for everyone, the American dream of upward mobility through education will be in danger of dying out.

Mr. KENNEDY. Mr. President, I intend to introduce later on in the afternoon the technical language and legislation that will block that particular provision by the Department of Education from going into effect.

Mr. President, Janice Rogers Brown's nomination to the DC Circuit is opposed more strongly by civil rights organizations than almost any other nominee I can recall to the Federal courts of appeals.

She is opposed by respected civil rights leaders, including Julian Bond, the chairman of the NAACP, and Reverend Joseph Lowery, president emeritus of the Southern Christian Leadership Conference, who worked with Dr. Martin Luther King, Jr., in the civil rights movement, and who has fought tirelessly for many years to make civil rights a reality for all Americans.

Her nomination is also opposed by the Congressional Black Caucus, the National Bar Association, the Coalition of Black Trade Unions, the California Association of Black Lawyers, and Delta Sigma Theta Sorority, the second oldest sorority founded by African-American women.

Justice Brown's nomination is opposed by Dorothy Height, president emeritus of the National Council of Negro Women, and a leader in the bat-

tle for equality for women and African Americans. Dr. Height has dedicated her life to fighting for equal opportunities for all Americans. She is universally respected by Republicans and Democrats, and last year she received the Congressional Gold Medal, and President Bush joined Members of Congress in honoring her service.

In opposing Justice Brown's nomination, Dr. Height says:

I have always championed and applauded the progress of women, and especially African American women; but I cannot stand by and be silent when a jurist with a record of performance of California Supreme Court Justice Janice Rogers Brown is nominated to a Federal court, even though she is an African American woman. In her speeches and decisions, Justice Janice Rogers Brown has articulated positions that weaken the civil rights legislation and progress that I and others have fought so long and hard to achieve.

Justice Brown's nomination is opposed equally strongly by over 100 other organizations, including 24 in California, representing seniors, working families, and citizens concerned about corporate abuses and the environment.

Some of Justice Brown's supporters suggest that she should be confirmed because she is an African-American woman with a compelling personal story. While all of us respect her ability to rise above difficult circumstances, we cannot confirm nominees to lifetime positions on the Federal courts because of their backgrounds. We have a constitutional duty to confirm only those who would uphold the law and would decide cases fairly and reject those who would issue decisions based on personal ideology.

It is clear why this nomination is so vigorously opposed by those who care about civil rights. Her record leaves no doubt that she would attempt to impose her own extreme views on people's everyday lives instead of following the law. The courts are too important to allow such persons to become lifetime appointees as Federal judges.

Janice Rogers Brown's record makes clear that she is a judicial activist and would roll back not only civil rights but laws that protect public safety, workers' rights, and the environment, as well as laws that limit corporate abuse, which are precisely the cases the DC Circuit hears most often.

Our decision on this nomination is profoundly important to America's everyday life. All Americans, wherever they live, should be concerned about such a nomination to the DC Circuit, which interprets Federal laws that protect our civil liberties, worker safety, our ability to breathe clean air and drink clean water in our communities.

The DC Circuit is the crown jewel of Federal appellate courts and has often been the stepping stone to the Supreme Court. It has a unique role among the Federal courts in interpreting Federal power. Although located here in the District of Columbia, its decisions have national reach because it has exclusive

jurisdiction over many laws that protect consumers' rights, employees' rights, civil rights, and the environment. Only the DC Circuit can review the national drinking water standards under the Safe Drinking Water Act to ensure clean water for our children. Only the DC Circuit can review national air quality standards under the Clean Air Act to combat pollution in our communities. This court also hears the lion's share of cases involving the rights of workers under the Occupational Safety and Health Act which helps ensure that working Americans are not exposed to hazardous conditions on the job. It has a large number of cases under the National Labor Relations Act. As a practical matter, because the Supreme Court can review only a small number of lower court decisions, the judges on the DC Circuit often have the last word on these important rights.

Because of the court's importance to issues that affect so many lives, the Senate should take special care in appointing judges for lifetime positions on the DC Circuit. We must be completely confident that appointees to this prestigious court have the highest qualifications and ethical standards and will fairly interpret the laws, particularly laws that protect our basic rights.

The important work we do in Congress to improve health care, reform public schools, protect working families, and enforce civil rights is undermined if we fail in our responsibility to provide the best possible advice and consent on judicial nominations. Needed environmental laws mean little to a community that cannot enforce them in Federal courts. Fair labor laws and civil rights laws mean little if we confirm judges who ignore them.

In the 1960s and 1970s, the DC Circuit expanded public access to administrative proceedings and protected the interests of the public against the egregious actions of many large businesses. It enabled more plaintiffs to challenge agency decisions. It held that a religious group, as a member of the listening public, could oppose the license renewal of a television station accused of racial and religious discrimination. It held that an organization of welfare recipients was entitled to intervene in proceedings before a Federal agency. These decisions empowered individuals and organizations to shine a brighter light on governmental agencies. No longer would these agencies be able to ignore the interests of those they were created to protect.

But in recent years, the DC Circuit has begun to deny access to the courts. It held that a labor union could not challenge the denial of benefits to its members, a decision later overturned by the Supreme Court. It held that environmental groups are not qualified to seek review of Federal standards under the Clean Air Act. These decisions are characteristic of the DC Circuit's flip-flop.

After decades of landmark decisions allowing effective implementation of important laws and principles, the court now is creating precedence on labor rights, civil rights, and the environment that will set back these basic principles for years to come. It is, therefore, especially important to ensure that judges appointed to this important court will not use their position to advance an extreme ideological agenda.

Janice Rogers Brown would be exactly that kind of ideological judge. How can we confirm someone to the DC Circuit who is hostile to civil rights, to workers' rights, to consumer protections, to governmental actions that protect the environment and the public in so many other areas—the very issues that predominate in the DC Circuit? How can we confirm someone who is so deeply opposed to the core protections that the DC Circuit is required to enforce? It is hard to imagine a worse choice for the DC Circuit.

Perhaps most disturbing is the contempt she has repeatedly expressed for the very idea of democratic self-government. She has stated that where government moves in, community retreats, and civil society disintegrates. She has said that government leads to families under siege, war in the streets. In her view, when government advances, freedom is imperiled, and civilization itself is jeopardized. These views could hardly be further from legal mainstream. They are not the views of someone who should be confirmed to the second most important court in the land and the court with the highest frequency of cases involving governmental action. Congress and the White House are the places you go to change the law, not the Federal courts.

She has criticized the New Deal which gave us Social Security, the minimum wage, and the fair labor laws. She questioned whether age discrimination laws benefit the public interest. She has even said that today's senior citizens blithely cannibalize their children because they have the right to get as much free stuff as the political system will permit them to extract. No one with these views should be confirmed to any Federal court, and certainly not to the Federal court most responsible for cases respecting governmental action. It is no wonder that an organization seeking to dismantle Social Security is running ads supporting her nomination to the second most powerful court in the country.

Of course, like every nominee who comes before the Senate, Justice Brown assures us that she will follow the law. But merely saying so is not enough when there is clear and extensive evidence to the contrary. The Senate is more than a rubberstamp in the judicial confirmation process. We must examine the record and vote our conscience.

Justice Brown and her supporters ask us to believe that her contempt for the

role of government and government regulation and her opinions against workers' rights and consumer protections are not an indication of how she would act as a Federal judge. It is hard to believe that anyone would repeatedly use such extreme rhetoric and not mean it. It is even harder to believe that her carelessness and intemperance somehow qualify her to be a Federal judge.

Moreover, Justice Brown's decisions match her extreme rhetoric. She has written opinions that would undermine these basic protections. I was especially troubled by her opinion in a case in which ethnic slurs have been proven to create hostile working conditions for Latino workers. Justice Brown wrote that the first amendment prevents courts from stopping ethnic slurs in the workplace even when those slurs create a hostile work environment, in violation of job discrimination laws.

Her opinion even went beyond the State law involved in the case and suggested that title VII and other Federal antidiscrimination laws may not prohibit this kind of harassment in the workplace. Her opinion contradicts decades of precedent protecting workers from harassment based on race, gender, ethnicity, and religion. Fortunately, a majority of California's Supreme Court disagreed with her views.

We cannot risk giving Justice Brown a lifetime appointment to a court on which she will have a greater opportunity to apply her extreme views on our Federal civil rights laws. This Nation has made too much progress toward our shared goal of equal opportunity to risk appointing a judge who will roll back civil rights.

Other opinions by Justice Brown would have prevented victims of age and race discrimination from obtaining relief in State court. She dissented from a holding that victims of discrimination may obtain damages from administrative agencies for their emotional distress. Time and again, she has issued opinions that would cut back on laws that rein in corporate special interests. When there is a choice between protecting the interests of working Americans and siding with big business, Janice Rogers Brown sides with big business, and she does so in ways that go far beyond the mainstream conservative thinking.

She wrote an opinion striking down a State fee requiring paint companies to pay for screening and treating children exposed to lead paint. Most of us are familiar with the dangers of lead paint. It is a contributing cause to mental retardation with regards to children. Many of the older communities all over this country have paint that has a lead content, and children have a habit of picking off the pieces. Even if it is in playgrounds, they have a way of ingesting these pieces. We find that children develop severe illness and sickness and in too many instances mental retardation. We tried here for years to eliminate the issues of lead in paint.

We have made some important progress.

As I understand it, one of the proposals was a small State fee requiring paint companies to pay for screening and treating children exposed to lead paint, and she struck down that State fee. Fortunately, she was unanimously reversed by the California Supreme Court. But because the United States Supreme Court hears so few cases, there is no guarantee that her mistakes will be corrected if she receives a lifetime position on the DC court.

In another case, she wrote a dissent urging the California Supreme Court to strike down a San Francisco law providing housing assistance to low-income elderly and disabled people.

Justice Brown has also clearly demonstrated her willingness to ignore established precedent. She wrote a dissent, arguing that the California Supreme Court "cannot simply cloak ourselves in the doctrine of stare decisis," which is the rule that judges should follow the settled law. That is the basic concept of upholding the law, interpreting law, stare decisis, following the law which currently exists.

She wrote a dissent urging the California Supreme Court, saying we cannot simply cloak ourselves in that doctrine.

She again showed her willingness to disregard legal precedent just this year. In *People v. Robert Young*, Justice Brown tried to overturn a precedent protecting the rights of racial minorities and women not to be eliminated from juries for discriminatory reasons. In a concurring opinion not joined by any of her colleagues, she criticized the precedent stating that for the purposes of deciding whether a prosecuting attorney had discriminated in selecting a jury, black women could not be considered a separate group. The California Supreme Court had held two decades ago that prosecutors may not exclude jurors solely because they are black women.

Justice Brown argued that this precedent should be overruled because she saw no evidentiary basis that black women might be the victims of a unique type of group discrimination justifying their designation as a cognizable group.

It is not just Senate Democrats who are troubled about the record of Janice Rogers Brown. Conservatives have also expressed concern about the judicial activism of Janice Rogers Brown. The conservative publication *National Review* had this to say:

Janice Rogers Brown . . . has said that judicial activism is not troubling per se; what matters is the "worldview" of the judicial activist. If a liberal nominee to the courts said similar things, conservatives would make short work of her.

Even conservative columnist George Will has said that Janice Rogers Brown is out of the mainstream.

In the past, some members of the press, and even some in Congress, have accused us of bias when we raise ques-

tions about a nominee. That is nonsense. Justice Brown has received the same treatment as other nominees. We have asked about her record, looked at her statements, and reviewed her opinions. We have raised questions when her record cast doubt on her commitment to the rule of law.

During the recent debate on judicial nominees, almost all of us, Republicans and Democrats, have emphasized that we want an independent judiciary. If that is truly what we believe, we must vote no on the nomination of Janice Rogers Brown. She opposes many of our society's most basic values shared by both Republicans and Democrats.

Throughout its history, America has embraced the ideals of fairness, opportunity, and justice. We all believe our laws are there to help ensure everyone can share in the American dream and that everyone should be free from discrimination. Janice Rogers Brown has expressed hostility to some of the protections most important to the American people, including those that protect workers, civil rights, and the environment. We believe that judges should be impartial, not beholden to powerful corporate interests. If we believe in these basic protections, it makes no sense to confirm a judge who would undermine them and turn back the clock on many of our most basic rights.

The Senate's role in confirming judges to the Federal courts is one of our most important responsibilities under the Constitution. We count on Federal judges to be openminded, fair, and respect the rule of law. Despite what Justice Brown thinks, laws passed by Congress to give Government a role in protecting the environment, immigrants, workers, consumers, public health and safety, have helped to make America a stronger, better, and more fair country. A nominee so deeply hostile to so many basic laws does not deserve to be appointed to such an important Federal court.

Last month, we celebrated the 51st anniversary of the Supreme Court's landmark decision in *Brown v. Board of Education*. Nothing can be a more important reminder of the role of our courts in upholding individual rights. In confirming Federal judges, we must ensure that they will uphold the progress our country has made in so many areas, especially in civil rights.

Justice Brown's record and her many intemperate statements give me no confidence that she will do so, and I urge my colleagues to vote against her nomination.

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

The PRESIDING OFFICER (Mr. COLEMAN). Without objection, it is so ordered.

BIRTH CONTROL

Mr. DURBIN. Mr. President, today is a very important day in American history. On June 7, 1965, 40 years ago today, the U.S. Supreme Court struck down a Connecticut law making it a crime to use or prescribe any form of birth control or even to give advice about birth control. Forty years ago it was a crime to prescribe any form of birth control in the State of Connecticut, or to use it, or to give advice about it: 40 years ago.

It is hard to imagine, isn't it? Even married couples in Connecticut could be convicted of a crime, fined, and sentenced to up to a year in prison for using forms of birth control. Doctors who prescribed contraceptives, pharmacists who filled the prescriptions, even people who simply provided advice about birth control, could be charged with aiding and abetting a crime, fined, and sent to prison for up to a year.

But 40 years ago today, just across the street, by a vote of 7 to 2, the Supreme Court struck down the Connecticut law. The case was called *Griswold v. Connecticut*, a famous case. The Court's ruling held for the first time in our Nation's history that the Constitution guarantees all Americans the right to privacy in family planning decisions. Such decisions were so intensely personal, their consequences so profound, the Court said the State, the Government, may not intrude, it may not impose its will upon others.

You can search our Constitution, every single word of it, as short a document as it is, and never find the word "privacy" in this document. Yet the Supreme Court said they believed the concept of our privacy was built into our rights, our individual rights and liberties.

I referred briefly to this landmark ruling earlier today in remarks opposing the nomination of Janice Rogers Brown to serve as a Federal circuit court judge in the District of Columbia. That nomination is before the Senate at this moment. It is for a lifetime appointment. Janice Rogers Brown is a justice in the California Supreme Court who has stated explicitly her own personal philosophy, her own judicial philosophy, and it runs counter to many of the concepts and values I will be discussing as part of this commemoration of the *Griswold* decision.

I am glad there is a bipartisan resolution sponsored by my colleague from Illinois, Senator BARACK OBAMA, and Senator OLYMPIA SNOWE of Maine, calling on the Senate to celebrate the 40th anniversary of the *Griswold* decision. In that resolution, my two colleagues, one Democrat, one Republican, ask the Senate to renew its commitment to make sure that all women, including poor women, have access to affordable, reliable, safe family planning.

Right at the heart of the *Griswold* decision, the right to make the most intimate personal decisions about our lives in private, without Government

interference, we find the foundation for future decisions that expanded reproductive rights. In 1972, in *Eisenstadt v. Baird*, the Supreme Court granted unmarried people in America access to family planning and contraception—1972—and, in 1973, the famous case, *Roe v. Wade*, a 7-to-2 decision by the Supreme Court said that women have a fundamental right to decide whether to continue a pregnancy, depending on the state of the pregnancy. Supreme Court Justice Harry Blackmun was nominated to serve on the Supreme Court by Richard Nixon—obviously a Republican President. Justice Blackmun had been on the Court less than a year and a half when he was assigned to write the majority opinion in *Roe v. Wade*.

There is a brilliant new biography called “*Becoming Justice Blackmun*” by Linda Greenhouse. I finished it and recommend it to my colleagues. Justice Blackmun served on the Court at several different levels and kept copious notes. From those notes, which were donated, they have derived this biography, which I recommend to anyone, regardless of your political background, to understand what happens behind those closed doors at the Supreme Court.

Justice Blackmun revealed in this book how he struggled with the assignment of writing the majority opinion on *Roe v. Wade*. You see, he had been the general counsel for the Mayo Clinic, one of the most outstanding hospitals in America, which happens to be in the State of our Presiding Officer, Minnesota, in Rochester. So Justice Blackmun left Washington and went back to the library of the Mayo Clinic as he wrote this decision. He worked for long periods of time, plowing through books and articles on the whole question of abortion. He listened to a lot of people, including his own daughter, who dropped out of college in her sophomore year after becoming pregnant.

In his notes for the *Roe* decision, Justice Blackmun made two predictions. Here is what he said. The Court will be excoriated at first for its decision. Then, he went on to say, there will be an unsettled period for a while as States brought their laws into compliance with the *Roe v. Wade* decision.

The first prediction proved accurate; the second, overly optimistic. Thirty-two years after the *Roe* decision, 40 years after the *Griswold* decision, America today remains unsettled, not only about reproductive rights, but about many other fundamental matters of conscience as well. We are struggling today with a question that is as old as our democracy itself: What is the appropriate, what is the proper relationship between personal religious belief and public policy? How many battles, how many debates do we struggle through that go to that single issue? When should one group in America be able to impose its own moral code on the rest of society?

It is worth remembering that the *Griswold* decision overturned Connecticut’s version of a Federal law called the Comstock Act. In 20 years on Capitol Hill, I have never heard anyone refer to the Comstock Act. Listen to the history. This law was named after its author, Anthony Comstock, a morals crusader and a zealot anti-abortion advocate.

In 1868, Anthony Comstock was the driving force behind a State anti-obscenity law in New York. In 1873, he brought his crusade to Washington. He lobbied Congress to pass a Federal law making it a crime to advertise or mail not only “every lewd, lascivious, or filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character” but also any information “for preventing conception or producing abortion.”

Congress passed the Comstock law unanimously, with little debate. It then commissioned—this is something I find almost hard to believe—it commissioned Anthony Comstock as a special agent of the U.S. Post Office, gave him the power under the law to define what should be banned in America, and also vested in Mr. Comstock the power of arrest and gave him a huge travel budget. Imagine that: Mr. Comstock spent the next 30 years crisscrossing America, enforcing his law as he saw fit.

Two years before he died in 1915, Anthony Comstock bragged that he had been personally responsible for the criminal conviction of enough people to fill a 61-car passenger train. He prosecuted Margaret Sanger, the family planning pioneer, on eight counts of obscenity because she published articles on birth control. Druggists were punished and criminalized for giving out information to Americans about family planning and contraception. Publishers revised their texts and books so as to avoid the wrath of Mr. Comstock and his law, deleting banned words such as “pregnant,” and Americans lived with his censorship of the mail.

The Irish playwright George Bernard Shaw dismissed the Comstock Act as “a standing joke at the expense of the United States.” There was nothing funny about the Comstock Act, nothing funny to those who were forced by the law to conform with Anthony Comstock’s rigid personal moral code. The penalty for violating the Comstock Act was up to 5 years in prison at hard labor and a fine of up to \$2,000. For every victim who was prosecuted, there were untold others whose lives, health, and family suffered as a result of being denied basic information about family planning.

Linn Duvall Harwell is one of those who suffered. Miss Harwell now lives in New Hampshire. She is 82 years old. In 1929, when she was 6 years old, her mother, who was then 34 and pregnant for the eighth time, lost her life. She tried to abort her own pregnancy using knitting needles and bled to death,

leaving behind a husband and five small children. Linn Duvall Harwell has spent her life trying to spare other women her mother’s fate by protecting women’s right to safe and legal contraception and abortion.

In 1958, Linn Harwell moved to Connecticut. A woman at her church asked her to volunteer for Planned Parenthood. She and other young mothers were trained in medical understanding of birth control by Estelle Griswold, the director of Planned Parenthood in Connecticut, and Charles Lee Buxton, the league’s medical director. These were the two people who brought the lawsuit that later became the *Griswold* case before the Supreme Court. Years before the Court struck down Connecticut’s Comstock law, Linn Duvall Harwell defied the law to teach poor women in housing projects about birth control and family planning.

Yesterday, the Chicago Sun-Times carried an article written by Miss Harwell about her life’s work and the renewed threats today to the rights identified in *Griswold* and *Roe*. In her op-ed, Miss Harwell recalled a woman she met in 1968 named Rosie. Rosie was 32 years old. She and her husband, a short-order cook, were the parents of 11 children.

Miss Harwell wrote:

By the time I met Rosie and her family, I could not help her, for she had so many children already. She and her family were imprisoned in poverty because she was unable to access the preventive medicine that I easily obtained.

She added:

The Comstock law denied health care to millions of Rosies because of religious bigotry, legalized injustice and ignorance.

Today, it is estimated that 95 percent of American women will use birth control during their childbearing years. Reliable birth control is now a critical part of preventive health care for women. And *Roe*, although it has been weakened, is still the law of the land.

The widespread use of birth control has helped reduce maternal and infant mortality by an astonishing two-thirds in the last 40 years. Since *Griswold*, we have reduced infant and maternal mortality in America by two-thirds. In 1999, the U.S. Centers for Disease Control and Prevention included family planning on the list of “Ten Great Public Health Achievements in the 20th Century.”

But Comstockery seems to be making a return. You can see it in efforts to impose gag rules on doctors and other measures designed to make it harder for women to get information and services related to family planning and abortion. You can see it in the stories of women who are harassed by pharmacists when they attempt to fill prescriptions for contraceptives—in some cases, even after these women have been victims of sexual assault.

A chill wind blows for reproductive rights and possibly other issues of conscience as well. You can hear that wind in the rhetoric of extremists who rail

about the "culture war" in America and misrepresent legitimate political debate as attacks on people of faith.

We heard the chill wind of religious intolerance in some of the sad debate over the tragedy of Terri Schiavo. We heard it in the dangerous, vitriolic condemnations of judges, like George Greer, the judge in the Schiavo case, who dared to enforce the law as he believed the Constitution required.

We can hear that chill wind of religious and social intolerance today in the debate over stem cell research. Once again, as with the Comstock laws, a passionate group who sees itself as the moral guardians of America would use the power of our Government to deny life-saving medical care to those who need it. They believe that a cell blastocyst deserves the same legal standing and protections as a full-grown child or adult suffering from Parkinson's or diabetes or terrible injury to their spinal cords. I respect their opinion. I respect their religious beliefs. In most cases, I don't share them. Neither do most Americans. I don't believe this vocal minority, no matter how well intentioned they may be, no matter how moral they believe themselves to be, should have a veto power over medical research that offers apparently unlimited potential to heal broken bodies and minds and save lives.

Will our courts continue to recognize the constitutional right to privacy on family planning and other profoundly personal issues? Or will we fill the Federal bench with judicial activists who see themselves as soldiers in a cultural war, who want to put their own agendas ahead of the Constitution? That is one of the questions that is at the heart of the debate on the Federal judges.

The filibuster debate is not about old Senate rules. It is about whether self-described cultural warriors can use our Government to impose their personal moral agenda on America.

In April, a group of organizations held a televised rally to condemn the Senate filibuster rule as a weapon against people of faith. They called it "Justice Sunday." That day, Janice Rogers Brown, the nominee now before the Senate, gave a speech in which she argued that "people of faith are embroiled in a war against secular humanists." According to newspaper accounts, she went on to say:

[T]here seems to have been no time since the Civil War that this country was so bitterly divided. It's not a shooting war, but it's a war.

Mr. President, Americans are not at war with one another. We are at war in Afghanistan and Iraq, wars, sadly, fueled by religious extremism in many respects. Expressing honest, fundamental differences of opinion on political and social questions here at home is not an act of war. It is an act of democracy. It is our democratic process and our Constitution at work.

I respect the right of every person to express his or her beliefs about religion

or anything else. That is part of the beauty of being a citizen in this great Nation. But we cannot allow the beliefs of a majority, or even a vocal minority, to determine moral choices for every American. As the Supreme Court ruled so wisely 40 years ago, there are decisions that are so intensely private that the Government has no right to intrude.

Soon I hope we take up the issue which the House considered just several days ago on stem cell research. It strikes me as strange, maybe unfair, that some believe we should oppose in vitro fertilization in every circumstance. I have friends of my family, friends for years, who have spent small fortunes in the hopes that a mother and father who cannot conceive by natural means can use this process to have a child whom they will rear and love all of their lives. One of my friends has spent \$80,000 in two separate, thank goodness successful, efforts, and she has two beautiful children to show for it.

I cannot imagine why that is an immoral act, when a husband and wife will go to those extremes to bring a life into this world that they will love and nurture. But we know, just as in normal conception, there will be, during the process, some of the fertilized eggs that will not lodge in a mother's womb and lead to human life. That is the natural thing that occurs.

The same thing happens during in vitro fertilization. If they are successful in creating this fertilized egg, and then implanting it in a woman's womb so she can have a baby, it is a miracle, but as part of that miracle there will be some of these fertilized eggs which cannot be used.

So the question before us in stem cell research is very clear: Should stem cells from blastocysts be used to save others' lives, to prevent disease, to give someone hope and a future? That is what it is about. There are some who say no, some who would say we should not allow in vitro fertilization, and others who say, if you allow it, you should never allow those discarded blastocysts to be used for medical research.

The position of the Bush administration is close to that. The President, in August of 2001, said he would approve certain stem cell lines being used for research but no others. Well, it turns out those stem cell lines were very limited in their number and quality, and scientists and medical researchers have told us that the President's approach is not going to give us the opportunity we need to develop these stem cells into cures for diseases. So many of us believe we should move forward.

We should have strict rules against cloning. I do not know of a single Member of Congress, of either political party, who supports human cloning. We are all opposed to that. It should be condemned, and we should have strict ethical guidelines on the use of these stem cells so that they are used legiti-

mately for research, not for profit or commercialization, but legitimately used for research to try to find the cures to these vexing diseases.

Many of us believe that this is as pro-life as it gets. If you can take stem cells that would be otherwise discarded and never used for any purpose and use them for the purpose of giving a youngster who has to inject with insulin three times a day a chance to be rid of diabetes, if you can use it for a person afflicted in their forties or fifties with Parkinson's disease, which is a progressively degenerative disease in most instances, if you can use it to try to regenerate the spinal column and all the things that are necessary so someone can walk again after a spinal cord injury—how in the world can that be wrong?

That strikes me as promoting life. Yet some will come to the floor, even threatening a filibuster, saying that we cannot do this because it violates their personal moral and religious beliefs. Well, I understand that. And that is how they should vote. But to stop the rest of the Nation—because of their personal moral and religious beliefs—from this type of medical research seems to me to be counterproductive, if you are truly committed to life and the health of those who surround us.

Forty years ago, the decision was made across the street that there are certain elements of privacy, there are certain elements of personal decisions made by individuals and families which the State, the Government cannot overrule because of anyone's personal religious, moral belief. They said that privacy is critically important in America. Those private decisions should be protected.

Every nominee for the Supreme Court I have heard in recent times has faced a Judiciary Committee question from some member, Democrat or Republican: Do you still agree with the *Griswold v. Connecticut* decision? Do you still believe that, even though this Constitution does not include the word "privacy," that is part of what we have as Americans as part of our individual rights and liberties? The only one who tried to, I guess, split the difference and find some way to argue around it was Robert Bork. His nomination was ill-fated after he made some of those statements.

I believe most Americans feel we should be personally responsible, that we should be allowed to have our own personal religious beliefs, but they also think we should stay away from the Government imposing religious beliefs on one group or the other. That is what happened with the Comstock laws. That is what led to the laws in Connecticut, which were stricken in *Griswold*. Sadly, that is part of the debate today when it comes to stem cell research.

I am urging Senator FRIST, a medical doctor, one I greatly respect, to bring this bill up and bring it up quickly. I know there is a feeling by the White

House, and maybe even by some in Congress, that we should avoid this stem cell research debate. But when you think of the millions of Americans and their families who are counting on us to move medical research forward, is there anything more important on our political agenda?

I sincerely hope President Bush, who made an exception for some stem cell lines for research, will understand that you cannot take an absolute position on this issue. It is a tough issue. It is one where we should draw good, ethical guidelines for the use of this research, but not prohibit it, not close the door to this research and the cures that could emanate from it. That, I think, would be a lesson well learned, a lesson consistent with the decision made by the Supreme Court 40 years ago today.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I would like to get us back on the topic at hand. It is a topic that has been denied for some period of time. It is the Honorable Janice Rogers Brown nomination to the U.S. Court of Appeals for the DC Circuit. "Justice delayed is justice denied" is an old saying under the law. This lady has been delayed a long time. It is time to get this nomination through.

I am glad to see the cloture vote move us forward. She is going to be now approved, I believe, by a majority vote and a majority opinion. And I think if the country had to vote on Janice Rogers Brown, it would be a 90-plus percent vote for this lady, given her background, given her judicial expertise, given her demeanor, given her nature.

I think the country would look at this lady, whom I have a picture of here, and say: That is the type of person I want on the bench. This is a good, honorable person, with a great heart, a well-trained mind, who is thoughtful, with great experience. This is the type of person we ought to have on the bench. Yet we have just heard litany after litany of excuses, the dissecting of cases that you try to then parse to say she should not be on the bench for whatever reason.

I want to go through some of what has been stated previously. I want to go through, again, her background to get us back on topic. And then I want to go through some of the specifics.

She is currently serving as an associate justice on the California Supreme Court. She has held that position since 1996. She is the first African-American woman to serve on the State's highest court. She was retained with 76 percent of the vote in the last election. Certainly, that does not seem to be the sort of extreme case anyone can come up with; that 76 percent of Californians think she should be retained on the court. If she is so extreme, if she is so off the mark, if she is so out of the mainstream, why, in California, wasn't she voted off the bench?

Why didn't at least 24 percent of Californians or more than 24 percent vote her off the bench? Why didn't she have a much closer election than that? Where is the beef, an old advertising phrase?

In 2002, Justice Brown's colleagues relied on her to write the majority opinion for the court more times than any other justice. Prior to appointment and confirmation to the California Supreme Court, Justice Brown served from 1994 to 1996 as an associate justice on the Third District Court of Appeals, an intermediate State appellate court.

Justice Brown enjoys bipartisan support from those in California who know her best. A bipartisan group of 15 California law professors has written to the Senate Judiciary Committee in support of Justice Brown. The letter notes that:

We know Justice Brown to be a person of high integrity, intelligence, unquestioned integrity, and evenhandedness. Since we have differing political beliefs and perspectives, Democratic, Republican and Independent, we wish especially to emphasize what we believe is Justice Brown's strongest credential for appointment on the D.C. Circuit Court: her open-minded and thorough appraisal of legal argumentation—even when her personal views may conflict with those arguments.

This is a bipartisan group that says she is open-minded and thorough in her appraisal of legal arguments.

A bipartisan group of Justice Brown's current and former judicial colleagues has also written a letter in support of her nomination. Twelve current and former colleagues noted in a letter to the committee that:

Much has been written about Justice Brown's humble beginnings, and the story of her rise to the California Supreme Court is truly compelling. But that alone would not be enough to gain our endorsement for a seat on the Federal bench. We believe that Justice Brown is qualified because she is a superb judge. We who have worked with her on a daily basis know her to be extremely intelligent, keenly analytical, and very hard working. We know that she is a jurist who applies the law without favor, without bias and with an even hand.

This doesn't sound like the same lady who is being discussed on this floor by some of my colleagues on the other side.

Ellis Horvitz, a Democrat and one of the deans of the appellate bar in California, has written in support of Justice Brown noting that:

... in my opinion, Justice Brown [possesses] those qualities an appellate jurist should have. She is extremely intelligent, very conscientious and hard working, refreshingly articulate, and possessing great common sense and integrity. She is courteous and gracious to the litigants and counsel who appear before her.

Regis Lane, director of Minorities in Law Enforcement, a coalition of ethnic minority law enforcement officers in California, wrote:

We recommend the confirmation of Justice Brown based on her broad range of experience, personal integrity, good standing in the community, and dedication to public

service. . . . In many conversations with Justice Brown, I have discovered that she is very passionate about the plight of racial minorities in America, based on her upbringing in the south. Justice Brown's views that all individuals who desire the American dream regardless of their race or creed can and should succeed in this country, are consistent with [that group's] mission to ensure brighter futures for disadvantaged youth of color.

These are some of the people who know her the best. These are the statements they make about her. This is why she should be on the DC appellate court.

Justice Brown is an outstanding and highly qualified candidate as evidenced by her background, credentials, and training. This has been covered and covered. But she is a sharecropper's daughter, born in Greenville, AL, in 1949. During her childhood she attended segregated schools, came of age in the midst of Jim Crow policies in the South. She grew up listening to her grandmother's stories about NAACP lawyer Fred Gray, who defended Dr. Martin Luther King, Jr., and Rosa Parks. Her experience as a child of the South motivated her desire to be a lawyer. Her family moved to Sacramento, CA, when Justice Brown was in her teens. She later received a B.A. in economics from California State in Sacramento in 1974, and her J.D. from UCLA School of Law in 1977. She also received honorary law degrees from Pepperdine University Law School, Catholic University, and Southwestern University School of Law.

She has dedicated all but 2 years of her 26-year legal career to public service. For only 2 years has she not been in public service, 24 years of public service. Where is the person who is out of the mainstream? Where is the person who is irrational? Where is the person who doesn't hold or have the judicial temperament or doesn't have the intellect or the open-mindedness to be a judge in all of this? She has dedicated most of her life, 24 years, to public service.

Prior to more than 8 years as a judge in State courts, Justice Brown served from 1991 to 1994 as legal affairs secretary to California Governor Pete Wilson where she provided legal advice on litigation, legislation, and policy matters. From 1987 to 1990, she served as deputy secretary and general counsel to the California Business, Transportation, and Housing Agency where she supervised the State banking, real estate, corporations, thrift, and insurance departments.

From 1972 to 1987, she was deputy attorney general of the Office of the California Attorney General where she prepared briefs and participated in oral arguments on behalf of the State in criminal appeals, prosecuted criminal cases, and litigated a variety of civil issues. She began her legal career in 1977, when she served 2 years as deputy legislative counsel in the California Legislative Counsel Bureau. She has a broad base of experience from which to

draw to be an excellent person to sit on the Federal appellate court bench.

She has participated in a variety of statewide and community organizations dedicated to improving the quality of life for all citizens of California. Justice Brown has served as a member of the California Commission on the Status of African-American Males—the commission was chaired by now-U.S. Representative BARBARA LEE—and made recommendations on how to address inequalities in the treatment of African-American males in employment, business development, the criminal justice, and health care systems.

She is a member of the Governor's Child Support Task Force, which reviewed and made recommendations on how to improve California's child support enforcement laws. She serves as a member of the Community Learning Advisory Board of the Rio Americano High School and developed the Academia Civitas Program to provide government service internships to high school students in Sacramento. She has also assisted in the development of a curriculum to teach civics and reinforce the values of public service.

She has volunteered time with the Center for Law-Related Education, a program that uses moot courts and mock trials to teach high school students how to solve everyday problems. She has taught Sunday school class at Cordova Church of Christ for more than 10 years. That is Justice Janice Rogers Brown. Those are the facts. That is who she actually is.

So why has it taken that long a period of time for us to be able to get her to the floor? Why is there such consternation about her becoming a DC appellate court judge? Why have we spent years to get her to the point where we will vote on—I would love to see it today, but at least this week—her approval to the DC appellate court bench? I think it goes to the fact that she is a lady, nominated by President Bush, who will strictly construe the Constitution, stay within the bounds of the document, not try to write new opinion as to a new constitutional right or a new issue that is not within the Constitution or not within the law. She is what lawyers would call a strict constructionist. She says if the law says this—and it was passed to say that—that is what we enforce, if that is what the Constitution says.

It is not the living, breathing document of let's try to create another right or privilege here and take three or four of the amendments to the Constitution, provisions of the Constitution, frame them together, and then let's find a new right in the Constitution because we think this is good for the country. If it is a change to the Constitution that needs to happen, then it should happen. And it should go through this body with a two-thirds vote. It should go through the House with a two-thirds vote. It should go to the State legislatures for a three-fourths vote. It should not be a majority opinion of a bench somewhere.

She says she will stay within the confines of the law. That is what the President is trying to nominate, judges who will stay strict constructionists within the confines of the law and be what judges should be, interpreters of the law, enforcers of the Constitution as it is written, not as they wish it were written. That is what this nomination is about.

Others want to see a court that will expand and look and read different things in, even if it doesn't pass through this body or doesn't pass through the legislature or isn't signed into law by the President. We really are at a point of what it is that the judiciary is to be about in America. You are seeing the face of somebody who is a strict constructionist, saying that this is what it is about.

The judiciary has a role. It has a constitutional role. It is an extraordinarily important role. But it is defined and it is set. She believes it should stay within. That is why we have had so much trouble with so many of these judicial nominations.

During the first 4 years of the Presidency of George W. Bush, the Senate accumulated the worst circuit court confirmation record in modern times, thanks to partisan obstruction. Only 35 of President Bush's 52 circuit court nominees were confirmed, a confirmation rate of 67 percent. To give you a comparison on that:

People have said that is not so low; we approved a number of these lower court judges. But let's take President Johnson's term in office. There was a Democrat Senate and a Democrat President. What was his circuit court nomination rate? It was 95 percent.

President Bush: Republican Senate, Republican Presidency, 67 percent.

What about President Carter? Democratic President, Democratic Senate, and 93 percent of his circuit court nominees were approved.

President Bush: 67 percent.

What has taken place is a filibuster of good people, such as Janice Rogers Brown, who has served honorably most of her professional career in public service but does believe there are confines within which they rule. It is in the Constitution or it is not; it is in the law or it is not; it is constitutional or it is not. It is not what I wish it were, it is what is actually there. It is what the precedents have said that matters.

The average American may not be familiar with Senate rules on cloture or on the unprecedented low confirmation rate of President Bush's circuit court nominees, but the average American can tell you one thing: that the Constitution and common sense require the Government to be accountable to the people for its actions. This is especially the case of what we do in the House and the Senate as we move forward in this country.

I want to address some of the items that have been coming up in some of these debates. Various Members have

raised specific points, and I want to address a few of those points.

Certain liberal special interest groups have tried to distort Janice Rogers Brown's decision when she served on the State court of appeals in the case of Sinclair Paint Company v. Board of Equalization. They claimed she was insensitive to the legislature's desire to protect children from lead poisoning.

What was really at issue in the case was the respect for the will of the California voters who wanted to make it more difficult for the California Legislature to raise taxes.

California proposition 13—people remember that—enacted in June of 1978, requires a two-thirds vote of the legislature to increase State taxes. That is what proposition 13 did. In 1991, the California Legislature voted by a simple majority to assess fees on manufacturers engaged in commerce involving products containing lead in order to fund a program to provide education, screening, and medical services for children at risk for lead poisoning. Justice Brown simply held for a unanimous court of appeals—a unanimous court of appeals—in affirming the judgment of the trial court that the assessment constituted a tax within the meaning of proposition 13 and thus had to be passed by a two-thirds vote.

That seems to be pretty basic and pretty common sense and not about her insensitivity to cases involving lead poisoning but simply what her role is under the law and her role as a jurist.

Under applicable California case law where payment is exacted solely for revenue purposes and its payment gives the right to carry on the business without any further conditions, the payment constitutes a tax. The Childhood Lead Poisoning Protection Act did not require the plaintiff to comply with any other conditions. It was merely required to pay its share of the program cost. Justice Brown reasonably concluded the assessment was a tax.

There are several other cases that have been brought up that I want to address.

Several liberal interest groups have attacked Justice Brown's dissent in *Aguilar v. Avis Rent-a-Car Systems* in which she argued racial discrimination in the workplace, even when it rises to the level of illegal race discrimination, cannot be prohibited by an injunction under the first amendment. I want to talk about this.

Justice Brown, as I have cited, is the daughter of a sharecropper from rural Alabama. She grew up under the shadow of Jim Crow laws. I think she understands the lingering effects of racial classification. In light of her personal history, the allegation she is insensitive to discrimination is absurd.

Notwithstanding her personal experiences with racism, Judge Brown's role as a judge has been to apply the law which she has done faithfully and rigorously. As I discussed earlier, it is the

role of the judge to apply the law and apply the Constitution, not rewrite the law the way they wish it were, not to rewrite the Constitution the way they think it ought to be, but to apply it in a particular case. And this is a case she could have looked at from her background and said: I understand this situation. I have been in this situation. Yet what does the law itself say?

Judge Brown's opinions demonstrate her firm commitment to the bedrock principle of civil rights. Discrimination on the basis of race is illegal, it is immoral, unconstitutional, inherently wrong, and destructive of a democratic society. Those are her statements.

In the Aguilar case, Justice Brown described the defendants' comments as disgusting, offensive, and abhorrent, and she voted to permit a large damage award under California's fair employment law to stand. Her dissent only pertained to an injunction that placed an absolute prohibition on speech. This is commonly called a prior restraint which most free speech advocates strenuously oppose.

Justice Brown's opinions demonstrate her firm commitment to the first amendment. She cited a long line of Supreme Court cases for the proposition that speech cannot be banned simply because it is offensive.

Justice Brown's opinions also demonstrate her commitment to equality in the workplace. Justice Mosk and Justice Kennard, considered one of the most liberal members of the California Supreme Court, also dissented on first amendment grounds.

Here we see the core of the person, the commitment to the law and to the rule of law. Here was something she had experienced, she understood, and yet had to say: OK, what does the law actually say, and what are the first amendment rights? Then she applied them in the case. That is the type of justice who looks at what is their role and what is it that they are required to do under the Constitution.

Judge Brown's opinion was so powerful that it prompted one member of the U.S. Supreme Court to take the unusual step of publishing an opinion dissenting from the denial of certiorari.

I find it amazing that the very same liberal outside groups who never hesitate to level accusations of censorship, perhaps, against the administration or even Congress are attacking Justice Brown for standing up for what she interpreted and looked at clearly as a first amendment issue which she had to stand by even though she found the comments herself so offensive and wrong.

Justice Brown has been attacked as being insensitive on women's issues because she has voted to strike down a State antidiscrimination law that provided a contraceptive drug benefit to women. Some have claimed her to be hostile to these women's issues.

What one has to do is look at the actual case, the actual facts, the actual law in front of her because her role as

a justice is to take the law and the facts applied in this particular case, not what she wished it was, not what she hoped it would be, not what she thinks it should be in a perfect world, but what it is.

The law involved in the case actually required health and disability insurance policies to cover contraceptives. Justice Brown did not vote to strike down the law, she simply argued that the law should not be applied to force a religious institution—here Catholic Charities of Sacramento—to do something that violated its religious beliefs. This case was about religious freedom under the first amendment, not about gender discrimination or revisiting the right to contraceptives. It is about discrimination based on religion, and Justice Brown stood against this discrimination. Telling us about this case without saying a word about religious freedom on the issue misinforms people totally about this particular case and this person.

Justice Brown has been attacked for rendering opinions that have been considered outside the mainstream. These allegations are spurious. As I have stated, she has been affirmed by the population, the public voting in California, with a 76-percent approval rating. If her opinions are so out of the mainstream and so wrong, why weren't more Californians than roughly 25 percent concerned about this?

The flip side of this is that I have never won an election by a 75-percent margin. I would love to win an election by that margin. This is a confirmation election. It is different than what we face in the Senate.

Still, as somebody who has run for elections, when you get up to that three-fourths mark, that is really good, standing in front of the public and asking them to endorse your status, endorse your position, particularly if this allegation were true. If it were true that she is way out of the mainstream of public opinion in California and she is way out, on a consistent basis, so that her opinions are in the paper all the time and they are way out there, contrary to California public opinion, would you not think more than 25 percent of Californians would say, I am going to vote against confirming this lady?

I think probably a lot of people would look down the ballot box on judges and say, Which ones can I vote against because I am used to voting for all of them, particularly if somebody was so out of the mainstream on such a consistent basis that she is in the papers all the time about being in this dissent or being overruled in this case, that there would be some recognition of her and more people would be concerned. Yet that is not the case. I submit it is because it is just not true. She is not outside the mainstream.

I believe the criticism is utterly baseless. Among the eight justices who served on the California Supreme Court between 1996 and 2003, Justice Brown

tied with another judge as the author of the second most majority opinions for the court. Only the chief justice wrote more majority opinions. Now, those are her colleagues on the bench saying: We think you are the right person to write this opinion. You are expressing the opinion for most of us. You are a hard worker. You are intelligent. You are an excellent wordsmith. These are all traits we would want in a justice.

Justice Brown also ranked fourth among the eight justices for the number of times she dissented alone. This puts her squarely in the middle, certainly not on either fringe in that category. It is wrong for Justice Brown's opponents to throw out numbers without offering any basis for comparison on her court.

I wish to talk about a particular case, the case of *People v. McKay*. Justice Brown stood alone among her colleagues in arguing for the exclusion of evidence of drug possession that was discovered after the defendant, Conrad McKay, was arrested for riding his bicycle the wrong way on a residential street. Her dissent is remarkable for its pointed suggestion of the possibility that the defendant was a victim of racial profiling.

Justice Brown commented:

Questions have been raised about the disparate impact of stop-and-search procedures of the California Highway Patrol. The practice is so prevalent, it has a name: "Driving While Black."

This is somebody who is insensitive? I do not think that is the case with Justice Brown.

I will go on and read from the conclusion of her dissent. She added the following stirring comments:

In the spring of 1963, civil rights protests in Birmingham united this country in a new way.

This is a native of Alabama.

Seeing peaceful protesters jabbed with cattle prods, held at bay by snarling police dogs, and flattened by powerful streams of water from fire hoses galvanized the nation. Without being constitutional scholars, we understood violence, coercion, and oppression.

These are the words of Justice Janice Rogers Brown. And I continue:

We understood what constitutional limits are designed to restrain. We reclaimed our constitutional aspirations. What is happening now is more subtle, more diffuse, and less visible, but it is only a difference in degree. If harm is still being done to people because they are black, or brown, or poor, the oppression is not lessened by the absence of television cameras.

I do not know Mr. McKay's ethnic background. One thing I would bet on: he was not riding his bike a few doors down from his home in Bel Air, or Brentwood, or Rancho Palos Verdes—places where no resident would be arrested for riding the "wrong way" on a bicycle whether he had his driver's license or not. Well . . . it would not get anyone arrested unless he looked like he did not belong in the neighborhood. That is the problem.

That was her dissenting opinion, a stirring opinion, quoting things that in her growing up and in her childhood

she had witnessed. She is very sensitive on racial issues.

Last month, Ginger Rutland, who is on the editorial board of the *Sacramento Bee*, wrote this in her newspaper about Justice Brown's judicial courage:

I know Janice Rogers Brown, and she knows me, but we're not friends. The associate justice on the California Supreme Court has never been to my house, and I've never been to hers. Ours is a wary relationship, one that befits a journalist of generally liberal leanings and a public official with a hard-right reputation fiercely targeted by the left. . . . I find myself rooting for Brown. I hope she survives the storm and eventually becomes the first black woman on the nation's highest court.

In describing Justice Brown's position in the McKay case that I quoted Justice Brown earlier, Rutland, the editorialist from the *Sacramento Bee*, says the following:

Brown was the lone dissenter. What she wrote should give pause to all my friends who dismiss her as an arch conservative bent on rolling back constitutional rights. In the circumstances surrounding McKay's arrest, the only black judge on the State's highest court saw an obvious and grave injustice that her fellow jurists did not. . . . In her dissent, Brown even lashed out at the U.S. Supreme Court and—pay close attention, my liberal friends—criticized an opinion written by its most conservative member, Justice Antonin Scalia, for allowing police to use traffic stops to obliterate the expectation of privacy the Fourth Amendment bestows.

This is an admitted liberal editorial writer talking about Brown's courage.

This is a lady who is going to do an outstanding job on the DC Circuit Court of Appeals. The only tragedy is that she has not been there years earlier. The tragedy is that she has been held up because she looks at doing her job for what it is, which is staying within the Constitution and enforcing it, looking at the law and enforcing it; or if it goes against what is in the Constitution, ruling it unconstitutional, but not looking at the Constitution as she hoped it would be or mixing together a series of ideas in the Constitution and finding a new right; or looking at the law and thinking it should be this way or that and expanding it that way. This is a person who looks at her job as being a judge, in an honorable role, but it is a role that has a set to it and a way, and she is upholding that.

I believe that is really what is at the cornerstone of this debate. Unfortunately, we get it mired so often in personalities and accusations and hyperbole, comments of a personal nature toward an individual that are simply not true, when really what we are talking about is the role of courts.

Courts, like every institution, are people. People are on the courts. We have judges who are appointed to the courts, and they have their views and they have a way of looking at the Constitution or they have a way of looking at various documents or laws. She looks at it as more of a strict constructionist. That is an honorable way to look at it. I believe it is the right way

to look at it. Yet she gets painted with all the other sorts of accusations that are simply not based on fact but are a disguise for what the real debate is about, which is the role of the judiciary in America today.

We are having a rolling debate about that issue. We are having a lot of discussion about that. We are having discussions in various States and in the Nation about what is the appropriate role of the judiciary. I believe this is a lady who would stand by that role.

Those are a series of issues. I may visit some others later on, but this is a lady who is eminently qualified, will do a wonderful job. I support her nomination, and I hope we can get to a strong vote fairly soon on it.

I yield the floor.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from North Dakota.

Mr. DORGAN. Mr. President, this is a debate that is worth having. There has been a great deal of discussion about this nominee for the lifetime appointment to the Federal bench.

There is no entitlement, of course, to a lifetime appointment to the Federal bench. The Constitution provides how this is done. First, the President shall nominate a candidate for a lifetime service on the Federal courts, and, second, the Congress shall provide its advice and consent, and determine whether to confirm the nominee. So the President nominates, sends a name, and the Congress does what is called in the Constitution advise and consent, says yes or no.

In most cases, the Congress says yes. This President, President George W. Bush, has sent us 218 names of people he wanted to send to the Federal courts for a lifetime. This Congress has said "yes" to 209 of the 218. That is pretty remarkable, when you think about it—209 out of 218 we have said "yes." There are a few we have delayed and held up and have been subject to cloture votes. Some have said they haven't gotten a vote. Yes, they have gotten a vote. The procedure on the floor, of course, is there is a cloture vote, and they didn't get the 60 votes, but 60 votes is what requires consensus in the Senate. It has been that way for decades and decades.

I have voted for the vast, vast majority of the 209 Federal judges that the President has nominated, including, incidentally, both of the Federal judgeships in North Dakota which were open. Both of which are now filled with Republicans. I was pleased to support them. I think they are first-rate Federal judges. I am a Democrat. The names that came down from the President to fill the two judgeships in North Dakota were names of Republicans. I am proud of their service. I testified in front of the Judiciary Committee for both of them and introduced both of them.

So the fact is this is not about partisanship. It is about nominating good people, nominating people in the main-

stream of political thought here in this country.

I take no joy in opposing a nominee, but I do think that if Members of the Senate will think carefully about the views of this nominee, they will decide that she really ought not be put on the second most important court in this country for a lifetime of service. Let me go through a few things that this nominee, Janice Rogers Brown, has said.

Let me say to my colleague who was speaking when I came in, this is not inuendo, not argumentative; these are quotes from the nominee. Facts are stubborn things. We are all entitled to our own opinions, but we are not all entitled to our own set of facts. Let me read the facts, and let me read the quotes that come from this nominee.

This nominee, Janice Rogers Brown, says that the year 1937 was "the triumph of our own socialist revolution." Why? In 1937, that is when the courts, including the Supreme Court, upheld the constitutionality of Social Security and the other major tenets of the New Deal. The triumph of socialism? I don't think so. What planet does that sort of thinking come from, a "triumph of socialism"?

This nominee says that zoning laws are a "theft" of property, a taking, under the Constitution; therefore, a theft of property. Well, we have zoning laws in this country for a reason. Communities decide to establish zoning laws so you don't build an auto salvage yard next to a church, and then have somebody move in with a porn shop next to a school and a massage parlor next to a funeral home. But this nominee thinks zoning is a theft of property. It is just unbelievable, it is so far outside the mainstream thought.

Here is what she says about senior citizens in America.

Today's senior citizens blithely cannibalize their grandchildren because they have a right to get as much free stuff as the political system will permit them to extract.

I guess she is talking about maybe Social Security and Medicare. I don't know for sure. All I know is that a good many decades ago, before there was Social Security and Medicare, fully one-half of all elderly in this country lived in poverty.

Think of that. What a wonderful country this is. This big old planet spins around the Sun, we have 6 billion neighbors inhabiting this planet called Earth, and we reside in the United States of America. What a gift and blessing it is to be here. But think, in 1935, one-half of America's elderly, if they were lucky enough to grow old, to age to the point where they were called elderly, one-half of them lived in poverty. One-half of them lived in poverty. So this country did something important, very important. We put together a Social Security Program and a Medicare Program. What did this nominee say about that? She said:

Today's senior citizens blithely cannibalize their grandchildren because they have a

right to get as much free stuff as the political system will permit them to extract.

Really? I wish perhaps she could have been with me one evening at the end of a meeting in a small town of about 300 people. A woman came up to me after the meeting and she grabbed a hold of my elbow. She was probably 80 years old. She said: Mr. Senator, can you help me?

I said I would try.

Then her chin began to quiver and her eyes welled up with tears and she said: I live alone. And she said: My doctor says I have to take medicine for my heart disease and diabetes, and I can't afford it. I don't have the money. Then she began to get tears in her eyes.

I wish perhaps Janice Rogers Brown understood something about that. She thinks this old lady, this elderly woman, struggling to find a way to pay for medicine to keep her alive, is cannibalizing somebody? I don't think so. I think it is incredible that someone would say this.

Now the President wants to put this nominee on the second highest court in the land for a lifetime of service.

She says again:

We are handing out new rights like lollipops in the dentist's office.

I guess I never thought the basic rights that we have in this country ought to be antithetical to what we believe is most important in America. I have traveled over most of this world and been in countries where there aren't rights. I have been in a country where, if people have the wrong piece of paper in their pocket and they are picked up, they are sent to prison for 12 years. I have seen the tyranny of dictatorships and the tyranny of communism. I happen to think basic rights that exist in this country for the American people are critically important; that "We the people," the first three words of that document that represents the constitutional framework for this country's governance, is not something that ought to be taken lightly.

Let me read a couple of other things that this nominee has said. She was the only member of the California Supreme Court to conclude that age discrimination victims should not have the right to sue under common law. Age discrimination victims should not have the right to sue?

She was the only member of the California Supreme Court who voted to strike down a San Francisco law that provided housing assistance to displaced and low-income and disabled people.

I don't understand the President sending us this nominee. Is it the case that this administration really wants to put on the Federal bench for a lifetime someone who is opposed to the basic tenets of the New Deal that have lifted so many people out of poverty in this country, that represents, in many cases, some of the best in this country—telling old folks that when you reach that retirement age you don't

have to lay awake at night worrying about whether you are going to be able to go to the doctor when you get sick because there will be Medicare; or telling people that Social Security will be there when you need it—you work, you invest in it, when you retire, you can collect it. Do we really want to put someone on this circuit court who believes that is a triumph of socialism? I don't think so.

There is a kind of arrogance here these days that is regrettable. I was here in the 1990s, and I watched 60 Americans who were nominated for judgeships never even have the courtesy of a day of hearings, let alone get to the floor of the Senate for a cloture vote or a vote up or down—60 of them. We are not even given the courtesy of a day of hearings. The President sends the name down in the 1990s. The majority party said, tough luck, we don't intend to do anything about it; you will not have a hearing; you will not have a vote. This name will not advance.

We did not do that. This caucus has not done that; in fact, just the opposite. Of the 218 names that have been sent to this Congress from this President, the Senate has approved 209 of them. Those who did not get confirmed had a cloture vote in the Senate. They had a day of hearings. They had an opportunity to testify before the Judiciary Committee. Their name was brought to the floor. We had cloture votes.

Now we have Members coming to the Senate on the other side saying, look, our policy is, everyone needs an up-or-down vote; not a cloture vote, an up-or-down vote. These Members did not hold that view at all in the 1990s. In fact, they did exactly the opposite. There are terms for that which I shall not use here.

The fact is, we are proceeding on the Janice Rogers Brown nomination because of an agreement made 2 weeks ago. I hope, however, having read what I have read about her views on a wide range of issues, that we will have sufficient colleagues in the Senate to say to this President, this is so far outside the mainstream, we will not approve this nominee.

It is not unusual for a political party to tell its President that you cannot pack the court. The members of Thomas Jefferson's own political party told Thomas Jefferson that. Members of the political party of Franklin Delano Roosevelt did the same thing, in his attempt to pack the Court.

My hope with respect to this nominee is that we will have sufficient numbers on the majority side—moderates and others—who will take a look at this record and say this is not the kind of record that we believe should commend someone for a lifetime of service on the DC Circuit. This is not what we should be doing.

I conclude as I started. I take no joy in coming to the Senate and opposing someone. I would rather be here speaking for a proposition, speaking for

someone. It was Mark Twain who once was asked if he would engage in debate. He said, sure, as long as I can take the negative time. He was told, we didn't tell you the subject. He said, the negative side will take no preparation.

I am mindful that it is very easy to oppose. Let me say this: On this issue, on this nominee, this is not a close call. This is not a close call. I wish I could be here to support this nomination. I will not support the nomination of someone who believes the elements of that which has made this country such a wonderful place in which to work and live represents a triumph of socialism. It is not the triumph of socialism. It is a reflection of the interests of this country, we the people of this country who said we will lift the senior citizens of this country out of poverty. And we have done that. We went from 50 percent in poverty to less than 10 percent in poverty. Why? Because we did something important in this country, Social Security and Medicare.

With respect to environmental issues, with respect to workers' rights, with respect to a whole series of issues, this nominee is profoundly wrong. She has a record, a long record, an aggressive record of activism in support of what are, in my judgment, outdated and discredited concepts.

My hope is that in the remaining hours in this debate—I think we will vote on this tomorrow—my hope is there will be sufficient moderates on the other side who will understand this record does not justify confirmation to the Federal bench for a lifetime. I hope the next time I come to the Senate to speak on a judicial nomination, I will be able to speak in favor of a nomination that is a strong candidate.

This President has nominated some good people. I mentioned two from my State. I will say it again: both Republicans, both terrific people, both people I was proud to introduce to the Judiciary Committee and proud to support. While we might disagree on some issues, these are extraordinary jurists. I am proud they are Federal judges in my State. I felt the same way about some of the other nominees.

But this President has sent us a handful of nominees who do not deserve the backing and support of this Congress. It is long past the time for this Congress to stand up and speak with an independent voice. This Congress is not some sort of subsidiary of the White House. It is not an adjunct to the Presidency. This Congress is a separate branch of Government under this Constitution. The President nominates but we advise and consent. It is up to the Senate to determine whether judicial nominees are confirmed or not. My hope is we will make the right decision with this nomination.

I yield the floor and 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. THOMAS. 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. THOMAS. Mr. President, I ask unanimous consent that I be allowed to speak for 10 minutes as in morning business.

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

ROLE OF THE FEDERAL GOVERNMENT

Mr. THOMAS. Mr. President, I know it has been a busy day and we are very much involved, of course, in moving forward with the judge arrangement, as we should be.

I spent a week in my home State. I guess we always come back with different ideas. I spent the whole time talking with people and having town meetings and those kinds of things, and in certainly a little different atmosphere.

People see a great deal in the news media about what is happening here, but, of course, what they get is what the media is intending for them to get, and somehow it is a little bit different. So frankly, people are a little impatient that we are not moving forward as much as we might. Certainly, we are working hard here, but the fact is, we have not moved to many different issues. I believe many of us want to do so.

I think we have spent an awful lot of time on internal kinds of issues that do not mean a lot to people out in the country. I understand that. I realize the way things are done here is important to us, such as changing procedures and all those things. But folks are talking about energy, folks are interested in a highway bill, people are interested in health and the cost of health care, such as what you do in rural areas with health care. There are a lot of these things that are so very important to people on the ground, and here we are continuing to talk about how we are going to vote on judges. So they get a little impatient. I understand that. So I hope we are in the process of doing something about that.

There is also a great deal of concern, of course, in Government spending and the deficit. I certainly share that concern. I have been more and more concerned about it as time has gone by. We have Social Security before us, about which we need to continue to do something.

Interestingly enough, the issue that came up most often when I was home in Wyoming is the idea of illegal aliens and illegal immigration and the great concern about that. I share that concern. Most people here do. Of course, we are seeking to do something. But perhaps we need to focus on some of those issues a little more.

I particularly will talk a little bit about spending and about the deficit. I think that is one of our most important issues. In relation to that, it seems to me we need to get some sort of an idea of what we think the role of

the Federal Government is. We have kind of gotten in the position that for anything that is wanted by anyone, why, let's get the Federal Government to do it. Then we have somebody here on the Hill who will introduce a bill to do that, and perhaps it has very little relationship to what we normally think is the role of the Federal Government.

I think most people would agree with the notion we want to limit the size of the Federal Government, that we, in fact, want Government to be as close to the people as can be, and that the things that can be done at the State level and the county level, the city level, should be done there, the things that can be done in the private sector should be done there. I would hope we could come up with some kind of general idea, an evaluation, of what we think the role of the Federal Government specifically should be.

The other thing I will comment on a little bit is having some kind of a system for evaluating programs. We have programs we put into place when there is a need. Hopefully, there is a need for them. I think it is also apparent that over a period of time that need may change. But yet, once a program is in place and people are involved, they build a constituency around it. It stays in place without a good look at it to see whether it still belongs there.

These are some of the issues of concern. I think the first step toward reducing the \$400 billion deficit is eliminating waste. Of course, what is waste to one person may not be waste to another. But there has to be, again, some definition as to how important things are relative to our goals and to assess programs that stay in place because they are there or that are not managed as well as they might be. I think we have some responsibility to try to ensure that we take a look at that issue.

There are serious problems facing our Nation today, of course. The President's budget that he put out proposes eliminating 150 inefficient and ineffective Government programs. You can imagine what that is going to mean to people who are involved. "Something in my town? Something in my State? We are not going to mess around with that."

There needs to be some kind of a relatively nonpolitical idea as to how you do that and what the purposes are. Of course, I see some of that right now in the military changes that obviously need to be made. They are difficult to make. So I hope the administration will pursue this idea of setting up some kind of a program—and I am here to support it—that evaluates those programs that are in place to see if, indeed, they are still as important as they were in the beginning.

We have to even go further than that, of course, to curb runaway spending. I think we can consolidate a number of the duplicative programs that are out there and save money and make it more efficient in their services. There

are organizations that could manage a number of programs, each of which now has its own bureaucracy, and to put them together to make it efficient. I know you will always have people who say: Well, you are taking away jobs. That is not the purpose of programs. The purpose of programs is to deliver a service, and to do it in a way that is as efficient as it can be.

Of course, there are programs that should be eliminated. They have accomplished what they were there for. We need to have a system. I hope and I am interested in helping to put together a program that would do that. There is probably some merit in having a termination to a program so that after 5 or 10 years, it has to be reevaluated to be extended. That is one way of doing it. I don't know if it is the only way. That is something we are going to do, and I would like to do some of that.

The role of the Federal Government, again, if you talk in generalities, if you talk to people in terms of philosophy, most would say, we want to keep the Federal Government small. How many times do you hear people saying: Keep the Federal Government out of my life? Yet at the same time we have created this kind of culture where whenever anything is needed or wanted, mostly money, then let's get the Federal Government to do it.

If we step back and take a look at it and say: Wait a minute, is this the kind of thing the Federal Government should be involved in or is this something that could be done more efficiently by a government closer to the people, I believe we ought to do that.

Some lawmakers here believe the Government is the solution to all of society's ills. I don't agree with that. I don't believe that. Our role in the Federal Government is a limited role. Our role is to provide opportunities, not to provide programs for everything.

Ronald Reagan said: Government is not the solution to our problem. Government often is the problem. That is true. That doesn't mean there isn't a role. There is a role, an important role. But we need to help define that somehow. That vision of limited government has, to a large extent, been lost. We need to debate. We need to have some discussion, some idea as to what that role is.

Unfortunately, sometimes the politics of government are you going to do everything for everybody because it is good politics. Politics is not our only goal here. Our goal is to limit government, to provide services, to provide them efficiently, and to evaluate them as time goes by.

Unfortunately, when a program gets put into place, it becomes institutionalized. It is there often without sufficient change. It is a real challenge. Something we need to do is to develop a plan, a consistent and organized plan to evaluate programs, to determine whether they are outdated, to determine whether they are still necessary, to determine if they could be done in a

little different way to be more efficient and more effective.

Clearly the Federal Government does have a role. It has a role in many matters. So our challenge is to determine what the roles are and then to set it up so that we are as efficient as can be. I know I am talking in generalities, but I believe these are some things that are basic to some of the ideas we ought to be talking about and evaluating. I sense that doesn't happen very much. We sort of are challenged to see how many programs we can get going. We seem to be challenged to see how much money we can spend.

I appreciate what the administration is seeking to do to try and reduce some of the spending. That is very difficult. You can see what kind of reaction you get cutting back on programs or changing them. Our budget group is working on doing some of that. We need to be more involved in that.

As I mentioned, evaluating programs is something we should do. We have a constitutional obligation to appropriate hard-earned tax dollars in the most efficient manner we possibly can. New government programs get institutionalized. They go on forever. So I think there are some things we could do that would be important, and that we should.

There will be some proposals coming from OMB. I intend to seek to help put them into place if we can and have a system that deals with efficiency, a system that deals with identifying what the proper role of the various levels of government is. We will hear the States saying: We need more money. That is probably true. But nevertheless, we ought to have some other definitions besides where the money will go.

I hope we have one where we can review some things. I know these are general ideas. I have not gotten into the specifics. But from time to time, I think we have to look at ourselves and say: How do we deal with some of these issues? Clearly, everyone would agree we have to do something about spending. We have to do something about the deficit. We have to look at the future as to how we are going to make this thing work.

You can take a look at Social Security. In about 10 years, we will have to take trillions of dollars out of the general fund to put them back where they belong in the Social Security fund. That is going to be very difficult. It is a tremendous amount of money. But that is what we have done, of course, and it is reasonable because that money has to be drawing interest and it is drawing interest. But those things are going to be more and more difficult.

We are seeking to try and review and renew the Tax Code so it can be simpler and more efficient and hopefully provide better opportunities for the economy to grow and have incentives for growing by being able to put that money into developing jobs as opposed

to coming into the Federal Government.

These are real challenges, but they are worthwhile: the challenge of evaluating government programs to see if they are still important, to see if they are still being done the way they were designed to meet the needs they were designed to meet when they were first there, to do something about the idea of controlling spending and the size of the Federal Government so that doesn't continue to expand into every area that is open. We ought to take a look at all the programs that are in place, that we are talking about putting in place, all the bills that are brought in here, and see what a wide breadth of subjects we talk about. Some you could make a pretty good case are not within the area of normal recognition of Federal Government activity.

I hope the role of the Federal Government is something we could talk about. We ought to talk about it with the State leadership and get a little clearer idea of how we define these things and get some kind of a measurement against these roles.

There are lots of challenges. I will be happy when we can move on through this judicial debate. It is very important, but we should not be spending all this much time on it in terms of how we do these things and get on with the things that have an impact on what we are doing out in the country.

I yield the floor and 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. 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.

Mr. BROWNBACK. Mr. President, I want to take up the discussion of Justice Janice Rogers Brown and her qualifications for serving on the DC Circuit Court of Appeals and some of the accusations and charges that have been brought against her. There have been a number that have been put forth. I had a lengthy discussion earlier about what I think this is really about, that it is about her being a strict constructionist, wanting to stay within the confines of the Constitution and the law and her interpretation rather than an expansive reading of it. I think that is really what is at the root of this, but people bring forth all sorts of allegations and charges, and I want to address some of them.

One of them is on a particular case, the *Lochner* case. As it might be described, this is getting into the weeds and details of some items, but I think it is meritorious to raise. She has been charged by some of our colleagues that in the *Santa Monica Beach v. Superior Court* case that Justice Brown called the demise of the *Lochner* decision, which was overruled in 1937, the revolu-

tion of 1937, and "she wants to undo" this overruling. A couple of my colleagues on the other side of the aisle said that Justice Brown believes in *Lochner* and wants the New Deal undone. That is the charge against Janice Rogers Brown. I want to talk about that particular charge because the opposite is what is actually true. This is the opposite of what Justice Brown said, and I want to go through her words of what she said to refute that particular case.

They are accusing her of wanting to undo the New Deal and the legislation that has been in place surrounding and regarding the New Deal.

In the *Santa Monica* case, which is the case that is cited for her opinion that she wants to undo the New Deal legislation of Roosevelt—FDR—she clearly criticized *Lochner* as wrongly decided:

[T]he *Lochner* court was justly criticized for using the due process clause as though it provided a blank check to alter the meaning of the Constitution as written.

It was in the very next sentence that Justice Brown mentioned "revolution of 1937." In context, it is clear that Brown felt the end of *Lochner* was a good thing, that the end of *Lochner* was a good thing, and she says that. Moreover, the ranking member of the Senate Judiciary Committee flatly asked Justice Brown at the hearing—we are at her confirmation hearing—this issue has been put forward. This charge has been made that you want to undo the New Deal legislation, that you want to overturn FDR, and the legacy of FDR. That is what you want to do. The ranking member of the Senate Judiciary Committee flatly asked Justice Brown at her confirmation hearing:

Do you agree with the holding in *Lochner*?

She answered just as directly, "No." This evidence is out there for all to see.

Why pretend it is not there is what I would say. She says no, she does not want to undo the New Deal legislation. She said it in sworn testimony at the Senate Judiciary Committee. She says that in her opinion in the *Santa Monica Beach* case. She does not want to overrule the case.

Others have attacked Justice Brown's speech to the Federalist Society when she lamented the demise of the *Lochner* era, in which the Supreme Court violated property or other economic rights. That is the allegation.

Justice Brown's speeches illustrate her personal views. To suggest that her critique of the Holmes dissent in *Lochner* is evidence of how she would rule in a certain case belies the facts. Indeed, Justice Brown has taken issue with the *Lochner* decision, criticizing the Supreme Court's "usurpation of power," stating the *Lochner* court was justly criticized for using the due process clause:

. . . as though it were a blank check to alter the meaning of the Constitution as written.

That is what she actually said.

Discussing the history of the judiciary, which Hamilton stated was to be

the branch “least dangerous to the political rights of the Constitution,” Justice Brown has stated her personal views that judges too often have strayed from this framework and engaged in judicial activism.

That is something we have talked about a lot, about judicial activism. She believes that too often judges have strayed from this framework and engaged in judicial activism. It was in this context that Justice Brown stated the standards of scrutiny employed by the judiciary, which are not enumerated in the Constitution, often are used by judicial activists to reach the results they want.

Justice Brown’s record shows she is committed to following precedent, even when she might personally disagree with it. Partisan attack groups, lacking evidence that Brown is unable to follow precedent, have indicated their opposition stems from Justice Brown’s supposed incorporating her personal views into judicial decision-making. They assert she injected her personal views on property rights into judicial opinions, but nothing could be further from the truth.

The two cases cited by the attack groups in this context deal with the Takings clause. The groups fail to point out the Supreme Court itself expressed the view that Justice Brown herself is now accused of advocating, that property rights were intended to carry the same import as other rights in the Constitution.

In *Dolan v. City of Tigard*, the Supreme Court majority wrote:

We see no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or Fourth Amendment, should be relegated to the status of a poor relation in these comparable circumstances.

That is a 1994 case.

The reason I point these out is I want people to know the factual setting here, that she does not support an opinion to overrule New Deal legislation.

She has been attacked on her judicial qualifications, which I covered in an earlier presentation, but I want to also state here clearly and for the record, the ABA recently found Justice Brown qualified and concluded—this is from the ABA, the American Bar Association—that Justice Brown:

... meets the Committee’s very high standards with respect to integrity, professional competence and judicial temperament and that the Committee believes that the nominee will be able to perform satisfactorily all of the duties and responsibilities required by the high office of a federal judge.

If we are going to consider outside evaluations of judges, I would think the ABA’s assessment that she is fit to serve on the DC Circuit is far more relevant than any others that might come forward.

I mentioned these to address some of the attacks on her that I think are based on her more limited strict constructionist view than on what others are basing their attacks, by trying to piece things together. Justice Brown is

enormously qualified by her set of personal experiences, public service, good legal mind, good legal temperament, sound training and abilities to serve on the DC Circuit Court of Appeals. She will make an outstanding judge on that court of appeals.

Mrs. CLINTON. Mr. President, while I commend my colleagues for the compromise that momentarily spared this body from the so-called nuclear option, their agreement did nothing to change the fact that several of President Bush’s judicial nominees fall well outside the mainstream and the parameters of what is an acceptable jurist. This nominee in particular, Janice Rogers Brown, has shown a disdain for the rule of law and precedent and is undeserving of lifetime tenure on the Federal bench.

The administration’s agenda has become evident throughout the course of the debate over judicial nominees. The President, the Republican leaders, and their supporters have turned our Federal judiciary into their own personal political battleground. To satisfy the demands of their most ardent right wing supporters, the Republicans have not chosen to appoint capable Federal jurists but rather the political activists willing to contort the law, precedent, and the Constitution in order to promote their own conservative political agenda.

Our Federal courts have drifted well to the right in the past two or three decades. Today’s so-called moderates would have been called conservatives in the 1970s. And while I personally think that this drift is not in the best interest of our country, I understand and accept that the President is certainly entitled to nominate conservatives to the bench. In fact, I have voted for the vast majority of this President’s judicial nominees despite the fact that they maintain a conservative philosophy and support positions on issues that I do not necessarily agree with. I have done so because these nominees have demonstrated a respect for justice and the rule of law.

But even accounting for this drift, some of his nominees, such as Janice Rogers Brown, are far outside of even today’s conservative mainstream.

Justice Brown is an agenda driven judge who, usually as a lone dissenter, shows little respect for the considered policy judgments of legislatures, repeatedly misconstrues precedent and brazenly criticizes U.S. Supreme Court rulings. She has a record of routinely voting to strike down property regulations, invalidate worker and consumer protections and restrict civil rights laws.

What makes Justice Brown particularly ill suited for a lifetime appointment to District of Columbia Court of Appeals is her disdain for Government. Among other things, she has long advocated for the demise of the New Deal. She equates democratic Government with “slavery,” claims that the New Deal “inoculated the federal Constitu-

tion with a kind of collectivist mentality,” calls Supreme Court decisions upholding the New Deal “the triumph of our own socialist revolution,” accuses social security recipients of “blithely cannibaliz[ing] their grandchildren because they have a right to get as much ‘free’ stuff as the political system permits them to extract,” and advocates returning to the widely discredited, early 20th century Lochner era, where the Supreme Court regularly invalidated economic regulations, like workplace protections.

“Where government moves in,” Justice Brown has stated, “community retreats, civil society disintegrates, and our ability to control our own destiny atrophies. The result is: families under siege; war in the streets; unapologetic expropriation of property; the precipitous decline of the rule of law; the rapid rise of corruption; the loss of civility and the triumph of deceit. The result is a debased, debauched culture which finds moral depravity entertaining and virtue contemptible.” Justice Brown’s contempt for government runs so deep that she urges “conservative” judges to invalidate legislation that expands the role of government, saying that it “inevitably transform[s] . . . democracy . . . into a kleptocracy.”

Furthermore, Justice Brown takes issue with one of the basic tenets of our entire judicial system—precedent. When she does not like the result established case law dictates, Justice Brown tries single-handedly to change it. In one dissent, she proclaimed, “(w)e cannot simply cloak ourselves in the doctrine of stare decisis.”

These and other comments have prompted her colleagues on the California Supreme Court to criticize her for “imposing . . . [a] personal theory of political economy on the people of a democratic state.” Her fellow justices have taken her to task for asserting “an activist role for the courts.” They have noted that she “quarrel[s] . . . not with our holding in this case, but with this court’s previous decision . . . and, even more fundamentally, with the Legislature itself.” And finally, they contend that Justice Brown’s brand of judicial activism, if allowed, would “permit a court . . . to reweigh the policy choices that underlay a legislative or quasi-legislative classification or to reevaluate the efficacy of the legislative measure.”

Justice Brown’s nomination makes clear that we have entered an era in which conservative politicians are seeking to nominate and confirm judges who read the Constitution and the law to coincide with the Republican Party’s platform. The expectation is that these judicial appointees will toe the party line. This politicization of the judiciary carries disastrous consequences. Because when our judges are viewed as politicians, it diminishes the influence and the respect afforded our courts, which is the lifeblood of their efficacy. Our independent judiciary is the most respected

in the world, and our courts' ability to reach unpopular but just decisions is made possible only because of the deep wells of legitimacy they have dug.

I urge my colleagues to take the longer view for the good of the American people. Think carefully about what the result to our judiciary will be if we continue to pack our courts with extremists who ignore justice and the law. I implore my colleagues to take seriously their constitutional charge of advice and consent and to reject the nomination of Janice Rogers Brown.

Mr. JOHNSON. Mr. President, I rise today in opposition to President Bush's nomination of Janice Rogers Brown to be United States Circuit Court Judge to the Court of Appeals for the DC. Circuit.

This morning, the Washington Post editorialized against the nomination of Justice Brown, writing that she "is that rare nominee for whom one can draw a direct line between intellectual advocacy of aggressive judicial behavior and actual conduct as a judge." I agree with this respected newspaper's assessment and ask unanimous consent that this editorial be printed in the RECORD at the end of my statement.

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

(See exhibit 1.)

Mr. JOHNSON. I have several concerns about Justice Brown's ability to serve on this important court. On the California Supreme Court, Justice Brown has proven to be an activist judge when it suits her political agenda. Consistently, and despite precedent to the contrary, Justice Brown has ruled on the side of corporations. For example, in a cigarette sales case, she ignored relevant law and protected corporations in lieu of protecting minors. In other cases she has placed corporate interests above law that intended to shield consumers and women.

Justice Brown has also attempted to remove protections for teachers, and has been hostile to such New Deal era programs as Social Security. She has called government assistance programs "[t]he drug of choice for . . . Midwestern farmers, and militant senior citizens." These views are out of touch with most Americans and South Dakotans.

During today's debate, colleagues argued that because Justice Brown has been reelected by California voters by a 76 percent margin, she should not be considered "out of the mainstream." This argument is misplaced. First, many other judges get reelected at a higher rate. It should also be noted that her retention reelection took place only 1½ years into her tenure on the California Supreme Court, at a time before her extreme views and activist agenda could have been known by voters.

Both the American Bar Association and the California Judicial Commission have questioned Justice Brown qualifications to serve on the bench. The California Judicial Commission

specifically noted questions about her deviation from precedent and her "tendency to interject her political and philosophical views into her opinions." We should note their concerns and seriously consider them.

Justice Brown's views and history of judicial activism is especially dangerous in the DC Circuit. She is a nominee who is far outside of the mainstream. For these reasons, I stand in opposition of the confirmation and lifelong appointment of Janice Rogers Brown.

REJECT JUSTICE BROWN

[From the Washington Post, June 7, 2005]

The Senate filibuster agreement guaranteeing up-or-down votes for most judicial nominees creates a test for conservatives who rail against judicial activism. For decades, conservative politicians have objected to the use of the courts to bring about liberal policy results, arguing that judges should take a restrained view of their role. Now, with Republicans in control of the presidency and the Senate, President Bush has nominated a judge to the U.S. Court of Appeals for the D.C. Circuit who has been more open about her enthusiasm for judicial adventurism than any nominee of either party in a long time. But Janice Rogers Brown's activism comes from the right, not the left; the rights she would write into the Constitution are economic, not social. Suddenly, all but a few conservatives seem to have lost their qualms about judicial activism. Justice Brown, who serves on the California Supreme Court, will get her vote as early as tomorrow. No senator who votes for her will have standing any longer to complain about legislating from the bench.

Justice Brown, in speeches, has openly embraced the "Lochner" era of Supreme Court jurisprudence. During this period a century ago, the court struck down worker protection laws that, the justices held, violated a right to free contract they found in the Constitution's due process protections. There exist few areas of greater agreement in the study of constitutional law than the disrepute of the "Lochner" era, whose very name—taken from the 1905 case of *Lochner v. New York*—has become a code word for judicial overreaching. Justice Brown, however, has dismissed the famed dissent in *Lochner* by Justice Oliver Wendell Holmes, saying it "annoyed her" and was "simply wrong." And she has celebrated the possibility of a revival of "what might be called Lochnerism-lite" using a different provision of the Constitution—the prohibition against governmental "takings" of private property without just compensation.

In the context of her nomination, Justice Brown has trivialized such statements as merely attempts to be provocative. But she has not just given provocative speeches; "Lochnerism-lite" is a fairly good shorthand for her work on the bench, where she has sought to use the takings doctrine aggressively. She began one dissent, in a case challenging regulation of a hotel, by noting that "private property, already an endangered species in California, is now entirely extinct in San Francisco." Her colleagues on the California Supreme Court certainly got what she was up to. In response, they quoted Justice Holmes's *Lochner* dissent and noted that "nothing in the law of takings would justify an appointed judiciary in imposing [any] personal theory of political economy on the people of a democratic state."

Justice Brown is that rare nominee for whom one can draw a direct line between intellectual advocacy of aggressive judicial be-

havior and actual conduct as a judge. Time was when conservatives were wary of judges who openly yearned for courts, as Justice Brown puts it, "audacious enough to invoke higher law"—instead of, say, the laws the people's elected representatives see fit to pass. That Justice Brown will now get a vote means that each senator must take a stand on whether some forms of judicial activism are more acceptable than others.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. FRIST. I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

PENSION SECURITY

Mr. REID. Mr. President, throughout this Congress, I have argued that the Senate ought to spend less time debating radical judges and more time focusing on issues that can improve the lives of working Americans. One such issue is the gradual erosion of retirement security. Instead of working to replace Social Security's guaranteed benefit with a risky privatization scheme, we should work to strengthen retirement by shoring up our pension system. In no industry is this looming pension crisis more acute than the airline industry. The Finance Committee held a hearing on pension problems facing the airline industry this morning, and I hope that the committee will move soon on legislation to fix those problems.

Last month we learned just how worrisome this issue is, as the Pension Benefit Guaranty Corporation and United Airlines agreed to terminate the four pension plans maintained by the airline as that company struggles to emerge from bankruptcy. At the same time, Northwest, Delta and American Airlines face similar pension liabilities and are requesting Congress' help so that they can avoid bankruptcy. To their credit they are fighting to preserve their workers' pensions but need some time to allow them to recover from the effects of the post-9/11 travel downturn.

While the pension funding problems facing the airline industry are substantial, the industry is not alone in inadequately funding their employee pension plans. Congress needs to carefully review the rules that apply to the broad spectrum of employers that offer pension plans to their employees. Congress needs to make sure that those rules are strengthened to require greater funding for the pension promises

being made. Let me be very clear about one thing; the pension promises made by companies to their employees carry with them an obligation to make sure those promises are kept. An employer's obligation is to have sufficient funds set aside to meet the pension promises it has made, not merely to have met the minimum funding requirements of the tax code or ERISA.

As Congress strengthens the pension funding rules, we also need to be cognizant of the potential negative consequences of these changes. Pension plans, like all employee benefits, are voluntarily offered by employers. Congress created tax and other incentives that encourage companies to offer pension plans because it believes these are important benefits for employees. Many of the administration's proposals go too far and will discourage companies from maintaining and offering these important benefits. The proposal Congress considers must be more balanced. We should join together to enhance retirement security for all Americans by strengthening Social Security, shoring up our pension system and encouraging more Americans to save.

ADMINISTRATIVE SUBPOENAS AND PATRIOT ACT REAUTHORIZATION

Mr. KYL. Mr. President, I understand that the senior Senator from Oregon, Mr. WYDEN, spoke yesterday regarding the reauthorization of the USA PATRIOT Act. I look forward to the Senate acting later this year on PATRIOT Act reauthorization, but today I just want to address one aspect of the Senator's speech, his opposition to administrative subpoena power.

In his speech, the Senator argued that any reauthorization should not extend those subpoena powers to FBI terrorism investigators. He correctly noted that Intelligence Committee Chairman ROBERTS has held hearings about extending this authority, which is common within the Government, to FBI agents investigating terrorism. I was happy to see Chairman ROBERTS do this because last year I cosponsored S. 2555, the Judicially Enforceable Terrorism Subpoenas Act. On June 22, 2004, I chaired a hearing in the Judiciary Subcommittee on Terrorism, Technology, and Homeland Security that examined this subpoena power and heard testimony regarding how the subpoenas work and how the government protects civil liberties when using them.

One of the things that struck me as I learned about administrative subpoena power was how widespread it is in our Government and how unremarkable a law enforcement tool it really is. It was for that reason that I asked the Senate Republican Policy Committee, which I chair, to examine this issue in greater detail, to study the constitutional and civil liberties questions that critics have raised, and to identify the other contexts where the Federal Gov-

ernment has this power. The resulting report was consistent with my previous research and the testimony that I had heard during my subcommittee hearings. We give this subpoena power to postal investigators and Small Business Administration bank loan auditors and IRS agents, and we do not have a problem with Government abuse or deprivation of civil liberties. Shouldn't we also give it to those who are charged with rooting out terrorism before it strikes our neighborhoods?

I look forward to the upcoming debate on PATRIOT Act reauthorization, and I certainly intend to support it. At the same time, I commend Chairman ROBERTS for his efforts and hope that we will have the opportunity to ensure that our FBI terrorism investigators are not hamstrung as they continue to work to protect our Nation.

I ask unanimous consent that this policy paper, dated September 9, 2004, be printed in the RECORD.

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

SHOULD POSTAL INSPECTORS HAVE MORE POWER THAN FEDERAL TERRORISM INVESTIGATORS?

INTRODUCTION

Congress is undermining federal terrorism investigations by failing to provide terrorism investigators the tools that are commonly available to others who enforce the law. In particular, in the three years after September 11th, Congress has not updated the law to provide terrorism investigators with administrative subpoena authority. Such authority is a perfectly constitutional and efficient means to gather information about terrorist suspects and their activities from third parties without necessarily alerting the suspects to the investigation. Congress has granted this authority to government investigators in hundreds of other contexts, few of which are as compelling or life-threatening as the war on terror. These include investigations relating to everything from tax or Medicare fraud to labor-law violations to Small Business Administration inquiries into financial crimes. Indeed, Congress has even granted administrative subpoena authority to postal inspectors, but not to terrorism investigators.

This deficiency in the law must be corrected immediately. Postal inspectors and bank loan auditors should not have stronger tools to investigate the criminal acts in their jurisdictions than do those who investigate terrorist acts. The Senate can remedy this deficiency by passing legislation like the Judicially Enforceable Terrorism Subpoenas (JETS) Act, S. 2555. The JETS Act would update the law so that the FBI has the authority to issue administrative subpoenas to investigate possible terrorist cells before they attack the innocent. The Act would ensure more efficient and speedy investigations, while also guaranteeing that criminal suspects will have the same civil liberties protections that they do under current law.

TERRORISM INVESTIGATORS' SUBPOENA AUTHORITY IS TOO LIMITED

Federal investigators routinely need third-party information when attempting to unravel a criminal enterprise. In the context of a terrorism investigation, that information could include: financial transaction records that show the flow of terrorist financing; telephone records that could identify other terrorist conspirators; or retail sales receipts

or credit card statements that could help investigators uncover the plot at hand and capture the suspects. When third parties holding that information decline to cooperate, some form of subpoena demanding the information be conveyed must be issued. The Supreme Court unanimously has approved the use of subpoenas to gather information, recognizing that they are necessary and wholly constitutional tools in law enforcement investigations that do not offend any protected civil liberties. [See unanimous decision written by Justice Thurgood Marshall in *SEC v. Jerry T. O'Brien, Inc.*, 467 U.S. 735 (1984).]

There are different kinds of subpoenas, however, and under current law, the only way that a terrorism investigator (typically, the FBI) can obtain that third-party information is through a "grand jury subpoena." If a grand jury has been convened, investigators can usually obtain a grand jury subpoena and get the information they need, but that process takes time and is dependent on a number of factors. First, investigators themselves cannot issue grand jury subpoenas; instead, they must involve an assistant U.S. Attorney so that he or she can issue the subpoena. This process can be cumbersome, however, because assistant U.S. Attorneys are burdened with their prosecutorial caseloads and are not always immediately available when the investigators need the subpoena. Second, a grand jury subpoena is limited by the schedule of a grand jury itself, because the grand jury must be "sitting" on the day that the subpoena demands that the items or documents be returned. Grand juries do not sit at all times; indeed, in smaller jurisdictions, the only impaneled grand jury may meet as little as "one to five consecutive days per month." [See United States Dept of Justice, Federal Grand Jury Practice, at §1.6 (2000 ed.). For example, in Madison, Wisc., the federal grand jury only meets a few days every three weeks. See Clerk of the Court for the Western District of Wisconsin, "Grand Jury Service," revised April 15, 2004.]

The following hypothetical illustrates the deficiency of current law. Take the fact that Timothy McVeigh built the bomb that destroyed the Oklahoma City Federal Building while he was in Kansas; and take the fact that under current practices, grand juries often are not sitting for 10-day stretches in that state. If FBI agents had been tracking McVeigh at that time and wanted information from non-cooperative third parties—perhaps the supplier of materials used in the bomb—those agents would have been unable to move quickly if forced to rely on grand jury subpoenas. McVeigh could have continued his bomb-building activities, and the FBI would have been powerless to gather that third-party information until the grand jury returned—as many as 10 days later. [Information on Kansas federal grand jury schedules provided to Senate Republican Policy Committee by Department of Justice. In addition, Department of Justice officials have testified to another scenario: even where grand juries meet more often (such as in New York City), an investigator realizing she urgently needs third-party information on Friday afternoon still could not get that information until Monday, because the grand jury would have gone home for the weekend. See Testimony of Principal Deputy Assistant Attorney General Rachel Brand before the Senate Judiciary Subcommittee on Terrorism, Technology and Homeland Security on June 22, 2004.]

The current dependence on the availability of an assistant U.S. Attorney and the schedule of a grand jury means that if time is of the essence—as is often the case in terrorism

investigations—federal investigators, lacking the necessary authority, could see a trail turn cold.

THE BETTER ALTERNATIVE: ADMINISTRATIVE SUBPOENA AUTHORITY

The deficiency of grand jury subpoenas described above can be remedied if Congress provides “administrative subpoena” authority for specific terrorism-related contexts. Congress has authorized administrative subpoenas in no fewer than 335 different areas of federal law, as discussed below. [See U.S. Department of Justice, Office of Legal Policy, Report to Congress on the Use of Administrative Subpoena Authorities by Executive Branch Agencies and Entities, May 13, 2002, at p. 5 (hereinafter “DOJ Report”).] Where administrative subpoena authority already exists, government officials can make an independent determination that the records are needed to aid a pending investigation and then issue and serve the third party with the subpoena. This authority allows the federal investigator to obtain information quickly without being forced to conform to the timing of grand jury sittings and without requiring the help of an assistant U.S. Attorney. And, as simply another type of subpoena, the Supreme Court has made clear that it is wholly constitutional. [See *Jerry T. O'Brien*, 467 U.S. at 747–50.]

The advantages of updating this authority are substantial. The most important advantage is speed: terrorism investigations can be fast-moving, and terrorist suspects are trained to move quickly when the FBI is on their trail. The FBI needs the ability to request third-party information and obtain it immediately, not when a grand jury convenes. Moreover, this subpoena power will help with third-party compliance. As Assistant Attorney General Christopher Wray stated in testimony before the Senate Judiciary Committee, “Granting [the] FBI the use of [administrative subpoena authority] would speed those terrorism investigations in which subpoena recipients are not inclined to contest the subpoena in court and are willing to comply. Avoiding delays in these situations would allow agents to track and disrupt terrorist activity more effectively.” [Assistant Attorney General Christopher Wray, in testimony before the Senate Judiciary Committee, October 21, 2003.] Thus, Congress will provide protection for a legitimate business owner who is more than willing to comply with law enforcement, but who would prefer to do so pursuant to a subpoena rather than through an informal FBI request.

CONSTITUTIONAL PROTECTIONS

It is important to note that nothing in the administrative subpoena process offends constitutionally protected civil liberties, as has been repeatedly recognized by the federal courts.

First, the government cannot seek an administrative subpoena unless the authorized federal investigator has found the information relevant to an ongoing investigation. [See S. 2555, §2(a) (proposed 18 U.S.C. §2332g(a)(1)). The Attorney General has the authority to delegate this power to subordinates within the Department of Justice. See 28 U.S.C. §510.] The executive branch—whether Republican or Democrat—carefully monitors its agents to ensure that civil liberties are being protected and that authorities are not being abused. [See, for example, Executive Order Establishing the President’s Board on Safeguarding Americans’ Civil Liberties (August 27, 2004), detailing extensive interagency oversight of civil liberties protections for Americans.]

Second, the administrative subpoena is not self-enforcing. There is no fine or penalty to the recipient if he refuses to comply. Thus, if

the recipient of an administrative subpoena believes that the documents or items should not be turned over, he can file a petition in federal court to quash the subpoena, or he can simply refuse to comply with the subpoena and force the government to seek a court order enforcing the subpoena. And, as one federal court has emphasized, the district court’s “role is not that of a mere rubber stamp.” [*Wearly v. Federal Trade Comm’n*, 616 F.2d 662, 665 (3rd Cir. 1980).] Just as a grand jury subpoena cannot be unreasonable or oppressive in scope [Federal Grand Jury Practice, at §5.40], an administrative subpoena must not overreach by asking for irrelevant or otherwise-protected information.

The Supreme Court has addressed the standards for enforcing administrative subpoenas.

In *United States v. Powell*, the Supreme Court held that an administrative subpoena will be enforced where (1) the investigation is “conducted pursuant to a legitimate purpose,” (2) the subpoenaed information “may be relevant to that purpose,” (3) the information sought is not already in the government’s possession, and (4) the requesting agency’s internal procedures have been followed. [379 U.S. 48, 57–58 (1964); see also *EEOC v. Shell Oil*, 466 U.S. 54, 73 n.26 (1984) (citing *Powell* in EEOC context and adding that the request for information cannot be “too indefinite” or made for an “illegitimate purpose”); *Jerry T. O'Brien*, 467 U.S. at 747–48 (reaffirming *Powell* in context of SEC administrative subpoena).] In addition, the Supreme Court has stated that the recipient may challenge the subpoena on “any appropriate ground” [*Reisman v. Caplin*, 375 U.S. 440, 449 (1964)], which could include a privilege against self-incrimination, religious freedom, freedom of association, attorney-client privilege, or other grounds for resisting subpoenas in the grand jury context. [See cases collected in Graham Hughes, *Administrative Subpoenas and the Grand Jury: Converging Streams of Civil and Compulsory Process*, 47 Vand. L. Rev. 573, 589 (1994), cited in DOJ Report, at p. 9 n.19.] This “bifurcation of power, on the one hand of the agency to issue subpoenas and on the other hand of the courts to enforce them, is an inherent protection against abuse of subpoena power.” [*United States v. Security Bank and Trust*, 473 F.2d 638, 641 (5th Cir. 1973).]

Third, where the authorized agent has not specifically ordered the administrative subpoena recipient not to disclose the existence of the subpoena to a third party, the recipient can notify the relevant individual and that individual may have the right to block enforcement of the subpoena himself. [In *Jerry T. O'Brien*, the Supreme Court noted that a “target may seek permissive intervention in an enforcement action brought by the [Securities & Exchange] Commission against the subpoena recipient” or may seek to restrain enforcement of the administrative subpoena. 467 U.S. at 748.] In many cases the “target” (as opposed to the recipient) will have full knowledge of the subpoena.

However, this is not always the case; sometimes the administrative subpoena authority includes a provision prohibiting the recipient from discussing the subpoena with anyone other than his or her attorney. Some critics have argued that federal investigators should not be able to gather information related to an individual without notifying that individual, and that every person has an inherent right to know about those investigations. [See generally *Jerry T. O'Brien*, 467 U.S. at 749–50 (rejecting demand that SEC must notify any potential defendant of existence of pending administrative subpoena).] But, as the Supreme Court has held, there is no constitutional requirement that the subject of an investigation receive notice that

the administrative subpoena has been served on a third party. Justice Thurgood Marshall wrote for a unanimous Court that a blanket rule requiring notification to all individuals would set an unwise standard. [Id. at 749–51. The issue in that case was the nondisclosure provisions of the administrative subpoena authority used by the SEC when investigating securities fraud.] He explained that investigators use administrative subpoenas to investigate suspicious activities without any prior government knowledge of who the wrongdoers are, so requiring notice often would be impossible. [Id. at 749.] Moreover, granting notice to individuals being investigated would “have the effect of laying bare the state of the [government’s] knowledge and intentions midway through investigations” and would “significantly hamper” law enforcement. [Id. at 750 n.23.] Providing notice to the potential target would “enable an unscrupulous target to destroy or alter documents, intimidate witnesses,” or otherwise obstruct the investigation. [Id. at 750.] The Court further emphasized that where “speed in locating and halting violations of the law is so important,” it would be foolhardy to provide notice of the government’s administrative subpoenas. [Id. at 751.]

MOST GOVERNMENT AGENCIES HAVE ADMINISTRATIVE SUBPOENA AUTHORITY

Given these extensive constitutional protections, it is unsurprising that Congress has extended administrative subpoena authority so widely. Current provisions of federal law grant this authority to most government departments and agencies. [DOJ Report, at p. 5. See appendices A–C to DOJ Report that describe and provide the legal authorization for each of these administrative subpoena powers.] These authorities are not restricted to high-profile agencies conducting life-or-death investigations. To the contrary, Congress has granted administrative subpoena authority in far less important contexts. For example, 18 U.S.C. §3061 authorizes postal inspectors to issue administrative subpoenas when investigating any “criminal matters related to the Postal Service and the mails.” One can hardly contend that federal investigators should be able to issue administrative subpoenas to investigate Mohammed Atta if they suspect he broke into a mailbox but should not have the same authority if they suspect he is plotting to fly airplanes into buildings.

It is not just postal inspectors who have more powerful investigative tools than terrorism investigators. Congress has granted administrative subpoena authorities for a wide variety of other criminal investigations. A partial list follows:

Small Business Administration investigations of criminal activities under the Small Business Investment Act, such as embezzlement and fraud. [Congress granted administrative subpoena authority to the Small Business Administration through section 310 of the Small Business Investment Act of 1958. Delegation to investigators and other officials is authorized by 15 U.S.C. §634(b). Relevant criminal provisions also include the offer of loan or gratuity to bank examiner (18 U.S.C. §212), acceptance of a loan or gratuity by bank examiner (18 U.S.C. §213), and receipt of commissions or gifts for procuring loans (18 U.S.C. §215).]

Internal Revenue Service investigations of such crimes as tax evasion. [Congress granted administrative subpoena authority to the Small Business Administration through section 310 of the Small Business Investment Act of 1958. Delegation to investigators and other officials is authorized by 15 U.S.C. §634(b). Relevant criminal provisions also include the offer of loan or gratuity to bank examiner (18 U.S.C. §212), acceptance of a

loan or gratuity by bank examiner (18 U.S.C. §213), and receipt of commissions or gifts for procuring loans (18 U.S.C. §215.)]

The Bureau of Immigration and Customs Enforcement investigations of violations of immigration law. [See 8 U.S.C. §1225(d)(4) (granting administrative subpoena power to “any immigration officer” seeking to enforce the Immigration and Naturalization Act).]

Federal Communications Commission investigations of criminal activities, including obscene, harassing, and wrongful use of telecommunications facilities. [See 47 U.S.C. 409(e) (granting subpoena authority to FCC); 47 U.S.C. §155(c)(1) (granting broad delegation power so that investigators and other officials can issue administrative subpoenas); 47 U.S.C. §223 (identifying criminal provision for use of telecommunications system to harass).]

Nuclear Regulatory Commission investigations of criminal activities under the Atomic Energy Act. [See 42 U.S.C. §2201(c) (providing subpoena authority to Nuclear Regulatory Commission); 42 U.S.C. §2201(n) (empowering the Commission to delegate authority to General Manager or “other officers” of the Commission).]

Department of Labor investigations of criminal activities under the Employee Retirement Income Security Act (ERISA). [See 29 U.S.C. §1134(c) (authorizing administrative subpoenas); Labor Secretary’s Order 1-87 (April 13, 1987) (allowing for delegation of administrative subpoena authority to regional directors).]

Criminal investigations under the Export Administration Act, such as the dissemination or discussion of export-controlled information to foreign nationals or representatives of a foreign entity, without first obtaining approval or license. [See 50 App. U.S.C. §2411 (granting administrative subpoena authority for criminal investigations).]

Corporation of Foreign Security Holders investigations of criminal activities relating to securities laws. [See 15 U.S.C. §77t(b) (granting administrative subpoena authority in pursuit of criminal investigations).]

Department of Justice investigations into health care fraud [See 18 U.S.C. §3486(a)(1)(A)(i)(I) (granting administrative subpoena authority).] and any offense involving the sexual exploitation or abuse of children. [See 18 U.S.C. §3486(a) (granting administrative subpoena authority).]

Moreover, Congress has authorized the use of administrative subpoenas in a great number of purely civil and regulatory contexts—where the stakes to the public are even lower than in the criminal contexts above. Those include enforcement in major regulatory areas such as securities and antitrust, but also enforcement for laws such as the Farm Credit Act, the Shore Protection Act, the Land Remote Sensing Policy Act, and the Federal Credit Union Act. [DOJ Report, App. A1 & A2.]

Nor are these authorities dormant. The Department of Justice reports, for example, that federal investigators in 2001 issued more than 2,100 administrative subpoenas in connection with investigations to combat health care fraud, and more than 1,800 administrative subpoenas in child exploitation investigations. [DOJ Report, at p. 41.] These authorities are common and pervasive in government—just not where it arguably counts most, in terrorism investigations.

S. 2555 WOULD UPDATE THE ADMINISTRATIVE SUBPOENA AUTHORITY

S. 2555, the Judicially Enforceable Terrorism Subpoenas Act of 2004 (the “JETS Act”), would enable terrorism investigators to subpoena documents and records in any

investigation concerning a federal crime of terrorism—whether before or after an incident. As is customary with administrative subpoena authorities, the recipient of a JET subpoena could petition a federal district court to modify or quash the subpoena. Conversely, if the JET subpoena recipient simply refused to comply, the Department of Justice would have to petition a federal district court to enforce the subpoena. In each case, civil liberties would be respected, just as they are in the typical administrative subpoena process discussed above.

The JETS Act also would allow the Department of Justice to temporarily bar the recipient of an administrative subpoena from disclosing to anyone other than his lawyer that he has received it, therefore protecting the integrity of the investigation. However, the bill imposes certain safeguards on this non-disclosure provision: disclosure would be prohibited only if the Attorney General certifies that “there may result a danger to the national security of the United States” if any other person were told of the subpoena’s existence. [S. 2555, §2(a) (proposed 18 U.S.C. §2332g(c)).] Moreover, the JET subpoena recipient would have the right to go to court to challenge the nondisclosure order, and the Act would protect the recipient from any civil liability that might otherwise result from his good-faith compliance with such a subpoena.

Given the protections for civil liberties built into the authority and its widespread availability in other contexts, there is little excuse for failing to extend it to the FBI agents who are tracking down terrorists among us.

CONCLUSION

Congress is hamstringing law enforcement in the war on terror in failing to provide a proven tool—administrative subpoena authority—for immediate use for the common good. Federal investigators should have the same tools available to fight terrorism as do investigators of mail theft, Small Business Administration loan fraud, income-tax evasion, and employee-pension violations. S. 2555 provides a means to update the law and accomplish that worthy goal.

40TH ANNIVERSARY OF GRISWOLD V. CONNECTICUT

Ms. CANTWELL. Mr. President, I rise today to commemorate the 40th anniversary of the Supreme Court’s crucial decision in *Griswold v. Connecticut*.

Forty years ago, Estelle Griswold and Dr. Lee Buxton were arrested and convicted for counseling married couples on birth control methods, and prescribing married couples contraceptives. They challenged their convictions, and the Supreme Court overturned them, ruling that the Connecticut law under which they were charged was unconstitutional. The Court found that the Government had no place in interfering in the intimately private marital bedroom. Justice William O. Douglas, in writing the Court’s opinion, scoffed at the notion of police searching private bedrooms for evidence of contraceptive use. This landmark decision, cited in countless numbers of decisions since then on the constitutional right to privacy, guarantees the right of married couples to use birth control.

Yet the relevance of this decision goes far beyond contraceptive use. In

rendering its decision, the Court recognized a “zone of privacy” arising from several constitutional guarantees. The Court acknowledged that while the right of privacy is not enumerated specifically in anyone place, it is inherent in several areas within the Bill of Rights and throughout the Constitution. This very American notion of privacy served as a cornerstone of precedent, paving the way for other decisions and further solidifying as established law the constitutional right to privacy. *Roe v. Wade*, guaranteeing a woman’s right to choose, was a logical application of *Griswold*.

Today, Americans’ privacy rights are threatened on many fronts. The Government is asserting greater and greater investigative powers. Some pharmacists are refusing to fill prescriptions for legal contraceptives. The anniversary of *Griswold* gives us all an opportunity to reflect on the importance of preserving our privacy rights. The Court recognized that we are born with privacy rights as Americans, and we have a particular responsibility as Senators to protect these rights for our constituents.

MORT CAPLIN ON THE NATION’S TAX SYSTEM

Mr. KENNEDY. Mr. President, earlier this year, Mort Caplin, a founding partner of the law firm Caplin & Drysdale in Washington, DC, and the outstanding IRS Commissioner under President Kennedy, delivered the Erwin Griswold Lecture at the annual meeting of the American College of Tax Counsel, which was held in San Diego.

In his eloquent and very readable address, Mr. Caplin summarizes the evolution of our modern tax system, the current challenges it faces, the recent efforts by Congress to achieve reform, the alarming drop in compliance and revenue collection, and the ethical responsibilities of the tax bar.

Mr. Caplin’s remarks are especially timely today as Congress struggles to deal with its own responsibility for the effectiveness, integrity and fairness of our tax laws. All of us in the Senate and House can benefit from his wise words, and I ask unanimous consent that his lecture be printed at this point in the RECORD.

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

[From the Virginia Tax Review, Spring 2005]

THE TAX LAWYER’S ROLE IN THE WAY THE AMERICAN TAX SYSTEM WORKS

(By Mortimer M. Caplin)

It is a high privilege to be asked to deliver this Erwin N. Griswold Lecture and a treat too to see so many old friends and meet so many new ones. In honor of our namesake, I would like to touch on four matters of relevance: (1) Dean Griswold’s impact on the tax law, (2) the role of the U.S. Tax Court, (3) the role of the IRS, and (4) the tax lawyer’s role in the way the American tax system works.

My first contact with the Dean was in my early days as a young law professor at the University of Virginia School of Law—struggling in the classroom using Griswold, Cases and Materials on Federal Taxation. Not that the casebook was entirely new to me; for, with the good help of the G.I. bill, I'd become well-acquainted with it at N.Y.U. in my post-World War II doctoral efforts. It's hard to believe, but the Griswold casebook was the first ever devoted entirely to federal income taxation; and it proved a godsend to me as I segued from New York law practice to teaching at UVA in the fall of 1950.

Erwin Griswold and I met at law professor gatherings and bar meetings, especially in the early 1950's at American Law Institute sessions in Washington as members of ALL's Tax Advisory Group. We both were hard at work on its comprehensive tax report, which later became part of the 1954 Code. Never did I tell him though that, in using his casebook, my custom was to try a personal touch by distributing mimeograph materials that totally rearranged the order of presentation and reading assignments. Nor did I ever hint that, after a year or two, I switched entirely to his major competitor, the more comprehensive Surrey and Warren. He probably learned about it faster than I thought skimming through his royalty reports—reports which he undoubtedly scrutinized with great care.

He had graduated from Harvard Law School in 1929, and his first real contact with the tax law was during his five-year stint as a fledgling attorney in the Office of the Solicitor General of the United States. Federal tax rates and tax receipts were at a low point then and handling tax cases was not the most sought after assignment. By default, he soon became the office's tax expert, arguing the bulk of its tax cases both in the U.S. Supreme Court and the U.S. Courts of Appeals. I should mention that, just before leaving the S.G.'s office, he was instrumental in the rule change that allowed appeals in tax cases to be made under the general title "Commissioner of Internal Revenue," without the need to specify the name of the incumbent. That's why you see older tax cases bearing the names of particular Commissioners—David Burnet or Guy T. Helvering, for example—and, later, hardly any with names like Latham, Caplin, Cohen, Thrower and the like. Let me mournfully add: "Sic transit gloria mundi"—so passes away the glory of this world!

Erwin Griswold left the S.G.'s office in 1934 to become a Harvard Law School professor for 12 years, and then dean for the next 21. He had a major influence on tens of thousands of law students as well as lawyers throughout the world. As years went by, he reminisced that he found "less exhilaration" in teaching the federal tax course as "the tax law had become far more technical and complicated . . . In the early days, the statute was less than one hundred pages long and the income tax regulations . . . were in a single, rather slight, volume." Oh, for the good old days!

In the fall of 1967, he returned to the S.G.'s office, but this time as the Solicitor General of the United States—a position he held for six years. He'd been appointed by President Lyndon B. Johnson during the last years of his administration, and in 1969 was reappointed by President Richard M. Nixon. President Nixon for his second term, however, preferred as his S.G. a Yale law professor, Robert H. Bork, someone more closely in tune with his philosophy. Erwin Griswold's duties ended in June 1973, at the close of the Supreme Court's term, well in time to avoid the heavy lifting of Watergate and the "Saturday Night Massacre." Although, he later said that he would not have

followed Solicitor General Bork in carrying out the President's order to fire Special Watergate Prosecutor Archibald Cox.

Shortly after leaving office, he joined Jones, Day, Reavis & Pogue as a partner and engaged in law practice and bar activities for some 20 years, until his death in 1994 at the age of 90. Erwin Griswold was honored many times over, not only for his innumerable contributions to the law, but for "his moral courage and intellectual energy . . . meeting the social responsibilities of the profession."

I always suspected that any special feeling the Dean may have had for me had roots in my strong backing of his plea for a single federal court of tax appeals—to resolve conflicts and provide "speedier final resolution of tax issues." He observed, "The Supreme Court hates tax cases, and there is often no practical way to resolve such conflicts"; and he anguished over the practicing bar's opposition to his proposal, convinced that "the real reason is that tax lawyers find it advantageous to have uncertainty and delay"—a preference for forum-shopping, if you will. But in the end, in his 1992 biography, Ould Fields, New Corne, he sounded a bit more hopeful: "Eventually, something along the lines proposed will have to come as it makes no sense to have tax cases decided by thirteen different courts of appeals, with no effective guidance on most questions from the Supreme Court."

One Supreme Court Justice, who'd had hands-on experience in tax administration, and well understood weaknesses in our appellate review system, was former Justice Robert H. Jackson. The Court's most informed member on taxation, he had previously served successively as "General Counsel" of the Bureau of Internal Revenue (succeeding E. Barrett Prettyman), Assistant Attorney General in charge of the Tax Division, Solicitor General, and then Attorney General of the United States. In 1943, in his famous Dobson opinion, Justice Jackson made a determined effort to strengthen the Tax Court's status in the decision-making process so as to minimize conflicts and attain a greater degree of uniformity. To these ends, he laid down a stringent standard in appellate review of Tax Court decisions: "

[W]hen the [appellate] court cannot separate the elements of a decision so as to identify a clear-cut mistake of law, the decision of the Tax Court must stand . . . While its decisions may not be binding precedents for courts dealing with similar problems, uniform administration would be promoted by conforming to them where possible."

The message was straightforward and seemingly clear; but it didn't cover District Court decisions or those of the Court of Federal Claims. Also, other problems were encountered by judges and members of the bar, and dissatisfaction was high. Ultimately this led to the 1948 statutory reversal of Dobson by enactment of the review standard now in the Internal Revenue Code, which requires U.S. Courts of Appeals to review Tax Court decisions "in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury." And that's where the situation lies today—save for those still aspiring, as Erwin Griswold did for the rest of his life, for greater uniformity and earlier resolution of conflicts.

Justice Jackson never did change his view about the critical importance of the Tax Court. In his 1952 dissent in *Arrowsmith v. Commissioner*, he underscored this in strikingly poignant fashion, saying: "In spite of the gelding of *Dobson v. Commissioner* . . . by the recent revision of the Judicial Code . . . I still think the Tax Court is a more competent and steady influence toward a systematic body of tax law than our sporadic

omnipotence in a field beset with invisible boomerangs."

Members of the tax bar readily endorse this strong vote of confidence in the role of the Tax Court. As our nationwide tax tribunal for over 80 years, it has served effectively and with distinction as our most important court of original jurisdiction in tax cases.

Today's tax system has its genesis in World War II when income taxes rapidly expanded from a tax touching the better off only, to a mass tax reaching out to the workers of America. Revenue collection was turned upside down with Beardsley Ruml's "pay-as-you-go," collection-at-the-source, withholding and estimated quarterly payments, and floods of paper filings. Commissioner Guy Helvering said it couldn't be done. And, in fact, the old Bureau of Internal Revenue, with its politically-appointed Collectors of Internal Revenue, was not fully up to the task. Subcommittee hearings chaired by Congressman Cecil R. King, D-California, revealed incompetence, political influence and corruption; and directly led to a total overhaul under President Harry Truman's 1952 Presidential Reorganization Plan. New district offices and intermediate regional offices, replaced the old Collectors' offices; and, except for the Commissioner and Chief Counsel, who still require presidential nomination and Senate confirmation, the entire staff was put under civil service. The last step a year later was the official name change to "Internal Revenue Service."

The new IRS made remarkable headway turning itself completely around by the end of the 1950's; and it was not long before it was recognized as one of government's leading agencies. In the early 1960's, new heights were reached through a fortunate confluence of events, strong White House endorsement and unflagging budgetary support. President John F. Kennedy had a special interest in tax law and tax administration and almost immediately called on Congress for anti-abuse tax legislation and strengthening of tax law enforcement, including Attorney General Robert F. Kennedy's drive against organized crime. Of key importance was the final congressional go-ahead for installing a nationwide automatic data processing system (ADP), backed by approval of individual account numbers and a master file of taxpayers housed in a central national computer center. IRS had entered the modern age. But it is this same ADP design, now badly out-of-date, which is still in use, albeit patched with additions and alterations. And it is the dire need to modernize this 44-year old system which is IRS' chief challenge today.

Starting in the 1970's, IRS began to encounter its present serious difficulties. A series of complex legislative changes, tightened budgets, an exploding workload, and expensive failures to complete its "tax systems modernization" (TSM) project— all contributed to weakened performance and heightened congressional oversight. In 1995 and 1996, Congress created the National Commission on Restructuring the Internal Revenue Service "to review the present practices of the IRS, and recommend how to modernize and improve the efficiency and productivity of the IRS while improving taxpayer services." A year later, the Commission issued its report, "A Vision for a New IRS," which led to the enactment of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98).

The report centered chiefly on governance and managerial type changes, including IRS modernization, a publicly-controlled Oversight Board, a business-type Commissioner of Internal Revenue, electronic filing and a paperless tax system, taxpayer rights, and finally—and of primary importance—changing

IRS' culture and mission so as to place emphasis on enhanced "customer service" and functioning like "a first rate financial institution." Congress was asked to do its part too: simplified tax legislation; complexity analyses reports; multiyear budgeting; joint hearings and coordinated reports of the different oversight committees. To the more sophisticated, the suggestions to Congress appeared more aspirational than realistic.

The House largely followed the Commission's recommendations (H.R. 2676). But the legislation found itself pending at a tumultuous time, when the air was filled with words of U.S. Senators—if you can believe it—like: "end the IRS as we know it," "tear the IRS out by the roots," "drive a stake in the heart of the corrupt culture at the IRS," and "stop a war on taxpayers." At this point, Senator William V. Roth, Jr., R-Delaware, Senate Finance Committee Chairman, took over and ran a series of dramatic, highly televised hearings, carefully prepared by his staff, and featuring a handful of allegedly abused taxpayers and IRS employees who gave testimony that shocked the nation. Never at the time did the IRS have the opportunity to tell its side of the story; nor was the testimony tested for accuracy or placed in proper context. Later, however, after enactment of RRA 98, court proceedings and various government reports by the GAO and Treasury Inspector General for Tax Administration (TIGTA) clearly established that much of the testimony was not only misleading but false; IRS may have made mistakes, but they were not malicious or systemic. Numerous corrective news stories began to appear with sharp headlines like the following: "IRS Abuse Charges Discredited"; "Highly Publicized Horror Story That Led to Curbs on IRS Quietly Unravels"; "IRS Watchdog Finds Complaints Unfounded"; "Court is Asked to Block False Complaints against IRS"; "Secret GAO Report is Latest to Discredit Roth's IRS Hearings." But publication came too late; the damage was already done.

Congress, the public and ultimately the Clinton administration had all been outraged by the Senate testimony and, almost overnight, sweeping support was given to Senator Roth's proposed highly stringent treatment of the IRS. His Senate version added some 100 new provisions to the House bill. Some are praiseworthy and reasonably protective of taxpayer rights, but others step over the line, unduly micromanaging IRS daily operations and laying the groundwork for serious delaying tactics by taxpayers and damage to the administrative process. In the end, the legislation was adopted by an overwhelming vote. One of the most criticized provisions is the "10 Deadly Sins" sanction in section 1203 of RRA 98. This peremptory discharge procedure, which directs the Commissioner to terminate an employee for any one of certain specified violations, is deeply disturbing to IRS personnel. Some hesitate to enforce the tax law because of possible unfair exposure to complaints by disgruntled taxpayers. Both Commissioner Mark W. Everson and former Commissioner Charles O. Rossotti have noted this erratic impact and have requested modification. In my mind, there is little doubt that section 1203 should be totally repealed.

Commissioner Rossotti very ably captured the transition to the new culture. But with Congress' continuing emphasis on the "customer service" aspect of tax administration, it was not until his last years that the word "enforcement" began to trickle out, along with warnings of the "continuing deterioration" and "dangerous downturn in the tax system." This shift in emphasis was quickly hastened by new Commissioner Mark Everson, who early announced: "At the

IRS our working equation is service plus enforcement equals compliance." (This to me is the basic "S-E-C of taxation.") He underscores repeatedly the significant "diminution of resources"; the continuing fall in audits, collection, notices to non-filers; the 36 percent drop in enforcement personnel since 1996; and, since 1998, the audit rate drop of 57 percent!

Perhaps of even greater importance is the negative impact this weakened enforcement has had on compliance and self-assessment. Commissioner Everson often quotes President Kennedy's admonition: "Large continued avoidance of tax on the part of some has a steadily demoralizing effect on the compliance of others." Indeed, the annual tax gap continues to grow: Last reported as a \$311 billion tax loss each year—from under-reporting, nonpayment and non-filing—new findings of a major increase are anticipated in the IRS study now underway.

With repeated annual deficits and a burgeoning national debt, the Commissioner recently confessed: "The IRS, frankly speaking, needs to bring in more money to the Treasury." The White House had confirmed this by supporting a 2005 budget increase and allocating to enforcement alone an increase of 11 percent. But this was not to be. For in the cut-back in the increase, House majority leader Tom DeLay, R-Texas, commented rather imprudently: "I don't shed any tears for the IRS. Our priority as far as the IRS is concerned is to put them out of business." So much for the looming crisis in meeting the revenue needs of our democracy!

IRS' final 2005 appropriation reflected hardly a one percent increase—an overall grant of \$10.3 billion, almost \$400 million below the President's request. This tight squeeze tells clearly why IRS went along with outsourcing to private debt-collection agencies the collection of certain delinquent tax accounts. The statutory authorization to pay outsiders up to 25 percent of tax debts collected is technically "off-book"; and through this backdoor financing, IRS' appropriations takes no direct hit.

This then is the very serious state of affairs confronting those directly concerned with the fair and balanced administration of our tax law.

The proper functioning of our tax system is largely dependent upon the quality and responsible involvement of well-trained tax practitioners, primarily tax lawyers and tax accountants. Well over half the public seeks their help for tax advice and return preparation—inquiring, time and again, about the "rules of the road," what's right and what's wrong, what's lawful and what's not. The integrity and standards of these tax professionals serve as the nation's guideposts, with direct impact on taxpayer compliance and the self-assessment concept itself. The significance of their good faith practices cannot be overstated.

Recent congressional and IRS investigations, however, have identified an alarming spread of extremely questionable practices, some approaching outright fraud, by a number of previously well-regarded tax practitioners. The Senate Finance Committee has zeroed in directly on practitioners as a whole, emphasizing the "important role tax advisors play in our tax system." Chairman Charles Grassley, R-Iowa, caustically observed: "At the heart of every abusive tax shelter is a tax lawyer or accountant." In full agreement, Senator Max Baucus, D-Montana, the committee's ranking minority member, added: "Let's stop these unsavory practices in their tracks by restoring integrity and professionalism in the practitioner community." In their follow-up letter to the Treasury Secretary John N. Snow, they called for reinvigoration of IRS' Office of

Professional Responsibility (OPR), for its proper funding, and for extension of the authority of its new head, Cono Namorato. Much has happened since, legislatively and administratively.

Taking the lead, the American Jobs Creation Act of 2004 greatly enhances OPR's effectiveness through a series of new provisions that expand Circular 230's reach: (1) confirming authority to impose standards on tax-shelter opinion writers, (2) clarifying authority to "censure" practitioners, as well as to suspend or disbar them, (3) granting authority, for the first time, to impose monetary penalties on individual practitioners, as well as on employers or entities for which they act, and (4) granting injunction authority, for the first time, to prevent recurrence of Circular 230 violations.

In turn, publication of Treasury's long-awaited Circular 230 amendments on tax-shelter opinion writing puts OPR's momentum in high gear. The official release advises that these "final regulations provide best practices for all tax advisors, mandatory requirements for written advice that presents a greater potential for concern, and minimum standards for other advice." No doubt is left, however, that the amendments' underlying intent is to "Promote Ethical Practice," "improve ethical standards," and "restore and maintain public confidence in tax professionals." Highlighted too is the caution that "one of the IRS' top four enforcement goals" is "[e]nsuring that attorneys, accountants and other tax practitioners adhere to professional standards and follow the law."

This is a harsh estimate of tax practitioners in general. As members of the profession of tax lawyers, it is difficult to ignore our collective responsibility to respond. What do we do about it? Certainly the tax bar has not been asleep. Both the ABA Tax Section and the AICPA separately have been working on standards of practice for over 40 years; and each has published a series of guiding principles which continue as works in progress. The issue remains, however, whether the tax bar has probed deeply enough.

Have we been willing to grapple with more subtle, more difficult issues? Have we articulated what we regard as "best practices" for tax lawyers, keeping in mind that Circular 230 applies to a broad range of "practitioners"? Tax lawyers are clearly quite distinguishable from other "practitioners" and, indeed, from lawyers in general. And it seems fair to ask: Which practices are acceptable to the tax bar, and which are not? At what point does the tax bar regard tax advice or tax practice as crossing the line? As "too aggressive"? As "things that are not done"?

These questions, of course, transcend the current concern with tax shelters only. It may not be long, in my view, before we will be asked to revisit a broader question: "Whether, in a system that requires each taxpayer to self-assess the taxes that are legally due, a tax lawyer can properly advise a client that he or she may take an undisclosed tax return position absent the lawyer's good faith belief that the position is 'more likely than not' correct?" In considering the issue some 20 years ago, ABA Formal Opinion 85-352 crafted as a more flexible answer the "realistic possibility of success" test, which later became a touchstone used by Congress and the Treasury in assessing certain penalties. In light of unacceptable developments since then, it would seem timely for the entire subject matter to undergo a thorough review.

In his speech on The Public Influence of the Bar, Supreme Court Chief Justice Harlan F. Stone addressed the same theme of lawyers' ethics in relation to the great Wall

Street stock market crash. Critical of “clever legal devices,” and critical of lawyers having done “relatively so little to remedy the evils of the investment market,” he observed that “whatever standards of conduct in the performance of its function the Bar consciously adopts must at once be reflected in the character of the world of business and finance.” In his view, “the possibilities of its influence are almost beyond calculation”; and he went on to advise, “It is needful that we look beyond the club of the policeman as a civilizing agency to the sanctions of professional standards which condemn the doing of what the law has not yet forbidden.”

The point is: Though we are a long-recognized profession, allowed the privilege of autonomy and essentially self-regulation, no insurmountable barriers exist to prevent encroachment on this privilege, or even its end, if our practices or standards are regarded as inadequate or unrealistic. Today, we already see a gradual erosion flowing from a series of new governmental rules—by Congress, for example through the Internal Revenue Code or legislation like Sarbanes-Oxley, or by the SEC or Public Company Accounting Oversight Board (“Peekabo”), or by Treasury through Circular 230 or other regulations.

Our profession of tax lawyers must take the initiative and become more intently involved—more proactive and not simply defensive. Problems need be identified and solutions developed by ourselves, and where necessary recommended for implementation by the bar in general or by appropriate governmental bodies. We cannot wait for others to compel answers. Nor can we move at the pace of the ALI project that required 13 years to complete a two-volume Restatement of the Law Governing Lawyers. Ours would naturally be more immediate in time and focus, and might well look to the leadership of the ABA Section on Taxation, this organization, the American College of Tax Counsel, or some other concerned and qualified group.

As tax lawyers, we face many different responsibilities daily—to our clients, to the profession, to the public, to ourselves. How we maintain our own self-respect as lawyers; how we desire to be viewed by others; and how we use our special skills to improve the nation’s revenue raising system—are all questions crossing our minds every day, some at times in conflict and in need of balancing as we confront different tasks. In this regard, Dean Griswold counseled us to preserve our “independence of view”—separating our representation of clients from our role as public citizens seeking to improve the functioning of government.

The one exemplar he acclaimed is Randolph E. Paul, Treasury’s General Counsel and tax policy leader during World War II, whom the Dean refers to as “one of the early giants in the tax field.” Randolph, with whom I practiced during my beginning days as a lawyer, asserted this individual independence throughout his entire career, while he developed a remarkable tax practice. In the closing lines of his classic *Taxation in the United States*, he makes these seminal observations on “the responsibilities of tax experts”:

“The most I can say is that I do not think surrender needs to be unconditional . . . I know tax advisers who accomplish the double job of ably representing their clients and faithfully working for the tax system taxpayers deserve . . . At another level I venture the opinion that they lead a more comfortable life than do many of their colleagues. Of one thing I am very sure—that both taxpayers and the government need many more of these independent advisers.”

Tonight this room is filled with many of these independent, responsible advisers—

some surely to become the giants we will salute in the future. I am certain that together we will overcome our present challenge “to restore and maintain public confidence in tax professionals.” At the same time, I have no doubt too that we will not fail in our ongoing commitment to better the way in which our nation’s needs for revenue are fulfilled, fairly and honorably.

ADDITIONAL STATEMENTS

RETIREMENT OF 10 UTICA COMMUNITY SCHOOL ADMINISTRATORS

• Mr. LEVIN. Mr. President, I take this opportunity to recognize 10 individuals in Michigan for their dedication and service to public education. The Utica Community School District can be proud of these men and women for their devotion to improving the lives of countless young people.

The Utica Community School District encompasses Utica, most of Sterling Heights, Shelby Township and parts of Ray, Washington, and Macomb Townships. It is the second largest school district in Michigan, with a current enrollment of over 29,000 students. Utica takes pride in its educational standards, dedication, and service to its students. These goals would not have been possible without the efforts of the following 10 school administrators who have a combined 300-plus years of service and have collectively touched the lives of more than 500,000 children over the course of their careers. The accomplishments and the impacts on public education these individuals have had over the years are numerous and impressive.

Each of these individuals has played a vital role in building strong relationships with students, parents, teachers, and the community at large in this diverse and vibrant region of southeast Michigan. They exemplify the necessary dedication, determination, and professionalism to foster individualized attention to each student. I am pleased to honor each of them:

David A. Berube, Assistant Superintendent of Human Resources; Vivian V. Constand, Director of Elementary Education; Joseph F. Jeannette, Assistant Director of Elementary Education; Susan E. Meyer, Director of Secondary Education; Glenn A. Patterson, Director of Human Resources; Diane M. Robinson, Supervisor of Employee Benefits; Nancy M. Searing, Assistant Director of Secondary Education; Linda M. Theut, Administrative Assistant to the Superintendent, Judith M. Wagner, Supervisor of Special Education; and John S. Zoellner, Director of Fiscal Services.

On July 1, 2005, these individuals will retire from their respective careers in education, and their leadership and talents will surely be missed. I know my Senate colleagues join me in congratulating these 10 distinguished individuals for their many efforts throughout the years, and to recognize their record of service to the Utica community

schools and to the surrounding community.●

TRIBUTE TO GEORGE DEMENT, MAYOR OF BOSSIER CITY, LOUISIANA

• Mr. VITTER. Mr. President, I rise today to recognize George Dement, mayor of Bossier City, LA. Mayor Dement will retire from office on June 30, 2005, after 16 years of service to northwest Louisiana. Mayor Dement is retiring from public service on the same date he was inaugurated 16 years earlier. Today, I take a moment to offer warm thanks for his years of service to Bossier City and best wishes for his coming commendation ceremonies.

A native of Princeton, LA, Mayor Dement served in the U.S. Submarine Service in both the Atlantic and Pacific Theaters during World War II and was present when the Japanese surrendered at Tokyo Bay. After 5 years of military service, he attended Centenary College and Louisiana State University Shreveport. Upon completing his studies, Mayor Dement began a 22-year tenure with Holiday Inn and was named Innkeeper of the Year in 1976. In 1989, he was elected mayor of Bossier City where he has been reelected three times—all with large margins of victory.

As mayor, Mr. Dement will be remembered for his leadership and accessibility. During his tenure, Mayor Dement led the way on four different phases of the Arthur Ray Teague Parkway and also poured large amounts of energy into revitalizing key areas of Bossier City.

Fondly referred to as “the people’s mayor,” Mr. Dement is known for his honesty and commonsense approach to governing. I come to the Senate floor today to join the residents of Bossier City in personally commending, honoring, and thanking him for his 16 years of service to northwest Louisiana.●

RESCUE AND RESTORE PROGRAM

• Mr. BROWNBACK. Mr. President, I rise to mark the occasion of the 500th nonprofit and faith-based group joining Rescue & Restore Victims of Human Trafficking, an initiative by the U.S. Department of Health and Human Services. Rescue & Restore is a project to help protect the victims of trafficking in human beings.

After years of working on a bipartisan level with colleagues to pass the Trafficking Victims Protection Act of 2000, it is my distinct pleasure to commemorate this landmark achievement. Rescue & Restore is a multicity, decentralized national coalition to find, identify and rescue victims of human trafficking in the United States and restore them to a condition of human dignity. The program does this through the engagement of thousands of individuals and hundreds of government and community organizations. TVPA

was designed to protect the victims of involuntary servitude, sexual exploitation, forced labor and other forms of a contemporary slave trade.

Since the launch of the first Rescue & Restore city coalition in 2004, the rate of trafficking victims rescued has more than doubled over the previous reporting period—from 107 victims receiving certification letters, to 224. More victims are being identified every day. There are now more than 10,000 “boots on the ground” in 14 cities and trained advocates actively seeking out trafficking victims.

Today, June 7, a statewide Rescue & Restore coalition is set to be launched in Illinois in cooperation with the administration of Governor Rod Blagojevich. The Chicago rollout is a true watershed in the mission to locate, identify, rescue, and restore trafficking victims to a condition of human dignity. This is a statewide endeavor, the first of its kind, involving the full panoply of Illinois state and local government law enforcement and health and human welfare agencies working in a coalition with more than 60 nongovernmental and social welfare organizations, child advocates, and health care professionals mobilized to combat trafficking. Other coalition launches are planned for Long Island NY, Houston, and Los Angeles later this year for a total of 17 geographical regions to be served.

Human trafficking is the fastest growing criminal industry in the world today, affecting as many as 900,000 victims worldwide. The CIA estimates that as many as 17,500 men, women and children are brought into the U.S. annually by force, fraud or coercion as victims of human trafficking. Others are victimized right here in America, trafficked into prostitution or forced labor. Many of the victims are women or children who are forced into prostitution; others are pressed into labor slavery such as sweatshops, peonage, or domestic servitude.

Rescue & Restore coalition partners are using their existing channels of communication and growing public awareness to help Americans recognize the existence of human trafficking. They are educating their associates and constituents on how to identify and assist trafficking victims. We now have taken vital steps toward wiping the scourge of human trafficking from our shores.●

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-2452. A communication from the Director, Office of Executive Secretariat, Bureau of Indian Affairs, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled “Conforming Amendments to Implement the No Child Left Behind Act of 2000” (RIN1076-AE54) received on June 6, 2005; to the Committee on Indian Affairs.

EC-2453. A communication from the Director, Regulations Management, Veterans Benefits Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled “Veterans Education: Non-payment of VA Educational Assistance to Fugitive Felons” (RIN2900-AL79) received on June 3, 2005; to the Committee on Veterans’ Affairs.

EC-2454. A communication from the Chairman, National Endowment for the Arts, National Foundation on the Arts and the Humanities, transmitting, the Foundation’s Annual report on the Arts and Artifacts Indemnity Program for Fiscal Year 2004; to the Committee on Health, Education, Labor, and Pensions.

EC-2455. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled “Testing for Rapid Detection of Adulteration of Food”; to the Committee on Health, Education, Labor, and Pensions.

EC-2456. A communication from the Acting Assistant Secretary, Occupational Safety and Health Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled “Oregon State Plan; Final Approval Determination” (RIN1218-AC13) received on June 2, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC-2457. A communication from the Assistant General Counsel for Regulations, Office of Special Education and Rehabilitative Services, Department of Education, transmitting, pursuant to law, the report of a rule entitled “Disability and Rehabilitation Research Projects and Centers Programs—Rehabilitation Engineering Research Centers” received on June 1, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC-2458. A communication from the Assistant General Counsel for Regulations, Office of Special Education and Rehabilitative Services, Department of Education, transmitting, pursuant to law, the report of a rule entitled “Disability and Rehabilitation Research Projects—Knowledge Dissemination and Utilization Projects” (RIN1820-ZA36) received on June 1, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC-2459. A communication from the Chief of Staff, Comptroller of the Currency, Administrator of National Banks, transmitting, pursuant to law, the Agency’s annual reports for fiscal years 2003 and 2004, four issues of the Quarterly Journal of the Office of the Comptroller of the Currency (OCC) for calendar year 2003 and one for calendar year 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC-2460. A communication from the Deputy General Counsel for Equal Opportunity and Administrative Law, Office of General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a vacancy in the position of Assistant Secretary for Community Planning and Development, received on June 3, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC-2461. A communication from the Deputy General Counsel for Equal Opportunity and Administrative Law, Office of General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a vacancy in the position of Assistant Secretary for Housing/Federal Housing Commissioner, received on June 3, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC-2462. A communication from the Under Secretary, Emergency Preparedness and Response, Federal Emergency Management Agency, transmitting, pursuant to law, a report that funding for the Commonwealth of Massachusetts as a result of the record/near

record snow on January 22–23, 2005, has exceeded \$5,000,000; to the Committee on Banking, Housing, and Urban Affairs.

EC-2463. A communication from the Under Secretary, Emergency Preparedness and Response, Federal Emergency Management Agency, transmitting, pursuant to law, a report that funding for the State of Indiana as a result of the record/near record snow on December 21–23, 2004, has exceeded \$5,000,000; to the Committee on Banking, Housing, and Urban Affairs.

EC-2464. A communication from the Secretary of the Treasury, transmitting, pursuant to the National Emergencies Act, a report relative to the national emergency that was declared in Executive Order 13047 of May 20, 1997 with respect to Burma; to the Committee on Banking, Housing, and Urban Affairs.

EC-2465. A communication from the Director, Financial Crimes Enforcement Network, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Dealers in Precious Metals, Stones, or Jewels” (RIN1506-AA58) received on June 6, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC-2466. A communication from the Administrator, Energy Information Administration, Department of Energy, transmitting, pursuant to law, a report relative to the country of origin and the sellers of uranium and uranium enrichment services purchased by owners and operators of U.S. nuclear power reactors for 2004; to the Committee on Energy and Natural Resources.

EC-2467. A communication from the General Counsel, Federal Energy Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled “Standards for Business Practices of Interstate Natural Gas Pipelines” (RIN1902-AC63) received on June 6, 2005; to the Committee on Energy and Natural Resources.

EC-2468. A communication from the Assistant Secretary for Fish, Wildlife and Parks, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled “Endangered and Threatened Wildlife and Plants; Amendment of Lower St. Johns River Manatee Refuge in Florida” (RIN1018-AU10) received on May 26, 2005; to the Committee on Energy and Natural Resources.

EC-2469. A communication from the Staff Director, United States Commission on Civil Rights, transmitting, pursuant to law, a report relative to probable violations of the Antideficiency Act; to the Committee on Appropriations.

EC-2470. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a report on violations of the Antideficiency Act; to the Committee on Appropriations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. STEVENS, from the Committee on Commerce, Science, and Transportation, with amendments:

S. 714. A bill to amend section 227 of the Communications Act of 1934 (47 U.S.C. 227) relating to the prohibition on junk fax transmissions (Rept. No. 109-76).

INTRODUCTION OF BILLS AND
JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DEMINT:

S. 1173. A bill to amend the National Labor Relations Act to ensure the right of employees to a secret-ballot election conducted by the National Labor Relations Board; to the Committee on Health, Education, Labor, and Pensions.

By Mr. FEINGOLD (for himself and Mr. KOHL):

S. 1174. A bill to authorize the President to posthumously award a gold medal on behalf of Congress to Robert M. La Follette, Sr., in recognition of his important contributions to the Progressive movement, the State of Wisconsin, and the United States; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. FEINGOLD (for himself and Mr. KOHL):

S. 1175. A bill to require the Secretary of the Treasury to mint coins in commemoration of Robert M. La Follette, Sr., in recognition of his important contributions to the Progressive movement, the State of Wisconsin, and the United States; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. AKAKA:

S. 1176. A bill to improve the provision of health care and services to veterans in Hawaii, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. AKAKA:

S. 1177. A bill to improve mental health services at all facilities of the Department of Veterans Affairs; to the Committee on Veterans' Affairs.

By Mr. MARTINEZ:

S. 1178. A bill to amend the Internal Revenue Code of 1986 to allow individuals a refundable credit against income tax for the purchase of private health insurance; to the Committee on Finance.

By Mr. KENNEDY:

S. 1179. A bill to amend title SVIII of the Social Security Act to ensure that benefits under part D of such title have no impact on benefits under other Federal programs; to the Committee on Finance.

By Mr. OBAMA:

S. 1180. A bill to amend title 38, United States Code, to reauthorize various programs servicing the needs of homeless veterans for fiscal years 2007 through 2011, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. CORNYN (for himself, Mr. LEAHY, Mr. FEINGOLD, and Mr. ALEXANDER):

S. 1181. A bill to ensure an open and deliberate process in Congress by providing that any future legislation to establish a new exemption to section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) be stated explicitly within the text of the bill; to the Committee on the Judiciary.

By Mr. CRAIG:

S. 1182. A bill to amend title 38, United States Code, to improve health care for veterans, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. WARNER (for himself, Mr. LIEBERMAN, Mr. ROBERTS, Ms. STABENOW, Mr. DURBIN, and Mr. ALLEN):

S. 1183. A bill to provide additional assistance to recipients of Federal Pell Grants who are pursuing programs of study in engineering, mathematics, science, or foreign lan-

guages; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BIDEN:

S. 1184. A bill to waive the passport fees for a relative of a deceased member of the Armed Forces proceeding abroad to visit the grave of such member or to attend a funeral or memorial service for such member; to the Committee on Foreign Relations.

By Mr. DODD:

S. 1185. A bill to protect United States workers from competition of foreign workforces for performance of Federal and State contracts; to the Committee on Homeland Security and Governmental Affairs.

By Mr. DOMENICI (for himself, Mr. SCHUMER, Mr. COCHRAN, Mr. ALLARD, and Mr. COLEMAN):

S. 1186. A bill to amend the Internal Revenue Code of 1986 to provide the same capital gains treatment for art and collectibles as for other investment property and to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor; to the Committee on Finance.

By Mr. ALLEN:

S. 1187. A bill for the relief of James Sy- mington; to the Committee on the Judiciary.

By Mr. ALLEN:

S. 1188. A bill for the relief of Fereshteh Sani; to the Committee on the Judiciary.

By Mr. SALAZAR:

S. 1189. A bill to require the Secretary of Veterans Affairs to publish a strategic plan for long-term care, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. SALAZAR:

S. 1190. A bill to provide sufficient blind rehabilitation outpatient specialists at medical centers of the Department of Veterans Affairs; to the Committee on Veterans' Affairs.

By Mr. SALAZAR:

S. 1191. A bill to establish a grant program to provide innovative transportation options to veterans in remote rural areas; to the Committee on Veterans' Affairs.

By Mr. SALAZAR:

S. 1192. A bill to amend section 51 of the Internal Revenue Code of 1986 to expand the eligibility for the work opportunity tax credit to all disabled veterans; to the Committee on Finance.

By Mrs. BOXER (for herself and Mr. SCHUMER):

S. 1193. A bill to direct the Assistant Secretary of Homeland Security for the Transportation Security Administration to issue regulations requiring turbojet aircraft of air carriers to be equipped with missile defense systems, and for other purposes; to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND
SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FEINGOLD (for himself and Mr. KOHL):

S. Res. 161. A resolution honoring the life of Robert M. La Follette, Sr., on the sesqui-centennial of his birth; to the Committee on the Judiciary.

By Ms. SNOWE (for herself, Mr. OBAMA, Mr. CORZINE, Mrs. BOXER, Mrs. MURRAY, Mrs. CLINTON, Mr. HARKIN, Mr. DURBIN, Mrs. FEINSTEIN, Mr. REID, Mr. FEINGOLD, and Mr. JEFFORDS):

S. Res. 162. A resolution expressing the sense of the Senate concerning Griswold v. Connecticut; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 65

At the request of Mr. INHOFE, the names of the Senator from Pennsylvania (Mr. SANTORUM), the Senator from Utah (Mr. HATCH) and the Senator from Nevada (Mr. ENSIGN) were added as cosponsors of S. 65, a bill to amend the age restrictions for pilots.

S. 98

At the request of Mr. ALLARD, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 98, a bill to amend the Bank Holding Company Act of 1956 and the Revised Statutes of the United States to prohibit financial holding companies and national banks from engaging, directly or indirectly, in real estate brokerage or real estate management activities, and for other purposes.

S. 104

At the request of Mr. TALENT, the name of the Senator from South Dakota (Mr. THUNE) was added as a cosponsor of S. 104, a bill to amend the Internal Revenue Code of 1986 to provide tax-exempt financing of highway projects and rail-truck transfer facilities.

S. 151

At the request of Mr. PRYOR, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 151, a bill to amend title 38, United States Code, to require an annual plan on outreach activities of the Department of Veterans Affairs.

S. 181

At the request of Mr. ENSIGN, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 181, a bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for taxpayers owning certain commercial power takeoff vehicles.

S. 340

At the request of Mr. LUGAR, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 340, a bill to maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media.

S. 350

At the request of Mr. LUGAR, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 350, a bill to amend the Foreign Assistance Act of 1961 to provide assistance for orphans and other vulnerable children in developing countries, and for other purposes.

S. 369

At the request of Mr. DODD, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 369, a bill to establish protections against compelled disclosure of sources, and news information, by persons providing services for the news media.

S. 390

At the request of Mr. DODD, the name of the Senator from Illinois (Mr.

OBAMA) was added as a cosponsor of S. 390, a bill to amend title XVIII of the Social Security Act to provide for coverage of ultrasound screening for abdominal aortic aneurysms under part B of the medicare program.

S. 392

At the request of Mr. LEVIN, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 392, a bill to authorize the President to award a gold medal on behalf of Congress, collectively, to the Tuskegee Airmen in recognition of their unique military record, which inspired revolutionary reform in the Armed Forces.

S. 438

At the request of Mr. ENSIGN, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 438, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 484

At the request of Mr. WARNER, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. 484, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 489

At the request of Mr. ALEXANDER, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 489, a bill to amend chapter 111 of title 28, United States Code, to limit the duration of Federal consent decrees to which State and local governments are a party, and for other purposes.

S. 549

At the request of Mr. ALLARD, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 549, a bill to extend a certain high priority corridor in the States of Colorado, Nebraska, South Dakota, and Wyoming.

S. 580

At the request of Mr. SMITH, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 580, a bill to amend the Internal Revenue Code of 1986 to allow certain modifications to be made to qualified mortgages held by a REMIC or a grantor trust.

S. 603

At the request of Ms. LANDRIEU, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 603, a bill to amend the Consumer Credit Protection Act to assure meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, and for other purposes.

S. 614

At the request of Mr. SPECTER, the name of the Senator from Maine (Ms.

COLLINS) was added as a cosponsor of S. 614, a bill to amend title 38, United States Code, to permit medicare-eligible veterans to receive an out-patient medication benefit, to provide that certain veterans who receive such benefit are not otherwise eligible for medical care and services from the Department of Veterans Affairs, and for other purposes.

S. 619

At the request of Mrs. FEINSTEIN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 619, a bill to amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions.

S. 647

At the request of Mrs. LINCOLN, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 647, a bill to amend title XVIII of the Social Security Act to authorize physical therapists to evaluate and treat medicare beneficiaries without a requirement for a physician referral, and for other purposes.

S. 750

At the request of Mr. KYL, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 750, a bill to amend the Internal Revenue Code of 1986 to allow look-through treatment of payments between related foreign corporations.

S. 756

At the request of Mr. BENNETT, the names of the Senator from Michigan (Ms. STABENOW) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. 756, a bill to amend the Public Health Service Act to enhance public and health professional awareness and understanding of lupus and to strengthen the Nation's research efforts to identify the causes and cure of lupus.

S. 828

At the request of Mr. HARKIN, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 828, a bill to enhance and further research into paralysis and to improve rehabilitation and the quality of life for persons living with paralysis and other physical disabilities, and for other purposes.

S. 853

At the request of Mr. LUGAR, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 853, a bill to direct the Secretary of State to establish a program to bolster the mutual security and safety of the United States, Canada, and Mexico, and for other purposes.

S. 859

At the request of Mr. SANTORUM, the name of the Senator from Hawaii (Mr. INOUE) was added as a cosponsor of S. 859, a bill to amend the Internal Revenue Code of 1986 to allow an income tax credit for the provision of homeownership and community development, and for other purposes.

S. 863

At the request of Mr. CONRAD, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 863, a bill to require the Secretary of the Treasury to mint coins in commemoration of the centenary of the bestowal of the Nobel Peace Prize on President Theodore Roosevelt, and for other purposes.

S. 877

At the request of Mr. HAGEL, his name was added as a cosponsor of S. 877, a bill to provide for a biennial budget process and a biennial appropriations process and to enhance oversight and the performance of the Federal Government.

S. 980

At the request of Mr. NELSON of Florida, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 980, a bill to provide state and local governments with financial assistance that will increase their ability and effectiveness in monitoring convicted sex offenders by developing and implementing a program using global positioning systems to monitor convicted sexual offenders or sexual predators released from confinement.

S. 1002

At the request of Mr. BAUCUS, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1002, a bill to amend title XVIII of the Social Security Act to make improvements in payments to hospitals under the medicare program, and for other purposes.

S. 1022

At the request of Mr. SMITH, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 1022, a bill to amend the Internal Revenue Code of 1986 to allow for an energy efficient appliance credit.

S. 1057

At the request of Mr. DORGAN, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1057, a bill to amend the Indian Health Care Improvement Act to revise and extend that Act.

S. 1062

At the request of Mr. KENNEDY, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. 1062, a bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

S. 1076

At the request of Mr. TALENT, the names of the Senator from Indiana (Mr. BAYH) and the Senator from Colorado (Mr. SALAZAR) were added as cosponsors of S. 1076, a bill to amend the Internal Revenue Code of 1986 to extend the excise tax and income tax credits for the production of biodiesel.

S. 1104

At the request of Mrs. CLINTON, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 1104, a bill to amend titles XIX and XXI

of the Social Security Act to provide States with the option to cover certain legal immigrants under the medicaid and State children's health insurance programs.

S. 1123

At the request of Mr. LEVIN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1123, a bill to suspend temporarily the duty on certain microphones used in automotive interiors.

S. 1160

At the request of Mr. SMITH, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 1160, a bill to amend the Internal Revenue Code of 1986 to restore, increase, and make permanent the exclusion from gross income for amounts received under qualified group legal services plan.

S.J. RES. 12

At the request of Mr. HATCH, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S.J. Res. 12, a joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

S. CON. RES. 16

At the request of Mr. BINGAMAN, the names of the Senator from Michigan (Ms. STABENOW) and the Senator from Alaska (Ms. MURKOWSKI) were added as cosponsors of S. Con. Res. 16, a concurrent resolution conveying the sympathy of Congress to the families of the young women murdered in the State of Chihuahua, Mexico, and encouraging increased United States involvement in bringing an end to these crimes.

S. CON. RES. 24

At the request of Mr. GRAHAM, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. Con. Res. 24, a concurrent resolution expressing the grave concern of Congress regarding the recent passage of the anti-secession law by the National People's Congress of the People's Republic of China.

S. RES. 39

At the request of Ms. LANDRIEU, the names of the Senator from West Virginia (Mr. BYRD), the Senator from Oklahoma (Mr. COBURN), the Senator from Minnesota (Mr. COLEMAN), the Senator from Idaho (Mr. CRAIG), the Senator from Maryland (Ms. MIKULSKI) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. Res. 39, a resolution apologizing to the victims of lynching and the descendants of those victims for the failure of the Senate to enact anti-lynching legislation.

S. RES. 42

At the request of Mr. LUGAR, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. Res. 42, a resolution expressing the sense of the Senate on promoting initiatives to develop an HIV vaccine.

S. RES. 134

At the request of Mr. SMITH, the names of the Senator from Michigan

(Mr. LEVIN) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of S. Res. 134, a resolution expressing the sense of the Senate regarding the massacre at Srebrenica in July 1995.

S. RES. 155

At the request of Mr. BIDEN, the names of the Senator from New Mexico (Mr. BINGAMAN), the Senator from Colorado (Mr. SALAZAR), the Senator from Washington (Ms. CANTWELL), the Senator from Delaware (Mr. CARPER) and the Senator from North Dakota (Mr. DORGAN) were added as cosponsors of S. Res. 155, a resolution designating the week of November 6 through November 12, 2005, as "National Veterans Awareness Week" to emphasize the need to develop educational programs regarding the contributions of veterans to the country.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DEMINT:

S. 1173. A bill to amend the National Labor Relations Act to ensure the right of employees to a secret-ballot election conducted by the National Labor Relations Board; to the Committee on Health, Education, Labor, and Pensions.

Mr. DEMINT. Mr. President, today I introduce the Secret Ballot Protection Act, a measure that would amend the National Labor Relations Act, NLRA, to ensure the right of employees to a secret ballot election conducted by the National Labor Relations Board, NLRB, when deciding whether to be represented by a labor organization.

The legislation would prohibit a union from being recognized based on a "card check" campaign. Under a card check system, a union gathers authorization cards purportedly signed by workers expressing their desire for the union to represent them. By their very nature, card checks strip employees of the right to choose freely, safely, and anonymously, whether to unionize and leave them open to harassment, intimidation, and union pressure.

The bill also addresses the increasing pressure faced by employers from union bosses to recognize unions based on a card check campaign and forego the customary secret ballot election supervised by the National Labor Relations Board, NLRB, which gives workers the ability to vote their conscience without fear of reprisal.

Under current law, employers may voluntarily recognize unions based on these card checks, but are not required to do so. However, threats, boycotts, and other forms of public pressure are increasingly being used to force employers to recognize unions based on a card-check rather than the customary secret ballot election. The need for legislation to protect workers' rights could not be more clear.

It is no secret that hostile campaigns against American businesses to discredit employers have become a key

organizing tactic used by union bosses across the country. These and other pressure tactics are often designed to hurt employers, their workers, and the economy, unless the demands of union leaders are met. It is wrong that union bosses are using these types of tactics at the expense of secret ballot elections, depriving rank-and-file workers of the ability to freely vote their conscience without fear of retaliation.

The Secret Ballot Protection Act will preserve the integrity of workers' freedom of choice and the right to a secret ballot election; it will protect workers from fear, threats, misinformation, and coercion by a union or coworkers to sign union authorization cards; and it will eliminate a union's ability to coercively terrorize an employer into recognition under duress. These fundamental protections can be achieved by simply requiring unions to win a majority of worker support in an anonymous, secret ballot election which eliminates the shroud of union intimidation tactics.

Supporting the right to a private vote and outlawing the corrupt card check practice of allowing union thugs to bully, harass, and scare workers who object to union membership is absolutely critical to democracy and freedom of choice.

Secret ballots are an absolutely essential ingredient for any functioning democratic system. The lack of secret ballot elections is how oppressive regimes manage to stay in power without majority support. Repelling such oppression hinges on the ability to walk into a voting booth, pull the curtain, and vote for anyone or anything we please with confidence the vote will be counted but never revealed to anyone who could use the knowledge to retaliate.

Evidence clearly demonstrates that secret ballot elections are more accurate indicators than card checks of whether employees actually wish to be recognized by a union. Numerous court decisions echo this fact. For example, in the case *NLRB v. S.S. Logan Packing Co.*, the court said:

It would be difficult to imagine a more unreliable method of ascertaining the real wishes of employees than a card check, unless it were an employer's request for an open show of hands. The one is no more reliable than the other.

There is no question that card checks leave employees open to harassment, intimidation, and union pressure. Workers' democratic rights should be protected, and the Secret Ballot Protection Act will make sure that happens by preserving the secret ballot election process. This important measure would guarantee workers the right to an anonymous, secret ballot election conducted by the NLRB and eliminate the use of intimidation and threats by organizers to coerce workers into joining a union.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1173

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Secret Ballot Protection Act of 2005".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The right of employees under the National Labor Relations Act (29 U.S.C. 151 et seq.) to choose whether to be represented by a labor organization by way of secret ballot election conducted by the National Labor Relations Board is among the most important protections afforded under Federal labor law.

(2) The right of employees to choose by secret ballot is the only method that ensures a choice free of coercion, intimidation, irregularity, or illegality.

(3) The recognition of a labor organization by using a private agreement, rather than a secret ballot election overseen by the National Labor Relations Board, threatens the freedom of employees to choose whether to be represented by a labor organization, and severely limits the ability of the National Labor Relations Board to ensure the protection of workers.

SEC. 3. NATIONAL LABOR RELATIONS ACT.

(a) RECOGNITION OF REPRESENTATIVE.—

(1) IN GENERAL.—Section 8(a)(2) of the National Labor Relations Act (29 U.S.C. 158(a)(2)) is amended by inserting before the colon the following: "or to recognize or bargain collectively with a labor organization that has not been selected by a majority of such employees in a secret ballot election conducted by the National Labor Relations Board in accordance with section 9".

(2) APPLICATION.—The amendment made by paragraph (1) shall not apply to collective bargaining relationships in which a labor organization with majority support was lawfully recognized prior to the date of enactment of this Act.

(b) ELECTION REQUIRED.—

(1) IN GENERAL.—Section 8(b) of the National Labor Relations Act (29 U.S.C. 158(b)) is amended—

(A) in paragraph (6), by striking "and" at the end;

(B) in paragraph (7), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(8) to cause or attempt to cause an employer to recognize or bargain collectively with a representative of a labor organization that has not been selected by a majority of such employees in a secret ballot election conducted by the National Labor Relations Board in accordance with section 9."

(2) APPLICATION.—The amendment made by paragraph (1) shall not apply to collective bargaining relationships that were recognized prior to the date of enactment of this Act.

(c) SECRET BALLOT ELECTION.—Section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)), is amended—

(1) by striking "Representatives" and inserting "(1) Representatives";

(2) by inserting after "designated or selected" the following: "by a secret ballot election conducted by the National Labor Relations Board in accordance with this section"; and

(3) by adding at the end the following:

"(b) The secret ballot election requirement under paragraph (1) shall not apply to collective bargaining relationships that were recognized before the date of the enactment of the Secret Ballot Protection Act of 2005."

SEC. 4. REGULATIONS.

Not later than 6 months after the date of the enactment of this Act, the National Labor Relations Board shall review and revise all regulations promulgated prior to such date of enactment to implement the amendments made by this Act.

By Mr. AKAKA:

S. 1176. A bill to improve the provision of health care and services to veterans in Hawaii, and for other purposes; to the Committee on Veterans' Affairs.

Mr. AKAKA. Mr. President, I rise today to introduce the "Neighbor Islands Veterans Health Care Improvements Act." My State of Hawaii is home to 115,000 veterans, nearly 18,000 of whom avail themselves of VA health care. Unfortunately, the level of care provided to those living on Oahu and the Neighbor Islands—Kauai, Molokai, Lanai, Maui, and the Big Island—is not at the optimal level. My legislation would significantly improve the level of care the veterans residing in Hawaii have so bravely earned.

Hawaii is undoubtedly an exceptional place to make one's home, and its population continues to grow each year. As such, the number of veterans seeking VA health care has grown. However, the level of services provided to Hawaii's veterans has failed to keep pace. Additionally, each day more veterans are returning home to Hawaii from the Global War on Terror, including Operations Enduring and Iraqi Freedom. It is critical that these brave men and women receive adequate care. It is equally critical that today's veterans receive needed long-term care and mental health care.

My bill would ensure that care and facilities are optimized, that the burden of VA personnel is diminished, and that veterans throughout the state receive specialized care. Specifically, my legislation calls for new Community Based Outpatient Clinics and Vet Centers in areas that desperately need additional health care facilities, as well as expanding services at those already in existence. Satellite clinics providing both medical care and mental health counseling would be opened on the islands of Molokai and Lanai, which currently lack VA facilities. Staff levels at existing clinics and Vet Centers would be increased to compensate for these new clinics and to provide needed community-based long-term care, such as home care. My legislation also authorizes the construction of a \$10 million mental health center on the grounds of Tripler Army Medical Center, which will include an inpatient Post-Traumatic Stress Disorder residential treatment program.

That our veterans receive the long-term care to which they are entitled is of major concern to me. In fact, the Committee on Veterans' Affairs, of which I am Ranking Member, held a hearing on the potential demand for long-term care just this May. I would like to point out that the VA Center for Aging in Honolulu—the only VA

nursing home in the State—has a mere 60 beds. This is nowhere near sufficient to care for the number of veterans who reside there. Furthermore, community nursing home beds are limited. Given the dearth of nursing home beds, both VA and community, the Neighbor Islands Veterans Health Care Improvements Act authorizes a medical care foster program on the Island of Oahu. Modeled on the successful Medical Care Foster Program at the Central Arkansas Veterans Health Care System, such a system places veterans in a permanent foster home, allowing them to remain in the community while receiving the care they need.

Because I believe specialized care, such as orthopedics and ophthalmology, are limited on the neighbor islands, the bill directs that VA fully study the provision of such care. VA would then be required to make a formal determination as to the adequacy of specialized care. I may seek to direct improvements in this area at a later date.

This bill is vital to those veterans residing in Hawaii. Though they may live far from the other veterans on the mainland, they are just as entitled to quality health care.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

(The bill will be printed in a future edition of the RECORD.)

By Mr. AKAKA:

S. 1177. A bill to improve mental health services at all facilities of the Department of Veterans Affairs; to the Committee on Veterans' Affairs.

Mr. AKAKA. Mr. President, I rise proudly today to introduce legislation that would enhance the Department of Veterans Affairs' (VA) ability to provide mental health and other specialized services to its patients. At a time when our Nation is at war, it is imperative that we ensure that all veterans have access to top quality mental health care, whether they visit a VA hospital or clinic.

At the time of its creation, the VA health care system was tasked with meeting the special needs of its veteran patients. Those veterans who suffered from spinal cord injuries, amputations, blindness, Post-Traumatic Stress Disorder, substance abuse, and homelessness required unique forms of treatment and rehabilitation. During the past few decades, VA has emerged as the industry leader in providing specialized services to these types of patients. Much of VA's expertise in these areas remains unparalleled in the larger health care community—particularly with regard to mental health care.

However, it is with great dismay that I rise today, as VA's specialized programs are in jeopardy due to budget constraints. Increased demand and flatline budget increases over the past

few years have literally starved the system. Sadly, this problem is not a new one. Back in 1996, Congress recognized the merits of these specialized programs and that they could be vulnerable to cuts because of their smaller scale. As such, we enacted legislation that required VA to retain its capacity to provide specialized services at the levels in place at the time of the bill's passage in 1996, and to annually report as to the status of its compliance with this requirement.

Despite this effort by Congress and the actions of my predecessors on this Committee to subsequently strengthen the original legislation to protect VA's specialized services, VA continues to underfund and cut back resources for these vital programs. Additionally, VA has employed measures such as counting dollars according to 1996 levels to appear as if they are in compliance. In the area of mental health care, this has been especially true. My proposed legislation amends the statute to ensure that capacity funding levels are adjusted for inflation. We need to be talking about real dollars—not 1996 dollars—to get a true sense of VA's capacity to care for veterans with mental health needs.

This legislation would also mandate that VA carry out a number of measures designed to improve mental health and substance abuse treatment capacity at Community-Based Outpatient Clinics and throughout the VA system. Currently, many clinics do not even provide mental health services at all. My bill would ensure that at least 90 percent of all clinics can provide mental health services, either onsite or through referrals. Furthermore, it would establish more comprehensive performance measures to provide incentives for clinics to maintain mental health capacity, for primary care doctors to screen patients for mental illness, and require that every primary health care facility be able to provide at least five days of inpatient detoxification services.

Finally, the bill seeks to foster greater cooperation between VA and the Department of Defense (DoD) in treating servicemembers and subsequently veterans who suffer from some form of mental health or readjustment disorder. It has been estimated that anywhere from 20 to 30 percent of the men and women who are currently serving in Iraq and Afghanistan will require treatment for a mental health issue. The bill would direct the two Departments to agree upon standardized separation screening procedures for sexual trauma and mental health disorders, as well as establish a joint VA-DoD Workgroup to examine potential ways of combating stigma associated with mental illness, educate servicemembers' families, and make VA's expertise in the field of mental health more readily available to DoD providers.

We still have much work to do in the area of mental illness associated with service in the armed forces. But this

bill is a step in the right direction. I ask my colleagues for their support of this bill, for it not only seeks to combat disorders that can be very debilitating, but it also would protect specialized services that are at the heart of VA's mission.

I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 1177

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans Mental Health Care Capacity Enhancement Act of 2005".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Mental health treatment capacity at community-based outpatient clinics remains inadequate and inconsistent, despite the requirement under section 1706(c) of title 38, United States Code, that every primary care health care facility of the Department of Veterans Affairs develop and carry out a plan to meet the mental health care needs of veterans who require such services.

(2) In 2001, the minority staff of the Committee on Veterans' Affairs of the Senate conducted a survey of community-based outpatient clinics and found that there was no established systemwide baseline of acceptable mental health service levels at such clinics.

(3) In 2004, the Department of Veterans Affairs workgroup on mental health care, which developed and submitted a Comprehensive Mental Health Strategic Plan to the Secretary of Veterans Affairs, found service and funding gaps within the Department of Veterans Affairs health care system, and made numerous recommendations for improvements. As of May 2005, Congress had not received a final report on the workgroup's findings.

(4) In February 2005, the Government Accountability Office reported that the Department of Veterans Affairs had not fully met any of the 24 clinical care and education recommendations made in 2004 by the Special Committee on Post-Traumatic Stress Disorder of the Under Secretary for Health, Veterans Health Administration.

SEC. 3. REQUIRED CAPACITY FOR COMMUNITY-BASED OUTPATIENT CLINICS.

(a) **STRENGTHENING OF PERFORMANCE MEASURES FOR MENTAL HEALTH PROGRAMS.**—Section 1706(b)(6) of title 38, United States Code, is amended by adding at the end the following:

"(D) The Under Secretary shall include, as goals in the performance contracts entered into with Network Directors to prioritize mental health services—

"(i) establishing appropriate staff-patient ratio levels for various programs (including mental health services at community-based outpatient clinics);

"(ii) fostering collaborative environments for providers; and

"(iii) encouraging clinicians to conduct mental health consultations during primary care visits."

(b) **INFLATIONARY INDEXING OF CAPACITY REQUIREMENTS.**—Section 1706(b) of title 38, United States Code, is amended by adding at the end the following:

"(7) For the purposes of meeting and reporting on the capacity requirements under paragraph (1), the Secretary shall ensure

that the funding levels allocated for specialized treatment and rehabilitative services for disabled veterans are adjusted for inflation each fiscal year."

(c) **MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES.**—Section 1706(c) of title 38, United States Code, is amended—

(1) by inserting "(1)" before "The Secretary"; and

(2) by adding at the end the following:

"(2) The Secretary shall ensure that not less than 90 percent of community-based outpatient clinics have the capacity to provide onsite, contract-referral, or tele-mental health services—

"(A) for at least 10 percent of all clinic visits by not later than September 30, 2006; and

"(B) for at least 15 percent of all clinic visits by not later than September 30, 2007.

"(3) The Secretary shall ensure that not less than 2 years after the date of enactment of this paragraph—

"(A) each primary care health care facility of the Department has the capacity and resources to provide not less than 5 days of inpatient, residential detoxification services onsite or at a nearby contracted or Department facility; and

"(B) a case manager is assigned to coordinate follow up outpatient services at each community-based outpatient clinic."

(d) **REPORTING REQUIREMENT.**—Not later than January 31, 2008, the Secretary of Veterans Affairs shall submit a report to Congress that—

(1) describes the status and availability of mental health services at community-based outpatient clinics;

(2) describes the substance of services available at such clinics;

(3) includes the ratios between mental health staff and patients at such clinics; and

(4) includes the certification of the Inspector General of the Department of Veterans Affairs.

SEC. 4. COOPERATION ON MENTAL HEALTH AWARENESS AND PREVENTION.

(a) **AGREEMENT.**—The Secretary of Defense and the Secretary of Veterans Affairs shall enter into a Memorandum of Understanding—

(1) to ensure that separating servicemembers receive standardized individual mental health and sexual trauma assessments as part of separation exams; and

(2) includes the development of shared guidelines on how to conduct the assessments.

(b) **ESTABLISHMENT OF JOINT VA-DOD WORKGROUP ON MENTAL HEALTH.**—

(1) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Secretary of Defense and the Secretary of Veterans Affairs shall establish a joint workgroup on mental health, which shall be comprised of not less than 7 leaders in the field of mental health appointed from their respective departments.

(2) **STUDY.**—Not later than 1 year after the establishment of the workgroup under paragraph (1), the workgroup shall analyze the feasibility, content, and scope of initiatives related to—

(A) combating stigmas and prejudices associated with servicemembers who suffer from mental health disorders or readjustment issues, through the use of peer counseling programs or other educational initiatives;

(B) ways in which the Department of Veterans Affairs can make their expertise in treating mental health disorders more readily available to Department of Defense mental health care providers;

(C) family and spousal education to assist family members of veterans and servicemembers to recognize and deal with signs of potential readjustment issues or other mental health disorders; and

(D) seamless transition of servicemembers who have been diagnosed with mental health disorders from active duty to veteran status (in consultation with the Seamless Transition Task Force and other entities assisting in this effort).

(3) REPORT.—Not later than June 30, 2007, the Secretary of Defense and the Secretary of Veterans Affairs shall submit a report to Congress containing the findings and recommendations of the workgroup established under this subsection.

SEC. 5. PRIMARY CARE CONSULTATIONS FOR MENTAL HEALTH.

(a) GUIDELINES.—The Under Secretary for Health, Veterans Health Administration, shall establish systemwide guidelines for screening primary care patients for mental health disorders and illnesses.

(b) TRAINING.—Based upon the guidelines established under subsection (a), the Under Secretary for Health, Veterans Health Administration, shall conduct appropriate training for clinicians of the Department of Veterans Affairs to carry out mental health consultations.

By Mr. OBAMA:

S. 1180. A bill to amend title 38, United States Code, to reauthorize various programs servicing the needs of homeless veterans for fiscal years 2007 through 2011, and for other purposes; to the Committee on Veterans' Affairs.

Mr. OBAMA. Mr. President, the Department of Veterans Affairs estimates that on any given day, as many as 200,000 veterans are homeless. That is 200,000 men and women who have fought for this country who will go without the comfort of knowing that they will have a roof over their head and a place to call home.

If 200,000 of our Nation's veterans will go homeless tonight, the VA estimates that about twice as many veterans will experience homelessness this year. Again, that is 400,000 men and women who defended this great Nation, who will be left out on the streets at some point this year.

I hope my colleagues are as distressed as I am by these numbers, and I hope my colleagues will join me in supporting the bill I introduce today—the Shelter All Veterans Everywhere or “SAVE” Reauthorization Act of 2005.

This bill reauthorizes many of the soon-to-expire homeless veterans programs currently serving this needy population, including the Homeless Providers Grant and Per Diem Program and the Homeless Veterans Reintegration Program. These programs work to provide much-needed services to homeless veterans so that they can find jobs and ultimately find a stable home. These programs deserve to be continued. The SAVE Reauthorization Act actually expands the reach of the Homeless Veterans Reintegration Program, which provides job placement and training assistance, to include those veterans at risk of homelessness as well as those actually homeless, so that we can work to prevent homelessness before it happens.

At a time when so many of my colleagues are working to ensure that our Nation's veterans receive the benefits

and services they have earned and deserve, we cannot forget the neediest of our veterans—the homeless veterans. I hope my colleagues will join me in supporting these worthy programs.

Mr. CORNYN (for himself, Mr. LEAHY, Mr. FEINGOLD, and Mr. ALEXANDER):

S. 1181. A bill to ensure an open and deliberate process in Congress by providing that any future legislation to establish a new exemption to section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) be stated explicitly within the text of the bill; to the Committee on the Judiciary.

Mr. CORNYN. Mr. President, on February 16, shortly before the President's Day recess, the Senator from Vermont and I introduced the OPEN Government Act of 2005 (S. 394)—bipartisan legislation to promote accountability, accessibility, and openness in government, principally by strengthening and enhancing the Federal law commonly known as the Freedom of Information Act.

When I served as Attorney General of Texas, it was my responsibility to enforce Texas's open government laws. I am pleased to report that Texas is known for having one of the strongest sets of open government laws in our Nation. And since that experience, I have long believed that our Federal Government could use “a little Texas sunshine.” I am thus especially enthusiastic about the OPEN Government Act, because that legislation attempts to incorporate some of the most important principles and elements of Texas law into the Federal Freedom of Information Act. And I am gratified that Senators ALEXANDER, FEINGOLD, ISAKSON, and NELSON of Nebraska are cosponsors of the bipartisan Cornyn-Leahy bill.

This legislation enjoys broad support across the ideological spectrum. Indeed, since its introduction on February 16, the legislation has attracted additional support. In particular, I am pleased to report the endorsements of three conservative public interest groups—one devoted to the defense of property rights, Defenders of Property Rights, led by Nancie G. Marzulla, one devoted to the issue of racial preferences in affirmative action programs, One Nation Indivisible, led by Linda Chavez, and one devoted to the protection of religious liberty, Liberty Legal Institute, led by Kelly Shackelford. I ask unanimous consent that their endorsement letters be printed in the RECORD at the close of my remarks. The point of including these letters in the RECORD, of course, is not that these groups are right or wrong in the pursuit of their respective causes, but that the cause of open government is neither a Republican nor a Democrat issue—neither a conservative nor a liberal issue—rather, it is an American issue.

I would like to take a few moments to emphasize one particular provision

of the Cornyn-Leahy bill—section 8. It is a common sense provision. This provision should not be at all controversial, and indeed, I am not aware of any opposition whatsoever to it. The provision would simply help to ensure an open and deliberate process in Congress, by providing that any future legislation to establish a new exemption to the Federal Freedom of Information Act must be stated explicitly within the text of the bill. Specifically, any future attempt to create a new so-called “(b)(3) exemption” to the Federal FOIA law must specifically cite section (b)(3) of FOIA if it is to take effect. The justification for this provision is simple: Congress should not establish new secrecy provisions through secret means. If Congress is to establish a new exemption to FOIA, it should do so in the open and in the light of day.

A recent news report published by the Cox News Service amply demonstrates the importance of this issue, and specifically emphasizes the need for section 8 of the Cornyn-Leahy bill. I ask unanimous consent that a copy of this news report be printed at the close of my remarks.

Senator LEAHY and I firmly believe that all of the provisions of the OPEN Government Act are important—and that, as the recent Cox News Service report demonstrates, section 8 in particular is a worthy provision that can and should be quickly enacted into law. We note that July 4 is the anniversary of the 1966 enactment of the original Federal Freedom of Information Act. Accordingly, we plan to devote our efforts this month to getting section 8 approved by Congress and submitted to the President for his signature by that anniversary date.

Toward that end, we rise today to introduce separate legislation to enact section 8 of the OPEN Government Act into law. We ask our colleagues in this chamber to support this measure, first in the Senate Judiciary Committee, and then on the floor of the United States Senate. And we look forward to working with our colleagues in the House—including Representative LAMAR SMITH, the lead sponsor of the OPEN Government Act in the House, H.R. 867, as well as Chairman TOM DAVIS, who leads the House Committee on Government Reform, and Chairman TODD PLATTS, who leads the House Government Reform subcommittee that recently held a hearing to review the Federal FOIA law.

Section 8 of the Cornyn-Leahy bill is a common-sense, uncontroversial provision that deserves the support of every member of Congress. It simply provides that, when Congress enacts legislation—specifically, legislation to exempt certain documents from disclosure under FOIA—it do so in the open. After all, if documents are to be kept secret by an act of Congress, we should at least make sure that that very act of Congress itself not be undertaken in secret.

A Senate Judiciary subcommittee held a hearing on the OPEN Government Act on March 15. I hope that at least section 8 of the legislation can be enacted into law quickly, and that Congress will then move to consider the other important provisions of the bill.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

MAY 25, 2005.

Hon. JOHN CORNYN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR CORNYN: On behalf of the Defenders of Property Rights, I would like to commend you on your introduction of the Openness Promotes Effectiveness in our National Government Act of 2005 (OPEN Government Act). With this legislation, Americans can have confidence that their government is operating honestly and efficiently.

This proposed bill would be invaluable in aiding our quest to protect the private property rights of all Americans. The bill is beneficial for property rights plaintiffs—it puts teeth into the requirement that the government timely respond to requests while still protecting private property rights. For instance, under the bill, if an agency does not respond within the required 20 days, the agency may not assert any exemption under subsection (b) of the bill unless disclosure would endanger national security, “disclose personal private information protected by section 552a or proprietary information,” or would otherwise be prohibited by law. The bill also provides for better review of agencies’ responses to FOIA requests and for disciplinary actions for arbitrary and capricious rejections of requests. If passed, this bill would surely help private property owners obtain faster access to information regarding actions that have taken their property—and provide better enforcement if they do not.

Your bill has our full and enthusiastic endorsement. We thank you for your steadfast commitment to liberty, open government, and constitutionally guaranteed property rights.

Yours truly,

NANCIE G. MARZULLA,
President.

ONE NATION INDIVISIBLE,
May 19, 2005.

Senator JOHN CORNYN,
U.S. Senate,
Washington, DC.

DEAR SENATOR CORNYN: I am writing to tell you that One Nation Indivisible supports the OPEN Government Act of 2005. Good luck with its passage.

Sincerely,

Linda Chavez.

LIBERTY LEGAL INSTITUTE,
June 1, 2005.

Re: “OPEN Government Act” bill

Hon. JOHN CORNYN,
U.S. Senate, Washington, DC.

DEAR SENATOR CORNYN: We are fully on board with your efforts on Freedom of Information Act improvements. The government should be open to its people. This is a core requirement in any free society.

FOIA currently has little enforcement capability and was also hurt by the wrongly decided Buckhannon decision. Citizens deserve the protection of FOIA and the changes you are proposing.

Please put us on your endorsement list for the “OPEN Government Act” bill. In fact, we strongly believe the Buckhannon error needs to be corrected for all §1983 cases.

Last, even more abusive recently is the abuse of Rule 68 to threaten and intimidate citizens already victimized once by government officials. The idea that civil rights victims, who win their suit (usually for just nominal damages), may have to pay the government’s costs is obscene and a complete violation of Congressional intent. I hope we can fix this as well.

Thank you for your service to all Texans.

Sincerely,

KELLY SHACKELFORD,
Chief Counsel, Liberty Legal Institute.

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

[From the Cox News Service, June 3, 2005]

CONGRESS CLOAKS MORE INFORMATION IN
SECRECY

(By Rebecca Carr)

WASHINGTON.—Few would argue with the need for a national livestock identification system to help the federal government handle a disease outbreak such as mad cow.

But pending legislation calling for the nation’s first electronic livestock tracking system would prohibit the public from finding out anything about animals in the system, including the history of a cow sick with bovine spongiform encephalopathy.

The only way the public can find out such details is if the secretary of agriculture makes the information public.

That’s because the legislation, sponsored by Rep. Collin C. Peterson, D-Minn., includes a provision that exempts information about the system from being released under the Freedom of Information Act.

Formally called the “third exemption,” it is one of nine exemptions the government can use to deny the release of information requested under the FOI Act.

Open government advocates say it is the most troubling of the nine exemptions because it allows Congress to cloak vital information in secrecy through legislation, often without a public hearing or debate. They say Congress frequently invokes the exemption to appease private sector businesses, which argue it is necessary to protect proprietary information.

“It is an easy way to slap a secrecy stamp on the information,” said Rick Blum, director of openthegovernment.org, a coalition of more than 30 groups concerned about government secrecy.

The legislative intent of Congress is far more difficult to challenge than a federal agency’s denial for the release of information, said Kevin M. Goldberg, general counsel to the American Society of Newspaper Editors.

“This secrecy is often perpetuated in secret as most of the (third exemption) provisions consist of one or two paragraph tucked into a much larger bill with no notice that the Freedom of Information Act will be affected at all,” Goldberg said.

There are at least 140 cases where congressional lawmakers have inserted such exemptions, according to a 2003 Justice Department report.

The report notes that Congress has been “increasingly active in enacting such statutory provisions.”

The exemptions have become so popular that finding them in proposed legislation is “like playing a game of Wackamole,” one staffer to Sen. Patrick Leahy, D-Vt., joked. “As soon as you handle one, another one pops up.”

Congress used the exemption in its massive Homeland Security Act three years ago, granting businesses protection from information disclosure if they agreed to share information about the vulnerabilities of their facilities.

And in another twist on the exemption, Congress inserted a provision into the Consolidated Appropriations Act of 2004 that states that “no funds appropriated under this or any other act may be used to disclose” records about firearms tracking to the public.

Government agencies have also sought protection from information disclosure.

For example, Congress passed an amendment to the National Security Act in 1984 that exempted the CIA from having to comply with the search and review requirements of the FOI Act for its “operational files.”

Most of the information in those files, which included records about foreign and counterintelligence operations was already protected from disclosure under the other exemptions in the FOI Act.

But before Congress granted the exemption, the agency had to search and review each document to justify withholding the information, which cost time and money.

Open government advocates say many of the exemptions inserted into legislation are not justified.

“This is back door secrecy,” said Thomas Blanton, executive director of the National Security Archive at George Washington University, a nonprofit research institute based in Washington.

When an industry wants to keep information secret, it seeks the so-called third exemption, he said.

“It all takes place behind the sausage grinder,” Blanton said. “You don’t know what gristle is going through the sport, you just have to eat it.”

But Daniel J. Metcalfe, co-director of the Justice Department’s Office of Information and Privacy, said the exception is crucial to the FOI Act’s structure.

In the case of the animal identification bill, the exemption is critical to winning support from the cattle industry and on Capitol Hill.

“If we are going to develop an animal ID system that’s effective and meaningful, we have to respect participants’ private information,” said Peterson, the Minnesota lawmaker who proposed the identification system. “The goal of a national animal I.D. system is to protect livestock owners as well as the public.”

As the livestock industry sees it, it is providing information that will help protect the public health. In exchange for proprietary information about their herds, they believe they should receive confidence that their business records will not be shared with the public.

“The producers would be reluctant to support the bill without the protection,” said Bryan Dierlam, executive director of government affairs at the National Cattleman’s Beef Association.

The animal identification on bill provides the government with the information it needs to protect the public in the event of an disease outbreak, Dierlam said. “But it would protect the producers from John Q. Public trying to willy-nilly access their information.”

Food safety experts agree there is a clear need for an animal identification system to protect the public, but they are not certain that the exemption to the FOI Act is necessary.

“It’s sad that Congress feels they have to give away something to the cattle industry to achieve it,” said Caroline Smith DeWaal, director of the food safety program at the Center for Science in the Public Interest, a nonprofit organization based in Washington.

Slipping the exemption into legislation without notice is another problem cited by open government advocates!

It has become such a problem that the Senate’s strongest FOI Act supporters, Sen.

John Cornyn, R-Texas, and Sen. Patrick Leahy, D-Vt., proposed that lawmakers be required to uniformly identify the exemption in all future bills.

"If Congress wants to create new exemptions, it must do so in the light of day," Cornyn said. "And it must do so in a way that provides an opportunity to argue for or against the new exemption—rather than have new exemptions creep into the law unnoticed."

Leahy agreed, saying that Congress must be diligent in reviewing new exemptions to prevent possible abuses.

"In Washington, loopholes tend to beget more loopholes, and it's the same with FOI Act exemptions," Leahy said. "Focusing more sunshine on this process is an antidote to exemption creep."

Mr. LEAHY. For the third time this year, Senator CORNYN and I have joined to introduce common sense proposals to strengthen open government and the Freedom of Information Act, or FOIA. The Senator from Texas has a long record of promoting open government, most significantly during his tenure as Attorney General of Texas. He and I have forged a valuable partnership in this Congress to support and strengthen FOIA. We introduced two bills earlier this year, and held a hearing on our bill, the Open Government Act, issues during Sunshine Week in March.

The bill we introduce today is simple and straightforward. It simply requires that when Congress sees fit to provide a statutory exemption to FOIA, it must state its intention to do so explicitly. The language of this bill was previously introduced as section eight of S. 394, the Open Government Act.

No one argues with the notion that some government information is appropriately kept from public view. FOIA contains a number of exemptions for national security, law enforcement, confidential business information, personal privacy, and other matters. One provision of FOIA, commonly known as the (b)(3) exemption, states that records that are specifically exempted by statute may be withheld from disclosure. Many bills that are introduced contain statutory exemptions, or contain language that is ambiguous and might be interpreted as such by the courts. In recent years, we have seen more and more such exemptions offered in legislation. A 2003 Justice Department report stated that Congress has been "increasingly active in enacting such statutory provisions." A June 3, 2005, article by the Cox News Service titled, "Congress Cloaks More Information in Secrecy," pointed to 140 instances "where congressional lawmakers have inserted such exemptions" into proposed legislation. I commend this article to my colleagues and understand that Senator CORNYN has placed a copy in the RECORD.

Our shared principles of open government lead us to believe that individual statutory exemptions should be vigorously debated before lawmakers vote in favor of them. Sometimes such proposed exemptions are clearly delineated in proposed legislation, but other times they amount to a few lines with-

in a highly complex and lengthy bill. These are difficult to locate and analyze in a timely manner, even for those of us who stand watch. As a result, such exemptions are often enacted with little scrutiny, and as soon as one is granted, others are requested.

The private sector has sought many exemptions in exchange for agreeing to share information with the government. One example of great concern to me is the statutory exemption for critical infrastructure information that was enacted as part of the Homeland Security Act of 2002, the law that created the Department of Homeland Security. In this case, a reasonable compromise, approved by the White House, to balance the protection of sensitive information with the public's right to know was pulled out of the bill in conference. It was then replaced with text providing an overly broad statutory exemption that undermines Federal and State sunshine laws. I have introduced legislation, called the Restoration of Freedom of Information Act, to revert to that reasonable compromise language.

Not every statutory exemption is inappropriate, but every proposal deserves scrutiny. Congress must be diligent in reviewing new exemptions to prevent possible abuses. Focusing more sunshine on this process is an antidote to exemption creep.

When we introduced the Open Government Act in February, we addressed this matter with a provision that would require Congress to identify proposed statutory exemptions in newly introduced legislation in a uniform manner. Today, we introduce that single section as a new bill that we hope can be enacted quickly.

I want to thank the Senator from Texas for his personal dedication to these issues. I urge all members of the Senate to join us in supporting this bill.

By Mr. CRAIG:

S. 1182. A bill to amend title 38, United States Code, to improve health care for veterans, and for other purposes; to the Committee on Veterans' Affairs.

Mr. CRAIG. Mr. President, I seek recognition today to introduce legislation that will expand the services available to our Nation's veterans and their dependents, and improve the ability of the Department of Veterans Affairs (VA) to provide health care services to this same group of deserving Americans. I take a few moments now to explain the provisions of this legislation.

First, the bill would, in section 2, exempt veterans enrolled for VA care from all copayments for hospice care services provided by VA. Over the past several years, VA has greatly expanded its efforts to provide compassionate end-of-life care for our Nation's heroes. Last year, Congress made efforts to ensure that the surviving spouses and children would not receive bills for such services following the deaths of

such veterans who were in the hospice program. Unfortunately, last year's legislation did not go far enough, and today some veterans' families are still paying for this care. This provision would end that practice in all hospice care settings.

Section 3 of the bill would exempt former Prisoners of War from copayments that are applicable to care in a VA extended care facility. Congress has already exempted this deserving group of veterans from other VA medical copayments, and this provision would complete the range of services available to these veterans free of charge. In addition, this section bill would remove the requirement that VA maintain the exact number of nursing home care beds in VA facilities as it had during fiscal year 1998. Now before some suggest that I am advocating the reduction in services available to veterans, I'd like to explain how the current requirement came about and why I believe it should be reconsidered.

The requirement that VA maintain a specified level of nursing home beds was inserted into the law in 1999 when Congress enacted legislation to expand options for non-institutional, long-term care services available to veterans. At that time, some felt that by growing the non-institutional care program, VA would seek simply to shut all of its institutional care capacity. So in a compromise, Congress decided that fiscal year 1998 would be the year against which changes in the institutional care program would be measured. And then it required that VA maintain all of the beds it had in 1998.

Since 1998, VA has increased the number of veterans it treats by nearly 2 million. Yet, year after year, VA reports to Congress that it does not need to maintain the number of nursing home beds required by law. Does that mean VA is closing beds unnecessarily? No. It means VA has followed the progress of medicine and is offering tens-of-thousands of veterans non-institutional care services while keeping them at home rather than in VA nursing home beds. I do not believe that Congress should continue to mandate the maintenance of an arbitrarily-determined number of beds in a system that is trying to effectively use every dollar it can to provide real and needed services to our veterans. This provision reflects that belief.

The fourth section of the legislation, if enacted, would ensure that veterans who seek emergency medical services at the nearby community medical facilities are treated no differently financially than if the care had been provided at a VA medical facility. This is an important issue in the provision of quality health care for our veterans. VA has some evidence that veterans who need emergency services are bypassing local medical facilities, and are attempting to "make it" to a VA facility even in the face of an emergency, because of concerns that VA's reimbursement policies for non-VA provided

emergency care will result in the veteran paying more out-of-pocket costs. Clearly, that is not the kind of behavior Congress wants to encourage in our veterans. Nor is it good medicine. This provision would clarify once and for all that veterans will be treated equally regardless of where emergency care treatment is sought.

Section 5 of the bill would authorize VA to provide or pay for up to the first fourteen days of care for a newborn child of an enrolled female veteran who delivers her baby under VA provided, or VA financed, care. As most of my colleagues know, VA provides what it calls a "comprehensive package of health benefits for eligible veterans." Unfortunately, for the increasing number of female veterans enrolling for VA care, the word "comprehensive" does not include coverage for a newborn's first few days of needed care. This type of arrangement is common in the private sector. In my judgment, this is an issue we must address to assure our female service members that, as more and more of them join the service and change the face of the American military, we will make certain that the face of VA changes right along with it.

Section 6 would allow private health care providers to recoup costs for care provided to children afflicted with spina bifida of Vietnam veterans—children who are, by law, entitled to VA-provided care—when the costs are not fully covered by VA reimbursements. This so-called "balance billing" authority would prohibit charging individual patients or veterans themselves. Only a beneficiary with private insurance could have his or her insurance cover charges not covered by VA. This provision is important because it will provide a financial incentive to many providers who, unfortunately in some cases today, are not willing to provide the very specialized services needed by these children because some costs are not reimbursed by VA at a sufficient rate.

Section 7 of this bill would increase the authorized level of funding for the Homeless Grant and Per Diem Program at the Department of Veterans Affairs. I know all of my colleagues would agree that any man or woman who served this country in uniform should not be among the unfortunate Americans who find themselves on the street without shelter. VA has made tremendous strides in this area by providing grant programs, health care services, mental health treatment, and other assistance to those veterans who do find themselves on the street. This provision would ensure that good programs remain on track for the foreseeable future.

The eighth section of this bill would authorize VA medical centers to employ Marriage and Family Therapists. I realize that to some of my colleagues this may sound as though VA is beginning to become a family health care system and not a veterans' health care system. I want to assure any who har-

bor such concerns that this is not the intention or the purpose of this proposed authority. Rather, this proposal seeks to recognize that for some veterans, the trauma and experiences of war may lead to troubles at home. Often in these situations, treatment as a family is more effective for the betterment of the veteran. Of course, preservation of the family is an extremely important byproduct of this treatment approach as well. I do not believe it is incompatible with the mission of treating our veterans to focus on their family well-being when it is appropriate. The military is offering many of these services already to those who are returning from overseas. These programs are receiving good reviews from those in the mental health and counseling professions. It seems only logical that we extend successful ideas from the military experience to our veterans.

Section 9 would provide pay equity for the national Director of VA's Nursing Service. Currently, this position is paid at a rate that is less than all of the other service chiefs at VA's Central Office. I believe correcting this inequity is not only a matter of fairness, but a long overdue recognition that VA's nursing service is just as important to the provision of health services for our veterans as the pharmacy service, the dental service, and other such services within VA.

Section 10 of this bill would allow VA to conduct cost-comparison studies within its health care system. Mr. President, such studies are invaluable tools for government to measure whether its current workforce has identified the most efficient and effective means of delivering services to our veterans, and value to the taxpayers. In my opinion, any organization that fails to measure its performance against others in the same field will quickly cease to be an effective organization. VA is—and it must continue to be—an effective and efficient health care provider. This small change in the law will provide one additional tool to ensure that is the case far into the future.

Section 11 of my legislation would focus on an area of great importance to many members of the Senate: The treatment of mental health issues for those returning from service in Operations Iraqi Freedom and Enduring Freedom. I know many of us have read reports that estimate that as many as 20 percent of those serving overseas will need some mental health care services to cope with the stress of serving in a war zone. First, I want to say to my colleagues that the Department of Veterans Affairs already has in place numerous programs and services to respond to the needs of those veterans seeking care for mental health issues. Still, as Chairman of the Veterans' Affairs Committee, I believe it is important that we assure our brave servicemen and women, and the American people, that we are not satisfied with merely maintaining VA's ability to

provide mental health services. Rather, we must assure that VA continues to improve and expand the treatment options available.

This section of the bill would authorize \$95 million in both fiscal years 2006 and 2007 to improve and expand the mental health services available to our Nation's veterans. The Secretary of Veterans Affairs would be required to devote specific resources to certain important areas of treatment including, but not limited to \$5 million to expand the number of clinical teams devoted to the treatment of Post-Traumatic Stress Disorder; \$50 million to expand the services available to diagnose and treat veterans with substance abuse problems; \$10 million to expand telehealth capabilities in areas of the country where access to basic mental health services is nearly impossible; \$1 million to improve educational programs available for primary care providers to learn more about diagnosing and treating veterans with mental illness; \$20 million to expand the number of community-based outpatient clinics with mental health services; and \$5 million to expand VA's Mental Health Intensive Case Management Teams.

I want to make it clear to my colleagues that I am taking this approach because I am concerned about the availability of these services as much as anyone in the Senate. But, I am also concerned about recent moves to "micro-manage" the VA health care system by requiring, for example, that certain percentages of VA's budget be spent on one service or another, or that every VA facility have some certain clinical service available. These approaches, while well-intentioned, run the risk of diverting important resources away from services that are extremely important to our veterans. My approach is to put Congress on record as expecting improvements and expansion in certain important programs, attaching a reasonable amount of money to those efforts, and then monitoring the progress closely from the Veterans' Committee.

Section 12 addresses a point of legal contention that has restricted the sharing of medical information between the Department of Defense and VA. As a result, record transfers for patients who would be VA patients are not arriving in VA hands as quickly and as seamlessly as they should. This provision would make clear that DoD and VA may exchange health records information for the purpose of providing health care to beneficiaries of one system who seek to quickly move to the other for services.

Section 13 of the bill would direct VA to expand the number VA employees dedicated to serving the Veterans Readjustment Counseling Service's Global War on Terrorism (GWOT) Outreach Program. The Committee on Veterans' Affairs held a hearing earlier this year at which two GWOT counselors testified on the numerous services their program provides to returning service

members, specifically Guardsmen and Reservists coming back from Iraq and Afghanistan. In many cases, these GWOT counselors are the first VA officials to welcome home our troops at the airport, provide them with their first briefing on VA benefits and services, and steer those in need to counseling services and health care centers. This is a creative, vibrant program with only 50 employees that is just now beginning to reach its peak effect on returning combat veterans. I believe VA should expand its efforts in this area to ensure we are reaching everyone we can.

Section 14 of this bill would require VA to expand the number of Vet Centers capable of providing tele-health services and counseling to veterans returning from combat. Currently there are 21 Vet Center facilities that maintain this capability. And while that is a laudable effort, I believe we can do better. Tele-medicine offers a tremendous opportunity to bring many health services, particularly mental health services, to veterans who reside in areas of the country where those services would not otherwise be available. Practitioners are showing great results with tele-health services for mental health treatment, and our veterans are getting the services they need, closer to home, in a more timely fashion. Expansion of such success only seems logical.

Finally, section 15 of this bill would require the Secretary of Veterans Affairs to submit a report on all of the mental health data maintained by VA, including the actual geographic locations of collection and whether all of these points of data should continue to be collected.

Over the next several weeks, the Committee on Veterans' Affairs will be taking testimony on this bill and other legislation introduced by Senators to improve the range of services and benefits available to our Nation's veterans. I look forward to working with my colleagues throughout the rest of this session of Congress on these and other important efforts.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1182

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

(a) **SHORT TITLE.**—This Act may be cited as the “Veterans Health Care Act of 2005”.

(b) **REFERENCES.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment or repeal to a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

SEC. 2. COPAYMENT EXEMPTION FOR HOSPICE CARE.

Section 1710 is amended—

(1) in subsection (f)(1), by inserting “(other than hospice care)” after “nursing home care”; and

(2) in subsection (g)(1), by inserting “(other than hospice care)” after “medical services”.

SEC. 3. NURSING HOME BED LEVELS; EXEMPTION FROM EXTENDED CARE SERVICES COPAYMENTS FOR FORMER POWS.

Section 1710B is amended—

(1) by striking subsection (b);

(2) by redesignating subsections (c) through (e) as subsections (b) through (d), respectively; and

(3) in subsection (b)(2), as redesignated—

(A) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and

(B) by inserting after subparagraph (A) the following:

“(B) to a veteran who is a former prisoner of war;”.

SEC. 4. REIMBURSEMENT FOR CERTAIN VETERANS' OUTSTANDING EMERGENCY TREATMENT EXPENSES.

(a) **IN GENERAL.**—Subchapter III of chapter 17 is amended by inserting after section 1725 the following:

“§ 1725A. Reimbursement for emergency treatment expenses for which certain veterans remain personally liable

“(a)(1) Subject to subsection (c), the Secretary may reimburse a veteran described in subsection (b) for expenses resulting from emergency treatment furnished to the veteran in a non-Department facility for which the veteran remains personally liable.

“(2) In any case in which reimbursement is authorized under subsection (a)(1), the Secretary, in the Secretary's discretion, may, in lieu of reimbursing the veteran, make payment—

“(A) to a hospital or other health care provider that furnished the treatment; or

“(B) to the person or organization that paid for such treatment on behalf of the veteran.

“(b) A veteran referred to in subsection (a) is an individual who—

“(1) is enrolled in the health care system established under section 1705(a) of this title;

“(2) received care under this chapter during the 24-month period preceding the furnishing of such emergency treatment;

“(3) is entitled to care or services under a health-plan contract that partially reimburses the cost of the veteran's emergency treatment;

“(4) is financially liable to the provider of emergency care treatment for costs not covered by the veteran's health-plan contract, including copayments and deductibles; and

“(5) is not eligible for reimbursement for medical care or services under section 1725 or 1728 of this title.

“(c)(1) Any amount paid by the Secretary under subsection (a) shall exclude the amount of any payment the veteran would have been required to make to the United States under this chapter if the veteran had received the emergency treatment from the Department.

“(2) The Secretary may not provide reimbursement under this section with respect to any item or service—

“(A) provided or for which payment has been made, or can reasonably be expected to be made, under the veteran's health-plan contract; or

“(B) for which payment has been made or can reasonably be expected to be made by a third party.

“(3)(A) Payment by the Secretary under this section on behalf of a veteran to a provider of emergency treatment shall, unless rejected and refunded by the provider within 30 days of receipt, extinguish any liability on the part of the veteran for that treatment.

“(B) The absence of a contract or agreement between the Secretary and the provider, any provision of a contract or agreement, or an assignment to the contrary shall not operate to modify, limit, or negate the requirement under subparagraph (A).

“(4) In accordance with regulations prescribed by the Secretary, the Secretary shall—

“(A) establish criteria for determining the amount of reimbursement (which may include a maximum amount) payable under this section; and

“(B) delineate the circumstances under which such payment may be made, including requirements for requesting reimbursement.

“(d)(1) In accordance with regulations prescribed by the Secretary, the United States shall have the independent right to recover any amount paid under this section if, and to the extent that, a third party subsequently makes a payment for the same emergency treatment.

“(2) Any amount paid by the United States to the veteran, the veteran's personal representative, successor, dependents, or survivors, or to any other person or organization paying for such treatment shall constitute a lien in favor of the United States against any recovery the payee subsequently receives from a third party for the same treatment.

“(3) Any amount paid by the United States to the provider that furnished the veteran's emergency treatment shall constitute a lien against any subsequent amount the provider receives from a third party for the same emergency treatment for which the United States made payment.

“(4) The veteran or the veteran's personal representative, successor, dependents, or survivors shall—

“(A) ensure that the Secretary is promptly notified of any payment received from any third party for emergency treatment furnished to the veteran;

“(B) immediately forward all documents relating to a payment described in subparagraph (A);

“(C) cooperate with the Secretary in an investigation of a payment described in subparagraph (A); and

“(D) assist the Secretary in enforcing the United States right to recover any payment made under subsection (c)(3).

“(e) The Secretary may waive recovery of a payment made to a veteran under this section that is otherwise required under subsection (d)(1) if the Secretary determines that such waiver would be in the best interest of the United States, as defined by regulations prescribed by the Secretary.

“(f) For purposes of this section—

“(1) the term ‘health-plan contract’ includes—

“(A) an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar arrangement, under which health services for individuals are provided or the expenses of such services are paid;

“(B) an insurance program described in section 1811 of the Social Security Act (42 U.S.C. 1395c) or established by section 1831 of that Act (42 U.S.C. 1395j);

“(C) a State plan for medical assistance approved under title XIX of such Act (42 U.S.C. 1396 et seq.); and

“(D) a workers' compensation law or plan described in section 1729(A)(2)(B) of this title;

“(2) the term ‘third party’ means—

“(A) a Federal entity;

“(B) a State or political subdivision of a State;

“(C) an employer or an employer's insurance carrier; and

“(D) a person or entity obligated to provide, or pay the expenses of, such emergency treatment; and

“(3) the term ‘emergency treatment’ has the meaning given such term in section 1725 of this title.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 1725 the following:

“Sec. 1725A. Reimbursement for emergency treatment expenses for which certain veterans remain personally liable.”

SEC. 5. CARE FOR NEWBORN CHILDREN OF WOMEN VETERANS RECEIVING MATERNITY CARE.

(a) IN GENERAL.—Subchapter VIII of chapter 17 is amended by adding at the end the following:

“§ 1786. Care for newborn children of women veterans receiving maternity care

“The Secretary may furnish care to a newborn child of a woman veteran, who is receiving maternity care furnished by the Department, for not more than 14 days after the birth of the child if the veteran delivered the child in a Department facility or in another facility pursuant to a Department contract for the delivery services.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 1785 the following:

“Sec. 1786. Care for newborn children of women veterans receiving maternity care.”

SEC. 6. ENHANCEMENT OF PAYER PROVISIONS FOR HEALTH CARE FURNISHED TO CERTAIN CHILDREN OF VIETNAM VETERANS.

(a) HEALTH CARE FOR SPINA BIFIDA AND ASSOCIATED DISABILITIES.—Section 1803 is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

“(c)(1) If a payment made by the Secretary for health care under this section is less than the amount billed for such health care, the health care provider or agent of the health care provider may, in accordance with paragraphs (2) through (4), seek payment for the difference between the amount billed and the amount paid by the Secretary from a responsible third party to the extent that the provider or agent would be eligible to receive payment for such health care from such third party.

“(2) The health care provider or agent may not impose any additional charge on the beneficiary who received the health care, or the family of such beneficiary, for any service or item for which the Secretary has made payment under this section;

“(3) The total amount of payment a health care provider or agent may receive for health care furnished under this section may not exceed the amount billed to the Secretary.

“(4) The Secretary, upon request, shall disclose to such third party information received for the purposes of carrying out this section.”

(b) HEALTH CARE FOR BIRTH DEFECTS AND ASSOCIATED DISABILITIES.—Section 1813 is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

“(c)(1) If payment made by the Secretary for health care under this section is less than the amount billed for such health care, the health care provider or agent of the health care provider may, in accordance with paragraphs (2) through (4), seek payment for the

difference between the amount billed and the amount paid by the Secretary from a responsible third party to the extent that the provider or agent would be eligible to receive payment for such health care from such third party.

“(2) The health care provider or agent may not impose any additional charge on the beneficiary who received health care, or the family of such beneficiary, for any service or item for which the Secretary has made payment under this section;

“(3) The total amount of payment a health care provider or agent may receive for health care furnished under this section may not exceed the amount billed to the Secretary; and

“(4) The Secretary, upon request, shall disclose to such third party information received for the purposes of carrying out this section.”

SEC. 7. IMPROVEMENTS TO HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM.

(a) PERMANENT AUTHORITY.—Section 2011 (a) is amended—

(1) in paragraph (1), by striking “(1)”; and

(2) by striking paragraph (2).

(b) AUTHORIZATION OF APPROPRIATIONS.—

Section 2013 is amended to read as follows:

“§ 2013. Authorization of appropriations

“There are authorized to be appropriated \$130,000,000 for fiscal year 2006 and each subsequent fiscal year to carry out this subchapter.”

SEC. 8. MARRIAGE AND FAMILY THERAPISTS.

(a) QUALIFICATIONS.—Section 7402(b) is amended—

(1) by redesignating paragraph (10) as paragraph (11); and

(2) by inserting after paragraph (9) the following:

“(10) MARRIAGE AND FAMILY THERAPIST.—To be eligible to be appointed to a marriage and family therapist position, a person must—

“(A) hold a master’s degree in marriage and family therapy, or a comparable degree in mental health, from a college or university approved by the Secretary; and

“(B) be licensed or certified to independently practice marriage and family therapy in a State, except that the Secretary may waive the requirement of licensure or certification for an individual marriage and family therapist for a reasonable period of time recommended by the Under Secretary for Health.”

(b) REPORT ON MARRIAGE AND FAMILY THERAPY WORKLOAD.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Under Secretary for Health, Department of Veterans Affairs, shall submit to the Committee on Veterans’ Affairs of the Senate and the Committee on Veterans’ Affairs of the House of Representatives a report on the provisions of post-traumatic stress disorder treatment by marriage and family therapists.

(2) CONTENTS.—The report submitted under paragraph (1) shall include—

(A) the actual and projected workloads in facilities of the Veterans Readjustment Counseling Service and the Veterans Health Administration for the provision of marriage and family counseling for veterans diagnosed with, or otherwise in need of treatment for, post-traumatic stress disorder;

(B) the resources available and needed to support the workload projections described in subparagraph (A);

(C) an assessment by the Under Secretary for Health of the effectiveness of treatment by marriage and family therapists; and

(D) recommendations, if any, for improvements in the provision of such counseling treatment.

SEC. 9. PAY COMPARABILITY FOR CHIEF NURSING OFFICER, OFFICE OF NURSING SERVICES.

Section 7404 is amended—

(1) in subsection (d), by striking “subchapter III” and inserting “paragraph (e), subchapter III.”; and

(2) by adding at the end the following: “(e) The position of Chief Nursing Officer, Office of Nursing Services, shall be exempt from the provisions of section 7451 of this title and shall be paid at a rate not to exceed the maximum rate established for the Senior Executive Service under section 5382 of title 5 United States Code, as determined by the Secretary.”

SEC. 10. REPEAL OF COST COMPARISON STUDIES PROHIBITION.

Section 8110(a) is amended—

(1) by striking paragraph (5); and

(2) by redesignating paragraph (6) as paragraph (5).

SEC. 11. IMPROVEMENTS AND EXPANSION OF MENTAL HEALTH SERVICES.

(a) IN GENERAL.—The Secretary of Veterans Affairs shall—

(1) expand the number of clinical treatment teams principally dedicated to the treatment of post-traumatic stress disorder in medical facilities of the Department of Veterans Affairs;

(2) expand and improve the services available to diagnose and treat substance abuse;

(3) expand and improve tele-health initiatives to provide better access to mental health services in areas of the country in which the Secretary determines that a need for such services exist due to the distance of such locations from an appropriate facility of the Department of Veterans Affairs;

(4) improve education programs available to primary care delivery professionals and dedicate such programs to recognize, treat, and clinically manage veterans with mental health care needs;

(5) expand the delivery of mental health services in community-based outpatient clinics of the Department of Veterans Affairs in which such services are not available as of the date of enactment of this Act; and

(6) expand and improve the Mental Health Intensive Case Management Teams for the treatment and clinical case management of veterans with serious or chronic mental illness.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated in each of fiscal years 2006 and 2007, \$95,000,000 to improve and expand the treatment services and options available to veterans in need of mental health treatment from the Department of Veterans Affairs, of which—

(1) \$5,000,000 shall be allocated to carry out subsection (a)(1);

(2) \$50,000,000 shall be allocated to carry out subsection (a)(2);

(3) \$10,000,000 shall be allocated to carry out subsection (a)(3);

(4) \$1,000,000 shall be allocated to carry out subsection (a)(4);

(5) \$20,000,000 shall be allocated to carry out subsection (a)(5); and

(6) \$5,000,000 shall be allocated to carry out subsection (a)(6).

SEC. 12. DATA SHARING IMPROVEMENTS.

Notwithstanding any other provision of law, the Department of Veterans Affairs and the Department of Defense may exchange protected health information for—

(1) patients receiving treatment from the Department of Veterans Affairs; or

(2) individuals who may receive treatment from the Department of Veterans Affairs in the future, including all current and former members of the Armed Services.

SEC. 13. EXPANSION OF NATIONAL GUARD OUTREACH PROGRAM.

(a) REQUIREMENT.—The Secretary of Veterans Affairs shall expand the total number

of personal employed by the Department of Veterans Affairs as part of the Readjustment Counseling Service's Global War on Terrorism Outreach Program (referred to in this section as the "Program").

(b) **COORDINATION.**—In carrying out subsection (a), the Secretary shall coordinate participation in the Program by appropriate employees of the Veterans Benefits Administration and the Veterans Health Administration.

(c) **INFORMATION AND ASSESSMENTS.**—The Secretary shall ensure that—

(1) all appropriate health, education, and benefits information is available to returning members of the National Guard; and

(2) proper assessments of the needs in each of these areas is made by the Department of Veterans Affairs.

(d) **COLLABORATION.**—The Secretary of Veterans Affairs shall collaborate with appropriate State National Guard officials and provide such officials with any assets or services of the Department of Veterans Affairs that the Secretary determines to be necessary to carry out the Global War on Terrorism Outreach Program.

SEC. 14. EXPANSION OF TELE-HEALTH SERVICES.

(a) **IN GENERAL.**—The Secretary shall increase the number of Veterans Readjustment Counseling Service facilities capable of providing health services and counseling through tele-health linkages with facilities of the Veterans Health Administration.

(b) **PLAN.**—The Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a plan to implement the requirement under subsection (a), which shall describe the facilities that will have such capabilities at the end of each of fiscal years 2005, 2006, and 2007.

SEC. 15. MENTAL HEALTH DATA SOURCES REPORT.

(a) **IN GENERAL.**—Not less than 180 days after the date of enactment of this Act, the Secretary of Veterans Affairs shall submit a report to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives describing the mental health data maintained by the Department of Veterans Affairs.

(b) **CONTENTS.**—The report submitted under subsection (a) shall include—

(1) a comprehensive list of the sources of all such data, including the geographic locations of facilities of the Department of Veterans Affairs maintaining such data;

(2) an assessment of the limitations or advantages to maintaining the current data configuration and locations; and

(3) any recommendations, if any, for improving the collection, use, and location of mental health data maintained by the Department of Veterans Affairs.

By Mr. WARNER (for himself, Mr. LIEBERMAN, Mr. ROBERTS, Ms. STABENOW, Mr. DURBIN, and Mr. ALLEN):

S. 1183. A bill to provide additional assistance to recipients of Federal Pell Grants who are pursuing programs of study in engineering, mathematics, science, or foreign languages; to the Committee on Health, Education, Labor, and Pensions.

Mr. WARNER. Mr. President, I rise today to introduce an important bill related to education and our national, homeland, and economic security. I am pleased to be joined in this bipartisan effort with Senators LIEBERMAN, ROBERTS, STABENOW, ALLEN, and DURBIN. I

am grateful to each of them for working closely with me in crafting this legislation.

Our ability to remain ahead of the curve in scientific and technological advancements is a key component to ensuring America's national, homeland and economic security in the post 9/11 world of global terrorism. Yet alarmingly, the bottom line is that America faces a huge shortage of home-grown, highly trained scientific minds.

The situation America faces today is not unlike almost fifty years ago. On October 4, 1957, the Soviet Union successfully launched the first man-made satellite into space, Sputnik. The launch shocked America, as many of us had just assumed that we were pre-eminent in the scientific fields. While prior to that unforgettable day America enjoyed an air of post World War II invincibility, afterwards our nation recognized that there was a cost to its complacency. We had fallen behind.

In the months and years to follow, we would respond with massive investments in science, technology and engineering. In 1958, Congress passed the National Defense Education Act to stimulate advancement in science and math education. In addition, President Eisenhower signed into law legislation that established the National Aeronautics and Space Administration (NASA). And a few years later, in 1961, President Kennedy set the Nation's goal of landing a man on the moon within the decade.

These investments paid off. In the years following the Sputnik launch, America not only closed the scientific and technological gap with the Soviet Union, we surpassed them. Our renewed commitment to science and technology not only enabled us to safely land a man on the moon in 1969, it spurred research and development which helped ensure that our modern military has always had the best equipment and technology in the world. These post-Sputnik investments also laid the foundation for the creation of some of the most significant technologies of modern life, including personal computers and the Internet.

Why is any of this important to us today? Because as the old saying goes—he or she who fails to remember history is bound to repeat it.

The truth of the matter is that today, America's education system is coming up short in training the highly technical American minds that we now need and will continue to need far into the future.

The 2003 Program for International Student Assessment found that the math, problem solving, and science skills of fifteen year old students in the United States were below average when compared to their international counterparts in industrialized countries.

While slightly better news was presented by the recently released 2003 Trends in International Mathematics and Science Study (TIMSS), it is still nothing we should cheer about. TIMSS

showed that eighth grade students in the U.S. had lower average math scores than fifteen other participating countries. U.S. science scores weren't much better.

Our colleges and universities are not immune to the waning achievement in math and science education. The National Science Foundation reports the percentage of bachelor degrees in science and engineering have been declining in the U.S. for nearly two decades. In fact, the proportion of college-age students earning degrees in math, science, and engineering was substantially higher in 16 countries in Asia and Europe than it was in the United States.

In the past, this country has been able to compensate for its shortfall in homegrown, highly trained, technical and scientific talent by importing the necessary brain power from foreign countries. However, with increased global competition, this is becoming harder and harder. More and more of our imported brain power is returning home to their native countries. And regrettably, as they return home, many American high tech jobs are being outsourced with them.

The effects of these educational trends are already being felt in various important ways. For example: according to the National Science Board, by 2010, if current trends continue, significantly less than 10 percent of all physical scientists and engineers in the world will be working in America. The American Physical Society reports that the proportion of articles by American authors in the Physical Review, one of the most important research journals in the world, has hit an all time low of 29 percent, down from 61 percent in 1983. And the U.S. production of patents, probably the most direct link between research and economic benefit, has declined steadily relative to the rest of the world for decades, and now stands at only 52 percent of the total.

Fortunately, we already have an existing Federal program up and running that, if modified, can help. Under current law, the \$14 billion a year Pell Grant program awards recipients grants regardless of the course of study that the recipient chooses to pursue. So, under current law, two people from the same financial background are eligible for the same grant even though one chooses to major in the liberal arts while the other majors in engineering or science.

While I believe studying the liberal arts is an important component to having an enlightened citizenry, I also believe that given the unique challenges we are facing in this country, it is appropriate for us to add an incentive to the Pell Grant program to encourage individuals to pursue courses of study where graduates are needed to meet our national, homeland, and economic security needs.

That is why today I am introducing this legislation. The legislation is simple. It provides that at least every two

years, our Secretary of Education, in consultation with the Secretary of Defense, the Secretary of Homeland Security, and others, should provide a list of courses of study where America needs home-grown talent to meet our national, homeland, and economic security needs. Those students who pursue courses of study in these programs will be rewarded with a doubling of their Pell Grant to help them with the costs associated with obtaining their education.

We in the Congress have an obligation when expending taxpayer money, to do so in a manner that meets our nation's needs. Our Nation desperately needs more highly trained domestic workers. That is an indisputable fact. And, in the Pell Grant program, we have approximately \$14 billion that is readily available to help meet this demand.

In closing, our world is vastly different today than it was when the Pell Grant program was created in 1972. My legislation is a common-sense modification of the Pell Grant program that will help America meet its new challenges. I hope my colleagues will join me in this endeavor.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 1183

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "21st Century Federal Pell Grant Plus Act".

SEC. 2. RECIPIENTS OF FEDERAL PELL GRANTS WHO ARE PURSUING PROGRAMS OF STUDY IN ENGINEERING, MATHEMATICS, SCIENCE, OR FOREIGN LANGUAGES.

Section 401(b)(2) of the Higher Education Act of 1965 (20 U.S.C. 1070a(b)(2)) is amended by adding at the end the following:

"(C)(i) Notwithstanding subparagraph (A) and subject to clause (iii), in the case of a student who is eligible under this part and who is pursuing a degree with a major in, or a certificate or program of study relating to, engineering, mathematics, science (such as physics, chemistry, or computer science), or a foreign language, described in a list developed or updated under clause (ii), the amount of the Federal Pell Grant shall be the amount calculated for the student under subparagraph (A) for the academic year involved, multiplied by 2.

"(ii)(I) The Secretary, in consultation with the Secretary of Defense, the Secretary of the Department of Homeland Security, and the Director of the National Science Foundation, shall develop, update not less often than once every 2 years, and publish in the Federal Register, a list of engineering, mathematics, and science degrees, majors, certificates, or programs that if pursued by a student, may enable the student to receive the increased Federal Pell Grant amount under clause (i). In developing and updating the list the Secretaries and Director shall consider the following:

"(aa) The current engineering, mathematics, and science needs of the United States with respect to national security, homeland security, and economic security.

"(bb) Whether institutions of higher education in the United States are currently producing enough graduates with degrees to meet the national security, homeland security, and economic security needs of the United States.

"(cc) The future expected workforce needs of the United States required to help ensure the Nation's national security, homeland security, and economic security.

"(dd) Whether institutions of higher education in the United States are expected to produce enough graduates with degrees to meet the future national security, homeland security, and economic security needs of the United States.

"(II) The Secretary, in consultation with the Secretary of Defense, the Secretary of the Department of Homeland Security, and the Secretary of State, shall develop, update not less often than once every 2 years, and publish in the Federal Register, a list of foreign language degrees, majors, certificates, or programs that if pursued by a student, may enable the student to receive the increased Federal Pell Grant amount under clause (i). In developing and updating the list the Secretaries shall consider the following:

"(aa) The foreign language needs of the United States with respect to national security, homeland security, and economic security.

"(bb) Whether institutions of higher education in the United States are currently producing enough graduates with degrees to meet the national security, homeland security, and economic security needs of the United States.

"(cc) The future expected workforce needs of the United States required to help ensure the Nation's national security, homeland security, and economic security.

"(dd) Whether institutions of higher education in the United States are expected to produce enough graduates with degrees to meet the future national security, homeland security, and economic security needs of the United States.

"(iii) Each student who received an increased Federal Pell Grant amount under clause (i) to pursue a degree, major, certificate, or program described in a list published under subclause (I) or (II) of clause (ii) shall continue to be eligible for the increased Federal Pell Grant amount in subsequent academic years if the degree, major, certificate, or program, respectively, is subsequently removed from the list.

"(iv)(I) If a student who received an increased Federal Pell Grant amount under clause (i) changes the student's course of study to a degree, major, certificate, or program that is not included in a list described in clause (ii), then the Secretary shall reduce the amount of Federal Pell Grant assistance the student is eligible to receive under this section for subsequent academic years by an amount equal to the difference between the total amount the student received under this subparagraph and the total amount the student would have received under this section if this subparagraph had not been applied.

"(II) The Secretary shall reduce the amount of Federal Pell Grant assistance the student is eligible to receive in subsequent academic years by dividing the total amount to be reduced under subclause (I) for the student by the number of years the student received an increased Federal Pell Grant amount under clause (i), and deducting the result from the amount of Federal Pell Grant assistance the student is eligible to receive under this section for a number of subsequent academic years equal to the number of academic years the student received an increased Federal Pell Grant amount under clause (i)."

By Mr. BIDEN:

S. 1184. A bill to waive the passport fees for a relative of a deceased member of the Armed Forces proceeding abroad to visit the grave of such member or to attend a funeral or memorial service for such member; to the Committee on Foreign Relations.

Mr. BIDEN. Mr. President, today I introduce a bill to remedy a small gap in our passport laws. The change that I propose could be important to family members of servicemembers who lose their lives in service of their country.

Under current law, the State Department may not charge a fee to issue a passport to relatives of a deceased member of the Armed Forces who are proceeding abroad to visit the grave of such a member. But the law as applied requires that the family be visiting an official gravesite overseas.

The law does not, however, allow the waiver of passport fees if the family is attending a funeral or memorial service for a servicemember killed in action, but who is buried or memorialized overseas. The need for such a waiver probably does not occur often, but it happens. Last year, a servicemember from my home State of Delaware was killed in action in Iraq. The servicemember was stationed in Germany and his wife was German. She wished for him to be buried in Germany. So all of his relatives in the United States needed to travel quickly, and many of them did not have passports. At a time of such grieving for a lost servicemember, the family of the fallen hero should not have to worry about paying passport fees, which can add up quickly for a family. Waiving the fee in such cases is the least that we can do.

I hope we can approve such a minor change in the law quickly. I urge my colleagues to support this bill.

I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 1184

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PASSPORT FEES.

Section 1 of the Act of June 4, 1920 (41 Stat. 750, chapter 223; 22 U.S.C. 214) is amended in the third sentence by striking "or from a widow, child, parent, brother, or sister of a deceased member of the Armed Forces proceeding abroad to visit the grave of such member" and inserting "or from a widow, widower, child, parent, grandparent, brother, or sister of a deceased member of the Armed Forces proceeding abroad to visit the grave of such member or to attend a funeral or memorial service for such member".

By Mr. DOMENICI (for himself,
Mr. SCHUMER, Mr. COCHRAN,
Mr. ALLARD, and Mr. COLEMAN):

S. 1186. A bill to amend the Internal Revenue Code of 1986 to provide the same capital gains treatment for art and collectibles as for other investment property and to provide that a

deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor; to the Committee on Finance.

Mr. DOMENICI. Mr. President, I rise today to introduce again legislation to eliminate one of the great inconsistencies in the Internal Revenue Code.

The bill I am introducing today with Senator SCHUMER is designed to restore some internal consistency to the tax code as it applies to art and artists. No one has ever said that the tax code is fair even though it has always been a theoretical objective of the code to treat similar taxpayers similarly.

The bill I am introducing today would address two areas where similarly situated taxpayers are not treated the same.

Internal inconsistency number one deals with the long-term capital gains tax treatment of investments in art and collectibles. If a person invests in stocks or bonds and sells at a gain, the tax treatment is long term capital gains. The top capital gains tax rate is 15 percent. However, if the same person invests in art or collectibles the top rate is hiked up to 28 percent. Art for art's sake should not incur a higher tax rate simply for revenue's sake. That is a big impact on the pocketbook of the beholder.

Art and collectibles are alternatives to financial instruments as an investment choice. To create a tax disadvantage with respect to one investment compared to another creates an artificial market and may lead to poor investment allocations. It also adversely impacts those who make their livelihood in the cultural sectors of the economy.

Santa Fe, NM, is the third largest art market in the country. We have a diverse colony of artists, collectors and gallery owners. We have fabulous Native American rug weavers, potters and carvers. Creative giants like Georgia O'Keeffe, Maria Martinez, E. L. Blumenschein, Allan Houser, R.C. Gorman, and Glenna Goodacre have all chosen New Mexico as their home and as their artistic subject. John Nieto, Wilson Hurley, Clark Hulings, Veryl Goodnight, Bill Acheff, Susan Rothenberg, Bruce Nauman, Agnes Martin, Doug Hyde, Margaret Nez, and Dan Ostermiller are additional examples of living artists creating art in New Mexico.

Art, antiques, and collectibles are a \$12 to \$20 billion annual industry nationwide. In New Mexico, it has been estimated that art and collectible sales range between \$500 million and one billion a year.

Economists have always been interested in the economics of the arts. Adam Smith is a well-known economist. He was also a serious, but little-known essayist on painting, dancing, and poetry. Similarly, Keynes was both a famous economist and a passionate devotee of painting. However, even ar-

tistically inclined economists have found it difficult to define art within the context of economic theory.

When asked to define jazz, Louis Armstrong replied: "If you gotta ask, you ain't never going to know." A similar conundrum has challenged Galbraith and other economists who have grappled with the definitional issues associated with bringing art within the economic calculus. Original art objects are, as a commodity group, characterized by a set of attributes: every unit of output is differentiated from every other unit of output; art works can be copied but not reproduced; and the cultural capital of the nation has significant elements of public good.

Because art works can be resold, and their prices may rise over time, they have the characteristics of financial assets, and as such may be sought as a hedge against inflation, as a store of wealth, or as a source of speculative capital gain. A study by Keishiro Matsumoto, Samuel Andoh and James P. Hoban, Jr. assessed the risk-adjusted rates of return on art sold at Sotheby's during the 14-year period ending September 30, 1989. They concluded that art was a good investment in terms of average real rates of return. Several studies found that rates of return from the price appreciation on paintings, comic books, collectibles and modern prints usually made them very attractive long-term investments. Also, when William Goetzmann was at the Columbia Business School, he constructed an art index and concluded that painting price movements and stock market fluctuations are correlated.

I conclude that with art, as well as stocks, past performance is no guarantee of future returns, but the gains should be taxed the same.

In 1990, the editor of *Art and Auction* asked the question: "Is there an 'efficient' art market?" A well-known art dealer answered "Definitely not. That's one of the things that makes the market so interesting." For everyone who has been watching world financial markets lately, the art market may be a welcome distraction.

Why do people invest in art and collectibles? Art and collectibles are something you can appreciate even if the investment doesn't appreciate. Art is less volatile. If buoyant and not so buoyant bond prices drive you berserk and spiraling stock prices scare you, art may be the appropriate investment for you. Because art and collectibles are investments, the long-term capital gains tax treatment should be the same as for stocks and bonds. This bill would accomplish that.

Artists will benefit. Gallery owners will benefit. Collectors will benefit. And museums benefit from collectors. About 90 percent of what winds up in museums like New York's Metropolitan Museum of Art comes from collectors.

Collecting isn't just for the hoity toity. It seems that everyone collects

something. Some collections are better investments than others. Some collections are just bizarre. The Internet makes collecting big business, and flea market fanatics are avid collectors. In fact, people collect the darndest things. Books, duck decoys, chia pets, snowglobes, thimbles, handcuffs, spectacles, baseball cards, and guns are a few such "collectibles."

For most of these collections, capital gains isn't really an issue, but you never know. You may find that your collecting passion has created a tax predicament to phrase it politely. Art and collectibles are tangible assets. When you sell them, capital gains tax is due on any appreciation over your purchase price.

The bill provides capital gains tax parity because it lowers the top capital gains rate from 28 percent to 15 percent.

Internal inconsistency number two deals with the charitable deduction for artists donating their work to a museum or other charitable cause. When someone is asked to make a charitable contribution to a museum or to a fund raising auction, it shouldn't matter whether that person is an artist or not. Under current law, however, it makes a big difference. As the law stands now, an artist/creator can only take a deduction equal to the cost of the art supplies. The bill I am introducing will allow a fair market deduction for the artist.

It's important to note that this bill includes certain safeguards to keep the artist from "painting himself a tax deduction." This bill applies to literary, musical, artistic, and scholarly compositions if the work was created at least 18 months before the donation was made, has been appraised, and is related to the purpose or function of the charitable organization receiving the donation. As with other charitable contributions, it is limited to 50 percent of adjusted gross income (AGI). If it is also a capital gain, there is a 30 percent of AGI limit. I believe these safeguards bring fairness back into the code and protect the Treasury against any potential abuse.

I hope my colleagues will help me put this internal consistency into the Internal Revenue Code.

I ask unanimous consent that and the text of the bill be printed in the RECORD.

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

S. 1186

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Art and Collectibles Capital Gains Tax Treatment Parity Act".

SEC. 2. CAPITAL GAINS TREATMENT FOR ART AND COLLECTIBLES.

(a) IN GENERAL.—Section 1(h) of the Internal Revenue Code of 1986 (relating to maximum capital gains rate) is amended by striking paragraphs (4) and (5) and inserting the following new paragraphs:

“(4) 28-PERCENT RATE GAIN.—For purposes of this subsection, the term ‘28-percent rate gain’ means the excess (if any) of—

“(A) section 1202 gain, over

“(B) the sum of—

“(i) the net short-term capital loss, and

“(ii) the amount of long-term capital loss carried under section 1212(b)(1)(B) to the taxable year.

“(5) RESERVED.—”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 3. CHARITABLE CONTRIBUTIONS OF CERTAIN ITEMS CREATED BY THE TAXPAYER.

(a) IN GENERAL.—Subsection (e) of section 170 of the Internal Revenue Code of 1986 (relating to certain contributions of ordinary income and capital gain property) is amended by adding at the end the following new paragraph:

“(7) SPECIAL RULE FOR CERTAIN CONTRIBUTIONS OF LITERARY, MUSICAL, ARTISTIC, OR SCHOLARLY COMPOSITIONS.—

“(A) IN GENERAL.—In the case of a qualified artistic charitable contribution—

“(i) the amount of such contribution taken into account under this section shall be the fair market value of the property contributed (determined at the time of such contribution), and

“(ii) no reduction in the amount of such contribution shall be made under paragraph (1).

“(B) QUALIFIED ARTISTIC CHARITABLE CONTRIBUTION.—For purposes of this paragraph, the term ‘qualified artistic charitable contribution’ means a charitable contribution of any literary, musical, artistic, or scholarly composition, or similar property, or the copyright thereon (or both), but only if—

“(i) such property was created by the personal efforts of the taxpayer making such contribution no less than 18 months prior to such contribution,

“(ii) the taxpayer—

“(I) has received a qualified appraisal of the fair market value of such property in accordance with the regulations under this section, and

“(II) attaches to the taxpayer’s income tax return for the taxable year in which such contribution was made a copy of such appraisal,

“(iii) the donee is an organization described in subsection (b)(1)(A),

“(iv) the use of such property by the donee is related to the purpose or function constituting the basis for the donee’s exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described under section 501(c)),

“(v) the taxpayer receives from the donee a written statement representing that the donee’s use of the property will be in accordance with the provisions of clause (iv), and

“(vi) the written appraisal referred to in clause (ii) includes evidence of the extent (if any) to which property created by the personal efforts of the taxpayer and of the same type as the donated property is or has been—

“(I) owned, maintained, and displayed by organizations described in subsection (b)(1)(A), and

“(II) sold to or exchanged by persons other than the taxpayer, donee, or any related person (as defined in section 465(b)(3)(C)).

“(C) MAXIMUM DOLLAR LIMITATION; NO CARRYOVER OF INCREASED DEDUCTION.—The increase in the deduction under this section by reason of this paragraph for any taxable year—

“(i) shall not exceed the artistic adjusted gross income of the taxpayer for such taxable year, and

“(ii) shall not be taken into account in determining the amount which may be carried from such taxable year under subsection (d).

“(D) ARTISTIC ADJUSTED GROSS INCOME.—For purposes of this paragraph, the term ‘artistic adjusted gross income’ means that portion of the adjusted gross income of the taxpayer for the taxable year attributable to—

“(i) income from the sale or use of property created by the personal efforts of the taxpayer which is of the same type as the donated property, and

“(ii) income from teaching, lecturing, performing, or similar activity with respect to property described in clause (i).

“(E) PARAGRAPH NOT TO APPLY TO CERTAIN CONTRIBUTIONS.—Subparagraph (A) shall not apply to any charitable contribution of any letter, memorandum, or similar property which was written, prepared, or produced by or for an individual while the individual is an officer or employee of any person (including any government agency or instrumentality) unless such letter, memorandum, or similar property is entirely personal.

“(F) COPYRIGHT TREATED AS SEPARATE PROPERTY FOR PARTIAL INTEREST RULE.—In the case of a qualified artistic charitable contribution, the tangible literary, musical, artistic, or scholarly composition, or similar property and the copyright on such work shall be treated as separate properties for purposes of this paragraph and subsection (f)(3).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after the date of the enactment of this Act in taxable years ending after such date.

By Mrs. BOXER (for herself and Mr. SCHUMER):

S. 1193. A bill to direct the Assistant Secretary of Homeland Security for the Transportation Security Administration to issue regulations requiring turbojet aircraft of air carriers to be equipped with missile defense systems, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mrs. BOXER. Mr. President, today I am reintroducing the Commercial Airline Missile Defense Act. This legislation is designed to ensure that our commercial aircraft are protected against the threat posed by shoulder-fired missiles.

I first introduced this legislation in February 2003 in response to two separate attacks attributed to al Qaeda terrorists. The first attack was the attempted shoot down of a U.S. military aircraft in Saudi Arabia. The second attack was against an Israeli passenger jet in Kenya. Fortunately, there were no casualties in either case.

But make no mistake, the threat posed by these weapons—also known as man-portable air defense systems (MANPADS)—is very real. In May 2002, the FBI said, “. . . Given al Qaeda’s demonstrated objective to target the U.S. airline industry, its access to U.S. and Russian-made MANPAD systems, and recent apparent targeting of U.S.-led military forces in Saudi Arabia, law enforcement agencies in the United States should remain alert to the potential use of MANPADS against U. S. aircraft.”

In February 2004, the Director of the Defense Intelligence Agency, Admiral

Lowell Jacoby, testified before the Senate Intelligence Committee on current and projected national security threats. He stated the following: “A MANPAD attack against civilian aircraft would produce large number of casualties, international publicity and a significant economic impact on aviation. These systems are highly portable, easy to conceal, inexpensive, available in the global weapons market and instruction manuals are on the internet. Commercial aircraft are not equipped with countermeasures and commercial pilots are not trained in evasive measures. An attack could occur with little or no warning. Terrorists may attempt to capitalize on these vulnerabilities.”

It is estimated that there are between 300,000 and one million shoulder-fired missiles in the world today—thousands are thought to be in the hands of terrorist and other non-state entities.

Since I first introduced my legislation in 2003, progress has been made in adapting countermeasures now being used by the military for use on commercial aircraft. A special program office has been created within the Department of Homeland Security that is working to demonstrate and test two prototype countermeasure systems. Flight testing is scheduled to begin in a matter of weeks.

This legislation, which I am again introducing with my primary cosponsor, Senator SCHUMER, states that the installation of countermeasure systems on commercial aircraft will begin no later than 6 months after the Secretary of Homeland Security certifies that the countermeasure system has successfully completed a program of operational test and evaluation.

We need to continue to move forward to ensure that commercial aircraft are protected from the threat posed by shoulder-fired missiles. I appreciate the hard work of my colleague in the House, Congressman STEVE ISRAEL, who is a real leader on this issue.

I hope my colleagues will support this important legislation.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 161—HONORING THE LIFE OF ROBERT M. LA FOLLETTE, SR., ON THE SESQUICENTENNIAL OF HIS BIRTH

Mr. FEINGOLD (for himself and Mr. KOHL) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 161

Whereas Robert M. La Follette, Sr., better known as “Fighting Bob” La Follette, was born 150 years ago, on June 14, 1855, in Primrose, Wisconsin;

Whereas Fighting Bob was elected to 3 terms in the United States House of Representatives, 3 terms as Governor of Wisconsin, and 4 terms as a United States Senator;

Whereas Fighting Bob founded the Progressive wing of the Republican Party;

Whereas Fighting Bob was a lifelong supporter of civil rights and women's suffrage, earning respect and support from such distinguished Americans as Frederick Douglass and Harriet Tubman Upton;

Whereas Fighting Bob helped to make the "Wisconsin Idea" a reality at the Federal and State level, instituting election reforms, environmental conservation, railroad rate regulation, increased education funding, and business regulation;

Whereas Fighting Bob was a principal advocate for the Seventeenth Amendment to the Constitution of the United States, which calls for the election of United States Senators by popular vote;

Whereas Fighting Bob delivered an historic speech, "Free Speech in Wartime", opposing the public persecution of those who sought to hold their Government accountable;

Whereas Fighting Bob played a key role in exposing the corruption during the Teapot Dome Scandal;

Whereas Fighting Bob and his wife, Belle Case La Follette, founded *La Follette's Weekly*, now renamed *The Progressive*, a monthly magazine for the Progressive community;

Whereas Fighting Bob ran for the presidency on the Progressive ticket in 1924, winning more than 17 percent of the popular vote;

Whereas the Library of Congress recognized Fighting Bob in 1985 by naming the Congressional Research Service reading room in the Madison Building in honor of both Robert M. La Follette, Sr., and his son, Robert M. La Follette, Jr., for their shared commitment to the development of a legislative research service to support the United States Congress;

Whereas Fighting Bob was honored in 1929 with 1 of 2 statues representing the State of Wisconsin in National Statuary Hall in the United States Capitol;

Whereas Fighting Bob was chosen as 1 of "Five Outstanding Senators" by the Special Committee on the Senate Reception Room in 1957;

Whereas a portrait of Fighting Bob was unveiled in the Senate Reception Room in March 1959; and

Whereas Fighting Bob was revered by his supporters for his unwavering commitment to his ideals, and for his tenacious pursuit of a more just and accountable Government: Now, therefore, be it

Resolved, That the Senate—

(1) celebrates the sesquicentennial of the birth of Robert M. La Follette, Sr.;

(2) recognizes the important contributions of Robert M. La Follette, Sr., to the Progressive movement, the State of Wisconsin, and the United States of America; and

(3) directs that the Secretary of the Senate transmit an enrolled copy of this resolution to the family of Robert M. La Follette, Sr., and the Wisconsin Historical Society.

Mr. FEINGOLD. Mr. President, I rise today to honor the extraordinary life of Robert M. La Follette Sr. Next week, on June 14th, people around my home State of Wisconsin will mark the 150th anniversary of La Follette's birth. Throughout his life, La Follette was revered for his tireless service to the people of Wisconsin and to the people of the United States. His dogged, full-steam-ahead approach to his life's work earned him the nickname "Fighting Bob."

Robert Marion La Follette, Sr., was born on June 14, 1855, in Primrose, a small town southwest of Madison in Dane County. He graduated from the University of Wisconsin Law School in

1879 and, after being admitted to the State bar, began his long career in public service as Dane County district attorney.

La Follette was elected to the United States House of Representatives in 1884, and he served three terms as a member of that body, where he was a member of the Ways and Means Committee.

After losing his campaign for reelection in 1890, La Follette returned to Wisconsin and continued to serve the people of my State as a judge. Upon his exit from Washington, DC, a reporter wrote, La Follette "is popular at home, popular with his colleagues, and popular in the House. He is so good a fellow that even his enemies like him."

He was elected the 20th Governor of Wisconsin in 1900. He served in that office until 1906, when he stepped down in order to serve the people of Wisconsin in the United States Senate, where he remained until his death in 1925.

As a founder of the national progressive movement, La Follette championed progressive causes as governor of Wisconsin and in the U.S. Congress. As governor, he advanced an agenda that included the country's first workers compensation system, direct election of United States Senators, and railroad rate and tax reforms. Collectively, these reforms would become known as the "Wisconsin Idea." As governor, La Follette also supported cooperation between the State and the University of Wisconsin.

His terms in the House of Representatives and the Senate were spent fighting for women's rights, working to limit the power of monopolies, and opposing pork barrel legislation. La Follette also advocated electoral reforms, and he brought his support of the direct election of United States Senators to this body. His efforts were brought to fruition with the ratification of the Seventeenth Amendment in 1913. Fighting Bob also worked tirelessly to hold the government accountable, and was a key figure in exposing the Teapot Dome Scandal.

La Follette earned the respect of such notable Americans as Frederick Douglass, Booker T. Washington and Harriet Tubman Upton for making civil rights one of his trademark issues. At a speech before the 1886 graduating class of Howard University, La Follette said, "We are one people, one by truth, one almost by blood. Our lives run side by side, our ashes rest in the same soil. [Seize] the waiting world of opportunity. Separatism is snobbish stupidity, it is supreme folly, to talk of non-contact, or exclusion!"

La Follette ran for President three times, twice as a Republican and once on the Progressive ticket. In 1924, as the Progressive candidate for president, La Follette garnered more than 17 percent of the popular vote and carried the State of Wisconsin.

La Follette's years of public service were not without controversy. In 1917, he filibustered a bill to allow the arm-

ing of United States merchant ships in response to a series of German submarine attacks. His filibuster was successful in blocking passage of this bill in the closing hours of the 64th Congress. Soon after, La Follette was one of only six Senators who voted against U.S. entry into World War I.

Fighting Bob was outspoken in his belief that the right to free speech did not end when war began. In the fall of 1917, La Follette gave a speech about the war in Minnesota, and he was misquoted in press reports as saying that he supported the sinking of the Lusitania. The Wisconsin State Legislature condemned his supposed statement as treason, and some of La Follette's Senate colleagues introduced a resolution to expel him. In response to this action, he delivered his seminal floor address, "Free Speech in Wartime," on October 16, 1917. If you listen closely, you can almost hear his strong voice echoing through this chamber as he said: "Mr. President, our government, above all others, is founded on the right of the people freely to discuss all matters pertaining to their government, in war not less than in peace, for in this government, the people are the rulers in war no less than in peace."

Of the expulsion petition filed against him, La Follette said:

I am aware, Mr. President, that in pursuance of this general campaign of vilification and attempted intimidation, requests from various individuals and certain organizations have been submitted to the Senate for my expulsion from this body, and that such requests have been referred to and considered by one of the Committees of the Senate.

If I alone had been made the victim of these attacks, I should not take one moment of the Senate's time for their consideration, and I believe that other Senators who have been unjustly and unfairly assailed, as I have been, hold the same attitude upon this that I do. Neither the clamor of the mob nor the voice of power will ever turn me by the breadth of a hair from the course I mark out for myself, guided by such knowledge as I can obtain and controlled and directed by a solemn conviction of right and duty."

This powerful speech led to a Senate investigation of whether La Follette's conduct constituted treason. In 1919, following the end of World War I, the Senate dropped its investigation and reimbursed La Follette for the legal fees he incurred as a result of the expulsion petition and corresponding investigation. This incident is indicative of Fighting Bob's commitment to his ideals and of his tenacious spirit.

La Follette died on June 18, 1925, in Washington, DC, while serving Wisconsin in this body. His daughter noted, "His passing was mysteriously peaceful for one who had stood so long on the battle line." Mourners visited the Wisconsin Capitol to view his body, and paid respects in a crowd nearing 50,000 people. La Follette's son, Robert M. La Follette, Jr., was appointed to his father's seat, and went on to be elected in his own right and to serve in this body for more than 20 years, following the progressive path blazed by his father.

La Follette has been honored a number of times for his unwavering commitment to his ideals and for his service to the people of Wisconsin and of the United States.

Recently, I was proud to support Senate passage of a bill introduced in the other body by Congresswoman TAMMY BALDWIN that will name the post office at 215 Martin Luther King, Jr., Boulevard in Madison in La Follette's honor. I commend Congresswomen BALDWIN for her efforts to pass this bill.

The Library of Congress recognized La Follette in 1985 by naming the Congressional Research Service reading room in the Madison Building in honor of both Fighting Bob and his son, Robert M. La Follette, Jr., for their shared commitment to the development of a legislative research service to support the United States Congress. In his autobiography, Fighting Bob noted that, as governor of Wisconsin, he "made it a . . . policy to bring all the reserves of knowledge and inspiration of the university more fully to the service of the people. . . . Many of the university staff are now in state service, and a bureau of investigation and research established as a legislative reference library . . . has proved of the greatest assistance to the legislature in furnishing the latest and best thought of the advanced students of government in this and other countries." He went on to call this service "a model which the federal government and ultimately every state in the union will follow." Thus, the legislative reference service that La Follette created in Madison served as the basis for his work to create the Congressional Research Service at the Library of Congress.

The La Follette Reading Room was dedicated on March 5, 1985, the 100th anniversary of Fighting Bob being sworn in for his first term as a Member of Congress.

Across this magnificent Capitol in National Statuary Hall, Fighting Bob is forever immortalized in white marble, still proudly representing the State of Wisconsin. His statue resides in the Old House Chamber, now known as National Statuary Hall, among those of other notable figures who have made their marks in American history. One of the few seated statues is that of Fighting Bob. Though he is sitting, he is shown with one foot forward, and one hand on the arm of his chair, as if he is about to leap to his feet and begin a robust speech.

When then-Senator John F. Kennedy's five-member Special Committee on the Senate Reception Room chose La Follette as one of the "Five Outstanding Senators" whose portraits would hang outside of this chamber in the Senate reception room, he was described as being a "ceaseless battler for the underprivileged" and a "courageous independent." Today, his painting still hangs just outside this chamber, where it bears witness to the proceedings of this body—and, perhaps,

challenges his successors here to continue fighting for the social and government reforms he championed.

To honor Robert M. La Follette, Sr., on the sesquicentennial of his birth, today I am introducing three pieces of legislation. I am pleased to be joined in this effort by the senior Senator from Wisconsin, Senator KOHL. The first is a resolution celebrating this event and recognizing the importance of La Follette's important contributions to the Progressive movement, the State of Wisconsin, and the United States of America.

I am also introducing a bill that would direct the Secretary of the Treasury to mint coins to commemorate Fighting Bob's life and legacy. The third bill that I am introducing today would authorize the President to posthumously award a gold medal on behalf of Congress to Robert M. La Follette, Sr. The minting of a commemorative coin and the awarding of the Congressional Gold Medal would be fitting tributes to the memory of Robert M. La Follette, Sr., and to his deeply held beliefs and long record of service to his State and to his country. I hope that my colleagues will support all three of these proposals.

Let us never forget Robert M. La Follette, Sr.'s character, his integrity, his deep commitment to Progressive causes, and his unwillingness to waver from doing what he thought was right. The Senate has known no greater champion of the common man and woman, no greater enemy of corruption and cronyism, than "Fighting Bob" La Follette, and it is an honor to speak in the same chamber, and serve the same great State, as he did.

SENATE RESOLUTION 162—EX-PRESSING THE SENSE OF THE SENATE CONCERNING GRISWOLD V. CONNECTICUT

Ms. SNOWE (for herself, Mr. OBAMA, Mr. CORZINE, Mrs. BOXER, Mrs. MURRAY, Mrs. CLINTON, Mr. HARKIN, Mr. DURBIN, Mrs. FEINSTEIN, Mr. REID, Mr. FEINGOLD, and Mr. JEFFORDS) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 162

Whereas June 7, 2005, marks the 40th anniversary of the United States Supreme Court decision in *Griswold v. Connecticut* (1965) in which the Court recognized the constitutional right of married couples to use contraception—a right that the Court would extend to unmarried individuals within less than a decade;

Whereas the decision in *Griswold v. Connecticut* paved the way for widespread use of birth control among American women;

Whereas the Centers for Disease Control and Prevention recognized family planning in its published list of the "Ten Great Public Health Achievements in the 20th Century";

Whereas the typical woman in the United States wants only 2 children and therefore spends roughly 30 years of her life trying to prevent pregnancy;

Whereas birth control is a critical component of basic preventive health care for

women and has been the driving force in reducing national rates of unintended pregnancy and the need for abortion;

Whereas the ability of women to control their fertility and avoid unintended pregnancy has led to dramatic declines in maternal and infant mortality rates and has improved maternal and infant health;

Whereas in 1965, there were 31.6 maternal deaths per 100,000 live births and in 2000 there were 9.8 maternal deaths per 100,000 live births;

Whereas in 1965, 24.7 infants under 1 year of age died per 1,000 live births and in 2003 this figure had declined to 7 infant deaths per 1,000 live births;

Whereas the ability of women to control their fertility has enabled them to achieve personal educational and professional goals critical to the economic success of the United States;

Whereas in 1965, 7 percent of women completed 4 or more years of college compared to 26 percent in 2004;

Whereas in 1965, women age 16 and over constituted 39 percent of the workforce compared to 59 percent in 2004;

Whereas publicly-funded family planning programs have increased the ability of women, regardless of economic status, to access birth control and experience the resulting health and economic benefits;

Whereas public investment in this most basic preventive health care is extremely cost effective—for every dollar spent on publicly funded family planning, \$3 is saved in pregnancy-related and newborn care cost to the Medicaid program alone;

Whereas Congress had repeatedly recognized the importance of a women's ability to access contraceptives through support for Medicaid, title X of the Public Health Service Act, and the Federal Employee Health Benefits Program;

Whereas 40 years after the *Griswold* decision, many women still face challenges in accessing birth control and using it effectively;

Whereas the United States has one of the highest rates of unintended pregnancy among Western nations and each year, half of all pregnancies in the United States are unintended, and nearly half of those end in abortion;

Whereas teen pregnancy rates have dramatically declined, still, 78 percent of teen pregnancies are unintended and more than one-third of teen girls will become pregnant before age 20; and

Whereas publicly funded family planning clinics are the only source of healthcare for many uninsured and low-income women:

Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) forty years ago the United States Supreme Court in *Griswold v. Connecticut* held that married people have a constitutional right to use contraceptives, a right that the Court would extend to unmarried individuals within less than a decade;

(2) the ability of women to control their fertility through birth control has vastly improved maternal and infant health, has reduced national rates of unintended pregnancy, and has allowed women the ability to achieve personal educational and professional goals critical to the economic success of the United States; and

(3) Congress should take further steps to ensure that all women have universal access to affordable contraception.

Ms. SNOWE. Mr. President, today we mark forty years since a momentous Supreme Court decision. It is difficult for many young Americans to imagine that in the not too distant past, the provision of contraceptives was illegal.

In the 1965 landmark decision of *Griswold v. Connecticut*, the Supreme Court recognized the right of married couples to obtain contraception and reproductive counseling. This was a watershed moment in public health—indeed such that the CDC has recognized that our subsequent progress in family planning constitutes one of the ten greatest public health achievements of the last century.

Women have faced great obstacles in family planning. While the average woman desires two children, with more than thirty years of fertility a woman's health and the welfare of her family is compromised without modern contraception.

We know that family planning has been practiced throughout history, but the methods used were certainly not always safe and effective. Today we take for granted both the access to modern contraceptives and the individual's right to make reproductive decisions. Among our noblest intentions is that every child is wanted, and that parents will have the resources to ensure their child's health and success. Following the *Griswold* decision, we have come far closer to that goal.

We certainly can see the results. The maternal death rate in the U.S. is only one third what it was back in 1965. The same is true for infant survival. The health outcomes are indisputable.

The lives of women have also been improved in so many ways. Four times more women are now college educated. This is so vital in an age where a more competitive world demands so much more of American families. It is essential that women can better themselves and ensure the security of their families.

As we commemorate the recognition by the Supreme Court that individuals have a right to that most basic part of life—the planning of their families—we recognize that there is still a great deal of progress to be made. Legal access does not equate to affordability. Certainly we must adequately fund Medicaid, title X, and other programs which provide family planning services. Such access reduces unwanted pregnancies, promotes the economic stability of families, and improves the health of both mother and child, yet we need to do more.

We simply must assure that access to contraceptives is equitable—that a lack of coverage by health plans does not place one of our most effective public health measures out of reach for millions of women. To achieve this aim, I will again introduce the Equity in Prescription Insurance and Contraceptive Act with Senator REID later this week. I invite my colleagues to join us in supporting this legislation to realize the full promise of *Griswold v. Connecticut*—healthier mothers, healthier children, and healthy, stable families.

Mr. OBAMA. Mr. President, today marks the 40th anniversary of the U.S. Supreme Court decision in *Griswold v.*

Connecticut, which struck down Connecticut laws that prohibited reproductive counseling and the use of contraception. In recognizing a constitutional right to privacy, this landmark decision secured the right of married women to use contraception and laid the groundwork for widespread access to birth control for all American women.

The availability and use of contraceptives has had a profound impact on the health and lives of women across the Nation. Widespread use of birth control has led to dramatic reductions in national rates of sexually transmitted infections, unintended pregnancies, and abortion. Contraceptive use has also significantly improved maternal and infant health outcomes, and reduced maternal and infant mortality rates. Since 1965 maternal and infant mortality rates have declined by more than two-thirds.

The impact of contraception on the professional lives of women has been equally profound. The ability of women to control fertility has allowed them to successfully achieve educational and career goals that would've been impossible a century ago. Women are critical to this nation's economic success, comprising up to one half of the total U.S. labor force.

In 1999, the Centers for Disease Control and Prevention recognized the significant impact of birth control on American society and included family planning in their list of the "Ten Great Public Health Achievements in the 20th Century." However, despite considerable progress in this area, much work remains. The United States has one of the highest rates of unintended pregnancies and sexually transmitted infections among industrialized nations, which in part reflects lack of access to basic preventive health care, including contraception.

A growing number of women—almost 17 million currently—must rely on publicly supported contraceptive care. Between 2000 and 2002, this number increased by 400,000 alone, because of the rising number of uninsured women. Yet, even those women with health insurance are not guaranteed access to contraceptives because some health plans choose not to cover these medications and procedures as they would other basic preventive health measures. And we are increasingly hearing about pharmacists and other providers who refuse to prescribe or fill contraceptive prescriptions, or refer women to those who will, because of their own personal beliefs.

This 40th anniversary of the *Griswold* decision provides a perfect opportunity to reflect upon the critical importance and impact of this decision on the health and professional lives of millions of women. We must ensure that policy decisions about contraception services remain health decisions and not political ones, and work to ensure that all women have access to contraception when they need it.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. DEMINT. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to conduct a hearing during the session of the Senate on Tuesday, June 7, 2005 at 9:30 a.m. in SD-106. The purpose of this hearing will be to review the Dominican Republic-Central America Free Trade Agreement: Potential Impacts on the Agriculture and Food Sectors.

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

COMMITTEE ON ARMED SERVICES

Mr. DEMINT. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on June 7, 2005, at 9:30 a.m., in open session to receive testimony on the Department of Defense Inspector General's Management Accountability Review of the Boeing KC-767A Tanker Program.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. DEMINT. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on June 7, 2005, at 10 a.m., to conduct a hearing on "International Monetary Fund Oversight."

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

COMMITTEE ON FINANCE

Mr. DEMINT. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Tuesday June 7, 2005, at 10 a.m., to hear testimony on "Preventing the Next Pension Collapse: Lessons from the United Airlines Case".

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

COMMITTEE ON FOREIGN RELATIONS

Mr. DEMINT. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, June 7, 2005 at 10:30 a.m. to hold a hearing on Nominations.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. DEMINT. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, June 7, 2005 at 2:30 p.m. to hold a hearing on China.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. DEMINT. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the

Senate on June 7, 2005 at 2:30 p.m. to hold a mark-up.

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

SUBCOMMITTEE ON RETIREMENT SECURITY AND AGING

Mr. DEMINT. Mr. President, I ask unanimous consent that the Subcommittee on Retirement Security and Aging, be authorized to hold a hearing during the session of the Senate on Tuesday, June 7, 2005 at 10 a.m. in SD-430.

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

SUBCOMMITTEE ON TERRORISM, TECHNOLOGY AND HOMELAND SECURITY

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP

Mr. DEMINT. Mr. President, I ask unanimous consent that the Subcommittee on Terrorism, Technology and Homeland Security and the subcommittee on Immigration, Border Security and Citizenship be authorized to meet to conduct a joint hearing on "The Southern Border in Crisis: Resources and Strategies to Improve National Security" on Tuesday, June 7, 2005 at 2:30 p.m. in Dirksen 226.

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

PRIVILEGES OF THE FLOOR

Mr. BROWBACK. Mr. President, I ask unanimous consent that Mike Carney, Megan Martin, and Charles Kane, interns on my Judiciary Committee staff, be granted floor privileges for the duration of today's proceedings.

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

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276h-276k, as amended, appoints the following Senators as members of the Senate Delegation to the Mexico-U.S. Interparliamentary Group during the First Session of the 109th Congress: the Senator from Alabama, Mr. SESSIONS, and the Senator from Idaho, Mr. CRAPO.

The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276h-276k, as amended, appoints the following Senator as a member of the Senate Delegation to the Mexico-U.S. Interparliamentary Group during the First Session of the 109th Congress: the Senator from Rhode Island, Mr. REED.

ORDERS FOR WEDNESDAY, JUNE 8, 2005

Mr. FRIST. I ask unanimous consent that when the Senate resumes the nomination at 10 a.m. tomorrow morning, the time from 10 to 11 be under the control of the majority leader or his designee, the time from 11 to noon be under the control of the Democratic leader or his designee, provided further that the time rotate in that order until

the hour of 4 p.m. I further ask that the time from 4 to 4:10 be under the control of Senator LEAHY or his designee, from 4:10 to 4:20 reserved for Senator SPECTER or his designee, 4:20 to 4:40 for the Democratic leader, and 4:40 to 5 be reserved for the majority leader.

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

Mr. FRIST. I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Wednesday, June 8. I further ask that, following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and that the Senate then return to executive session and resume consideration of the nomination of Janice Rogers Brown to be a U.S. circuit judge for the DC Circuit.

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

PROGRAM

Mr. FRIST. Mr. President, tomorrow the Senate will resume consideration of the nomination of Janice Rogers Brown to be a U.S. circuit judge for the DC Circuit. Earlier today, cloture was invoked by a vote of 65 to 32, and under an earlier agreement we will have an up-or-down vote at 5 p.m. tomorrow. Therefore, tomorrow we will continue with debate on the nomination as provided under the previous agreement. Following that vote, we will immediately proceed to the cloture vote on the nomination of William Pryor to be a U.S. circuit judge for the Eleventh Circuit. We will also consider additional nominations during this week, so Senators can expect votes each day until our executive business is finished.

ORDER FOR ADJOURNMENT

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order, following the remarks of the Senator from South Carolina for up to 10 minutes.

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

The Senator from South Carolina.

NOMINATION OF JANICE ROGERS BROWN

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. Mr. President, I thank the majority leader for allowing me to have this time. I acknowledge all his hard work to bring us to having votes. And that is true of the minority leader. The Senate is back in business and we are voting in the fashion of 214 years of our history and some good people are getting voted on. That is all we can ask or hope for.

I rise to speak on behalf of Justice Janice Rogers Brown. I intend to vote for her tomorrow when the vote is called. Being from the South, being from South Carolina, about to turn 50, I can say it is a long way from Greenville, AL, as a daughter of a sharecropper to the Supreme Court of California; an African-American female who grew up in the segregated South, daughter of a sharecropper in Greenville, AL, growing up, listening to stories from a grandmother about famous NAACP lawyer Fred Gray, who defended Martin Luther King and Rosa Parks.

It is a long way—and most of it is uphill. But she made it. And we ought to all be proud of the fact that someone such as Janice Rogers Brown has accomplished so much in her life. Not only did she go from Greenville, AL, to the Supreme Court of California, she served with distinction.

California has a unique system in the sense that the voters can decide whether they want to retain a judge. The last time she was up for retention vote in California she received 76 percent of the vote. We can talk about this as long as we would like, and apparently 30 hours is as long as we are going to talk about it. I find it hard to believe that someone could be out of the mainstream to the point they are a right-wing judicial fanatic and still get 76 percent of the vote in California. The last time I checked, it is not exactly the haven of rightwing people.

The reason she received 76 percent of the vote in California is because nobody made a big deal about her being a judge. The fact is, she decided a lot of cases with a variety of issues and a consistent manner that made it so that people who came before her did not feel the need to go out and try to get her beat. Only after the fact, only when she gets in this political whirlwind we are in now, where every Federal court nominee is getting attacked in a variety of different ways, mainly on the lines that you are out of the mainstream because you happen to be conservative, only then has she gotten to be a problem.

This is politics, pure and simple, because if it was about competency, if it was about professional qualifications, she would never have been on the Supreme Court in California to start with. She would not have stayed 7 or 8 years, and she would not have gotten 76 percent of the vote. To say otherwise defies common sense.

We are going to take a vote tomorrow. She is going to be confirmed to the Federal bench on the court of appeals. She is a good candidate for that position. Not only is the California Supreme Court a good training ground for such a position, her story as a person is a great reservoir for her to call upon.

The idea that she cannot relate to people who suffer and who have been dealt a difficult time is absurd given her life circumstance. She will be an ideal court of appeals judge because

she was a very solid supreme court justice.

Is she conservative? You better believe it. The last time I checked, that is not a disqualifier. As a matter of fact, I think that is exactly what the country needs right now. We need Federal judges who will interpret the law and not make it. The Federal judiciary has lost its way on many occasions. She will be part of the solution, not the problem.

For 25 years she has been a public servant. She has worked for the legal assistance folks in California doing things for people who are less fortunate. She has been an outstanding jurist. She is a smart lady. She graduated near the top of her class and has given back more than she has taken.

The road from Greenville, AL, to the Supreme Court of California now leads to the Federal bench. We all should be proud of the fact that someone like this has done so much for so many people. Instead of picking apart every word she said, we should celebrate her success because come tomorrow, she will be a Federal judge. The country will be better off for it. We will be a stronger nation having someone like her on the Federal bench.

I am very proud of what she has accomplished as a person. I am very supportive of her judicial tenure, her judicial reasoning. She will bring out the best in our Nation's legal system.

One final thought: Politicians live in a world of 50 plus 1. We think of the most awful things we can say about each other just to get these jobs and to hold on to them sometimes. More and more people are turned off by politics because it is 24/7, running each other down. I wish we could stop.

Let me tell you about the present Presiding Officer. He has the perfect demeanor, as far as I am concerned, about a political figure. The Presiding Officer has had many jobs, and he has carried himself well. But we are adrift in politics. We are trying to find who is the least bad among us. By the time we

get through with each other, nobody wants to vote for anybody. That needs to be corrected. At least we volunteer for this. We go in it with our eyes wide open. If we continue to do to judges what we have embarked on for the last 15 or 20 years, we will do great damage to the judiciary.

This lady has been called a Neanderthal. She has been called some names you would not call your political opponent. There is a lot that has been said about Janice Rogers Brown that is over the top and is unfair. But she stuck it out and she will have her vote and she will win.

Let me state to all my colleagues on both sides of the aisle, whatever our Democrat friends have done, we are capable of doing the same on our side. If we do not slow down, take a deep breath and reassess what we are doing to judicial nominees, we will destroy the independence of the judiciary because it has become another form. If you have ever had a thought in your life and you have expressed it, it will be used against you in a political fashion, not a qualification fashion.

I hope we will learn from the past 15 or 20 years and declare a cease-fire on the judiciary. If you do not like people, vote against them. If they have bad character or bad ethics, bring it up and we will come together and deal with that. I hope we will stop declaring war on these people in such a personal fashion because the downside of this is good men and women of the future who would want to be judges are going to take a pass. Who in their right mind in the future is going to put their family and themselves through what these nominees have gone through? They do not have to. They have decided not to get in the political arena. They decided to devote themselves to the rule of law.

The difference between my business and the courtroom is the difference between very loud and very quiet. Pack your political agenda at the courthouse door, at the courthouse steps. The courtroom is a quiet place where you

are judged based on what you do, not who you are. You do not have to pay in the American legal system because you have a big wallet. In the American political system, we hit the rich pretty routinely. In the American political system, the unpopular have zero chance because they do not poll well.

In a courtroom, we do not take any polls. We look at what you do, not where you came from, and we let your peers, the citizens of the community, decide your fate, with somebody presiding over the trial with no ax to grind. What a marvelous system.

The jury is not special interest groups. They are not out raising money. They do not get rewarded or punished. They leave when the case is over, and they get a few dollars for their time. And do you know what. It works marvelously well. And that person in a black robe is nobody's campaign manager. They are there to call the balls and the strikes. This has worked well for 214 years. And if we do not watch it, we are going to ruin it.

Hopefully, over the next coming weeks, we can get back to the traditions of the Senate, treat people with the courtesy they deserve, and if you do not think they will be a good judge, vote against them. I think that is your obligation. The name-calling needs to stop.

So come tomorrow, at 5 o'clock, Janice Rogers Brown is going to continue her journey from Greenville, AL, and she is going to wear the robe of a Federal court judge. I think that is something we all should celebrate.

Mr. President, I yield the floor.

ADJOURNMENT UNTIL 9:30 A.M.
TOMORROW

The PRESIDING OFFICER. The Senate stands in adjournment until 9:30 a.m. tomorrow.

Thereupon, the Senate, at 5:20 p.m., adjourned until Wednesday, June 8, 2005, at 9:30 a.m.