

Senator MATHIAS. Mr. Gold.

STATEMENT OF LAWRENCE GOLD

Mr. GOLD. Thank you, Senator Mathias.

The AFL-CIO was not asked to testify to argue for or against Judge Scalia's nomination, but to voice certain concerns about his conception of the Constitution and of the lawmaking process, and to ask the committee to explore in depth certain issues we believe are of great consequence. Our views are tentative because while we have read all of his legal writings, that effort has yielded only a limited number of relevant pieces of information, principally in his occasional academic pieces. Against that background, we wish to make the following points.

First, it appears to us that Judge Scalia is intent on demoting Congress from its primary place in making national policy. His views on statutory construction, on standing, on the President's appointment power, on the nondelegation doctrine, and on the legislative veto are tied together by the common thread that in each instance, he would hobble Congress and aggrandize Executive power.

Second, we would suggest that Judge Scalia's conception of the judicial role in interpreting and enforcing the Bill of Rights leaves little, if anything, of substance. His most telling quote is that, "The Bill of Rights to some degree is like a commercial loan: You can only get it if at the time, you do not need it." What that would leave of the legitimacy of *Brown v. Board of Education*, *New York Times v. Sullivan*, or *Baker v. Carr*, to note only three decisions which we believe were not only right but necessary, is difficult for us to discern.

Finally, we wish to point out that the discontinuity in Judge Scalia's approach to issues concerning the allocation of power between Congress, the President, and the Judiciary, and his approach to issues concerning the power of government over the individual, indicates that his legal positions are not the product of the doctrine of judicial restraint, but of his own social and political views. His inventiveness in finding limitations on the legislative power stands in stark contrast to his quietist position on the guarantees of individual rights.

It is the committee record on these matters that will determine our position on Judge Scalia's nomination, and that we hope will determine the committee's position.

Thank you.

Senator MATHIAS. Thank you.

[Statement follows:]