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more. The American people know how to economize and still keep essentials going, and so does this leadership.

Last February, President Reagan said:

I regret to say that we're in the worst economic mess since the Great Depression.

Little has changed as yet to change the truth of his remarks. Since that time, President Reagan has taken steps, with the assistance and support of Congress, to start getting us out of that mess. The speakers last Saturday were strangely silent on the fact that the inflation rate in 1980 was 13 percent and today it is 7 percent. The speakers last Saturday were strangely silent on the fact that the unemployment rate is lower today than at this same time last year. Even interest rates remain high largely because the Federal Government continues to have to borrow to finance the excesses of past administrations and Congresses The American people have rejected runaway spending, runaway taxation, runaway regulation and the reckless economic policies of decades of Democratic leadership.

The overwhelming majority of the American people, included labor rank and file, realize that the solution to inflation, high interest rates, and our other economic problems do not lie in the rhetoric of the past heard on a sunny Saturday afternoon. The overwhelming majority of the American people know the cure Less Government, not more, is part of the cure. More enterprise, not less, is part of the cure. Growth, not stagnation, is the whole cure.

The New York Times noted today, in commenting on the Saturday demonstration:

None of the speakers who addressed the throngs listed specific steps. They turned more to the past, the days of civil rights and anti-war protests, than to the future.

Mr. President, also on Saturday, an estimated three quarters of a million people filled New York City's Central Park to listen to a concert by Simon and Garfunkel—three times the estimated number who filled Washington's Mall to listen to the tired old rhetoric of the past.

The New York audience listened to a beautiful and haunting song entitled "Sounds of Silence." The Washington audience also heard not so beautiful "Sounds of Silence" about the future from leaders of the demonstration.

These "Sounds of Silence" do not represent the thinking of the vast majority of the American people. These "Sounds of Silence" do not represent the courage, the actions, and the programs of the new leadership in Washington. These "Sounds of Silence" do not represent New Mexicans or the American people.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, under the order of the Senate the time for the conduct of morning business has been completed.

EXECUTIVE SESSION

NOMINATION OF SANDRA DAY O'CONNOR TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The PRESIDING OFFICER. Under the previous order, the hour of 10 a.m. having arrived, the Senate will now go into executive session to consider the nomination of Sandra Day O'Connor of Arizona to be an Associate Justice of the Supreme Court.

Time for debate on this nomination is limited to 4 hours equally divided and controlled by the chairman of the Judiciary Committee and the ranking member or their designees, with 30 minutes of the majority's time to be under the control of the Senator from North Carolina (Mr. HELMS).

The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, today is truly an historic occasion—the Senate of the United States is considering for the first time in the history of our Nation the nomination of a woman to serve as an Associate Justice of the Supreme Court of the United States.

It has been the privilege of the Committee on the Judiciary, and my privilege as its chairman, to meet frequently with Judge Sandra Day O'Connor and to consider and examine in detail her qualifications for the high post to which she has been named. The Committee on the Judiciary undertook a solemn duty to the Senate and to the country when it began its inquiry. The committee has discharged that responsibility. Now, the entire Senate will participate in the ultimate decision.

I am confident that the Senate today will be guided by our highly favorable recommend tion.

After careful deliberation, the committee determined and has reported to the Senate that Judge O'Connor is extraordinary well qualifed to serve on the Supreme Court. Our decision was reached after 3 days of intense examination, both of the nominee and of a broad cross section of witnesses.

In the first instance, it is notable that Judge O Connor enjoyed the full support of the entire congressional delegation of her home State of Arizona, the support of the Governor of the State of Arizona, the support of a large delegation of Arizonans from the Arizona House and Senate, and the support of many distinguished members of the bench and the bar. That support bore witness to her outstanding career and to bipartisan and wide-based respect for her ability. Yet, much more was required.

When the committee began its deliberations, we were keenly aware that any appointment to the Supreme Court is unique because it grants life tenure and because it vests great power in an individual not held accountable by popular election. Accordingly, we reflected carefully upon the qualifications necessary for one to be an outstanding jurist and those essential to the prudent exercise of power by one relatively unchecked in its use. Each member of the committee sought to satisfy himself that this nominee possessed those qualifications. Collectively, we then determined that this nominee does, indeed, meet those high standards.

We sought, first, a per on of unquestioned integrity—hones incorrupt b e. and fair.

We sought a person of courage—one who has the fortitude to stand firm and render decisions based not n per nal beliefs but, instead, in accordance with the Const tution and the ill of the people as e pres ed in the laws of Congress.

We sought a person learned in he law—for law in an advanced civiliza on is the most expansi e product of e human mind and is, of ecessity, extensive and complex

We sought a person of co passi n—compassion whi h te s with mercy the judgment of the criminal, yet recognizes the sorrow and suff ring of the victim; compassion for the individual but, also, compassion for society in its quest for the overriding goal of equal justice under law.

We sought a person of proper judicial temperament—one who will never allow the pressures of the moment to overcome the composure and self-discipline of a well-ordered mind; one who will never permit temper or temperament to impair judgment or demeanor.

We sought a person who understands and appreciates the majesty of our system of government—a person who understands that Federal law is changed by Congress, not by the Court; who understands that the Constitution is changed by amendment, not by the Court; and who understands that powers not expressly given to the Federal Government by the Constitution are reserved to the S ates and to the people not to the Court.

In Judge O'Connnor, we believe we found such a person.

During the course of extensive questioning by the committee, Judge O'Connor displayed great intellectual honesty and a degree of fairness that reflected her balanced approach to difficult issues.

She was firm in her insistence that personal belief could not outweigh the mandate of the Constitution or of the law.

She demonstrated remarkable knowledge of constitutional law and of the judicial process.

She displayed consistently an understanding of the measured and compassionate use of judicial power.

She never allowed the intense scrutiny by the committee or the pressure of news media attention to overcome her composure and her calm demeanor.

In every instance, she established clearly that she understands and appreciates the carefully balanced division of authority envisioned by our forefathers when they created our federal system of government.

Judge O'Connor is the first nominee to the Supreme Court in 42 years who has served in a legislative body. Her experience as majority leader in the Arizona State Senate will help her, and through her the other members of the Court, in recognizing and observing the separation of legislative, executive, and judicial powers mandated by the Constitution.

Judge O'Connor is also the first nominee to the Supreme Court in the past 24 years who has served previously on a State court. That experience gives great hope that she will bring to the Court a greater appreciation of the division of powers between the Federal Government and the governments of the respective States.

I must add, finally, that I found Judge O'Connor to be a lady of great personal warmth and a person who is possessed of a friendly and open character in the best tradition of our country.

She has the talents and qualities to make an important contribution to the work of our highest Court and to the vitality and history of our great Nation.

It is my opinion that Judge O'Connor will fulfill well the trust reposed in her by those who recommended her, by the President who nominated her, and by the Judiciary Committee which approved her.

I commend the President for his fine choice and urge the Senate to consent to her nomination.

Mr. President, I ask unanimous consent that the questions propounded by the questionnaire of the Judiciary Committee, which mainly constitutes a résumé, follow my remarks on the nomination of Judge Sandra J. O'Connor.

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

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

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used). Sandra Day O'Connor.

2. Address: List current place of residence and office address(es). List all office and home telephone numbers where you may be reached. Office: Arizona Court of Appeals, State Capitol, Phoenix, Arizona 85007, (602) 255-4828; Home; 3561 East Denton Lane, Paradise Valley, Arizona 85253, (602) 954-6356.

3. Date and place of birth. March 26, 1930—El Paso, Texas.

4. Are you a naturalized citizen? No.

5. Marital status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business adress(es).

Married. John Jay O'Connor III. Attorney. Fennemore, Craig, von Ammon & Udall, 100 West Washington Street, Phoenix, Arizona 85003.

6. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted. Stanford University, 1946–1952; A.B. 1950; LL.B. 1952.

7. List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor or employee since graduation from college.

Professional, Legislative and Judicial Activities: 1952–53 Deputy County Attorney, San Mateo County, California. General Civil Work for County agencies and schools.

1954–57 Civilian Attorney for Quartermaster Market Center, Frankfurt/Main, W. Germany, handling contracts and bids procedures for acquisition and disposal of goods for the armed forces in Europe.

1958–60 Private practice of law in Maryvale, Arizona, handling wide variety of matters including contracts, leases, divorces, and criminal matters.

1961–64 Primarily engaged in care of my three small children. Handled some bankruptcies as a receiver, and served as a juvenile court referee.

1965–69 Assistant Attorney General, Arizona, representing various state officers and agencies writing opinions for Attorney General; handling some litigation. Approximately three months were spent on assignment as administrative assistant at Arizona State Hospital.

1969–75 State Senator, Arizona State Senate.

1975–79 Judge, Maricopa County Superior Court.

1979 to date Judge, Arizona Court of Appeals.

Business Affiliations:

c. 1957 to date Member, Board of Directors, Lazy B Cattle Co., an Arizona Corporation. It is a closely held corporation, owned by members of my family. I served for several years during the 1950's and 1960's as secretary.

1971–74 Member, Board of Directors, First National Bank of Arizona.

1975–79 Member, Board of Directors, Blue Cross/Blue Shield of Arizona, a non-profit corporation.

Partnerships:

My husband is a partner in Fennemore, Craig, von Ammon and Udall, the predecessor of the present professional corporation which is now engaged in the practice of law.

My husband is a general partner in Westside Apartments Co. and Westside Investments, which are essentially now passive investments.

My husband and I presently have limited partnership interest in Alvernon Center One, Fourth Geostatic Energy, Orchid Leasing Associates and Virden Valley Investments, Ltd.

By virtue of the community property laws of Arizona, I have an undivided one-half interest in all of the partnerships listed.

Civic Activities:

Member, National Board of the Smithsonian Associates, 1981.

President, Member, Board of Trustees, The Heard Museum, 1968–74, 1976 to date.

Member, Salvation Army Advisory Board—1975 to date.

Member, Board of Directors, YMCA (Maricopa County), 1978.

Member, Vice President, Soroptimist Club of Phoenix, 1978.

Member, Board of Visitors, Arizona State University Law School, 1981.

Member, Liaison Committee on Medical Education, 1981.

Advisory Board and Vice President, National Conference of Christians and Jews, Maricopa County, C. 1977, to date.

Member, Board of Directors, Stanford Club of Phoenix, various times since 1960.

Member, Board of Trustees Stanford University, 1976 to 1980.

Member, Stanford Associates.

Former member, Board of Directors, Phoenix Community Council.

Former 1st and 2nd Vice President, Phoenix Community Council.

Former member, Board of Directors and Secretary, Arizona Academy, 1969–75.

Former member, Board of Junior Achievement Arizona, 1975–79.

Former member, Board of Directors of Friends of Channel 8, 1975–79.

Former member, Board of Directors, Phoenix Historical Society, 1974–78.

Former member, Citizens Advisory Board on Blood Services, 1975–77.

Past President, Junior League of Phoenix, Inc. c. 1966, and member since c. 1960, Member, Board of Directors during 1960's.

Former member, Board of Directors, Golden Gate Settlement, 1960–62.

Former member, Board of Trustees, Phoenix County Day School, 1960–70.

Former member, Maricopa County Juvenile Court Study Committee.

Former member, Board of Directors Blue Cross/Blue Shield of Arizona, 1975–79.

Memberships in Professional Organizations:

American Bar Association.

State Bar of Arizona.

State Bar of California.

Maricopa County Bar Association.

Chairman, Maricopa County Lawyer Referral Service.

Arizona Judges' Association.

National Association of Women Judges.

Arizona Women Lawyers Association.

Chairmanships of Professional Committees and Memberships on Significant Professional Committees:

Member, Anglo-American Legal Exchange 1980.

Chairman, Arizona Supreme Court Committee to Reorganize Lower Courts, 1974–75.

Chairman, Maricopa County Bar Association Lawyer Referral Service, 1960–62.

Member, State Bar of Arizona Committees on Legal Aid, Public Relations, Lower Court Reorganization, Continuing Legal Education.

Juvenile Court Referee, 1962–64.

Chairman, Maricopa County Juvenile Detention Home Visiting Board, 1963–64.

Chairman, Maricopa County Superior Court Judges' Training and Education Committee, 1977–79.

Government Activities:

State Senator, State of Arizona 1969–75. Initially appointed and then elected to two two-year terms; Republican Precinct Committeeman c. 1960–70.

Assistant Attorney General, Arizona, 1965–69. Appointed.

Deputy County Attorney, San Mateo County, California, 1952–53. Appointed.

Member, National Defense Advisory Committee on Women in the Services, 1974–76.

Member, Arizona State Personnel Commission, 1968–69.

Vice Chairman, Select Law Enforcement Review Commission, 1979–80.

Member, Maricopa County Board of Adjustments and Appeals, 1963–64.

Member and on Faculty, Arizona Committee Robert A. Taft Institute of Government.

As a State Senator I served as chairman of the State, County and Municipal Affairs Committee, on the Legislative Council, on the Probate Code Commission, and the Arizona Advisory Council on Intergovernmental Relations.

Co-Chairman, Arizona Committee to Reelect the President, 1972.

Former Republican Precinct Committeeman, District-Chairman & member County & State Committees, 1961–68.

Member, County Board of Adjustments and Appeals, 1963–64.

Member, Governor Fannin's Committee on Marriage and Family Problems c. 1962

and his Committee on Mental Health c. 1964.

Juvenile Court Referee c. 1962–65.

Member, Judicial Fellows Commission, August 1981.

Member, Arizona Law Enforcement Review Commission, 1979–80.

Member, Arizona Criminal Code Commission, 1974–76.

Member, Mayor's Committee, 1980.

8. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and present status.

No military service.

9. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Phoenix Advertising Club "Woman of the Year", 1973.

National Conference of Christians and Jews Annual Award, 1975.

Commencement Speaker, Arizona State University, 1974.

Participant and Speaker, American Assembly, Arden House, 1975.

Distinguished Achievement Award, Arizona State University, 1980.

10. Bar Associations: List all bar associations, legal or judicial related committees or conference of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

See Exhibit A.

11. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list any other organizations to which you belong, (e.g. civic, education, "public interest" law, etc.) which you feel should be considered in connection with your nomination.

Organizations to which I formerly belonged or to which I now belong are listed in Exhibit A.

12. Court Admission: List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of California, 1952.

Supreme Court of Arizona, October, 1957.

U.S. District Court, San Francisco, California, 1952.

Ninth Circuit Court of Appeals, 1952.

U.S. District Court, Phoenix, Arizona, 1957.

13. Published Writings: List the titles, publishers and dates of books, articles, reports, or other published material you have written. You may also list any significant speeches which you feel may be of interest to this Commitee.

My published writings include the opinions I have written as a member of the Arizona Court of Appeals.

"Trends in the Relationship Between the Federal and State Courts From the Perspective of a State Court Judge," Volume 22, William & Mary Law Review Number 4, Summer 1981.

In 1969, I wrote a booklet for the Arizona Attorney General outlining the powers and duties of public officers and employees in Arizona. I have written several articles for the "Arizona Weekly Gazette", such as "Lower Court Reorganization Can Provide Single Unified Trial Court" on April 29, 1975, and I also wrote a comment in the Stanford Law Review in 1952.

14. Health: What is the present state of your health? List the date of your last physical examination. Excellent. June 1981.

15. Judicial Office (if applicable): State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

1975–79 Judge, Maricopa County Superior Court. Elected. The Superior Court is the trial court of general jurisdiction.

1979 to date Judge, Court of Appeals, State of Arizona. Appointed. The Court of Appeals is the intermediate court of appeals in Arizona.

16. State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

See Exhibit A.

I have never been an unsuccessful candidate for elective public office.

EXHIBIT A

Memberships in Professional Organizations:

American Bar Association.

State Bar of Arizona.

State Bar of California.

Maricopa County Bar Association.

Chairman, Maricopa County Lawyer Referral Service.

Arizona Judges' Association.

National Association of Woman Judges.

Arizona Women Lawyers Association.

Chairmanships of Professional Committees and Memberships on Significant Professional Committees:

Member, Anglo-American Legal Exchange, 1980.

Chairman, Arizona Supreme Court Committee to Reorganize Lower Courts, 1974–75.

Chairman, Maricopa County Bar Association Lawyer Referral Service, 1960–62.

Member, State Bar of Arizona Committees on Legal Aid, Public Relations, Lower Court Reorganization, Continuing Legal Education.

Juvenile Court Referee, 1962–64.

Chairman, Maricopa County Juvenile Detention Home Visiting Board, 1963–64.

Chairman, Maricopa County Superior Court Judges' Training and Education Committee, 1977–79.

Governmental Activities:

State Senator, State of Arizona 1969–1975. Initially appointed and then selected to two two-year terms; Republican Precinct Committeeman c. 1960–70.

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Member, Arizona State Personnel Commission, 1968–69.

Vice Chairman, Select Law Enforcement Review Commission, 1979–80.

Member, Maricopa County Board of Adjustments and Appeals, 1963–64.

Member and on Faculty, Arizona Committee Robert A. Taft Institute of Government.

As a State Senator I served as chairman of the State, County and Municipal Affairs Committee, on the Legislative Council, on the Probate Code Commission, and the Arizona Advisory Council on Intergovernmental Relations.

Co-Chairman, Arizona Committee to Reelect the President, 1972.

Former Republican Precinct Committee, District-Chairman & member County & State Committees, 1961–68.

Member, County Board of Adjustments and Appeals, 1963–64.

Member, Governor Fannin's Committee on Marriage and Family Problems c. 1962 and his Committee on Mental Health c. 1964.

Juvenile Court Referee c. 1962–65.

Member, Judicial Fellows Commission, August 1981.

Member, Arizona Law Enforcement Review Commission, 1979–80.

Member, Arizona Criminal Code Commission, 1974–76.

Member, Mayor's Committee, 1980.

Civic Activities:

Member, National Board of the Smithsonian Associates, 1981.

President, Member, Board of Trustees, The Heard Museum, 1968–74, 1976 to date.

Member, Salvation Army Advisory Board, 1975 to date.

Member, Board of Directors, YMCA (Maricopa County), 1978.

Member, Vice President, Soroptimist Club of Phoenix, 1978.

Member, Board of Visitors, Arizona State University Law School, 1981.

Member, Liaison Committee on Medical Education, 1981.

Advisory Board and Vice President, National Conference of Christians and Jews, Maricopa County, C. 1977, to date.

Member, Board of Directors, Standard Club of Phoenix, various times since 1960.

Member, Board of Trustees Stanford University, 1976 to 1980.

Member, Stanford Associates.

Former member, Board of Directors, Phoenix Community Council.

Former 1st and 2nd Vice President, Phoenix Community Council.

Former member, Board of Directors and Secretary, Arizona Academy, 1960–75.

Former member, Board Junior Achievement Arizona, 1976–79.

Former member, Board of Directors of Friends of Channel 8, 1975–79.

Former member, Board of Directors, Phoenix Historical Society, 1974–78.

Former member, Citizens Advisory Board on Blood Services, 1976–77.

Past President, Junior League of Phoenix, Inc. c. 1966, and member since c. 1960, Member, Board of Director during 1960's.

Former member, Board of Directors, Golden Gate Settlement, 1960–62.

Former member, Board of Trustees, Phoenix County Day School, 1960–70.

Former member, Maricopa County Juvenile Court Study Committee.

Former Member, Board of Directors Blue Cross/Blue Shield of Arizona, 1975–79.

III. GENERAL (PUBLIC)

1. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

a. A tendecy by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The Constitution itself establishes the guiding principle of separation of powers in its assignment of legislative power to Congress in Article I, executive power to the President in Article II, and judicial power to the Supreme Court in Article III. This principle requires the federal courts scrupulously to avoid making law or engaging in general supervision of executive functions. As Justice Frankfurther wrote in *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 146 (1940), "courts are not charged with general guardianship against all potential mischief in the complicated tasks of government."

The function of the federal courts is rather to resolve particular disputes properly presented to them for decision. In this regard, the jurisdictional requirements that a true "case or controversy" exist and that the plantiff have "standing" help guarantee that the court does not transgress the limits of its authority. The separation of powers principle also requires judges to avoid substituting their own views of what is desirable in a particular case for those of the legislature, the branch of government appropriately charged with making decisions of public policy. To quote Justice Frankfurter again, Justices must have "due regard to the fact that [the] Court is not exercising a primary judgment but is sitting in Judgment upon those who also have taken the oath to observe the Constitution and who have the responsibility for carrying on government." *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 164 (1951) (concurring opinion).

The fact that federal judges are restricted to deciding only the particular case before them and are not given a broad license to reform society does not mean that general wrongs go unrighted. As Justice Holmes remarked, "it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts." *Missouri, Kansas & Texas Railway Co. v. May*, 194 U.S. 267, 270 (1904).

In the case just cited, Justice Holmes was referred to a state legislature, and our federal system requires the federal courts to avoid instrusion not only on the Congress and the Executive but the states as well.

Judges are not only not authorized to engage in executive or legislative functions, they are also ill-equipped to do so. Serious difficulties arise when a judge undertakes to act as an administrator or supervisor in an area requiring expertise, and judges who purport to decide matters of public policy are certainly not as attuned to the public will as are the members of the politically accountable branches. In sum, I am keenly aware of the problems associated with "judicial activism" as described in the preceding question, and believe that judges have an obligation to avoid these difficulties by recognizing and abiding by the limits of their judicial commissions.

2. What actions in your professional and personal life evidence your concern for equal justice under the law?

In my judgment, the record of a judge will reflect a commitment to equal justice under the law if the judge applies the law even handedly to those who come before the court. The essence of equal justice under the law, in my view, is that neutral laws be applied in a neutral fashion. I believe that my judicial record as a trial of appellate judge attests to this commitment.

As a legislator I worked to equalize the treatment of women under state law by seeking repeal of a number of outmoded Arizona statutes. I developed model legislation to let women manage property they own in common with their husbands. I also successfully sought repeal of an Arizona statute that limited women to working eight hours per day and backed legislation equalizing treatment of men and women with regard to child custody.

As an attorney, I feel a professional obligation to help provide the poor with access to legal assistance and to the courts. I have worked toward this goal through my association with the Maricopa County Bar Association Lawyer Referral Service, of which I was Chairman from 1960 through 1962, and through service on the Arizona State Bar Association Committee on Legal Aid.

I have been concerned with the rights of those who are cared for by the state. From 1963 to 1964 I was Chairman of the Maricopa County Juvenile Detention Home Visiting Board and I have served as a member of the Maricopa County Juvenile Court Study Committee. I acted as a Juvenile Court Referee in various cases between 1962 and 1964. I participated as a panel member in an Arizona Humanities Commission Seminar on law as it relates to mental health problems.

My concern for fostering understanding among disparate groups within my community led to work on the Advisory Board of the Arizona Chapter National Conference of Christians and Jews. In 1975 I received an award for services in human relations from the National Conference of Christians and Jews.

I have served on the Advisory Board of the Salvation Army in Maricopa County, and as chairman of its Senior Citizen's Council. The Senior Citizen's Council operates a very successful center for low income elderly persons, and provides meals as part of the program. It is also constructing a residential facility for the low income elderly.

Through the Heard Museum in Phoenix, as a Trustee and its President, I have worked to foster and encourage understanding and communication with the several Indian tribes and the native Americans in Arizona through various programs and projects.

As a legislator I helped develop amendments to the mental health commitment laws designed to protect the rights of the mentally ill.

I also worked successfully to obtain state facilities for the mentally retarded in Maricopa County, and to improve Arizona's laws for the mentally retarded. I succeeded in obtaining legislation to convert a relatively unused state tuberculosis hospital to a hospital for crippled children.

Mr. GOLDWATER. Will the Senator yield?

Mr. THURMOND. I am very pleased to yield to the distinguished Senator from Arizona (Mr. GOLDWATER).

Mr. GOLDWATER. I thank my friend from South Carolina.

(Mr. QUAYLE assumed the chair.)

Mr. GOLDWATER. Mr. President, during the happy, long years of my life, I have known many moments of great pride, moments that I will not relate here, but they are imbedded deep in the recesses of my mind. Today we are voting on Judge Sandra O'Connor, born in the State of Arizona, raised on a cattle ranch and now being admitted as the first woman to ever sit on the Supreme Court of our land.

Judge O'Connor is not just a good lawyer, not just a good judge, nor is the fact that she was an outstanding legislator entered into this. She was born on the land of the West, she grew up on that land, on a cattle ranch, and her feeling for the land of what we call the Southwest, and particularly Arizona, has grown with her and influenced her through her life.

When a westerner sees that land, it is not just a temporary vision of something beautiful. It is a permanent beauty that he or she has lived with all of his or her life. So it is natural that the land has its effect on all of us who were born out in that part of our country.

I have worked with her for many years on matters affecting the beauty of our land, the culture of our people, particularly the Indians, in anthropological fields because, frankly, not being a lawyer, the only other times I had to be near her were in times involving political or legislative work.

So, as I stand here today, on this historic floor of the U.S. Senate, participating in a great landmark of our history, the admittance of a woman to the Supreme Court, I think my colleagues, yes, not just my colleagues on this floor, but my colleagues who live at home in our native State, can understand my pride, because they share this, too, and every person who calls Arizona his home, looks on this day as one of the great days, not just in the history of the United States, but in the history of our own State.

My very best wishes and most sincere prayers are hers for the great success I know she will have sitting on our Supreme Bench. And, once again, for having had the foresight and the wisdom, first, to name a woman, but more importantly, to name this particular one, I congratulate President Reagan.

Judge O'Connor's brilliant appearance before the Judiciary Committee offers complete assurance that she is fully qualified for a seat on the Nation's highest court. Throughout her testimony, Judge O'Connor revealed an impressive knowledge of constitutional law and legal principles. She ticked off case citations and the dates of important court rulings as easily as most people would recite their birthdates.

Her testimony was calm, reasoned, open, and informed. She displayed great strength of personal character and stood firm to her principles of judicial restraint and strict construction.

In my opinion, she was as forthcoming as any nominee could be in responding to any questions, including her position on abortion. She declared positively that she finds abortion personally abhorrent.

Now, I realize that some dedicated opponents of abortion feel they have been burned with this kind of answer from candidates for political office, who have evaded taking a stand on public policy by hiding behind their personal beliefs.

But I would point out that the position of Supreme Court Associate Justice is not an elective office. It is not a policymaking office, or at least it should not be. Therefore, the same standards cannot be applied to a court nominee that apply to a candidate for legislative office.

I might add that right to life witnesses, who appeared at the hearings on Sandra O'Connor's nomination, commented that abortion was not the issue in 1973 or 1975 that it is today. Dr. Wilke and Dr. Gerster both explained that the National Right to Life Committee did not raise the abortion issue during the confirmation hearings on Justice Paul Stevens in 1975 because abortion "was not such a major issue previously" and was "much less discussed."

This being so, I would ask how they, or anyone else, can reasonably fault Sandra O'Connor for any positions she may have taken as a State legislator in the period from 1970 to 1974, when antiabortion leaders admit it was not such a prominent issue. Like most of the public, Sandra O'Connor's perceptions of the problems with abortion have increased over the last 10 years, which is what she said in her testimony.

Judge O'Connor repeatedly told the committee of her strong opposition to abortion. She stated that she would draw the line of any exceptions very strictly. She said her rejection of abortion is not a sudden development to win support, but is the result and the outgrowth of what she is. Her position stems from her sense of family values and her religious training.

Moreover, Judge O'Connor reminded the committee of her vote in 1974, as an Arizona legislator, for a prohibition on the use of public medicaid funds for abortions. The sole exceptions allowed were medical procedures to save the life of the mother or to prevent pregnancy after rape or incest. Judge O'Connor said this bill still reflects her views.

Frankly, if she had gone any further in commenting on the subject, she likely would have disqualified herself from ever participating in any cases before the Court relating to the subject. What I am saying is that if the right to life supporters had succeeded in pressing Judge O'Connor to state specifically whether she believes the Supreme Court's past abortion cases are wrong, they would have denied themselves the vote of a potential friend on the Court in the future.

Mr. President, I am far more impressed with Sandra O'Connor's statement regarding her general judicial philosophy and her obvious legal competence, than I can be whatever her answers are on a single-issue subject.

Judge O'Connor plainly stated that she would approach cases with a view to deciding them on narrow grounds and with proper judicial restraint. This should assure anyone concerned that she will not be going out of her way to make rulings, such as the abortion decisions, that create sweeping changes in social policy.

Also, Judge O'Connor was persistent in expressing her concern for preserving the power and rights of States and their ability to function as important parts of our Federal system of Government. Her testimony disclosed that her philosophical attachment to local government comes not only from personal service in all three branches of State government, but from her view of the nature of our form of government and the intent of the Founding Fathers.

Next, I am pleased at the many expressions of concern about violent crime that filled Judge O'Connor's testimony. She testified that crime is one of the major problems in the Nation and that we have an unacceptably high crime rate in this Nation.

Judge O'Connor mentioned that she was personally involved in drafting and voting for legislation in the Arizona Senate reinstating the death penalty as a deterrent to vicious crime. She openly stated her concern about court-written rules of procedures, such as the exclusionary rule, that allow obviously guilty criminals to escape punishment.

She explained the problems she had as a trial judge with certain rules mandated in criminal cases by Congress. She suggested Congress consider changing these requirements. Also, she proposed that courts must resolve criminal cases quickly. She testified there must be some way the courts can more effectively say a case is at an end. She said it would be wise for legislatures to give discretion to trial judges to impose life sentences on career offenders and she recommended that legislatures find a way to compel restitution by the criminal.

She stated her view that rampant crime is also the result of a general breakdown of standards we apply in society that discourage criminal behavior.

On other issues, Judge O'Connor expressed her belief that the religious precepts on which our country was founded are interwoven in our system of government. She said Internal Revenue Service activities affecting church schools raise serious questions about the extent to which the IRS should be a tax collector and the extent it should implement social policies. She also informed the Judiciary Committee that she had prepared legislation in the Arizona Senate to prohibit obscenity in compliance with Supreme Court rulings on the subject, particularly with respect to protecting minors from the distribution of smut material.

Mr. President, from these and other clear statements by Judge O'Connor on the record, I am convinced she is a very decent, moral and religious person. She is a qualified jurist of the highest rank and a woman who possesses one of the most brilliant minds of any lawyer or legal scholar in the country, man or woman.

Sandra O'Connor will enhance the Supreme Court. I believe she will be among the constellation of judicial geniuses who have sat on that Court in the past. And I know she will uphold the Constitution and our unique American contributions to rule by law.

Mr. President, I urge my colleagues to confirm Sandra O'Connor's nomination by unanimous vote.

I thank the chairman of the Judiciary Committee for having yielded to me. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DECONCINI. Mr. President, it is a pleasure for me to join my distinguished colleague, Senator GOLDWATER, who has been involved in this process of nominations and who has been actually involved in nominees to the Supreme Court. I am pleased that we could join in our effort to promote this particular nominee from our State.

Judge O'Connor will not be an Arizona judge by any means. She will be a judge for all citizens. I think the statement that the distinguished senior Senator from Arizona has just put into the RECORD spells out exactly why this nominee was chosen and how she performed. When I say that, I use that in the sense of her demeanor and presentation before the Senate Judiciary Committee, being as explicit as she could be in answering very difficult questions for some of the members of the committee, including myself, and stating her beliefs, why her beliefs were what they were, how they happened to come about, and the reasoning behind each one of those decisions, both in the legislative body and in her own personal life.

I think those hearings were some of the finest hearings that I have seen instituted and carried out by the Senate Judiciary Committee.

At this time, Mr. President, I would like to say that the chairman of the Judiciary Committee, the distinguished Senator from South Carolina, conducted those hearings in the most equitable and fair manner that I have seen since I have been here. That includes modestly a few hearings that I have conducted in behalf of the Judiciary Committee. The chairman bent over backward to make clear that this was an open hearing; that there were no questions that could not be brought forward to be presented to Judge O'Connor for her response; that there was going to be ample time for everyone to ask as many questions as they wished.

One member of the committee complained during the process that there was not enough time. The chairman indicated that that person could have another turn and, indeed, a turn after that Where most Senators only had two opportunities to question the nominee, this particular Senator was granted four opportunities. I daresay the distinguished chairman would sit there today if he thought it was necessary and there were requests for additional questioning.

As the record will show, the questioning of Judge O'Connor went the proverbial menu of soup to nuts. Indeed, there was hardly anything that was not covered in great detail. As Senator GOLDWATER and myself knew from the very beginning when the President made this nomination, she would acquit herself with the greatest of professional expertise and with human value and personality that she has within her to demonstrate to everyone on the Judiciary Committee that indeed this was one of the finest moments for this administration having this nominee approved by the committee by a unanimous vote, with one abstention.

I am hopeful that today on this floor, at 6 p.m., when the final vote is cast, we will see just that, realizing the right of any individual in this body to cast a dissenting opinion and vote the other way. But I think there has been enough time and enough effort put forward and enough opportunity to scrutinize this nominee that regardless of where a Member of this body may come down on a particular issue, whether it be gun control, capital punishment, abortion, prayer in school, busing, et cetera, they can be satisfied that Judge O'Connor possesses the qualities that will really bring about the type of individual to serve on the Supreme Court who can do it with a blindfold over her eyes, looking at the law, interpreting the law, and not with a desire to change this country in a social manner or economic manner, interpreting what is brought before the Court, which I think most of us agree is what it is all about across the street at the Supreme Court.

Many of us have been critical of various decisions that we felt have gone far astray of what was intended by the Founding Fathers by that Court.

The attitude in Arizona is one of thanksgiving. The great pride of the

people of Arizona having a native daughter nominated to the Supreme Court, of course, is one for which we are very pleased and happy. We thank so many Members of this body, so many Arizona citizens, and so many citizens around the country who have come forward in support of Judge O'Connor and who have taken the time to learn something about her. I have received a great deal of mail which is of interest to me pointing out how much they have learned about her. In fact, they were ranchers or had visited Arizona and even had gone to the small town, unbeknownst at the time that there would be a nominee from Duncan, Ariz., and having professional relationship with Judge O'Connor and her distinguished husband. This goes on and on.

The people of this country are extremely well satisfied and elated with this fine nomination.

Mr. President, there will be other Senators who have statements. I may care to make further remarks before time has elapsed on this debate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THURMOND. 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. THURMOND. Mr. President, I ask unanimous consent that the time on the quorum be charged equally to both sides.

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

Who yields time?

Mr. THURMOND. Mr. President, I yield to the distinguished Senator from Pennsylvania (Mr. SPECTER).

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I thank the distinguished chairman of the Committee on the Judiciary for this opportunity to speak.

I am pleased to add my voice to those in support of the nomination of Judge Sandra Day O'Connor to be a Justice of the Supreme Court of the United States. The hearings, which were held for 3 days before the Committee on the Judiciary, were characterized as truly historic and, as they unfolded, they lived up to that representation in every sense of the word.

Mr. President, the presence of the first woman nominee to the Supreme Court of the United States was an occasion to make the proceedings historic in and of themselves. As the nominee's judicial views unfolded and as she faced some 18 members of the committee who had a broad range of questions—some of which were very pointed, some of which were very controversial—she acquitted herself with distinction. It was obvious that the Supreme Court of the United States is about to have an addition in the personage of a young, vibrant, well-equipped woman, who has the potential to be on that Court for a generation or beyond.

Judge O'Connor brings to the Supreme Court of the United States a remarkable background. She grew up on a ranch in Arizona. She had a top-flight academic career. She graduated from Stanford Law School in 1951, at the age of 21. She ranked high in her class—reportedly, third among a very distinguished group of legal scholars.

She has been active in the practice of law in a two-man partnership. She has held the position of assistant attorney general. She has served as a State court trial judge. She has served in the legislature of Arizona, rising to the rank of majority leader of the Arizona Senate. She currently occupies a position on the Court of Appeals of the State of Arizona.

With this background, I feel that Judge O'Connor has extraordinary credentials and extraordinary qualifications for the Supreme Court of the United States.

For one thing, her extensive background on the bench and in the legislature puts her in a unique position to say, as she did, that she knows the difference between being a judge and a legislator, and she understands the judicial function to interpret the law, as opposed to the legislative function to make new law.

This has been a question of considerable controversy in the Supreme Court of the United States, going back for decades, and I believe it will continue to be an area of controversy. I believe that Judge O'Connor's position on the Court will bring insight and real balance, and that her legislative experience will stand her in very good stead.

One point of minor disagreement in the questioning by some of us was the responsibility of the Court to examine social policy in situations where the executive and legislative branches had failed to act. The case which was cited for discussion involved school segregation, with Judge O'Connor's statement that in Brown against Board of Education, the Supreme Court of the United States only reinterpreted the 14th amendment of the U.S. Constitution. After some extensive discussion on that point, I believe it accurate to say that there was more than simply a reevaluation of the interpretation of the 14th amendment between Plessy, some 50 years before, and Brown against Board of Education; that, in fact, the Supreme Court had considered social policy, as I believe it must in some extraordinary circumstances.

In her testimony, Judge O'Connor, in effect, threw the gauntlet, albeit in a very polite way, to the other branches of Government. She said in effect, let the legislature accept its responsibility, let the executive accept its responsibility, and the Supreme Court of the United States and the other Federal courts need not consider social legislation or social policy but need only interpret the laws.

I believe that is a good lesson for the U.S. Senate, the Congress generally and the State legislatures. It is their responsibility to correct glaring inequities, so that it is not necessary for the Supreme Court of the United States to consider social policy and perhaps to move toward, if not to cross, the line between legislating and the traditional judicial function.

In Judge O'Connor's background there is also a strong credential with respect to the interpretation of State law, as contrasted with Federal law. Often, the decisions of the Supreme Court raise the question as to what is appropriate for a State court to consider, in contrast with what the Federal courts ought to decide. Given her background as a State court appellate judge, she will have a fine and unique perspective, from years of experience on a State appellate court, to share with her colleagues on the Supreme Court of the United States who have not had that experience, at least not very recently.

Her experience as a State court trial judge is also a unique asset, because the Justices of the Supreme Court of the United States are far removed from the trial courts, far removed from the evidentiary rulings, far removed from the issues of search and seizure and coerced confession and a variety of matters which a trial judge has to consider and take into account. Her experience there, which, again, she can share with her brethren (I believe that is an appropriate term, notwithstanding that she is the first woman on the Court) will greatly enhance the perspective and vantage point of the Supreme Court of the United States.

Finally—and I believe most important—she brings to the High Court the perspective of a woman. It is unnecessary to elaborate upon the differences in viewpoints and experiences she will have in being the first woman to serve on the Supreme Court of the United States.

Beyond those extraordinary talents, Judge O'Connor also brings to the court an attitude of dignity, an attitude of grace, and a remarkable temperament. Of all the characteristics she displayed during the course or some 2½ days of questioning, her composure and her good humor perhaps topped the list. Judicial temperament is a matter of tremendous importance, and she has it in abundance.

The other quality which she displayed, by implication, was her good health as well as her good cheer. She showed stamina in responding to questions during 2 full days of hearings and another half day of questioning.

Beyond that, I saw her at a formal luncheon arranged by the chairman of the Judiciary Committee. On Friday afternoon, I saw her in the Senate caucus room in the Russell Building at a large party, where she was carrying forth in a social way and was being available to people who wanted to see her and wanted to meet her—again, in a great attestation of stamina and good health which mark her general appearance as a young woman at the age of 51.

I believe all of this bodes very well for the future of the Supreme Court of the United States. I consider it a rare opportunity, in my first year in this august body, to have had an opportunity

to participate in the Judiciary Committee and to participate in these deliberations and to speak and, later, to vote in support of the nomination of Judge O'Connor to be an Associate Justice of the Supreme Court of the United States.

Mr. STEVENS. Mr. President, I feel privileged to be able to vote for the confirmation of the nomination of Sandra Day O'Connor to be an Associate Justice of the United States Supreme Court.

Others will point out her distinguished record. I might say that I know of that record, because my wife's uncle had served with her in the Arizona State Senate. I know two of her very close classmates from her days in law school, but I did not know Judge O'Connor personally until she was nominated. I was pleased to meet with her, as was my wife, Catherine. We find her to be a very strong woman, with a quiet calm that comes from the confidence of knowing she can do the job for which she has been selected. To me, that means more than anything else. Mrs. O'Connor knows she is qualified, has proven she is qualified, and I am confident she will be a distinguished member of the Supreme Court.

So, I join those in the Senate today who commend the President for selecting her to be the first woman to serve on the U.S. Supreme Court and, above all, for keeping the commitment he made during the campaign of 1980 to select a woman to serve on the U.S. Supreme Court.

Mr. THURMOND. Mr. President, I ask unanimous consent that the time on all quorum calls made during the consideration of the O'Connor nomination be equally charged to both sides.

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

Mr. DOLE. Mr. President, will the Senator yield?

Mr. THURMOND. Mr. President, I yield to the distinguished Senator from Kansas, a prominent member of the Judiciary Committee and the chairman of the Courts Subcommittee.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. DOLE. Mr. President, in many cases when we have a nomination before the Senate for a very prominent position in the administration we have our statements inserted, but I think this is such an historic occasion that no one wishes to pass up the opportunity to speak.

Those of us who wished to be present for the vote on Sandra Day O'Connor in our committee, feel the same responsibility in a way to be here today to express our support for that nomination.

I am very pleased to join my colleagues, first, to commend the distinguished chairman of the committee for his expeditious handling of the O'Connor nomination and, second, to commend all members of that committee for their cooperation regardless of some differences in point of view.

It seems to me that after lengthy examination of this nominee and her qualification during 3 days of rather extensive questioning by learned members—that does not include this Senator—but learned members of the committee, the chairman, the distinguished Senator from Arizona, and others, that she again demonstrated her ability to cope with the questions candidly and revealed her outstanding qualifications, and I certainly understand why she was selected for this position by the President.

So, Mr. President, although this is the first opportunity I hope it is not the last that we shall have to stand in this Chamber and support the nominations of outstanding women to the Supreme Court and other positions in the judicial system and all other branches of Government.

For a long period in our Nation's history, women had great difficulty in entering the professions, in attaining executive status in business, and in becoming an effective part of the governing process. In recent years, women have joined the professional, executive, and governing ranks in ever greater numbers. They have reached the highest levels of the legislative branch of the Federal Government. They have reached the level of cabinet officer in the executive branch. However, in the 190 years of the Supreme Court's existence, no woman has served on our highest tribunal.

I wish to commend President Reagan for so quickly fulfilling his campaign promise to nominate a qualified woman to the Supreme Court. The women of our Nation represent a vast reservoir of talent which should not go untapped. In choosing a person to sit on the Supreme Court, we must diligently search for the most qualified candidates that are available—we must choose someone with a high level of integrity, leadership, character, judicial competence and temperament, and knowledge of the law.

It is the belief of this Senator, that President Reagan found such a person. Of the potential nominees, male or female, for the Supreme Court seat vacated by Justice Potter Stewart, President Reagan could not have made a better selection than Sandra Day O'Connor.

Last week, the members of the Judiciary Committee, in accordance with their responsibility to advise and consent to presidential nominations, conducted a thorough examination of Judge O'Connor's background, abilities, and qualifications.

As I have previously indicated, her credentials and her qualifications again were demonstrated during the course of the hearing. Her credentials are excellent and she conducted herself superbly during the hearings. Her knowledge of both constitutional and Federal case law, and her knowledge of issues currently being considered by the Congress, were very impressive. During the hearings my colleagues and I inquired into Judge O'Connor's judicial philosophy, her position on problems affecting our judicial system, her views regarding the Constitution, and her position on a number of social issues, including gun control and abortion. The Senator from Kansas appreciated the candor of her responses and respects the fact that she avoided answering some questions as completely as the committee members would have liked in order to avoid prejudging issues which could come before the Court. He is satisfied that Judge O'Connor's views are prolife and not proabortion, and that she views the role of the Court as interpreting the law and not making the law.

Judge O'Connor's lack of experience as a Federal court judge is perhaps a small flaw in her otherwise excellent record—but experience on the Federal bench is not essential to becoming a good Supreme Court Justice. In addition, Judge O'Connor has a great wealth of prior experience which should serve her well on the Court and provide an excellent complement to the prior experience of the eight Justices who are already there. She achieved academic honors as a law student, she has been a practicing attorney, she has been a majority leader in the Arizona State Legislature, and she has served as a State court judge at both the trial and appellate levels.

The Senator from Kansas is pleased to be able to recommend Judge O'Connor to the Members of the Senate today. This Senator hopes that he will be joined by his colleagues in setting aside an unavailing precedent of 190 years' standing in voting for this highly qualified person to be the first woman Supreme Court Justice.

This Senator hopes that we will be joined by everyone else in this Chamber at 6 p.m. this evening to pass a unanimous vote for this nomination.

So, it is time that this is occurring, time long past due. Again I commend the distinguished nominee for the way she has presented herself and responded to questions. Despite some of the accounts I have read, I believe she has tackled some of the very difficult questions, whether it is busing, the death penalty, abortion, or a number of the other controversial issues that seem to find their way to the Chamber from time to time.

In my view she responded as directly as she could without staking out in advance what her position might be in the event such a case or some question involving one of these issues or a host of other issues might come before her as a Justice of the U.S. Supreme Court.

So it is my hope that at the appropriate time later today there will be a unanimous vote for this nomination.

I thank the distinguished chairman for yielding.

Mr. THURMOND. Mr. President, I wish to thank the able Senator from Kansas. He always makes worthwhile remarks and on this occasion he kept his reputation also.

Mr. President, I suggest the absence of a quorum on the basis that we have previously requested.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr.

DURENBERGER). Without objection, it is so ordered.

The Senator from Indiana.

Mr. QUAYLE. Mr. President, I am delighted today to have the opportunity to express my support for the historic nomination of Sandra Day O'Connor to the Supreme Court.

In my view, Mrs. O'Connor is superbly qualified to serve as a Supreme Court Justice. She will bring to the Court a unique blend of experience and talent. Mrs. O'Connor's outstanding record of achievement began at Stanford Law School where she was admitted to the law review and graduated in the top 10 percent of her class. One of her former classmates at Stanford, Justice Rehnquist, gave her a glowing recommendation when President Reagan sought his advice on her nomination. Similarly, lawyers who argued cases before her have testified to her thoroughness and professionalism. During her 6 years on the bench, Mrs. O'Connor consistently earned very high marks for her performance. In 1976, the Phoenix bar rated her at 90 percent. In 1978, she earned an 85 percent approval rate. In 1980, after a year on the Arizona Court of Appeals, Mrs. O'Connor once again earned a 90 percent overall approval from the bar.

Just as important, her personal integrity is unquestioned. Throughout her 6 years as initially a trial, and then an appellate, judge, Mrs. O'Connor never received lower than a 97-percent rating for integrity in carrying out the duties of her office.

In addition to her high level of judicial performance, Mrs. O'Connor has also been an effective State legislator, quickly attaining the post of majority leader of the Arizona State Senate. Those who served with her in the legislature have said that she was chosen for the leadership post as a result of admiration for her intelligence and ability to clarify the issues.

The combination of legislative and judicial experience will make Mrs. O'Connor unique among the sitting members of the Supreme Court. As a former State legislator, trial court judge, and State appeals court judge, there is little doubt that Mrs. O'Connor will bring to the Court a badly needed sensitivity to local concerns. Those of us in Congress who have warned against the dangers of an "imperial judiciary" should take great satisfaction in the nomination of a person who has a strong sense of judicial restraint and balanced Federal-State relations as does Mrs. O'Connor. Read Mrs. O'Connor's statements in this regard and there is no question where she stands. In her appearance before the Senate Judiciary Committee, she said it clearly, "the proper role of the Supreme Court is to interpret and apply the law, not make it."

Of course, the line between "legislating" and "adjudicating" is sometimes very fine, and a judge's political preferences will, at times, affect judicial considerations. Nonetheless, a person's basic scheme of values and personal traits must remain paramount in our evaluation of fitness for the Supreme Court. These traits include integrity, intelligence, fairness and commonsense. I believe that Mrs. O'Connor possesses a full measure of these qualities and is an excellent choice for the highest court in the land.

As a personal aside, Mr. President, it is a proud moment for me to vote this fine lady who has spent many summers at Iron Springs, Ariz.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. 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. HELMS. Mr. President, many Senators have privately expressed a measure of concern about their responsibility in connection with the nomination of Sandra Day O'Connor to become the first woman to serve on the U.S. Supreme Court.

It is no discredit to Mrs. O'Connor that a substantial national dialog has occurred in recent weeks. The concerns that have been raised are not to be confined to Senators. And it may very well be that the distinguished nominee herself may hereafter face concerns far exceeding any that Senators have felt.

Mrs. O'Connor—Madam Justice O'Connor as she shortly will become—has been chosen by the President of the United States as both the symbol and the reality of an important milestone in our Nation's history. Needless to say, President Reagan himself is likewise a part of it.

I have noted, as have others, the national dialog that has occurred since the President announced his selection of Mrs. O'Connor. Legitimate concerns have been expressed in the absence of any precise knowledge of where the nominee stands on an issue to which President Reagan has made repeated and frequent commitments for years.

The issue, of course, is the abortion issue. Ronald Reagan has been unequivocal in his position on that issue. He is unequivocal today. In his public statements on the O'Connor nomination, and in private conversation with me, the President has made clear that he is not merely satisfied but delighted with the nomination of Mrs. O'Connor. It is fair to assume, therefore, that the President is convinced that Mrs. O'Connor agrees with his position on abortion—which is to overturn the Supreme Court's decision in Roe against Wade.

If such an assumption is not correct, Mr. President, then any burden felt by Senators pales into insignificance when compared with the burden upon both the President and Mrs. O'Connor.

If the President is mistaken, then he must confront the fact that his judgment in this nomination is a contradiction of all that he has said on countless occasions in connection with the abortion issue. In that event, which I have instinctively decided is highly unlikely, Mrs. O'Connor would bear the burden of having failed to make clear to the President any ambivalence she may have regarding the issue.

The circumstances have been such that uncertainty yet exists to some degree. But such uncertainty notwithstanding, I find no suitable option for myself as a Senator. I will vote for the confirmation of Mrs. O'Connor because I have faith in the President, and because I have no valid reason to believe that Mrs. O'Connor would deliberately allow the President to be misled.

So, with her confirmation a certainty later today, I wish both Mrs. O'Connor and the President well, and assure them that I am convinced that both of them have acted in good faith, and that they will continue to do so.

Having said that, Mr. President, I believe it is essential that the record be made clear that those who have expressed concerns have done so in sincerity and on a reasonable basis. Churlish criticism of those who have raised questions has been undeserved.

Mr. President, let us examine the record, beginning with the 1980 Republican Party platform adopted at Detroit in August of last year. The platform, which Ronald Reagan pledged to support as President of the United States, included the following:

> We will work for the appointment of judges at all levels of the judiciary who respect traditional family values and the sanctity of innocent human life.

The inclusion of this statement in the platform immediately raised a debate concerning the nature of the judiciary and even the nature of law. Some critics charged that this promise was a litmus test that violated the independence of the judiciary, and suggested that legal issues be decided by the personal whims of judges, rather than by the intrinsic legal or constitutional merits of the question. Indeed, the suggestion was made that the plank seemed to set aside the law, and substitute a political judgment.

It is true that the platform did raise profound issues about the nature of the judiciary, but it raised them precisely because of a public perception that something has been happening to law and the judiciary in this country that is profoundly disturbing to the national interest. According to a Lou Harris Poll, in 1966 51 percent of the American public had a great deal of confidence in the Supreme Court. In 1980, only 27 percent of the American people said they had a great deal of confidence in the court. Thus in 14 years, public confidence evaporated to an alarming degree.

In my opinion, public confidence has evaporated because the judiciary is too often seen as tearing down the fundamental social values of our civilization, instead of reinforcing and supporting them. It is not a question of judges imposing their personal views on their interpretations of the law, or of following public opinion. Rather, the law gets its sanction from the underlying natural law, reflecting the divine order, in our social order. The values and ethics of our civilization have developed over the

course of 2,000 years. There is a common consensus on what these values are; neither an ordinary citizen, nor a judge, is free to disregard the moral absolutes of that consensus.

Too often both lawmakers and judges have deviated from those principles for the sake of presumed social utility, or in pursuit of equity and justice. Some judges have acted from a desire to institute or promote social change; others have acted as though the law were unrelated to actual life, or to fundamental values. For them, the law is a closed system that is not supposed to be influenced by external considerations.

The American people are not legal philosophers, but they are appalled by the results. They want the fundamental institutions of society supported by the law, not torn down. That grassroots feeling was reflected in the Republican Platform of 1980.

In that platform, Republicans promised to appoint judges who would respect traditional family values and the sanctity of human life. Those two aspects were not chosen at random; they go to the heart of our society. The basic unit of our society is not the individual, but the family. The God-given hierarchy of parents and children is a mystery that sums up in an ineffable way the situation of mankind.

The seventh-century English historian, Bede, once described man as a swallow flying through a shaft of sunlight in a barn; no one could know where the bird came from, or where it went, but while it flew through the beam of light it was illuminated in our sight. So too, human beings arrive on this earth through the medium of the family. It is in the family that the individual is nurtured and developed, and it is through a new family that, interlinked with the old, the stream of life flows on. Human beings, as the carriers of life and developers of civilization, depend upon the institution of the family to survive.

But the hierarchy of family life in no way destroys the individuality and humanity of the person. Each person has his own unique existence and dignity. The dignity of the person surpasses the value of material things precisely because the person possesses life. He participates in life in a way that most Americans believe reflects the life of an infinite God. This goes beyond mere religious belief; it is a deeply rooted awareness of the existence of God. Even our public opinion polls show that the vast majority of Americans believe in God; but it is not just opinion. It is an instinctive principle of action to accept the existence of transcendental reality.

Without the dignity of the person, and the protective framework of the family, our civilization and its values could not long survive. The Republican platform summed up that sentiment eloquently when it pinpointed the judiciary as a center of attention. Laws cannot make people good, but they can remove obstacles to personal and social development, and set up sanctions for those who transgress the traditional ethical system.

In promising to work for the appointment of judges who respect traditional family values and the sanctity of human life, it was not the intention of the Republican platform to reward individuals for their personal accomplishments as upholders of family values and the sanctity of life. It seems obvious that the intention was to get at the problem of the deterioration of legal interpretation by appointing interpreters who would use traditional values as a standard of interpretation. In other words, the platform plank was a promise of judicial reform.

Some critics of that plank asserted that it set up an illegitimate standard for the interpretation of law by introducing personal whim or popular opinion as a guide. Of course, whims, or public opinion, have no place in legal interpretation. No judge has the right to submit a personal view for the view of the law. But the body of our law already reflects the values of our civilization. Where the law is clear, no outside standard of interpretation is needed. But where the law or its intention is unclear, it ought to be interpreted according to the settled values of our society. It is only in recent years that alien interpretations have been introduced that contradict our social standards—with results that have devastated our society.

The Republican platform, therefore, promised a significant judicial reform to reverse the deterioration of law in our Nation.

Of all the courts in the United States, the Supreme Court is obviously the most important one for far-reaching effects of constitutional policy. It was inevitable, therefore, that the platform should become a standard for measuring the nomination of Judge Sandra D. O'Connor for the vacancy left by the resignation of Justice Potter Stewart. In the scrutiny that immediately began, it was discovered to be difficult to ascertain Judge O'Connor's views and legal philosophy. A lawyer with a somewhat limited law practice experience, Judge O'Connor had never argued a case before the Supreme Court of the United States, had no heavy trial experience, had published but a single law review article of note, and while serving 6 years as a judge on an intermediate appellate court in Arizona, had never written what careful jurists would call a noteworthy opinion.

Her judicial record was too meager to reveal any real clues as to her philosophy; and indeed in 3 days of hearings by the Judiciary Committee, there was scarcely any allusion to that record.

On the other hand, Judge O'Connor, previous to her election as judge, had served in the Arizona State Senate, and indeed, served also as the majority leader in that body. Thus her legislative record became the focus of attention.

The issue of abortion is at the center of the family issues. No other problem raises in such a unique way the integrity of the family unit. The relationship of trust and responsibility of mother, father, and child is destroyed by abortion. When the father is not the husband of the mother, the so-called solution which abortion offers simply paves the way for the dissolution of family relationships. The rights of all children, born or unborn, are called into question. And of course, the very meaning of life, the meaning of humanity and personhood, and the rights of all persons die with the aborted child.

Mrs. O'Connor's legislative record shows that whenever she had an opportunity to strengthen the hand of the proabortionists, she did so; conversely, whenever actions were under consideration which would have strengthened the cause of the traditional legal view of abortion, she found a way to avoid supporting those initiatives.

First. On April 30, 1970, Senator O'Connor voted in the Arizona State Senate Judiciary committee for H.B. 20, a bill which would have removed all restrictions from abortions done by licensed physicians without regard to indication or duration of pregnancy. This would have allowed abortion on demand throughout the whole term of pregnancy, a radical departure from the laws of other States, more radical even than the then existing statutes in New York. This anticipated Roe against Wade by 3 years. Yet Judge O'Connor had no recollection of how she voted until the opponents of her nomination began to circulate news accounts of the period which recorded her vote.

During the hearings, Judge O'Connor indicated that she supported the legislation because Arizona abortion law provided only an exception to save the life of the mother, and did not include a rape exception, but at the present time she regrets that vote. She stated:

I would say that my own knowledge and awareness of the issues and concerns that many people have about the question of abortion has increased since those days. It was not the subject of a great deal of public attention or concern at the time it came before the committee in 1970. I would not have voted, I think, Mr. Chairman, for a simple repealer thereafter.

At another point, she suggested that she was aware of how sweeping the bill was even then, but felt there was no alternative:

At that time I believed that some change in Arizona statutes was appropriate, and had a bill been presented to me that was less sweeping than House Bill 20, I would have supported that. It was not, and the news accounts reflect that I supported the committee action in putting the bill out of committee, where it died in the caucus.

But in fact, there was a bill less sweeping than H.B. 20, the so-called McNulty bill, S.B. 216, which had been introduced in the Senate on February 6, 1970. The McNulty bill was a less sweeping bill, limiting abortion to the first 4½ months in cases involving rape, incest, or the life of the mother. It required that the embryology of pregnancy be explained to the mother, so that she would have informed consent, and that parental consent be required for a girl 15 years or younger. When Senator DENTON pointed out the conflict in her testimony, she replied:

Senator Denton, as I recall that bill, it provided for an elaborate mechanism of counseling services and other mechanisms for deal-

ing with the question, and I was not satisfied that the complicated mechanism and structure of that bill was a workable one.

It appears, therefore, that Judge O'Connor was less than candid in explaining her awareness of the probable impact of H.B. 20, and of the alternatives available. While it is reassuring that her understanding of the problem has increased with time—the same kind of development which many of us, including this Senator from North Carolina, would readily admit to—the fact remains that in 1970 she was supporting the more radical of two alternatives for liberalizing abortion in Arizona.

Second. On May 1, 1970, Senator O'Connor voted in the Republican Majority Caucus to send H.B. 20 to the Senate floor, siding with the 10 to 6 majority. But the caucus rules required a two-thirds affirmative vote to send the bill to the floor. Thus, indeed, it died as she testified, but not because of the lack of her support.

Third. During 1971, two bills liberalizing abortion were introduced in the Arizona Senate, but they went to Public Health and Welfare Committee, of which Senator O'Connor was not a member. The bills died in committee.

Fourth. During 1972, the proabortion lobby did not seek to have legislation introduced in the legislature, but concentrated on legal action. However, the statute which Senator O'Connor had sought to repeal with H.B. 20 was upheld in its constitutionality by the State court.

Fifth. In 1973, after Roe against Wade caused the State statutes to fall, a controversy arose in Arizona when nurses were fired for refusing to participate in abortion procedures. Senator O'Connor, in her role as majority leader, had a freedom-of-conscience bill drafted to protect the rights of medical personnel who refused to participate in abortions. But there was no element of the abortion controversy in this bill whatsoever; it went to the rights of the medical technicians, not the rights of the mother or the unborn child. It was passed unanimously 30 to 0, with those on both sides of the controversy supporting it. Therefore, it tells us nothing of Senator O'Connor's then sentiments on the matter.

Sixth. On February 8, 1973, Senator O'Connor cosponsored the Family Planning Act (S.B. 1190). This act provided that "all medically acceptable family planning methods and information shall be readily and practicably available to any person in this State who requests such service or information, regardless of sex, race, age, income, number of children, marital status, citizenship or motive." This act immediately generated a large controversy in Arizona because of the phrase "all medically acceptable family planning methods," a phrase which in radical population control organizations was a euphemism for abortion. Indeed, after Roe against Wade, there could be little doubt that abortion was a legal means of family planning. On March 5, 1973, the Arizona Republic commented in an editorial:

Only a decade ago, family planning was commonly accepted as referring to contraception, but contraception was sharply differentiated from abortion even by family planning's faithful boosters.

But now the abortion front had developed dishonest terminology in which abortion isn't even described as "interruption of pregnancy" but "post-conceptive family planning."

Planned Parenthood used to be distressed by people who believed contraception was murder, just like abortion. Yet now PP often blurs the distinction even more terribly.

Rather than inhibiting abortion, as some unwise supporters of the bill contend, it might make it more widespread.

Why, indeed, is this bill proposed? The state certainly has no policy of discouraging contraception. The bill appears gratuitous—unless energetic state promotion of abortion is the eventual goal.

The bill was also denounced by religious leaders, and the minutes of the Public Health and Welfare committee reflect the bitter division which it caused. In addition to the abortion question, the bill also provided that the information and procedures authorized in the bill be given to minors without parental consent; in fact, the bill's sponsor, as reported in the committee minutes, indicated that the evasion of parental consent was the underpinning of the whole bill. Indeed, it was on that point that the bill died in committee.

The memorandum of Kenneth W. Starr, counselor to the Attorney General, reported on July 7, 1981, that "she recalls no controversy with respect to the bill, and is unaware of any hearings on the proposed measure."

Despite the fact that there was a controversy, Judge O'Connor testified that—

I viewed the bill as a bill which did not deal with abortion but which would have established as a State policy in Arizona, a policy of encouraging the availability of contraceptives information to people generally. The bill at the time, I think, was rather loosely drafted, and I can understand why some might read it and say, "What does this mean?"

That did not particularly concern me at the time because I knew that the bill would go through the committee process and be amended substantially before we would see it again. That was a rather typical practice, at least in the Arizona legislature.

Whatever the actual impact of the bill might have been, it is nevertheless plain that today Judge O'Connor does not support the use of abortion in family planning. She testified clearly on this point at the opening session of her hearings:

I would like to say that my own view in the area of abortion is that I am opposed to it as a matter of birth control or otherwise. The subject of abortion is a valid one, in my view, for legislative action subject to any constitutional restraints or limitations.

As for the issue of parental consent, Judge O'Connor's view today is at considerable odds with the approach taken in the bill she cosponsored 8 years ago. In reply to a question from Senator Denton, she said:

I would simply say that it is my personal view that I would want to have the child consult the parents and have the parents work with the child on the issue.

While both of her present positions contradict the main features of S.B. 1190, we must allow for growth and maturity of one's views. All of us today have a much clearer understanding of the implications of abortion and of the great legal ramifications which are sometimes drawn from seemingly innocuous words. Indeed, that is precisely why the issue of abortion dominated her nomination hearings.

Seventh. On May 9, 1974, Senator O'Connor was one of nine Senators who voted against S.B. 1245, a bill authorizing the University of Arizona to issue bonds to construct sports facilities, after the bill had been amended by the House to prohibit abortions at any facility operated by the Board of Regents. Senator O'Connor had supported the bill when it had originally passed the Senate. She stated:

In the House it was amended to add a nongermane rider which would have prohibited the performance of abortions in any facility under the jurisdiction of the Arizona Board of Regents. When the measure returned to the Senate, at that time I was the Senate majority leader and I was very concerned because the whole subject had become one that was controversial within our own membership.

I was concerned as majority leader that we not encourage a practice of the addition of nongermane riders to Senate bills which we had passed without that kind of a provision. Indeed, Arizona's constitution has a provision which prohibits the putting together of bills or measures or riders dealing with more than one subject. I did oppose the addition by the House of the nongermane rider when it came back.

In adopting the view that the abortion provision was nongermane, Senator O'Connor was construing the Arizona Constitution narrowly. The constitution says, in article 4, part 2, section 13:

Every Act shall embrace but one subject and matters properly connected therewith . . .

Since the issuing of stadium bonds and the performance of abortions were both actions under the authority of the Board of Regents, it could easily be argued that the act embraced but one subject, and the prohibition on abortion was properly connected therewith. Indeed, only one senator, and it was not Senator O'Connor, registered opposition to the bill on constitutional grounds. Despite the opposition, the bill passed, and it was never declared unconstitutional. Each one must draw one's own conclusions as to whether opposition to the bill in those circumstances sprang from a desire for purifying the legislative process or an aversion to prohibiting abortion.

Eighth. On January 22, 1974, 10,000 Arizona citizens gathered at the State capitol to protest the Roe against Wade decision. They submitted petitions signed by over 35,000 registered voters asking that a memorial be sent to the U.S. Congress to pass the Human Life Amendment. Arizonans are not given to large political demonstrations; the crowd at the State capitol was the largest in Arizona's history. House Memorial 2002 passed the Arizona House of Representatives by a 41-to-18 vote. Mr. President, I had a personal interest in this matter since the language of the con-

stitutional amendment sought by the memorial was the language which I had the honor of introducing in the U.S. Senate.

On April 23, 1974, H.B. 2002 passed the Senate Judiciary by a 4-to-2 vote, with the Phoenix Gazette reporting that Senator O'Connor voted against it even after it was amended to include exceptions for rape and incest in addition to an exception for the life of the mother. On May 7, 1974, a Phoenix Gazette article quoted Sandra O'Connor as follows:

I'm working hard to see to it that no matter what the personal views of people are, the measure doesn't get held up in our caucus.

On May 15, 1974, H.B. 2002 failed to pass the majority caucus by one vote. At least one senator who was in the caucus has stated that Senator O'Connor voted against the memorial. It should also be noted that these votes were taking place at exactly the same time as Senator O'Connor's vote against the stadium bill.

Judge O'Connor testified on this point as follows:

I did not support the memorial at that time, either in committee or in the caucus. ... I voted against it, Mr. Chairman, because I was not sure at that time we had given the proper amount of reflection or consideration to what action, if any, was appropriate by way of a constitutional amendment in connection with the *Rowe* v. *Wade* decision.

It seems to me, at least, that amendments to the Constitution are very serious matters and should be undertaken after a great deal of study and thought, not hastily. I think a tremendous amount of work needs to go into the text and the concept being expressed in any proposed amendment. I did not feel that that kind of consideration had been given to the measure.

It is of interest that the rationale she gives for not supporting the memorial is just exactly the opposite of the rationale she gave for cosponsoring the family planning bill, despite its obvious flaws. In that case, she told the committee that she was not concerned about the bill's shortcomings because she was certain that the bill would be amended in committee; but in the case of the memorial, she could not support it because the text was not yet perfect.

Ironically, a memorial has no legal impact whatsoever; the exact text of such a constitutional proposal is irrelevant since the constitutional amendment itself will be shaped in the Congress, not the State legislature. Supporting or not supporting the memorial was therefore merely a political statement, but one of keen interest in the State of Arizona. Whatever concerns Senator O'Connor may have had about the text as supported by 35,000 Arizonans, the practical effect of her withholding support was to aline herself with the proponents of abortion.

Ninth. In 1974, S.B. 1165, the State medicaid bill was introduced in the Senate. Among other provisions, it said that no benefits would be provided for abortions except when deemed medically necessary to save the life of the mother, or where the pregnancy had resulted from rape, incest, or criminal action. Attention was called to this measure by Judge O'Connor herself during the hearings, since it had been overlooked in the public debate. She said: "I supported that bill, together with that provision." Later Senator DOLE asked whether it was fair to conclude that that bill represented her views on that issue. She replied: "Yes, Senator, it reflected my views on that subject when I voted for that measure." When Senator DOLE pressed her as to whether it represented her views today, she answered: "Yes—in general substance, yes."

Yet her support of this bill tells us little about her attitude on abortion. Antiabortionists would have been displeased with any bill that provided State funding of abortion, although they would have been pleased that some restrictions were included. Proabortionists would have been pleased with any bill that established the principle of State funding of abortions, hoping to ease the restrictions at a later date. We can conclude only that she believes abortion to be a proper object of State legislation; and that, in a legislative framework, she supports restriction of abortion to cases involving rape, incest, or the life of the mother.

Nor was the abortion issue an isolated phenomenon. As is well known, abortion is only one element in a panoply of issues whose partisans describe them as women's issues. Yet, in fact, they are not women's issues as such, but only the issues of a partisan group of women who are promoting a particular view of femaleness that is at odds with the traditional view of the dignity of women. This is not the place to argue that justice of those views, or the extent to which they are actually held among women at large, but merely to point out that, by and large, those views are intolerant of the traditional family values supported by the Republican platform.

Senator O'Connor was perceived as a supporter of that group of issues. In 1970, for example, she sponsored the Equal Rights Amendment ratification in the Arizona Senate, showing none of the reticence she later displayed over memorializing Congress about the human life amendment. When the ERA was killed in the Arizona Senate Judiciary Committee in 1973, she immediately introduced a bill for an advisory referrendum on ERA, in a strategy that was interpreted as attempting to put pressure on her colleagues.

As already noted, she was a cosponsor of legislation giving information on sex education, abortion counseling, and even abortion procedures to minors without notification or consent of the parents. In 1970, she was described in Phoenix magazine as almost alone in opposing publicly State aid to private schools. In 1971, she succeeded in weakening antipornography bills which would have prohibited the public display of explicit sexual material near schools and parks. In 1972, she supported legislation giving 18-year-olds the right to drink alcoholic beverages, legislation that was defeated. In 1973, she supported H.R. 1107, a so-called no-fault divorce bill. In 1974, she was the only Senator to cosponsor H.B. 2190, a State-level version of the Child Development Act vetoed on the national level by President Nixon in 1971 as too great an intrusion into the family.

In 1974, Senator O'Connor was appointed to the Defense Advisory Committee on Women in the Services, DACOWITS, a group of 30 civilians appointed by the Secretary of Defense. DACOWITS became the center of agitation to repeal the laws prohibiting combat roles for women, specifically, the two laws upheld by the Supreme Court on June 25, 1981 as the basis for excluding women from the draft. By 1975, then Judge O'Connor spearheaded efforts in DACOWITS to allow women to enter the military academies and to be assigned to ships and aircraft other than hospital or transport vessels. For example, the minutes of the DACOWITS Subcommittee on Utilization for April 7, 1975 state:

At this point, Judge O'Connor moved the following recommendation, which was seconded by Dean Heyse: That careful analysis and definition of what is meant by "combat duty" and "combat assignment" be undertaken by the Department of Defense in order to clarify many questions which arise within the services relating to this question and in order to set forth a more uniform policy for the several branches of the services with respect to both enlisted and officer status.

Judge O'Connor then moved the following recommendation, which was adopted: That admission to the service academies be open to all qualified candidates to prepare military leaders for service in peace and war. That the Department of Defense alter its present position and take a positive position favoring admission of women to the service academies and implement it forthwith.

Judge O'Connor initiated discussion of Title 10, USC Sec. 6015 relating to the Navy's prohibition against assignment of women to vessels other than hospital or transport vessels. . . . This resulted in the following motion by Judge O'Connor, seconded by Dean Heyse: and agreed upon by all present: That the Department of Defense initiate amendment of Title 10, USC, Sec. 6051 so as to remove the total prohibition against assignment of persons (male and female) to vessels and aircraft in accordance with the qualifications of the person to be assigned and the particular mission to be performed.

It was not for nothing, then, that Judge O'Connor was endorsed for the nomination to the Supreme Court by women's liberation activists such as Eleanor Smeal, president of the National Organization for Women.

Throughout the hearings on her nomination, Judge O'Connor steadfastly refused to comment on Roe against Wade, taking the position the issues in that case would likely come before the Court, and she would have to disqualify herself under the law if she discussed the Roe holding. This was a clever position, but one that was less than candid. The statute governing disqualification of Supreme Court Justices is 28 U.S.C. 455, which provides:

Any Justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, or appeal, or other proceeding therein.

Obviously, nothing in the statute excludes public statements on the issues, so long as no case is actually pending. In the case of Laird against Tatum, 409 U.S. 824 (1972), the respondents had urged Justice Rehnquist to disqualify himself because prior to his nomination as a Supreme Court Justice he had publicly spoken about the constitutional issues that were raised in the case. But Justice Rehnquist refused to disqualify himself, sharply distinguishing between public statements about the case itself—which might constitute a discretionary ground for disqualification—and public statements about what the Constitution provides, outside of the specific case involved.

After Judge O'Connor was nominated, I wrote her a letter asking for her comment on Roe against Wade. In her reply, she declined to do so, citing a distinction that Rehnquist had made between statements made before nominations to the Court, and statements made after nomination, but before confirmation. Judge O'Connor wrote: "He recognized that statements about specific issues made by a nominee to the bench risk the appearance of being an improper commitment to vote in a particular way."

Thus the question turns not on the issue of disqualification, but of propriety. There are no grounds whatsoever for a Justice to fear the need to disqualify himself or herself, and indeed no Justice has ever done so in the history of the Court. Yet many have commented on past decisions of the Court in their nomination hearings, including Justice Fortas, Justice Marshall, Justice Powell, and Justice Rehnquist himself.

As for the supposed impropriety, the question turns upon whether a comment on a past decision is indeed a promise to vote a certain way in the future. In point of fact, it is not. No one can predict what might be done in the future, and no prospective Justice is going to promise to bind himself or herself before the facts of a case are known, or even before it is known how a case might be presented. Comment on a past decision merely explains the judicial philosophy of the nominee at the present time. Justices often shift, or grow in their thinking, or new facts may be presented If there were any doubt about impropriety, a nominee could simply disclaim that present comment constitutes a future promise.

The lack of substantive comment on judicial philosophy throughout three days of hearings poses a unique problem with regard to Judge O'Connor. The advise and consent duty which the Constitution imposes upon the Senate is obviously a substantive one. The Senate cannot be supposed to be a rubber stamp for an executive nomination, particularly for the Judiciary. A Justice is not the President's agent, unlike appointments in the executive branch. Yet unless the nominee's judicial philosophy is known, it is difficult for a Senator to fulfill his constitutional function of advise and consent.

Most other nominees to the Supreme Court have had a substantial public record from which their judicial philosophy could be deduced. Judge O'Connor has no such substantial record, aside from her legislative activities. By adopting the same position as a Harlan, or a Frankfurter, whose positions were well known before nomination, Judge O'Connor has all but shut out the Senate from its Constitutional responsibilities.

We are left, then, with what she described in the hearings as her personal views, repeatedly pointing out that she thought it improper to impose personal views in deciding a case. But in point of fact, every judge and justice imposes personal views in making decisions. Nearly every Justice who has appeared before the Senate for hearings has steadfastly affirmed that he believed it to be the function of the judiciary to interpret the Constitution, not to make new laws based upon his personal opinion. For example, Justice Blackmun, at his hearing, said:

I personally feel that the Constitution is a document of specified words and construction. I would do my best not to have my decision affected by my personal ideas and philosophy, but would attempt to construe that instrument in the light of what I feel is its definite and determined meaning.

Yet it was Justice Blackmun who wrote the Court's opinion in Roe against Wade, which is generally regarded as among the most extreme examples of judicial preference for personal ideas and philosophy over textual and historical sources of constitutional law.

Throughout the hearings, Judge O'Connor repeated several times that she is personally opposed to abortion. Perhaps the clearest and most definite statements on this matter came in an exchange with Senator KENNEDY:

Senator KENNEDY. In some earlier questions—I think by the Chairman—you were asked your position on birth control and abortion. Have your positions changed at all over the years or are they the same as indicated in your votes and statemente or comments?

Judge O'CONNOR. I have never personally favored abortion as a means of birth control or other remedy, although I think that my perceptions and my knowledge of the problems and the developing medical knowledge, if you will, has increased with the general explosion of knowledge over the past 10 years. I would say that I believe public perceptions generally about this particular area and problem have increased greatly over the past 10 years. I would say that I think my own perceptions and awareness have increased likewise in that interval of time.

Senator KENNEDY. Does that mean your position has altered or changed or just that you have developed a greater understanding and awareness of the problem?

Judge O'CONNOR. The latter, I think, Senator, is what I was trying to express.

The interpretation of this passage is difficult. Judge O'Connor says that she never favored abortion as a means of birth control or other remedy. Yet her legislative record implies just the opposite. At the same time that she was supporting abortion legislation that provided on demand until term, that would provide abortion counseling and abortions to minors without parental consent, and that would allow the University of Arizona to provide abortions to students at taxpayers' expense, she was personally opposed to abortion. And while she was personally opposed to abortion, she also opposed efforts by the pro-life movement to restore the traditional legal status for abortion.

Yet there are suggestions in the transcript that Judge O'Connor, as a State senator, tended to view the legislative process as separate from her personal views, that she was trying to make allowances for the views of those who disagreed with her. In my own view, I recognize that the legislative process involves many compromises, but I would not want ever to compromise on basic principles. In my opinion, I believe that Judge O'Connor now looks upon the legislative problem with more maturity.

In an exchange with Senator DENTON, Judge O'Connor in response to a question as to where abortion was offensive, spoke as follows:

It remains offensive at all levels. The question is, what exceptions will be recognized in the public sector? That really is the question . . . I find that it is a problem at any level. Where you draw the line as a matter of public policy is really the task of the legislator to determine. Would I personally object to drawing the line to saving the life of the mother? No, I would not. These are things that the legislator must decide.

In my view, her comments on abortion are certainly more perceptive today than her record as a legislator would indicate. But of course, even Ronald Reagan learned from experience while Governor of California when he approved ill-drafted legislation on abortion without fully understanding the consequences. In her exchange with Senator Denton, Judge O'Connor took note of the process of interior growth:

Senator Denton, I cannot answer what I will feel in the future. I hope that none of us are beyond the capacity to learn and to understand and to appreciate things. I do not want to be that kind of a person. I want to be a person who is open-minded and who is responsive to the reception of knowledge.

I must say that I do expect that in this particular area we will know a great deal more 10 years from now about the processes in the development of the fetus than we know today. I think we know a great deal more today than we knew 10 years ago, and I hope that all of us are receptive and responsive to the acquisition of knowledge and to change based upon that knowledge.

Mr. President, there is a suggestion in that statement that Judge O'Connor is moving away from the positions which she supported as a legislator, and is focusing more clearly on her own personal convictions. In her exchange with Senator DECONCINI, she said:

I have indicated to you the position that I have held for a long time—my own abhorrence of abortion as a remedy. It is a practice in which I would not have engaged, and I am not trying to criticize others in that process . . . But my view is the product, I suppose, merely of my own upbringing and my religious training, my background, my sense of family values, and my sense of how I should lead my own life. I have had my own personal views on the subject for many years. It is just an outgrowth of what I am, if you will.

When the President nominated Judge O'Connor to the Supreme Court, I visited him on that morning at his invitation, and he assured me personally that the

nominee shared his own views on the question of abortion. This is not hearsay. I sat with the President for the better part of a half hour in which he described Mrs. O Connor as he perceived her.

Under extensive questioning from the Judiciary Comm ttee, the nominee has clearly demonstrated, under oath, that she shares those views. In that sense, the President has fulfilled the commitment of the Republican platform.

Nevertheless troubling questions remain. With all due respect to Judge O'Connor, I find it disturbing that her legislative record is in direct opposition to the personal views which she has expressed, and to which she testified as being of long standing. It suggests a dichotomy between thought and action that I, as a legislator, cannot comprehend. Yet there are also indications that she regrets the role she played in the Arizona State senate.

I think that the hearing process has focused her attention on these problems in a way which had not previously occurred. I am encouraged by the fact that, over and over again, she emphasized her awareness of the criticisms of Roe against Wade, as an extreme example of judicial activism. I am encouraged by the fact that she emphasized that, in her opinion, Roe against Wade was far from being a settled doctrine, and that she expected it to come before the Court for further review.

On that hope—that I have judged her accurately, and I am instinctively persuaded that I have—I intend to cast my vote for approval. Her testimony is that she is personally deeply opposed to abortion. We are left with the question of whether her personal views will, in fact, influence her decisions in those areas where the Constitution itself is vague or nondeterminative. My instincts, my faith in President Reagan's word, and my respect for Mrs. O'Connor as a person provide the grounds for my supporting her nomination. I wish her well.

Mr THURMOND. Mr. President, I thank the Senator for the fine statement he has made. I am sure it will be a great contribution to this question.

Mr HELMS. I thank the Senator.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. THURMOND 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. THURMOND. Mr. President, I ask unanimous consent that the time of the Senator from Alabama be charged against the other side.

The PRESIDING OFFICER. Without objection, the time will be charged to the time of the Senator from Delaware.

The Senator from Alabama may proceed.

Mr. HEFLIN. Mr. President, the task which we are now considering is a most important one. It is the process by which a branch of government renews itself—a regeneration, a pumping of new blood into the life of a great and vital institution.

In my opinion, and I say this, Mr. President, only after careful reflection, there are only two institutions absolutely indispensable to the independence, health, and maintenance of our Republic—a free, fair, and vigorous press, and a strong and independent judiciary. While Presidents may come and go, their faithful execution of the laws is subject to an ultimate check. While great men and women may deliberate and legislate in these very Halls, the laws they pass do not interpret themselves.

The Federal judiciary—the high Court in particular—not only has the last word as to what our laws say, but also as to whether they may permissibly say it. The Court to which this capable jurist has been nominated is the ultimate arbiter of our most sacred freedoms, guardian of our most cherished liberties.

In fulfilling our constitutional duty to advise and consent, the men and women of this body will cast no more important vote in this session of Congress. For we are voting not so much to confirm Sandra Day O'Connor, but to reaffirm our belief in the very concept of justice, and its preeminence among values in a free and thriving republic. As our first President told his Attorney General, Edmund Randolph, some two centuries ago, "The administration of justice is the firmest pillar of government."

If justice is both the ultimate goal and indispensable for the survival of a free republic, we best insure it by the people we select as its custodians. And that is what we are about today—selecting a custodian for our most precious commodity, a trustee for our most valuable resource.

And yet, Mr. President, nowhere is there to be found a set of standards for selecting these custodians of justice. Since Chief Justice John Jay took the oath of office in 1789, 101 Justices have sat on the Supreme Court. While this record should provide some guidance for us, it is of limited assistance, for they have differed as much in their judicial philosophies as in their passion for the law.

Greatness on the Court is neither measurable nor clearly definable. It may derive from a coherent philosophy expressed with unequaled brilliance, as was the case with Justice Holmes, or from a vast currency of experience by the creative mind of a Justice Brandeis. It may stem from an unrelenting effort to restrain judicial activism by a Justice Rehnquist, an unquenchable thirst for liberty, as with Justice Douglas, or the passionate love of free expression of my fellow Alabamian, Hugo Black.

When asked to catalog the criteria for judicial selection, we normally—and somewhat automatically—list legal ability, character, and judicial temperament. To these qualities, I would respectfully add three perhaps more fundamental: First, an understanding of the proper role of the judiciary in our constitutional and Federal scheme; second, a deep belief in, and unfaltering support of, an independent judiciary; and third, an abiding love of justice.

If I might elaborate ever so briefly:

First. Regarding the proper role of the judiciary, it is the constant struggle of all Federal judges and the ultimate issue they must confront to preserve the balance between the powers of the Federal Government and those of the States while, at the same time, protecting the constitutional guarantees of all Americans. It is the supreme test of judicial acumen to preserve that balance, to which an understanding of the proper role of the Federal judiciary is indispensable.

Second. The Framers of the Constitution were painfully aware of encroachments on judicial independence. Indeed, denial to the colonies of the benefits of an independent judiciary was one of the grievances against King George III enumerated in the Declaration of Independence. If the judgment of our highest custodians of justice is at all compromised, if it is based on timidity or hesitation arising from public or political pressure, our legacy of judicial independence will be undermined. Justice compromised is justice aborted.

Third. There must be a passionate love of justice, the great cement of a civilized society, the guardian of all life and liberty. If injustice can divide us—pitting black against white, old against young, have-nots against haves—justice can bring us together as a people, and as a Nation.

Mr. President, against these highest and noblest of standards, I have examined this nominee, and find that she meets them, every one. Judge O'Connor's record of accomplishment, both in public and private life, is exemplary—a seasoned private practitioner; a vigorous prosecutor; skillful legislator; respected jurist; legal scholar; bar, civic and political leader; faithful wife; and devoted mother. The breadth of her service is surpassed only by the excellence with which it was rendered. More important, it enables Judge O'Connor to bring unique qualities to the Court: an abiding respect for the law; a deep understanding of our economic and political institutions; a clear view of the proper role of the judiciary; and a rare appreciation of the values of Americans as a people. I dare say these qualities, and her record to date, are a harbinger of judicial greatness.

When President Reagan nominated Sandra Day O'Connor for the position of Associate Justice of the U.S. Supreme Court, I was one of the few Members of the Senate who had the privilege of prior personal and professional knowledge of Judge O'Connor. I was delighted with the President's selection and was hopeful that the U.S. Senate would confirm this nomination.

Having participated with Judge O'Connor, under the leadership of Chief Justice Burger, in the recent Anglo-American Legal Exchange on Criminal Justice, I learned first-hand of her exceptional intelligence, her hard-working preparation of the issues at hand, and her unswerving adherence to integrity. Based upon my previous experience with Judge O'Connor, I was confident of her

abilities to assume the most crucial position of Associate Justice of the Supreme Court.

During the Senate Judiciary Committee hearing process, Judge O'Connor demonstrated outstanding legal abilities, judicial temperament, a quick and decisive intellect, and a firm understanding of American jurisprudence and our judicial system. After 3 days of extensive hearings by the committee, I am delighted that my initial impressions of her legal and judicial ability were confirmed to the highest extent, and that the members of the Judiciary Committee recognized her outstanding attributes in support of this nomination, with 17 affirmative votes.

I began by saying we are involved in the process of institutional renewal. As Justice Cardoza put it—

> The process of justice is never finished, (it) reproduces itself, generation after generation, in ever-changing forms. Today, as in the past, it calls for the bravest and the best.

I believe his words ring just as true today, and in Sandra Day O'Connor I believe we have "the bravest and the best." I counseled Judge O'Connor during the confirmation hearing to carry indelibly etched in her conscience, and follow as religiously as is humanly possible, the admonition of one of our greatest jurists, Learned Hand, who wrote:

> If we are to keep our democracy there must be one commandment: Thou shalt not ration justice.

I am confident that Justice Sandra Day O'Connor will follow this commandment religiously.

Mr. President, President Reagan's appointment to the Supreme Court will reflect great credit on his administration, the Court itself and, indeed, the Nation at large. I am delighted to vigorously support this nomination, and I encourage each of my colleagues in the U.S. Senate to enthusiastically support the nomination of Sandra Day O'Connor for the position of Associate Justice of the U.S. Supreme Court.

Mr. HART. Mr. President, will the Senator from Alabama yield to me?

Mr. HEFLIN. I yield.

Mr. HART. Mr. President, I congratulate the Senator from Alabama on an extremely eloquent statement.

Too often in this Chamber, we debate the merits of nominations or fundamental legislative issues and miss the more overriding point. The point here is justice, which we do not hear about too much these days. The Senator from Alabama is to be congratulated for bringing the debate back to where it belongs.

The issue on this nomination, to some degree, and in our society at large is justice.

The distinguished Senator from Alabama has made a remarkable record in his own right in pursuing the cause of justice throughout his career on the highest court of his sovereign State. I wish to add a word here of support and congratulation for him and that distinguished career and his efforts in bringing the focus of the U.S. Senate on this issue, as well as other issues of the day, back to the fundamental point—that a society without justice, without justice for all, is not a democracy and certainly is not what the United States of America started out to be.

So I want the Senator from Alabama to know that his colleague has the highest regard for him and for his pursuit of that principle.

Mr. HEFLIN. I certainly appreciate the kind comments of the distinguished Senator from Colorado.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I suggest the absence of a quorum, and I ask that the time be charged equally to both sides.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KENNEDY. 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. KENNEDY. Mr. President, will the floor manager yield?

Mr. BIDEN. I yield as much time as the Senator from Massachusetts will require.

The PRESIDING OFFICER (Mr. SYMMS). The Senator from Massachusetts.

Mr. KENNEDY. I am pleased and proud to support Judge Sandra O'Connor's confirmation as Associate Justice of the Supreme Court.

The Judiciary Committee hearing on her nomination established beyond any doubt her qualifications to sit on the Nation's highest court. At the hearing, she demonstrated the qualities of judicial temperament, excellence in the law, and the personal and intellectual integrity essential in a nominee to this high position. She also demonstrated her commitment to the enforcement of individual rights under the Constitution. Other witnesses at the hearing testified to the respect she has earned in Arizona as a jurist and as a concerned member of her community. I am convinced that Judge O'Connor has the potential to be an outstanding Justice on the Supreme Court.

Judge O'Connor's nomination is a significant victory for the cause of equal rights. It is a significant new step on the road toward equal justice in America. The small number of women on the Federal bench, and, until now, their exclusion from the Supreme Court, has been a particularly troubling reflection of the discrimination that women and minorities still face in our society.

Americans can be proud of this day, as we put one more "men only" sign behind us.

Americans can also take pride in this nomination for another reason. By this vote, the Senate rejects the would-be tyranny of the new right and reaffirms the vital principle of the independence of the judiciary. Single-issue politics has no place in the solemn responsibility to advise and consent to appointments to the Supreme Court or any other Federal court.

As the hearings revealed, no member of the Senate Judiciary Committee completely agrees with Judge O'Connor's views on every major issue which will come before the Court. I do not agree with her present views on the proper balance in the relationship of the Federal courts and the State judiciary in the enforcement of Federal rights. But I am satisfied that her intellectual integrity and her concern for those whose rights have been denied will lead her to a fair evaluation of that balance from the unique perspective of the Supreme Court.

I congratulate Judge O'Connor and I wish her well in the new responsibility she now begins.

Her place is already secure as the first woman in the 200-year history of American law to be nominated to the Supreme Court. But she has the ability and the character to be remembered for even more—as a wise justice who understood and advanced the historic role of the Supreme Court in preserving our country as a nation of equal justice under law.

Mr. President, I yield the remainder of my time. I thank the Senator.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I yield as much time as the Senator from Ohio may require.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I stand to indicate my support for the confirmation of Sandra O'Connor to the Supreme Court of the United States.

In doing so, I have a special kind of good feeling, a good feeling that the overwhelming majority of this body—and it would not surprise me if the vote were unanimous—will indicate that they will not yield to the pressures of the new right and they will not be distracted to oppose her nomination on the basis of any one single issue.

My view is that, regardless of the merits of the issue, American politics have had enough of single-issue opposition or support and that it is time that those persons up for confirmation in the Supreme Court and persons up for election to public office should not be judged on the basis of any one issue—and there are many of them that are used as the sole determinant in this country.

I believe there is something basically un-American about saying that a person should or should not be confirmed for the Supreme Court or should or should not be elected to public office based upon somebody's view that they are wrong on one issue.

This judge, who has served her State well as a jurist and as a legislator, has a mind of her own. Her views are not my views. If I were doing the appointing, I doubt very much that I would appoint Judge O'Connor to the Supreme Court.

But that is not the question before the Senate of the United States. The question is: On the basis of her legal ability, on the basis of her character, on the basis of her integrity, on the basis

of her judicial temperament, and on an overall basis, is she or is she not qualified to be appointed to the Supreme Court of the United States? I know that this body today will give a resounding affirmative answer to that question.

There are many issues on which I disagree with the judge. On the whole question of access to the Federal courts for the poor, I do not agree with her attitude or some things that she has written about in a magazine article. She believes that the jurisdictional amount on Federal question cases should be a specific amount and I believe that the courts ought to be open regardless of the amount in question. This Congress has already passed on that issue and has arrived at the same conclusion as the Senator from Ohio.

She indicated her opposition to attorneys' fees being paid in section 1983 cases, the original Civil Rights Act, the anti-Ku Klux Klan Act. I take strong issue with that point of view. I do not happen to think that she is right on that score. But would that be a sufficient basis for me to vote against her confirmation? I think not.

She and I disagree with respect to the question of standing requirements in a case. Would that be a sufficient basis for me to vote against her? I think not.

I believe that the role of the court in issues having to do with social justice is, indeed, an important role. This question of judicial activism—what does that really mean? When is a court judicially active? When it is making laws or when it is not making laws? It is all a matter of perspective and all a matter of perception. It is a question of how you interpret the action of the court. I do not think she and I would agree on all matters in that connection, but I still believe she belongs on the Supreme Court, having been appointed by the President of the United States.

I doubt very much that she and I would agree on the issue of capital punishment. I would guess that we might disagree on many issues having to do with criminal procedures.

But her appointment is an appointment that the President of the United States has the right to make under the Constitution and we in the U.S. Senate have an obligation to confirm or refuse to confirm. It pleases me greatly that—after days of hearings, very full hearings, very fair hearings, conducted by the distinguished chairman of the Judiciary Committee, Senator STROM THURMOND, in which everybody was given an opportunity to be heard, in which Senators who felt that they needed an extended opportunity for questioning were given that opportunity—she came out of the Judiciary Committee with a vote of 17 to 0, 1 present.

I hope that today there will not be a single vote cast against her confirmation.

I am particularly pleased about the fact that she will become the first woman Justice of the Supreme Court. I am pleased that I had the privilege of participating in that confirmation process in connection with such an appointment.

But I do not hesitate to say that that would not be a sufficient basis alone for me to vote for her confirmation. I will vote for her confirmation because I think that she will serve the Court well, I think she will serve the American people well, and I think she will serve the cause of justice well. I am glad that we will have the privilege to vote on her confirmation today.

I yield back the remainder of my time.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, I rise once again today to discuss for a short period of time the nomination of Sandra O'Connor as an Associate Justice to the U.S. Supreme Court.

This is a monumental time for all of us—the first woman Justice—but, obviously, as many Members have pointed out, she was selected on the basis of her qualifications and her merits.

When Justice Potter Stewart announced his retirement, I submitted Judge O'Connor's name to President Reagan for consideration. Along with other people, some in this body and some other distinguished jurists and scholars, I had the honor of presenting Judge O'Connor, along with my distinguished senior colleague, Senator GOLDWATER, to the Judiciary Committee for the beginning of her confirmation hearings. I am once again here before the entire Senate to proclaim my clear, unequivocal support for this fine jurist, for this fine person, this fine woman, who will be the first woman on the Supreme Court.

I hope that our colleagues will vote a unanimous vote today in her behalf.

I think it is important to set aside a moment to say that though Judge O'Connor will be, in my judgment, the first woman to serve on the Supreme Court, after her confirmation today and her swearing in later this week, that this should not be the last, by any means, and, hopefully, it will just be the beginning. I urge the President, if he has another opportunity, that he fulfill that promise once again to bring into our judicial system the fine, qualified women that have demonstrated the absolute ability to be competent on the court and competent in the legal profession.

This should be just the beginning of a new era and not 200 years or 300 years before we have another woman on the Supreme Court. There are indeed many women qualified to serve in this position. Sandra O'Connor demonstrated that as well as demonstrating her own credibility for this position.

The Senate Judiciary Committee, as we all know, held 3 days of hearings which were conducted in an outstanding manner by the chairman, Senator THURMOND, which comprehensively covered Judge O'Connor's technical qualifications as well as her personal and judicial philosophy. These hearings reveal an individual who is capable of dealing with the intricate, complex issues that will face her and the other members of the Supreme Court in years to come.

Judge O'Connor will bring to the court a unique combination of experience as a legislator, a Government lawyer who served as assistant attorney general for the State of Arizona, a trial judge and an appellate judge. The quality and breadth of her legal background evidence her outstanding credentials for this appointment. As an honor graduate from Stanford University Law School her entire legal career has been a progression of distinguished records of achievements and accomplishments, which I think set very well and will hold her in great stead to serve on the Court.

As a legislator, Judge O'Connor served as majority leader of the Arizona State Senate and as chairman of one of the major committees of that body. She has received numerous awards and honors for her work as an active, private citizen, and has been held in high esteem by members of the Arizona State bar who have tried cases before her while she was serving as a judge.

The mix of these experiences has created in Judge O'Connor a special sensitivity, a sensitivity demonstrated in her thoughtful responses to the Judiciary Committee's question, the nature of American Government to the delicate interrelationship between its separate branches constitute the hallmark of democracy.

Judge O'Connor throughout the grueling confirmation hearings has been shown to be a woman of great depth and intelligence. She acted as a true professional. Questions presented by the Judiciary Committee were intricate and comprehensive. They involved issues of law and of her own knowledge of Supreme Court decisions and her studies of the Constitution. She answered these questions in such a manner so as to show her depth of thought and comprehension of the issues. She answered the questions fully and completely. Judge O'Connor told the Judiciary Committee her full views on judicial activism, stare decisis, and her personal views on many current issues. Questions pertaining to specific U.S. Supreme Court decisions were beyond the scope, in my opinion, of permissible questions, or at least the questions that should be answered specifically. To ask a potential Supreme Court Justice how he or she would vote on a particular issue which may come before the Court is the equivalent of asking that individual to prejudge the matter or to morally commit oneself to a particular position.

Whether or not it was pertaining to reversal of a previously decided case by the Court or a hypothetical set of circumstances or facts that would very likely present itself to a court in the future I think is unquestionably the wrong type of questions to expect a nominee, anyone—Judge O'Connor or otherwise—to answer.

Such a statement, if the nominee were to give a definite opinion, might disqualify the nominee for sitting and hearing such cases in the future. This end result is contrary to the sworn duty of a Justice to decide cases that come before the Court. In light of this basic duty, I feel that I must state my view that Judge O'Connor's statements and answers were full and complete responses to questions posed by members of the Senate Judiciary Committee.

I wish to thank the chairman for his thoughtfulness and that of the members, both Republicans and Democrats, who did indeed pose hard questions to Judge O'Connor but treated her with respect. What we are dealing with today is not a question of an individual's political ideology, but the question of an individual's competence and professionalism, integrity, judicial temperament, and commitment to have equal justice under the law, words that are said often but do we really think about equal justice under the law? That is what we as a country, that is what we as the Senate, that is what the President as the Chief Executive Officer of this land, are asking from Judge O'Connor, equal justice under the law.

I submit that we will get just that. The hearings and the statements made today by our colleagues demonstrate the confidence that Members of this body have in Judge O'Connor.

Our Constitution provides the framework of Government spanning years, decades, centuries. The retention of this framework depends to a great extent on the quality of judicial construction. As highly emotional and important as the issues of today are, and there are many that fit that particular description, there will be totally unpredictable matters that could confront the Supreme Court in future years. It takes maturity, it takes real competence to address those with that equal justice under the law always in the forefront.

It is our role to confirm a Justice who has the intelligence, training, and judgment to span through this period of time.

I am confident that Judge Sandra O'Connor will win full Senate confirmation, and I am hopeful that it will be a unanimous vote. I am equally confident that this Nation's first woman Justice, an Arizonan, will have a long and distinguished career on the Bench.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, with great pleasure, I take the floor today as the Senate prepares to exercise its constitutional function of giving its consent to President Reagan's appointment of Judge Sandra Day O'Connor to fill the Supreme Court vacancy created by the retirement of Justice Potter Stewart. As we undertake this vital task, therefore, we should pause to recall the reasons that the "framers" split the nomination process for Supreme Court judges between the executive and legislative branches. The framers understood the importance of the Supreme Court to the new Republic. Standing before the First Congress to propose that a bill of rights be added to the Constitution, James Madison stated beautifully the purpose of the Nation's Highest Court:

[The Court] is to be an impenetrable bulwark against every assumption of power in the legislative or executive . . . to resist every encroachment upon rights expressly stipulated for in the constitution by the declaration of rights. 1 Annals of Cong. 457.

The Supreme Court, therefore, holds the lofty responsibility of policing the bounds drawn by the framers of the Constitution. But the framers also understood that even the words of the Constitution could be slippery. They had suffered indignities at the hands of the King s magistrates who often changed the meaning of the law to fit the circumstances rather than upholding an unchanging legal standard. Recognizing that the integrity of the Constitution itself was at stake, therefore, the framers specifically provided for both the President and the Senate to participate in selecting Supreme Court judges. If the enforcement of the Constitution was to be committed to the hands of justices, the framers wanted to be sure, in the words of Alexander Hamilton, that they designed "the plan best calculated * * * to promote a judicious choice of men for filling such offices." Federalist No. 76. Their "advice and consent" plan thus provided a double check on nominations to insure that the Constitution and such words as "due process' or "necessary and proper" means what the authors intended and the people ratified not simply what five appointees might cumulatively concoct.

In light of this background, the most important qualities for a Justice of the Supreme Court is a keen comprehension of the limits drawn by the drafters of the Constitution and an unshakable resolve to those limits honored. With full awareness of the significance of this recommendation for the future of American jurisprudence, I can confidently say that these are qualities possessed by Judge Sandara O'Connor.

Mr. President, throughout the grueling inquiry into her judicial philosophy and personal background, Judge O'Connor consistently displayed a remarkable poise under pressure and a deep grasp of the intent of the authors of our Nation's foundational document. She brings to the Court an ideal set of credentials to carry out the mission described by Madison. Having served in all three branches—executive, legislative, and judicial—of State government, Judge O'Connor understands the checks and balances between them that prevents any single function of Government from overpowering the others. Moreover, her extensive experience with State government gives her an acute appreciation for the traditional principles of dual federalism which protect our individual rights against centralized governance.

In her excellent article in the William and Mary Law Review (vol. 22:801), Judge O'Connor constructed a cogent case for the principle of federalism within the judiciary:

State courts will undoubtedly continue in the future to litigate federal constitutional questions. State judges in assuming office take an oath to support the federal as well as the state constitution. State judges do in fact rise to the occasion when given the responsibility and opportunity to do so. It is a step in the right direction to defer to state courts and give finality to their judgments on federal constitutional questions where a full and fair adjudication has been given in state court. (At page 814.)

During the hearing, Judge O'Connor was often questioned about her high regard for the ability of State courts to uphold the Constitution and enforce Federal laws. Several members of the Judiciary Committee tried tirelessly to induce her to assign to the Federal courts a preeminent role in adjudication of Federal or constitutional rights. She would not retreat from her full confidence in our Nation's bifurcated judicial system and the ability of State courts. Indeed, her defense of this principle reminded me of a similar defense by Alexander Hamilton to the objections of the anti-Federalists:

There is not a syllable in the plan (the Constitution) under consideration on which directly empowers the national courts to construe the laws according to the spirit of the Constitution, or which gives them any greater latitude in this respect than may be claimed by the courts of every state. Federalist No. 81.

Judge O'Connor's adherence to this principle is just one example of her tenacity in defense of the Cons itution as it was drafted by the framers.

On another occasion during the hearing, Judge O'Connor was assailed for stating that the exclusionary rule is a judge-made rule of evidence that could be altered without doing violence to the Constitution. Several members of the Judiciary Committee questioned Judge O'Connor extensively, seeking to induce her to waver on this principle. Again she held her ground. To learn the soundness of Judge O'Connor's reading of the Constitution, we can look at what the Supreme Court itself has said. Justice Black stated in *Wolf* v. *Colorado*, 388 U.S. 25 (1969), that:

The Federal exclusionary rule is not a command of the fourth amendment but is a judicially created rule of evidence which Congress might negate.

Again, in *Linkletter* v. *Walker*, 381 U.S. 618 (1965), Justice Black iterated:

The rule is not a right or privilege accorded to defendants charged with crime but is a sort of punishment against officers in order to keep them from depriving people of their constitutional rights. In passing I would say that if that is the sole purpose, reason, object, and effect of the rule, the court's action in adopting it sounds more like law-making than construing the Constitution.

Indeed, more recently, the Chief Justice has said:

Reasonable and effective substitutes can be formulated if Congress would take the lead, as it did for example in 1946 in the Federal Tort Claims Act. I see no insurmountable obstacle to the elimination of the Suppression Doctrine if Congress would provide some meaningful and effective remedy against unlawful conduct by government officials. *Bivens* 403 U.S. 388 (1971).

Mr. President, Judge O'Connor was on sound footing when she assessed the exclusionary rule. More important than her effective defense of proper constitutional principles, however, was her courage to defend those principles with her own nomination on the line. This is the brand of bravery we need on the Supreme Court.

I could cite a good many more instances of Judge O'Connor both understanding sound constitutional doctrines and resisting the contentions of those who would have driven her away from those doctrines. For example, Judge O'Connor articulated well the reasons Congress must restructure Federal civil relief under 42 U.S.C. 1983:

In view of the great caseload increase in the Federal courts and the expressed desire of the Reagan administration to hold down the Federal budget, one would think that congressional action might be taken to limit the use of 1983. It could be accomplished either directly, or indirectly by limiting or disallowing recovery of attorney's fees. 22 William and Mary 801,810.

She also enunciated well the powers conferred by article III upon the Congress to regulate Federal court jurisdiction:

The jurisdiction of state courts to decide federal constitutional questions cannot be removed by congressional action, whereas the federal court jurisdiction can be shaped or removed by Congress. Id. at 815.

Mr. President, Judge O'Connor's performance before the Judiciary Committee and her rich experience in government both assure me that she understands the Constitution and possesses sufficient courage to carry out its mandate. At the outset of my remarks, I noted that James Madison characterized the Court as a "bulwark against every assumption of power * * * resisting every encroachment upon rights." The strength of the Court as a bulwark depends on the strength of the nine individuals who comprise it. Judge O'Connor, in my opinion should prove to be not simply a "bulwark" but the "impenetrable bulwark" described by Madison. She will be the kind of Supreme Court Justice the Framers of the Constitution had in mind when they drafted article III. I am honored to exercise my constitutional duty as a Member of the Senate in giving my wholehearted consent to President Reagan's appointment of Judge Sandra Day O'Connor to the Supreme Court of the United States of America.

Finally, Mr. President, I have to add that I personally am highly pleased that President Reagan, in his first Supreme Court nomination, knowing that he may have some more in the future, has opted to choose a woman to go on the Supreme Court of the United States. This is a decision that I think is long overdue. I think that we should have had a woman on the Court much before now. There are many great women jurists, women legislators, women attorneys, and women throughout other walks of life, with legal backgrounds, who could serve on the U.S. Supreme Court and who would add balance to the Court. That balance would give at least some solace and some comfort to women all over this country, who feel as though their needs, their feelings, their rights have not been adequately spoken for, debated, or even cared for.

I believe that Judge O'Connor will represent women's rights well. I think that her writings reflect that, her experience as a legislator reflects that. I think her experiences in the executive branch of the Arizona government reflect that well.

I also suspect that she is going to irritate all of us from time to time, as all Supreme Court Justices do. There is no way that anybody nominated to the Supreme Court of the United States is going to please everybody all the time, and there is no way that Judge O'Connor, as Justice O'Connor, will please everybody all the time.

All I can say is that, from her testimony before us, I was really pleased that she is motivated in the ways she is, that she is a student of the Constitution, that she is a strict constructionist, and that she is going to stand for the principles that I believe have made the Supreme Court the great institution it really is in our lives.

I hope that 20 or 30 years from now, perhaps longer, when Justice O'Connor steps down from the bench, the good things we have said about her this day will have been fulfilled and will have been principles of history and matters of history that all of us can look back upon with a great deal of happiness and with gratitude that she was chosen by this great President, who has lived up to another of his campaign promises.

I wholeheartedly support her, as I have from the beginning. I look forward to reading her decisions, and I expect them to be articulate and well-written and well thought out, as I believe her answers were when she appeared before the Judiciary Committee on her own behalf.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THURMOND. 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. THURMOND. Mr. President, I ask unanimous consent that quorum calls from now on not be charged to either side.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. 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. GRASSLEY. Mr. President, I am a member of the Judiciary Committee and from that standpoint have been very much involved in considering the nomination of Sandra O'Connor to the Supreme Court. That started with my answers to press questions about how I considered her nomination at the time the President announced it, through the time that we eventually considered the nomination and voted on it last week.

During that period I had an opportunity to visit with Judge O Connor in my office for about 40 or 45 minutes. At the end of that meeting with her I had a press conference in which I was asked by members of the media how I would vote on Judge Sandra O'Connor's nomination.

At that time I said I was not going to announce my vote because, in fact, I did not have my mind completely made up as to how I would vote, and that I would make that judgment based on the hearing record.

Throughout the August recess I had an opportunity to be questioned many times by my constituents as I traveled the State of Iowa on how I was going to vote on this nomination. I gave the same answers to my constituents who asked the question as I did to the media in my press conference back in July, that I would make my final decision based upon the record.

We then had 3 days of hearings and a record of those 3 days to review, and even at that point, even though I probably was more sure than ever before as to how I would vote as a result of our personal conversations back and forth on the record not only between Judge O'Connor and myself, but as I listened to every other member of the Senate Judiciary Committee ask her questions and get her answers, and as I listened to her responses to all of us, I said at the end of those 3 days of hearings, when asked by the media how I would vote on this nomination, that I was going to wait and review the record in the same way that I did as I answered the same question in July.

The weekend before last I had occasion to review that record. As you all know, I cast my affirmative vote in support of Judge O'Connor during last week's meeting.

During that review of the record, I have undergone an evolutionary process since the middle of July when I first visited with her, and it has been such a process by which the end result is that it has been very easy for me to cast this positive vote for Judge O'Connor.

I do it enthusiastically and without reservation. If there is reservation in anybody's mind it is probably only because of how the confirmation process is used in the Senate. As I understand it, it is traditional and historical that nominees for the various courts do not answer specific questions to any great extent, particularly as they relate to cases that might come before the Supreme Court.

I had some feelings, and still do, that part of the hearing process could involve how nominees might react to cases that have previously been decided by the Supreme Court. I would not expect any nominee to state how that nominee would decide a case that would come before the Court in the future.

However if nominees would comment on previous cases, it might be helpful in obtaining more thorough knowledge about how they feel. Even though she did not go to the depth that some of us, particularly the new members of the committee, would have liked her to have gone in expressing opinions on previous cases, I can say this: everything I heard in her answers regardless of the subject, and I include abortion, and I would add that I liked the answers she gave. That I basically agree with those answers and it was on this record, made by all the

members of the committee as well as other parties who testified in support of her, that I made a final decision to support Judge O'Connor.

In the process of making this decision, three of us, the Senator from North Carolina, the Senator from Alabama and I, put in the record our feelings of how we felt that the nomination procedure ought to be looked at by the committee and by the Senate to see if there is some way, to find out if there is some way, we can legitimately expect more definitive answers to our questions, again not on cases that might come before the Supreme Court but on cases that have already been adjudicated by the courts and an opinion rendered.

We say that only in the sense that we think it is legitimate for Members of the Senate to have as much knowledge as we can about nominees to the Court and, particularly, in the case of nominees like Judge O'Connor who move up from the State courts, where they have not had a record of their feelings on Federal constitutional issues. I think it is all the more important in those situations.

On the other hand, the absence of that to this point does not in any way detract from my support for Judge O'Connor as I think in many respects though we do not have an extensive record on this to judge her as compared to nominees who have moved up from lower Federal courts, she does have much to offer the Supreme Court that other nominees have not had.

One of those we dwelt upon to a considerable extent is the fact that she previously was a member of a legislative body, the State legislature of Arizona. I think it is great that the President has picked someone who can bring the perspective of a legislator to the Supreme Court and, hopefully, this will enhance respect by the Supreme Court of legislative intent, particularly the intent of State legislative bodies, both to enhance the division of powers, the States and their legitimate role in our Federal system of Government, and also to enhance the separation of powers so that the legislative activity of this Congress will be respected to a greater extent by the Supreme Court.

She brings that background to the Supreme Court. She also brings the background of a State judge to the Supreme Court, and I think again this will enhance respect by the Supreme Court for previous work done by the State courts and, hopefully, will enhance the State courts rule in interpreting the law.

I support Judge O'Connor because I believe she has basic conservative philosophies, both judicial and political.

During the extensive Judiciary Committee hearings she stated her opposition to forced busing and support of the death penalty. Those positions are very satisfying to those of us on the Judiciary Committee and in the Congress as a whole who are looking to President Reagan to give a new direction to the Supreme Court so that we will have a Court that will exercise judicial self-restraint.

It is this sort of person who is going to bring judicial restraint to the Supreme Court and an example of the people whom the President might appoint to the Federal judiciary in future years.

And if it is—and I hope it is—then, I am all the more satisfied that President Reagan is headed in the right direction.

It is because Judge O'Connor basically has conservative views, that I support her. I do not think that there was much about her basic philosophy that I found to disagree with in the 2 months since she has been nominated. I feel more satisfied now as time has passed and I believe that every favorable thought that I had about her conservative philosophy has been reinforced as a result of the hearing process.

I would say that the reinforcement of my preconceptions about her came from those who have known her during her tenure as a member of the Arizona State Legislature. I was impressed by the testimony of Republican and Democrat State legislators who have known her, who said that she was a good person. an active person, a person who worked hard. I think these are qualities that we want in a judge.

Also, in regard to the abortion issue, there was a State representative by the name of Tony West, who was present and testified, who admitted, even though he did not specifically ask her how she might vote upon that issue before the courts, he said very specifically that he would not have been here in Washington that day supporting her unless he thought that she was right on that issue. Implicitly, I read that to mean that she was pro-life on the subject of abortion.

In fact, I have been considering my years in the Iowa Legislature, a small State legislature—and I assume that Arizona can be classified as a small State legislature—and I have been considering, too, as I remember my time there, the camaraderie that grows up among legislators, and that camaraderie transcends party lines more in State legislatures than even in the Congress of the United States. I think as you get to know your colleagues in the State legislature, that is a better record of basic instincts of a person than anything we can get out of the hearing process we had before the Judiciary Committee.

So I want to be supportive of her nomination because I feel that we had at least three members of the legislature there who, on many issues, maybe would not agree with her but on some basic ones that concerned us, they expressed their approval of her.

Finally, let me say to the Senate as a body that I want to be supportive of the President in this nomination—and let me say not blindly supportive, but I am supportive. I had some doubts about that, as I said previously in my comments today. I pursued, in my questioning of Judge O'Connor, how her conversations with the President went when she visited with him. I asked if they had discussed policy questions. She refused to answer that, and I can understand that. A conversation with the President ought to be just between the two people involved.

However, I had an opportunity last week at the White House to talk to the President about this nomination. I did not go there with the purpose of talking about this; it was on another issue. I, too, do not think that I should divulge anything that the President has said to me privately.

But I am satisfied that the President did consider the very same weighty issues that we as committee members considered and he feels that she is going to respond the way he would want his nominee to respond on these issues, but, more importantly, the President finished his statement to me, not about just Judge O'Connor, but about his own feelings on the subject of abortion.

That was the first conversation I ever had with the President specifically on that subject, and I have discussed many policy questions with him both before and after the election, and I am satisfied for the first time in my own mind that the President feels as I do on the subject of abortion.

I only say these things, in closing, to whatever extent they might satisfy some doubts the leaders of the prolife forces in this country may have that the President is not honoring statements he made in the election by his performance as President. I want to satisfy those people—at least I am satisfied—that his performance on this question, specifically as it regards the nomination of Judge O'Connor, is commensurate with his rhetoric.

Mr. SYMMS. Will the Senator yield?

Mr. GRASSLEY. I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. RUDMAN). Does the Senator from South Carolina yield time?

Mr. THURMOND. How much time does the Senator desire?

Mr. SYMMS. One minute.

Mr. THURMOND. Mr. President, I yield to the able Senator from Idaho.

Mr. SYMMS. Mr. President, I thank the distinguished chairman of the Judiciary Committee for yielding to me.

I would like to compliment my friend, the Senator from Iowa, for his very thoughtful consideration of this. I had the opportunity to work with the Senator from Iowa in the House and have known him to be a very careful and thorough member of committees, having served on committees with him.

I am not a member of the Judiciary Committee, but I would like to compliment Senator THURMOND and his entire committee for the very careful approach that they took in working through what I consider to be a very important and responsible part of our responsibilities as Members of the Senate, to advise and consent to the President's nomination to the Supreme Court.

I am supporting President Reagan's nominee for the Supreme Court, Sandra O'Connor.

During Judge O'Connor's confirmation hearings she proved herself to be a very capable, articulate, intelligent individual with a precise legal mind. With her political background as a former legislator in Arizona and her substantial

knowledge of law she will bring to the highest court in this country a good balance of experience.

Judge O'Connor was questioned extensively by members of the Judiciary Committee on a wide variety of topics. For the most part she was forthright in her answers although she avoided some lines of questioning expressing a desire not to specifically commit herself on legal questions she might in the future be called to rule upon as a member of the Court.

I was, however, very pleased that she confirmed a belief that the Federal judicial system should have a limited role in American life. It appears that Mrs. O'Connor will help steer the Court toward its traditional role of interpreting the laws, rather than making them.

President Reagan made a commitment a long time ago to choose Supreme Court justices on the basis of the whole broad philosophy they would bring to the bench and appoint men and women to the Court who respect the values and morals of the American majority. I believe the President met that commitment by choosing Judge O'Connor for this very important post in the judicial branch of our Government.

On balance it appears she has the potential to be a very fine associate justice and I am confident that at some future time we will be able to look back on this appointment as one of the best in the proud history of the Supreme Court.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, we have an abundance of time on this side of the aisle. If the Senator from Idaho would like more time, I would be delighted to yield to him.

Mr. SYMMS. I have completed my statement.

Mr. THURMOND. I yield to the Senator from Connecticut.

Mr. BIDEN. I would be happy to yield on our time. I think the Senator from South Carolina is running low on his time.

Mr. WEICKER. Will the Senator yield me 5 minutes?

Mr. BIDEN. Yes, I yield 5 minutes to the Senator from Connecticut.

Mr. WEICKER. I thank the distinguished Senator from Delaware.

Mr. President, I rise in enthusiastic support of Judge Sandra Day O'Connor's confirmation as Supreme Court Justice. The President has made an excellent choice for our highest court. As someone personally acquainted with Mrs. O'Connor, let me assure my colleagues and the American people that she will grace the Court with her intelligence and integrity.

During her years in the legislature and on the bench, she has exhibited an astute legal mind and a rigorous conscience. And if anyone had any doubts about her political savvy, those were put to rest during her recent appearances on Capitol Hill.

In one-on-one meetings with Members of Congress and long, searching sessions before a Senate committee, Mrs. O'Connor remained unflappably calm and forthcoming in her responses.

Some complained that Mrs. O'Connor should not have to be subjected to such grueling interrogation. But I disagree. Now is the time for Congress to poke and pry into Judge O'Connor's politics. Now is the time for the Congress to address the proper role of the courts as well as the improper role. Now and not next month or next year when Mrs. O'Connor takes a stand on an issue that some Members of Congress disagree with.

Once this nominee is confirmed and takes her seat on this Nation's highest court, those kinds of questions will be out of order. Once she is confirmed, she must be independent, completely and utterly free of interference from anybody, and that includes Members of Congress as well as the President of the United States. That is what our Constitution calls for. That is what is meant by the checks and balances of a tripartite system of government.

We in the Senate will not have the right to look over her shoulder as she writes an opinion and tell her, "No, Justice O'Connor, you can't reach that conclusion or prescribe that remedy. You must support school prayer but not school busing. You must ban abortion but allow capital punishment." We cannot decide that for her. From here on she is on her own.

Is there anyone here who really wants 100 politicians to decide the quality of justice he or she will receive when their day in court comes around? Do any of us want our Supreme Court counting votes on the Senate floor when it decides an issue affecting our civil rights? The answer is no. We all deserve better than that.

In Mrs. O'Connor we have a top-notch nominee. Let us confirm her and then stay out of the way and let her do her job. She will do it exceedingly well.

Today marks our swing at the pitch. And that is proper. What will always be inappropriate is to use the legislative bat as a subsequent club over the heads of the judicial and executive branches.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I suggest the absence of a quorum and I ask unanimous consent that the time not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. THURMOND. 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. THURMOND. Mr. President, I yield to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, President Reagan has nominated Sandra Day O'Connor to be an Associate Justice of the Supreme Court. When confirmed she will be the first woman to serve on the Court in its history.

I have followed the controversy surrounding her nomination with great interest, a controversy centering on Judge O'Connor's views about abortion. Her record as a legislator in the State Senate of Arizona has been looked at in the minutest detail, and indeed much of Judge O'Connor's testimony before the Judiciary Committee last week was devoted to yet another reexamination of her record and her present opinions on that subject.

Let me say that I have been concerned with the question of abortion for a long time. Throughout the debate on Federal funding for abortion, I have continually supported the strictest language possible, language that would restrict the use of Federal funds only to cases where the mother's life is endangered. My own commitment to human life and my opposition to abortion are fundamental.

Nonetheless, I firmly believe that the preoccupation with her personal views displayed by opponents of Judge O'Connor's confirmation is misplaced. They are asking the wrong question. In my opinion, one's personal views on matters of public policy have little or no bearing on how one comprehends the duties of the judiciary under the Constitution.

We are not electing a legislator when the Senate confirms a man or woman for a seat on the Supreme Court. We are naming a justice. The true question to be addressed and answered regards Judge O'Connor's view of the Court and the role of the judiciary in the governmental system. Does she view a justice as a legislator and the Supreme Court as an institution that creates public policy? Or is the Court charged with determining what the law is and with enforcing the law enacted by the legislative branch.

Judge O'Connor left the Senate in no doubt about her answer to this question. After remarking on her experience as a State legislator and State court judge, she said:

> Those experiences have strengthened my view that the proper role of the Judiciary is one of interpreting and applying the law, not making it.

She repeated this basic belief time and again over 3 days of hearings before the Judiciary Committee.

President Reagan was outspoken in his campaign for the Presidency about his desire to stop overreaching by the Supreme Court. I wholeheartedly agree with him. And yet the position of Judge O'Connor's opponents seems to be that a nominee's personal preferences on issues such as abortion are not only relevant, but that those preferences should be pressed on the Court.

My view and the President's view, on the other hand, is that the Court is not the philosophical arbiter of Government policy. Our view is that the legislatures, both State and Federal, properly make policy decisions. The Court is to interpret the law and to apply it to different sets of facts.

Its task is to do justice, to fill in, as Justice Cardozo said, the interstices of the law. President Reagan and I are against judicial activism, whether it is activism of the right or the left. This is a conservative view of the Court and its

function that I am commending to my colleagues. The opponents of Judge O'Connor are not judicial conservatives, they are judicial activists. They seek to work their own will on the country through unelected judges.

It is easy to understand the unhappiness felt by the opponents of abortion, of whom I am one, with recent Supreme Court rulings. In many cases, most notably Roe against Wade in 1973, the Court has substituted its judgment on questions of domestic relations and public health for the judgment of State legislatures.

It is this practice of the Supreme Court and the lower Federal courts that we in the Senate ought to be working to stop. I believe we will be taking an important step in that direction by confirming Sandra O'Connor.

Judge O'Connor was asked her opinion of Roe against Wade during her confirmation hearings. She properly declined to comment directly on what she would do in any future abortion decision. But I conclude from what she did say about the role of the Court that she would have dissented in that decision.

Roe against Wade, as is well known, held that a woman's freedom to decide to have an abortion is a "fundamental right" protected by the Constitution against State interference. A State's right to proscribe or at least regulate abortions for the health of the mother or because of its interest in protecting the unborn child was judged secondary to a woman's right of privacy.

This right of privacy was expounded by the Court in Griswold against Connecticut in 1965.

While it is not clear from the various opinions in that case precisely what the constitutional basis of this right to privacy is, the effect of its creation and subsequent application in Roe against Wade was to remove from the State legislators decisions previously made by elected representatives.

In Planned Parenthood against Danforth I sought to uphold Missouri's ability to pass legislation preserving and strengthening marriage, an institution which an earlier court called "the foundation of the family and society, without which there would be neither civilization nor progress."

Missouri and I lost our battle, and the unhappiness over this and other abortion decisions explains why Judge O'Connor's nomination faces such an outcry from opponents to abortion.

And yet, to repeat, I think the outcry in this instance is misplaced. Judge O'Connor not only can, but should be part of the solution to a problem that includes the abortion decisions but goes beyond them.

That problem is a Federal judiciary that too often is willing to substitute its will for that of the legislative branch of State and Federal governments.

What we are concerned with is a judiciary that sometimes acts as though it is superior to the legislative power. This is the abuse that we need to stop, one which reaches to the heart of our entire system of government, one that challenges the very operation of a limited government such as ours.

The three branches of our Government are bounded by the Constitution, that document that at once makes possible and protects our liberty and prosperity. The three branches were designed as coequals and as coequals should not seek to control or undermine each other.

This difficulty with the judiciary is a perennial one. As long ago as the 1830's, de Tocqueville, that astute French observer of our national life, remarked that:

> Hardly any question arises in the United States that is not resolved sooner or later into a judicial question.

But, to borrow from the clear eye of Alexander Bickel, to say that the Supreme Court touches many aspects of American life does not mean that it should govern all that it touches. The work of interpeting the law, and ultimately the power to declare unconstitutional a statute passed by the Congress and signed by the President, is so important that the independence of life tenure is granted to the Court's members.

With this freedom from the ordinary demands of political life in this republic, the Court has the responsibility to exercise its power with the utmost discretion and respect for its coequal representative body. To do otherwise the Court risks losing the faith of the American people and their representatives in this Congress.

A substantial loss of faith will inevitably result in an attempt permanently to shackle the Court, either by stripping it of jurisdiction to hear a wide range of cases or by a constitutional amendment that would forever change its nature. There are already such efforts afoot in the 97th Congress.

I have faith after reviewing what Judge O'Connor has said and done in her career that she understands these things. She will not don her robes in order to legislate for partisans of any cause, left or right.

It is the expectation of this Senator that Judge O'Connor will join the Highest Court of this land dedicated to the final responsibility of insuring that our constitutional doctrines will be continuously honored.

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

Mr. BIDEN. Will the Senator withhold that. Mr. President?

Mr. THURMOND. I withhold it, Mr. President.

Mr. BIDEN. Mr. President, I have not taken the occasion this morning to speak about this nomination. Due to the fact that none of my colleagues are on the floor seeking to be heard at this time, I shall now speak about the nomination, if I may.

Mr. President, I, as did my colleague and chairman (Mr. THURMOND), sat through the hearings on the confirmation of Sandra Day O'Connor's nomination. I listened to Judge O'Connor expound on a series of issues and subjects; she described her perspective on the Constitution, the role of the Court generally, and her role, as she saw it, were she to be confirmed on that Court.

I was personally very satisfied with most, if not all, of the answers that Judge O'Connor gave. The strange thing, Mr. President, was that I noticed all of my colleagues were basically satisfied; this worried me.

I looked around on that committee and I found people with whom I have basic philosophic disagreements apparently being as satisfied as I was with Judge O'Connor's answers. And just as, as I am sure, that gave them cause to be concerned, it gave me cause to be concerned.

I am not being facetious when I say that, Mr. President, because if Senator EAST, for example, and Senator BIDEN could agree on what the qualifications of a judge could be, then either we did not understand one another's position or one of the two of us was misreading what the judge had to say. As I began to contemplate what that meant, all of a sudden a thought occurred to me. That same thought was prompted by the speeches made here this morning.

What dawned on me was that no one, Mr. President, in the approximately 200-year history of the Court, has been accurately able to predict what a Justice of the Supreme Court would be like prior to that justice's being appointed to the Supreme Court. It is somewhat of a futile exercise for us to stand on the floor of the Senate, with all due respect to my colleagues on both sides of the aisle, and assure our fellow Senators what this judge is going to be like.

It reminds me a little bit of a kid walking through a graveyard. When I walked through a graveyard to make a shortcut through to get up to my house, I used always to whistle. I used to whistle in the graveyard. It was more to assure myself that everything was all right than anything else. I was not whistling for the dead. I knew I did not believe in ghosts, I knew I was not frightened, but I wanted to let myself know aloud that I was not.

There is a great deal of whistling in the graveyard going on here on the floor of the Senate today. There is a huge amount of whistling in the graveyard about what kind of justice Judge O'Connor will be.

It would be my guess, if I had to guess, that she will be a fairly moderate justice. I do not think she will be significantly different from the man she is replacing. I think, in fact, she will probably be what my friends on the right like to think of as a strict constructionist. But every time we asked her that, she told us how important stare decisis is. She said, "Yes, I do not think judges should make the law, I think they should interpret it. Stare decisis is important." But everybody heard the first part of her comment, not the second part.

Mr. President, what my friends on the right are looking for these days is not a judge who believes strongly in stare decisis—because, a judge who does that relies on precedents, the cases the Supreme Court has already decided.

The Supreme Court has decided, in my humble opinion as a layman, incorrectly in the Roe case, but the fact of the mat-

ter is that the Court has made a decision with regard to abortion. The Court has made a decision with regard to the rights of women. The Court has made a number of decisions with regard to civil liberties and the first amendment. And here we have a judge who says, "I am a conservative; ergo, I will follow precedent."

What is happening on this floor is a strange juxtaposition of what the traditional roles have been and what you seek in a Supreme Court Justice. Really, what the liberals like HOWARD METZENBAUM are looking for is a strict constructionist. He does not even know it, I think. He wants somebody who is going to make sure that they do not overturn the decisions of the Warren Court. That is a strict constructionist today, in the way Judge O'Connor would always use the phrase.

Really, what my friend, Senator HELMS, and my other friends on the other side of the aisle—and some on this side of the aisle—are looking for is an activist on the Court. If Judge O'Connor is not an activist, she has problems, because she is not going to be overturning the decisions that they—and I, on occasion—sometimes find odious, obnoxious, or totally reprehensible.

I guess what I am trying to say, Mr. President, is that I solved the dilemma for myself of why I could sit there with Senator EAST or Senator DENTON and others with whom I have basic philosophic differences and we could both think this judge was going to be the kind of Justice we would appoint or we would be happy with if we had the right to determine who is going to be on the Court. It is because we have all confused, in my humble opinion, what we are looking for. Strict construction today, adherence to precedent today, may be the opposite of what intellectual conservatives would want.

Conversely, an activist justice may be the last thing in the world people like me would want, because I believe that the Court was right heretofore on civil liberties, has been correct on civil rights.

So, Mr. President, I caution my colleagues not to tie themselves in too tightly or weave such a closely knit web for the electorate in defining what this judge is going to be like. We are not seers; it is not our role to determine what she is going to be like. And this gets me to the basic thrust of what I think we should consider in nominees and why I am so ardently in support of Sandra Day O'Connor. That is that she possesses the qualifications to be a Supreme Court Justice. Those qualifications, in my opinion, are, in fact, not what her philosophy is and not what we think she will be, but, first of all, whether or not she possesses the legal skills and capabilities, training, and background to understand, and, in fact, have some possibility of interpreting the Constitution of the United States of America.

In short, does she have a lot of gray matter? Is she very bright? Notwithstanding the now notorious comment of a former colleague of ours, mediocrity on the bench is not something we need. We need superior intellects. This is the most superior of courts, Mr. President, and she has a superior intellect.

The next thing I think we should look for in nominees to the Supreme Court—and I do not know whether we can tell, in a predictable circumstance—that is, whether or not she is someone of moral character. There is only one way that I know of to determine whether or not someone has a good moral character. Either you know the person personally for a long time and can attest to it—and I suspect 99 or 98 of us in this body do not know about Sandra Day O'Connor—or you look at the person's background and all phases of the record. Investigators on the minority side, as on the majority side, went into great detail in investigating Sandra Day O'Connor's background.

We not only had the FBI checking, which they would have done anyway; we had our own people. We interviewed everyone, from people with whom she went to school to those with whom she practiced law and those with whom she served in the legislature, those who knew her family, those who knew her as a child. Across the board, unequivocally, even those who did not like her personally—and there were not many of those—said the woman has a lot of character; she is honest; she is straight; she is an outstanding person.

It seems to me that when you get by those first two tests, there is only one, last test we should be looking at, and that is whether or not the person has judicial temperament to be on the Court. That is almost a term of art, but it is not something that is unimportant. You can be brilliant, you can have great moral character, you can be honest as the day is long and know the Constitution and American jurisprudence better than anyone else and still be a poor judge because you do not have a good judicial temperament—you tend to lose your temper, you tend to lose your objectivity, you are not open-minded enough to see all sides of a question. That is judicial temperament.

Sandra Day O'Connor, from observation and from looking at her record, notwithstanding the fact that she has not had a long record on the bench, has had a long record of being openminded, willing to listen to all sides of an issue, and able to make, in a judicious nature, if you will, a decision based on the facts as she knows them.

So, Mr. President, I do not know what more we can ask of a Justice of the U.S. Supreme Court. We had a President, a great one, Dwight D. Eisenhower, who appointed a man named Earl Warren because he thought Mr. Warren was a mainstream Republican. and President Eisenhower wanted to have a conservative on the Court. Earl Warren turned out to be not the most liberal justice on the Supreme Court—Justice Douglas and others were more liberal—but the most liberal leader of the Court that the Court has known in its 196-year history. Earl Warren revolutionized his court—civil rights. civil liberties. and a huge range of other issues in the U.S. legal spectrum.

At that time, we had a President who appointed a man he thought was of a different philosophy.

We have had Presidents who decided they wanted to appoint very liberal Justices to the Supreme Court. I do not believe anyone is going to accuse Justice White of being the most liberal member of the Court, but we had a famous and known conservative President of the United States appoint him to the Court.

At the risk of overstating the case, I believe these examples from our history should be enough caution to those of us on the floor who are willing, for our own political needs and/or because we think we know, to stop predicting what she is going to be and to underscore the need for us to have more objective criteria to determine whether or not someone should or should not be on the Supreme Court of the United States—that is, their intellectual capacity, their background and training, their normal character, and their judicial temperament.

We cannot be asked to effectively do much beyond that; for, if it were our task to apply a philosophic litmus test beyond that—which is not the constitutional responsibility of this body, in my opinion—it would be a task at which we would consistently fail, because there is no good way in which we can know.

So I believe we should caution the electorate that even if they want us to apply a litmus test, even if they think that is our role, it is not something we can do very well; because once a Justice dons that robe and walks into that sanctum across the way, we have no control, and that is how it should be—we have no control. They are a separate, independent, and equal branch of Government, and all bets are off.

It is unlike the situation with respect to Senators and Presidents, in which the electorate can demand of us what our philosophic background is or what we think about a particular issue; and if we turn out to be different from that which they perceive, as many of us have in the past, they do to us very rapidly what they have a right to do—take back the seat that they own, not we, and say, "We made a mistake. We thought we elected a liberal, and he turned out to be conservative. Goodby." Or, "We thought we elected a conservative, and he turned out to be liberal. Goodby."

You cannot do that with a Justice. So we should not kid our electorate; we should not tell them we know. We can tell them what our hopes are. We can tell them what are desires are.

I hope Sandra Day O'Connor understands the futility of busing and understands that there is, in fact, a logical, constitutional argument for its exclusion from the remedy package. I sincerely hope that. But I have to tell my constituency the truth when they ask me, as they did during the August recess, "Joe, are you for this woman? Are you sure she is against busing, as you are?" They look you straight in the eye. I say, "I don't know. I hope so." It is the same with an entire range of other issues.

Mr. President, the only thing I am sure of today, as I prepare to vote in favor of the nomination of Sandra Day O'Connor, is that she is a woman of competence, intellect, and high moral standing, and has a record of 25 or more years of public

service that reflects a judicial bearing, a judicial temperament.

That is all I can be expected to know. I happen to believe that that is all I have a right to ask. Consequently, when that test is met, I not only feel compelled but also feel very good about exercising my role, my duty in the advice and consent process, and saying, "Yes, Mr. President, the woman you picked should be on the Court; she meets the test, and I enthusiastically support her."

The reason I bothered to take this much time is not merely that no one else wanted to speak and that I had a lot of time remaining. Another reason why I have taken this much time is that this is not the first test we are going to have. We are going to be back up here again, I am sure—perhaps not in the next 3 years, but in the near future, if Father Time has his way, as he does with all of us, and we will be making a similar decision on one, two, three, or four more Justices—soon, in the near term. It will be at least in this decade.

So I hope we do not lock ourselves into boxes which, in order to be consistent with our duties as Senators, we will have to climb out of, to our embarrassment, when the next nominee comes before us.

I find it very interesting that some of my liberal friends say that my conservative friends had no right to ask about abortion. Yet, if the President were to send up the name of somebody who was against the Voting Rights Act, who had a background of having been associated with the Klan or some other group whose ideas were anathema to civil rights, all of a sudden the litmus test would start to be applied.

I have that litmus paper out on this side, and it will be turning pink quickly.

Everyone will be saying, "Oh, no." My friends on the other side of the aisle will be saying it should not be one issue.

So if we have a sense of what obligation is, I think we will do the country a better service, we will do ourselves a serious political service, a good service, and that is not make fools of ourselves, and we will be honest with the public and hope that Sandra Day O'Connor continues to display her intellectual excellence, her moral standing, and her judicial temperament, and even with that we cannot guarantee but we can hope.

With a little bit of help and prayer, and it is likely that past is prologue and her past is exemplary, she is a fine woman, she deserves to sit on the Supreme Court of the United States if the President wants her there. He has a right to make that choice, and we do not have a right to turn it down unless she does not meet one of those standards, in my humble opinion.

Unless one of my colleagues wishes me to yield time to him, I am delighted to yield on our time to the Senator from Washington State.

Mr. GORTON. Mr. President, I had not intended to speak on this nomination, but I should wish to have the record show that I find the statement of the Senator from Delaware to have been thoughtful, to have been very well thought out, to state the duty of the Members of the U.S. Senate in dealing with nominations for the Supreme Court of the United States, in a fair, appropriate, and effective fashion.

I should wish to thank him for that statement which will grace this record and simply to say that I agree with everything which I have heard him say during the course of this talk.

Mr. BIDEN. I thank the Senator from Washington.

Had I known he was going to say that I would have yielded to him much earlier.

Mr. President, 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. THURMOND. 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. THURMOND. Mr. President, I yield to the distinguished Senator from Mississippi.

Mr. COCHRAN. Mr. President, I thank the Senator from South Carolina, the distinguished chairman of the Judiciary Committee for yielding to me.

This is indeed an important day in the life of our Republic. The Senate will confirm today the nomination of Sandra O'Connor as Associate Justice of the Supreme Court.

Not only has President Reagan chosen a woman to sit on the highest court in our Government, he has selected a person with outstanding qualifications. She has served with distinction as a State court judge, as an able and diligent legislator, and throughout her life she has been a concerned, caring, active citizen, participating in community and civic activities, helping make her area of the United States a much better place for all of its residents.

She obviously is a person with a keen intellect, whose respect for knowledge and reason will help make her a respected member of the Court. Her allegiance to the law and its importance to our society will serve as a firm basis for making the hard decisions that will be hers to make.

There are many competing and sometimes conflicting interests in our Nation. One of the most important functions of the law, and responsibilities of our courts, is to balance fairly and equitably those legitimate interests that are pressing for recognition. In many cases the law is not well settled. Precedents may not be clearly defined. That is why we have a Supreme Court. It is to this tribunal that the hardest questions are put.

In my mind, the quality and correctness of opinions and decisions and hence the compatibility of the people with their government will depend on the conscientious application of reason and the rule of law by the justices of our highest Court.

I am comfortable in the expectation that Mrs. Justice O'Connor will discharge the important duties of this office in a manner that will make us all proud of the Court and of our system of justice.

In conclusion, Mr. President, I must admit that I am delighted the President has chosen a woman to fill this vacancy. There has been a long wait.

I remember when women were first permitted to serve as members of the jury in civil and criminal cases in our courts. A dramatic impact on trials occurred, as I remember, because of their dedication to their duties and sense of fairness and the seriousness with which most women jurors attempted to comply with the courts' instructions as to the law governing the case. The quality of justice improved greatly in my State as a result of that long overdue change.

I am convinced that the future competence of the Supreme Court is assured by the excellent decision of our President to nominate Sandra O'Connor. It will be my pleasure to vote in favor of her confirmation.

I thank the Senator from South Carolina.

Mr. MATHIAS. Mr. President, this is an historic day in our Nation's history. Today we, in the U.S Senate, will exercise our authority under article II, section II of the Constitution and grant our consent to the nomination of the first woman to the U.S. Supreme Court. It is also an historic day in our Nation's continuing effort to insure women full citizenship in this country.

I think it is important that we savor this moment, because it is a milestone in the history of the Court itself, and there have been only a few of these moments. We should pause and realize that we are at the end of one era and the beginning of another. Sixteen years ago, President Johnson nominated Thurgood Marshall to the Court. We celebrated that appointment too as one of historic dimension. President Johnson said on that occasion:

> I believe that it is the right thing to do, the right time to do it, the right man and the right place.

By changing one word, I think that those words of President Johnson would be just as appropriate today.

I think President Reagan has demonstrated great vision and a fine sense of history in nominating Judge O'Connor for the seat that Justice Potter Stewart has held with such distinction for such a long time. Much reference has been made to the fact that Judge O'Connor comes from the State courts. This may indeed turn out to be an asset by bringing that State perspective into the Supreme Court.

In so doing, she will follow in the footsteps of some of her most distinguished predecessors—Justice Cardozo, Justice Holmes, Justice Brennan—and she will serve in good tradition.

Shortly before Judge O'Connor was nominated, I had an opportunity to meet with her and to discuss at length a variety of legal issues. During that conversation, I got a clear sense that when she is confirmed she will come to the Court as an interpreter of the law rather than as one who originates law. This is a view with which I wholeheartedly concur. We continued our dialog on this issue—and many other relevant con-

stitutional issues, such as freedom of the press—when my colleagues on the Senate Judiciary Committee and I had the opportunity 2 weeks ago to query her on the whole gamut of legal and constitutional issues of concern to us today, we put her through a rigorous and grueling examination. She passed that test with distinction. I have no doubt that Judge O'Connor's nomination will receive the whole-hearted support of the U.S. Senate on this historic occasion.

Mr. HUMPHREY. Mr. President, I rise today in support of the nomination of Sandra O'Connor to the Supreme Court. I met privately with Mrs. O'Connor and also observed her hour after hour in the Judiciary Committee. I have concluded that she is highly qualified to be confirmed by the Senate and intend to vote in her favor.

Let me share with you my observations of Sandra O'Connor which led to my decision to vote for her confirmation as a Justice of the Supreme Court. When I met in my office privately with Mrs. O'Connor we discussed judicial philosophy. There is little doubt in my mind that Mrs. O'Connor will be a conservative Justice of the Supreme Court. For instance, when I pointed out to her that the Constitution is only what the Supreme Court says it is, she quickly interjected saying, "No, I don't agree. The Constitution is what the Constitution says it is." In the committee hearings, her responses along this line were much the same. She further indicated her understanding of the difference between legislating and judging. She stated quite simply that, "As a judge, it is not my function to develop public policy."

Mr. President, I am sure most of my colleagues would agree that it is the duty of each member of the Court to put aside personal preferences and reach decisions based purely on the facts, the law and the Constitution. I believe that Mrs. O'Connor's clearly apparent conservative judicial temperament, that is, her conservative view of the role of the courts, and her clear understanding of the separation of powers, especially between the judiciary and the legislature, indicate that she will make an excellent Justice of the Supreme Court.

MRS. SANDRA O'CONNOR WILL SERVE WELL ON THE U.S. SUPREME COURT

Mr. RANDOLPH. Mr. President, it was my privilege to testify in support of Mrs. Sandra O'Connor at her hearing before members of the Senate Judiciary Committee on Wednesday, September 9.

I wish to read to the Senate my statement before the committee:

Mr. Chairman, members of the committee, I appreciate your giving me the opportunity to be heard on this historic occasion.

I am not overstating the case when I refer to this hearing as historic. For the first time in the 205 years of our Republic's existence the Senate is called on to judge the qualifications of a nominee to the U.S. Supreme Court who is a woman. I regret very much that it has taken more than two centuries to acknowledge through this nomination that just as justice should be symbolically blindfolded when determining the facts, we should be oblivious to sex when selecting those who administer justice.

Mrs. Sandra O'Connor will appear before this committee today as the choice of our President, not solely because she is a woman, but because her record appears to qualify her to serve on our Nation's highest tribunal.

I would be naive to believe that if Mrs. O'Connor is confirmed as an Associate Justice of the Supreme Court, her sex will cease to be a factor in her decisions. She will be urged to make feminist rulings; she will be criticized if she makes them or if she resists this pressure.

I look forward to the time when Justices of the Supreme Court are selected and evaluated solely on their experience, their knowledge of the law, and their dedication to the United States as a nation governed by the laws the people impose on themselves.

Mr. Chairman, when Mrs. O'Connor becomes a member of the Supreme Court, we will have succeeded at long last in having a woman occupy virtually every high office our country has to offer. The most notable exception is the White House, and I anticipate the day when the highest office in our land is not exclusively a male preserve.

A breakthrough occurred during the week in March of 1933 in which I first became a Member of the House of Representatives. It was on March 4 of that year that President Franklin D. Roosevelt—the day he took office—broke another precedent by appointing Frances Perkins as the first female cabinet member. During the 12 years that Mrs. Perkins served as Secretary of Labor she repeatedly demonstrated the wisdom of President Roosevelt's action. Her distinguished career made it easier for the other women who have subsequently served in the Cabinet.

Mrs. O'Connor, I wish you well, not only during these hearings, and the Senate confirmation vote, but during the challenging years ahead. You will be called on to make many difficult decisions, but I am confident you will approach them with a spirit of fairness, justice, and equity.

Mr. DOMENICI. Mr. President, today I wish to join the myriad of Senators who have risen to support the nomination of Sandra Day O'Connor to the U.S. Supreme Court.

Throughout the confirmation process, Judge O'Connor has impressed me as a thoroughly qualified, even brilliantly prepared, candidate for the Supreme Court. Her testimony before the Senate Judiciary Committee showed her knowledge of previous Supreme Court decisions, even those most recent ones. She declined, and quite properly so, to state her own personal views on matters that may come before the Court.

I am convinced that Judge O'Connor is a strict constructionist, both of case law and statutory interpretation. She is deeply concerned about crime in this country and has been strict in punishing criminals. She is a strong defender of private property rights and believes in the sovereignty of the States.

During her confirmation hearings, Judge O'Connor showed great strength of character, a calm and reasonable manner, and a remarkable intelligence. Judge O'Connor said that she would approach cases with a view toward deciding them on narrow grounds and with proper judicial restraint. This should assure anyone concerned that she will not be going out of her way to make rulings that create sweeping changes in social policy.

I believe Judge O'Connor will be an excellent Supreme Court Justice, and that she is an outstanding choice as the first woman to serve on that great body. I predict that we will look back on this appointment as one of the major successes of the Presidency of Ronald Reagan. I congratulate him on this superior appointment and I will join with an overwhelming majority of this Senate to confirm her as Justice of the U.S. Supreme Court.

● Mr. DENTON. Mr. President, the Senate Judiciary Committee has, without dissent, recommended the confirmation of Mrs. Sandra Day O'Connor as an Associate Justice of the U.S. Supreme Court. Although I am new to the Senate, I am quite uncomfortable with the point of view so prevalent in the O'Connor hearings regarding the proper role of the committee in the confirmation process.

Primarily, I am troubled by the contention that a nominee need not discuss, endorse, or criticize specific Supreme Court decisions. The basis for this contention is that such discussion would lead to later disqualification when cases arise that are similar to those that led to the establishment of a particular doctrine.

In my view, acceptance of this argument by the committee has created a particularly unfortunate situation in light of this nominee's past actions with regard to legislation on abortion and the limited number of judicial decisions upon which to determine her views on this and other issues. I had regarded as relatively unimportant the nominee's previous voting record on the abortion issue because Judge O'Connor had indicated that she had had a personal change of heart on the subject of abortion. Thus I had hoped to make a decision about her fitness for office on the basis of answers given to questions posed in the committee hearing.

However, the nominee repeatedly declined to answer questions about her view of the legal issues presented in the case of Roe against Wade. Relying upon the argument advanced earlier, she stated that, in her opinion, any criticism of that decision would prejudice her with regard to the abortion question.

Others have reasoned that neither this nor any other "single issue" should stand in the way of the confirmation of the nominee. I respectfully disagree with the notion that the rights of unborn human beings represent a single divisive issue that should not overshadow the otherwise excellent credentials of Judge O'Connor. Abortion—the wrongful taking of a human life—is not simply a political issue; the question of when life begins and of how it should be protected at all stages is essentially a civil rights question, and one which I believe is of immense importance.

The denigration of human life by increasingly relying on subjective meas-

ures of its "quality" or "meaningfulness" rather than on the principle that all life is God-given is frighteningly reminiscent of Hitlerian ideology. If government by judicial fiat removes the protection of the right to life from a class of individuals—in this case the unborn human being—then, the protection guaranteed others—the handicapped, the aged and the terminally ill—might also be lost in the years to come.

Moreover, biomedical research is quickly producing a whole series of new ethical questions about the nature and meaning of life. The Supreme Court's decision in Roe against Wade indicated a judicial willingness to alter fundamental historic protections by defining the concept of "person" so as to permit the elimination of the fetus, even as science was widening the concept of life.

This Nation is currently involved in a dialog that must not cease until it resolves this fundamental question of human rights. The terrible reality of the debate over abortion is that it has divided households, it has divided friends, and it has divided this body. We cannot dismiss the abortion issue when considering judicial nominees simply because the Nation has not reached a consensus. Every public official, and indeed, most citizens should exercise their right to speak out on this issue. It seems that once in every century a nation faces such a pivotal question, and I and millions of others cannot divorce the concept of the right to life from the concept of equal justice under the law.

The Supreme Court in its holding in Roe against Wade asserted final authority over the rights of the unborn fetus. Many argue that the Congress and the States have, in the course of a decade, reached a point at which further legislative remedy of abortion excesses is impossible without the approval of the Court. Prospective Justices cannot argue convincingly that the widespread controversy surrounding this issue makes their public pronouncements any more subject to criticism than the statements of the elected officials who must give advice and consent concerning judicial appointments. Prospective Justices might find that their criticism of a particular doctrine could make confirmation a more difficult process, but it does not mean that they will or should find themselves in violation of the statutes, ethical canons and other judicial renderings governing disqualification of Supreme Court Justices.

However, I recognize that others for whom I have enormous respect, including the chairman of this committee, agree with Judge O'Connor in her caution in replying to questions that attempt to elicit her views as to the correctness of prior decisions of the Court. Many of those same people are highly respected opponents of the abortion procedure. All the same, I do not believe that this committee can properly fulfill its duty to the rest of the Senate regarding any judicial nomination when it lacks an accurate estimate of the nominee's position respecting an issue of overriding importance to the general welfare of the United States.

In this context, I personally view the committee's role as a separate and distinct function from the decision which must now be made by the Senate as a whole. I respectfully contend that the committee should serve as an investigatorial body with respect to these nominations—eliciting as thorough and precise responses to specific questions as it possibly can—in order that the rest of the Senate can make a fully informed decision on the nomination. The role of the full Senate I would liken to that of judge—assessing the committee proceedings and judging the nominee on qualifications, experience, integrity, and opinions on basic legal questions.

This investigatorial responsibility of the committee is even more awesome when considered in light of the fact that this appointment is one of life tenure. This is not a 4-year, assistant secretary appointment. If confirmed, the nominee will have continuous potential for influencing a critically important issue for an indefinite period.

Given my own position on this most basic question of human life, and given the reluctance of Judge O'Connor to address the legal question of abortion in a forthright manner, I could not, in my perceived role as investigator, assent on hope nor dissent on uncertainty, with respect to my vote in the committee.

My vote on the floor of the Senate may well be different because of the way I view my role as committee member specifically and Senator generally—and for some other reasons. As a Senator on the floor, I do not feel obliged to restrict my judgment on the nominee to what was revealed within the committee hearings.

But in the final analysis, I believe the Judiciary Committee may have abrogated, in large measure, part of the responsibility of the Senate's constitutional role with respect to this most important nomination.●

● Mr. SCHMITT. Mr. President, it is with pleasure that I join with my colleagues in enthusiastically supporting the nomination of Sandra Day O'Connor for the position of Justice of the Supreme Court.

I am not a lawyer, so it was with great interest that I followed the Judiciary Committee in its deliberations of her nomination. At times, Judge O'Connor was subjected to difficult and controversial questioning by the distinguished members of the panel. However, not once during her 2½ days of testimony did Judge O'Connor lose her composure, dignity, or sense of humor. In fact, her intelligent and thoughtful responses clearly demonstrated that she is highly qualified to sit on the Supreme Court.

Additionally, Judge O'Connor brings very high academic credentials, very high intellectual credentials, and a record of clear, concise, and interpretive decisions to the Supreme Court. By interpretive decisions, I mean decisions not to make new law but to interpret the law as it is in the Constitution today.

Mr. President, I am proud to be a participant in this historic occasion; to cast my vote in favor of the first woman nominee to the Supreme Court.●

Mr. HAYAKAWA. Mr. President, I feel privileged to be a Member of the U.S. Senate on this historic day as we vote to confirm the first woman Justice of the Supreme Court, Sandra Day O'Connor. The women of our Nation have struggled to gain recognition of their abilities and competence, making great strides in recent years to overcome the barriers of prejudice against their gender. Our actions today provide long overdue recognition of the qualities of women, as well as recognition of the qualities of one particular woman.

However, we must not let the struggle of women overshadow the primary question before us: the confirmation of a highly qualified nominee for the Supreme Court. It is the role of the Senate to determine that a Presidential nominee to the Court is indeed qualified, without regard to sex.

Additionally, the Senate must not be swayed by the demands of any single interest group during the confirmation process. The opinions of any group must be carefully weighed against the requirements for a Supreme Court Justice.

I am confident that my colleagues have not allowed their responsibilities of advice and consent to be clouded by secondary considerations.

Sandra O'Connor finished among the top 10 graduates in the Stanford University Law School class of 1952. In addition to becoming a wife and mother, she practiced law, served as an assistant attorney general, and was elected to the Arizona State Senate—serving as well in the role of majority leader. She was then elected as a trial judge for Phoenix and later appointed to the Arizona Court of Appeals.

Her multifaceted career has given her experience with the law from several different perspectives—as a private citizen, and from within each of the three branches of government. Such a career provides the opportunity to clearly understand the limits and responsibilities of the various roles she accepted and, in particular, the responsibility of a judge.

After President Reagan announced his nomination of Mrs. O'Connor, loud objections were heard from several antiabortion groups. During the confirmation hearings, she carefully stated her feelings of personal repugnance toward abortion. I am more than satisfied by her statements of personal opinion on this subject. I am also confident that she will carefully address this issue, if it comes before the Court, to insure proper interpretation of current law and our Constitution.

An important point about the nominee was brought out during the consideration of her qualifications: Mrs. O'Connor favors greater reliance on our State courts to decide important issues. At a time when the Supreme Court is requested to review thousands of cases—an impossible task in terms of time and manpower—the competence of our State courts cannot be overlooked. When Federal constitutional questions have been fully heard and considered in the State court system, surely it is not necessary to provide a costly review on the Federal level.

She has also proven herself to be tough on criminals. At a time when the rate of violent crime is rising dramatically, we must give notice to the criminal element that they will not be dealt with lightly. The confirmation of Mrs. O'Connor is a signal to those who ignore our laws that they will pay for their actions.

Most importantly, the hearings before the Senate Judiciary Committee allowed us to see that Mrs. O'Connor will be a Justice who will stick to the business of interpreting the law and the Constitution. I personally feel assured that she will not attempt to legislate from the bench, but leave that responsibility with the Congress. It is essential to our system of government that the different branches of government respect the limitations of their authority.

We cannot fully predict the direction of the career of any Supreme Court nominee; nor can we predict the opinions that may be handed down by any potential Justice on future questions that may come before our highest court. We can, however, explore the questions of personal integrity and competence. Mrs. O'Connor, without doubt, deserves the highest marks for her record of integrity and competence. I have no reservations about predicting that her career on the Supreme Court will continue to prove that record.

● Mr. MATTINGLY. Mr. President, I believe Sandra O'Connor has the intelligence, the experience, and the ability to be one of the great Justices of the Supreme Court. She has excelled as a lawyer, a legislator, and as a judge on the Arizona Court of Appeals.

Beyond her obvious qualifications for the position, I believe all Senators were impressed by Judge O'Connor's appearance before the Senate Judiciary Committee. Her answers to the questions were clear, straightforward, and well reasoned. I believe the Supreme Court will greatly benefit from this type of reasoning.

It is so very tempting for some to focus on one current issue. But that should not be of paramount concern to the President in making a nomination nor to the Senate confirming it. What is important is judicial philosophy.

There is no way any of us can predict what the burning issues of the year 2000 will be. Those issues might very well be part of a process that will not begin to occur for another 10 years. Yet Judge O'Connor will very possibly be hearing cases and rendering decisions in the year 2000 and beyond.

She has a firm understanding of the constitutional responsibilities and limitations of the Supreme Court and we will all be proud of the votes we cast today. As a former legislator herself, I believe she will maintain the separation of powers in our Constitution. I hope and believe this appointment may be the beginning of the end for the activist court.

A word should also be said in praise of President Reagan for nominating the first woman to the Supreme Court. He has fulfilled a campaign promise. But this nomination should be the beginning, not the end. I hope we will not see develop a "woman's seat" on the Court with little hope for other women as long as Judge O'Connor is serving.

If the President had to make another nomination next week, I would hope he would feel confident in sending us another woman nominee. If she had the qualifications of Judge O'Connor, she too would receive speedy confirmation.

So, Mr. President, I will proudly cast my vote for Judge O'Connor and join with my colleagues in wishing her well as she assumes this most important position.●

Mr. LEAHY. Mr. President, if I had to choose one moment that explained the most about the way the American system of government worked, it would probably be the moment when we choose a Justice of the Supreme Court.

The Supreme Court has succeeded as the interpreter of the Constitution and the arbiter of great conflicts not only because of the Court's wisdom and sense of history, but because even in the most divided of times, the Court has earned and kept the respect of all Americans. Above all, this has been a Court of fairness and competence. It is these qualities that must characterize any nominee to the Court.

Judge O'Connor has amply demonstrated these qualities. She appeared before the Judiciary Committee and answered some of the most difficult questions put to a Supreme Court nominee in a long time. I think that she answered candidly and thoroughly, within the customary limitations imposed on any nominee, namely the avoidance of conflict regarding matters that might come before the Court. The overwhelming impression of fitness and competence was clear to all and was reflected in the committee vote.

If I were to stop here, I would invite the conclusion that this hearing process was an ideal example of separation of powers at work, the President and the legislative branch each contributing to the strength of the judicial branch. But the attempt to condition Judge O'Connor's confirmation upon her commitment to vote in a given way on given issues should sound a danger signal for all of us. A commitment on a future vote must never be the price of nomination or confirmation. No Justice on the Nation's Highest Court should be held hostage to any commitment, except the one to devote every moment on the Court to upholding the Constitution and the cause of justice.

The President had the right to make an appointment reflecting a philosophy that he agrees with, and he did so. To have asked more of his nominee than this would have been an intrusion by the executive on the independence of the Court. For us to have asked more would have been an equal intrusion.

I do not care if Judge O'Connor is a Democrat or Republican, liberal or conservative, She is a very able nominee, and this Senate should send her to join her colleagues on the Court with our strong support and our hopes for a fruitful and rewarding term on the Court.

Mr. STENNIS. Mr. President, I thank the Senator from Kentucky again for yielding me this time and assisting me in this matter.

In thinking about any nomination for the Supreme Court of the United States, I can think of nothing that is more important under our system of Government—and I do not know of any small group of people anywhere in the free world who are granted anything comparable to the power that these persons are granted under our Constitution. The exercise of that power has been a patent force for 200 years.

The Supreme Court is one of the strongest things I know in public life that generates faith and confidence in humanity when appealed to properly, when humans are appealed to do their best.

After all is said and done about the Court or any member thereof, it has an amazing record, and it gave me great strength and encouragement as a young man studying law and in public life—and I am not referring to any particular Justice; I am talking about the Court as an institution.

So I had some concern when there was a great deal of talk and media reports about "What are you going to do about this appointment of a lady to the Supreme Court?" I had absolutely no reservations about a lady being appointed, being capable and all, but I frankly was concerned that it might be kicked around as a political football by some. When this nomination came in I was pleased with the idea, if the lady was suitable, but I did not have the privilege of knowing her, and I was highly flattered that she came by the office for a visit.

I have never been more abundantly rewarded in public life than I was by the impression I had of Mrs. O'Connor. In the first place I judge her to be a lady of very fine and balanced judgment. I have previously stated the Supreme Court Justices must have an uncommon amount of commonsense. In addition to character that is really the major requirement of membership on that Court.

A Justice cannot make much of a contribution as a member of the Court on sheer book learning or other admirable qualities unless they are possessed with a generous amount of commonsense that runs through their thought processes and their understanding of the problems of government and the problems of human life.

To me there was in great abundance of unmistakable evidence of the lady's great competence in this field.

Another thing that pleased me—and I do not want to make a personal remark—but for several years I had the responsibility of being a trial judge in a court of unlimited criminal and civil jurisdiction. It was unlimited in that there was no ceiling all the way through to the gravest crimes or the most important civil suits where a great deal hung in the balance. The gravity of that experience in ruling on testimony, and the admissibility of it, that might be the deciding factor, on through to passing sentence on prisoners in serious cases involving human life was a very serious responsibility. There is nothing more searching than a judicial officer, I think nothing more searching of his qualities of character, of concept of responsibility,

and a desire to do his duty regardless of person.

So I was pleased with the concept, with the idea, that Mrs. O'Connor had been a trial judge and had had experience in the courtroom, in that way carrying those heavy responsibilities.

I notice by the reference of the American Bar Association, with all deference to them, I think her qualifications in the courtroom, of administering justice, would far outweigh some academic attainment that is measured often by some artificial rule.

So I was highly pleased with her experience and her uncommon amount of commonsense and, more particularly—in a day when the family is being tested and called into question by some of those habits and customs and all that goes to make up the strength of the family, challenged in legislative halls and everywhere else—that Mrs. O'Connor is a mother and has reared a family. That is no reflection on anyone who has not, but she is one who understands some fundamentals of our Constitution. But, more important than that, she understands the fundamentals of life itself and civilization itself and, more than all of that, the holy concept of having reared a family and, more particularly, having that greatest of all attainments of being a mother.

So I am really happy and have a great deal of satisfaction to know that she is willing to undertake this very difficult task, filled with hard work, at best.

There is nothing personal about this. I have said these words with great satisfaction and feel that she will have a splendid record in the Court which will be for the benefit and for the strengthening of our system, the common law of England and the constitutional law of the United States, based upon the family as we know it, and self-government as we try to make it. So the ship of state, for her part, will be in good hands. I am very glad, indeed, to vote in favor of her confirmation.

Mr. LEVIN. Mr. President, during the consideration of the confirmation of the nomination of Sandra Day O'Connor, a number of allegations were made with respect to statements she was reported to have made privately to various individuals relative to her position on substantive issues that might come before the Court. We read reports that, on one issue or another, she had assured one party or another, privately, as to what her position is.

I was very much intrigued by that, and I wrote her the following question:

During your private meetings with public officials since your appointment, did you make any statements relative to your position on the substantive issues which may come before the court? If so, please describe those statements.

Her answer was as follows:

Since my nomination I have not made any statements concerning my position on substantive issues which may come before the Court, either in private meetings with public officials or public testimony. Nor did I do so during the selection process leading up to the nomination

I believe judges must decide legal issues with the judicial process, constrained by the oath of office, presented with a particular case or controversy, and aided by briefs, arguments, and consultation with other members of the panel. I also believe it would be quite improper for a nominee to take a position on an issue which may come before the Court in order to obtain favorable consideration of the nomination.

Mr. President, I ask unanimous consent that soon-to-be Justice O'Connor's letter be printed in the RECORD.

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

HON. CARL LEVIN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR LEVIN: I have received from your office the following question: "During your private meetings with public officials since your appointment, did you make any statements relative to your position on the substantive issues which may come before the Court? If so, please describe those statements."

Since my nomination I have not made any statements concerning my position on substantive issues which may come before the Court, either in private meetings with public officials or public testimony. Nor did I do so during the selection process leading up to the nomination.

I believe judges must decide legal issues within the judicial process, constrained by the oath of office, presented with a particular case or controversy, and aided by briefs, arguments, and consultation with other members of the panel. I also believe it would be quite improper for a nominee to take a position on an issue which may come before the Court in order to obtain favorable consideration of the nomination.

Thank you for the opportunity to set forth my views in response to your question.

Sincerely,

SANDRA D. O'CONNOR.

Mr. BUMPERS. Mr. President, the confirmation of the nomination of an Associate Justice for the United States Supreme Court is a momentous occasion. The nine persons who form this Court are the guardians of the precious guarantees provided by the document that holds our Republic together, the Constitution of the United States of America.

James Madison, Alexander Hamilton, and the other primary framers of this solemn document must have been divinely inspired, because they managed to forge an agreement which, along with our Bill of Rights, has kept this Nation free for two centuries. In framing our delicate system of checks and balances, they had an uncanny understanding of the nature of power and the need to assure that it not be used tyranically. For all these years, it has been necessary to amend the basic text only 26 times.

Mr. President, article 1, section 1 places the full legislative power in the Congress of the United States. Article II, section 1, vests the executive power in the President of the United States, and he is also charged with the responsibility under section 3 to "take care that the laws be faithfully executed." Article III, section 1, makes clear that the judicial power is vested in the Supreme Court, and such inferior Federal courts are as established by Congress. The Supreme Court, in our constitutional scheme, is the final arbiter of what the law is and what the Constitution means.

It is true, as Justice Rehnquist recently pointed out in Rostker against Goldberg, that the Members of Congress take the same oath as do Supreme Court Justices to uphold the Constitution of the United States, and most of us take that responsibility seriously.

Sometimes, however, especially on emotionally charged issues, we allow political or other considerations to cloud our constitutional judgment, and the framers of the Constitution knew that this would happen. I, for one, am glad that the Supreme Court exists as the final arbiter on constitutional issues. Over the years, members of that body have usually managed to take a dispassionate view of what the Constitution says and means. They are above the fray. I have not always agreed with their decisions.

In fact, I strongly disagree with many of them, but the point is that it simply makes sense that the final word about what the Constitution means should come from a body which is above the day-to-day political pressures that guide many of our decisions.

Having said all this, let me point out that the Justices are not immune from our system of checks and balances. A potential Justice must be nominated by the President, and all of us know that the process of nomination is always preceded by an elaborate, if informal, screening process. An appointee must be confirmed by a majority vote of this body, and confirmation follows an exhaustive and, as Judge O'Connor can attest, grueling hearing process.

Once confirmed, a Justice will find that the wisdom of her opinions is debated ad infinitum in the press, in law reviews and other scholarly publications, and in Congress, and that kind of searching criticism has value to the Justice in providing a sounding board of thoughtful public opinion. Finally, Justices hold office only "during good behavior" under article III, section 1 of the Constitution, and of course may be impeached if they engage in conduct that renders them unfit for office.

It is against this backdrop that I comment briefly about the candidacy of Sandra Day O'Connor. I am not a member of the Judiciary Committee, but I followed the hearings closely. Judge O'Connor was an impressive witness. She is obviously a person of honesty and integrity. She responded to questions with confidence and sincerity, and she was generally unflappable. She impressed me as a woman of intellect and good commonsense. I do not necessarily agree with all of her opinions, but I am convinced that she will strive to discharge her duties with a high degree of competence and compassion. The office to which she is about to enter is one of awesome responsibility, and I wish her Godspeed.

Mr. COHEN. Mr. President, the confirmation today of Sandra Day O'Connor to be an Associate Justice of the U.S. Supreme Court is, as we all recognize, an historic event. It is one that I am proud to be able to take a part in by casting my vote in support of Judge O'Connor's nomination.

The debate surrounding Sandra O'Connor's nomination has focused almost exclusively on the fact that she will be the first woman to serve on the U.S. Supreme Court. Some view the appointment as significant primarily as providing women with representation on our highest judicial body. In voting on this nomination, I believe we must remember that the Supreme Court, unlike the legislative branch, is not a representative body. We cannot attempt to make it so without endangering the perception and reality of the Court as the preeminent symbol and protector of justice in this country. As George Will expressed it in a recent column:

The Court, more than any other American institution, depends for its authority on the perception of it as a place where principle reigns. Judicial review is somewhat anomalous in a system of popular government, and its legitimacy depends on the belief that those who exercise it do so only as construers of the text and structure of a document that allocates powers primarily to other institutions. That belief cannot withstand a selection process that suggests that Justices somehow represent this or that group or interest.

The duty of a Supreme Court Justice is not to advocate a particular view or philosophy, but it is to act as an unbiased and detached arbiter of the law. To quote the late Justice Felix Frankfurter:

The highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law of which we are all guardians—those impersonal convictions that make a society a civilized community, and not the victims of personal rule.

Neither, however, should the Supreme Court be the exclusive domain of men—not because it would be unrepresentative of our society but because sex should not be, any more than race, religion or age, a criterion for either choosing or rejecting a candidate for a position on the Supreme Court. Rather, it is those qualities of judicial temperament, ability, and commitment to equal justice upon which we must select the individuals who will serve on our Nation's highest Court.

Sandra Day O'Connor is well qualified for the position of Associate Supreme Court Justice and she will bring to the bench those qualities which are sought after in all members of the judiciary—integrity, fairness, and legal ability. She has excelled both academically and professionally, and has had a successful and distinguished career in public service and as a community leader.

Judge O'Connor will also bring to the Court a wide range of experience, having served in both the legislative branch, as a member of the Arizona State Senate, and in the judicial branch, as both a State trial and appellate court judge. In addition to spending several years in private practice, she also served as an assistant State attorney general.

Judge O'Connor's record shows her to be a temperate jurist. During her confirmation hearings, she displayed a thorough knowledge of the law and an appreciation for the respective roles of our branches of Government, and of the State and Federal courts. Characterized by those who have known, worked with, and appeared before her as intelligent, conscientious, objective, and open-minded, Judge O'Connor possesses the qualities which will make her a skillful and highly respected member of the Court.

Judge O'Connor's nomination has been highly praised by many across the country. She has received resounding endorsements from individuals with divergent political philosophies and views on the role of the judiciary. I am confident that the expectations of her many supporters will be realized, and that Sandra Day O'Connor will make a significant contribution to the Court.

Mr. President, not only is the confirmation of Judge O'Connor historic in that she happens to be the first woman to sit on the Supreme Court, but it is equally important as a symbol of the advances women have made in recent years in breaking down the barriers which have traditionally restricted their participation in many segments of our society. Judge O'Connor is only the first of many highly qualified and competent women which this country can look forward to seeing serve on the U.S. Supreme Court in the years ahead.

Mr. HEFLIN. Senator BAUCUS is unable to be here this afternoon. He is participating in an investment conference in Montana. However, he did want his statement in support of Judge O'Connor's confirmation as Associate Justice of the Supreme Court to be made part of the record, and for it to be noted that he did vote in favor of confirmation last week at the executive session of the Senate Committee on the Judiciary. Senator BAUCUS' statement follows:

● Mr. BAUCUS. Mr. President, the week before last the Senate Judiciary Committee spent 3 full days conducting hearings on the nomination of Sandra Day O'Connor as Associate Justice of the U.S. Supreme Court. Today we are asked to cast our vote on that nomination.

We are all agreed that we want a Justice of the highest integrity and the utmost competence.

The issue raised by this nomination is the degree to which personal views and judicial philosophy are relevant factors in deciding whether to vote to confirm a Supreme Court nominee. I personally believe such factors are relevant.

In my view, a Senator must be convinced that a nominee's conception of our form of Government, conception of the Constitution, and conception of the role of the Supreme Court are consistent with the best interests of the entire Nation. The advise and consent power of the Senate under article III of the Constitution has little meaning if Senators are not willing to assess whether or not the nominee is dedicated to uphold the basic principles of the Constitution.

This is an appropriate test. The nominee, as a Justice, is likely to make many far-reaching decisions on a wide range of issues during his or her life tenure on the Court. A Senator should be satisfied that the nominee will have the prerequisite sense of fairness and a principled understanding of the Constitution to serve as the basis for that decisionmaking.

It is in this light that I have decided to support the confirmation of Sandra Day O'Connor as Associate Justice of the U.S. Supreme Court.

I know there are some who disagree with her views on specific subjects. I, too, have found myself in disagreement with her in several areas.

However, I believe it is in the best interests of this country to make a decision on her overall philosophy and her overall approach to Government and our Constitution.

No one knows just what decisions Justice Sandra O'Connor will be called upon to make over the decades to come.

Based on her performance at her confirmation hearing, I think we can say that she will bring to that decisionmaking a sensitivity and a commitment to fairness.

As I sat at the hearings I became convinced that if issues concerning my personal property or liberty were before Justice O'Connor, my case would be given a fair and thoughtful hearing.

I would not be able to predict what decision she would render, but I do know I would walk away from the process with a sense that the interests of justice had been served with her participation.

This is the kind of Associate Justice to the Supreme Court I want to vote for. I believe that this is a vote which all of us today will be able to look back upon, not only with a sense of history, but more importantly, with a sense of pride.

Thank you.●

● Mr. RIEGLE. Mr. President, I rise in strong support of the nomination of Judge O'Connor to the Supreme Court, and welcome the chance to be a part of this historic action by the Senate. Judge O'Connor has proven herself to be an able candidate for a position on the Court, and I think that all Americans can take pride in the fact that we will have a person of her caliber serving on our Nation's highest court.

Judge O'Connor is an accomplished legal scholar, as her educational and professional career demonstrate. She graduated from Stanford University Law School magna cum laude, and distinguished herself as a member of the Law Review. Judge O'Connor also became the first woman to serve as majority leader of the Arizona State Legislature, a measure of her leadership ability and her breadth of experience.

Mr. President, much has been written and spoken about the fact that Judge O'Connor will be the first woman to serve on the Court. I find it incredible that it has taken until 1981 for a woman to become a Supreme Court Justice, and I commend this important and historic breakthrough. Judge O'Connor has met the highest standards that we expect from an Associate Justice, and I think that all citizens can be proud of her nomination and confirmation.●

● Mr. BENTSEN. Mr. President, in consideration of the nomination of Sandra Day O'Connor to be an Associate Justice of the Supreme Court, the Senate should seek the answers to three questions: Is her integrity above reproach, is she qualified, and does she have the judicial demeanor and knowledge to apply the law objectively in the cases that will come before the Court.

I will deal first with the simplest question to answer, that pertaining to her integrity. Who would know better than her neighbors in Paradise Valley, Ariz.? The town council there unanimously adopted a resolution, and I want to thank my good friend, the senior Senator from Arizona, for placing that resolution in the RECORD. It said:

Judge O'Connor is possessed of an uncommon intellect, and the highest degree of ability, integrity, and dignity.

Senator GOLDWATER advises that this resolution reflects the views of all the citizens of Paradise Valley. The resolution also urged Judge O'Connor's unanimous confirmation.

Likewise, no serious case has been raised against Judge O'Connor's ability. The words that have been used to describe her—perfectionist, meticulous, hardworking, intelligent—accurately mirror her record of achievement. She entered Stanford University at 17 and left 5 years later with undergraduate and law degrees magna cum laude. She spent 20 years in Arizona politics as a member of her precinct committee, legislative district chairman, assistant attorney general, and as the State of Arizona's Senate majority leader. She spent 6½ years serving in the State judicial system, first on the superior court, and then as a justice on the court of appeals. She received high ratings each time the Arizona Bar Association has reviewed the performance of the members of its bench. In their private conversations with the nominee, I am sure my colleagues were as impressed as I was with her extremely bright mind and judicial perfectionism. She has been an insightful judge with a razor-sharp ability for equal and fair application of the law.

Her judicial record shows her commitment to interpret rather than expand the law. Although given ample opportunity to broaden statutory applications, she has not expanded statutes to situations never contemplated by its drafters. I am confident that as a Justice of the Supreme Court, Judge O'Connor will respect the historic constitutional boundaries between the judiciary and the Congress.

Her criminal decisions reflect a fair but tough approach in balancing the rights of the accused and the compensatory duty of enforcing the criminal laws of this Nation. Her record is one of defending private property rights, preserving State sovereignty, and strict judicial restraint. Her philosophy and temperament are well suited for the Supreme Court, and she has the potential of becoming a Justice of superior distinction.

I want to deal quickly with an issue that some have raised relative to Judge O'Connor's morality. I find it very difficult to believe that a woman with three sons can be called antifamily. Everything that I have read about her personal life indicates a strong enthusiasm for her family.

I am sure that I am not the first to quote her remarks at a wedding of two people she introduced, in which she said that:

Marriage is the single most important event in the lives of two people in love . . . marriage is the foundation of the family, mankind's basic unit of society, the hope of the world, and the strength of the country.

The issue of Judge O'Connor's morality is a false one; above all, she is an individual of very high moral principles.

Mr. President, our debate today about Judge O'Connor's nomination is an historic one. I want to join the chorus in sounding my pleasure with President Regan's fulfillment of his campaign pledge to nominate the first woman to the Supreme Court. In saying that, I do not want to demean her ability, integrity or knowledge.

She enjoys my support for one reason, and one reason only, because she will be a great asset to the U.S. Supreme Court. I join with the good citizens of Paradise Valley in urging the Senate to confirm Judge O'Connor's nomination unanimously.●

Mr. PERCY. Mr. President, I wish first to express deep appreciation to the members of the Committee on the Judiciary, to its distinguished chairman (Mr. THURMOND), and to the ranking minority member (Mr. BIDEN). In an expeditious manner, consistent with thoroughness, they have conducted hearings and processed the nomination of Sandra Day O'Connor and are now placing it before this body for our decision. The committee has performed, once again, a great service to the Nation.

I am honored and privileged to address the Senate today on Sandra Day O'Connor, whose name is before this body for consideration to be an Associate Justice of the Supreme Court of the United States.

In considering her nomination, we as Senators will be fulfilling one of our important constitutional responsibilities in deciding whether or not to consent to this nomination. The individual we confirm will participate in and render decisions on some of the most complex and critical issues in the history of the Court. Therefore it is important that this individual is of the highest caliber—one who combines intellect, decency, and experience with judicial temperament, scholarship and integrity.

As her distinguished record clearly indicates, Sandra Day O'Connor is such an individual. She graduated from Stanford University in 1950 and received her law degree from the same institution in 1952. It was also in 1952 that she became deputy county attorney for San Mateo County in California.

In 1954 she traveled to Frankfurt, West Germany, where she served as civilian attorney. She returned to the United States in 1958 to engage in private practice in Arizona. As a wife and mother of three children, she devoted the years from 1961 to 1964 solely to her family. She returned to the law in 1965, this time as assistant attorney general for the State of Arizona. In 1969 she became an Arizona state senator, serving until 1975 as senate majority leader. In 1975 she became a trial judge on the Maricopa Superior Court of Arizona. From 1979 until the present she has served as a judge on the Arizona Court of Appeals.

In reviewing her outstanding legal career, it should be noted that she has served with distinction in all three branches of government—legislative, executive, and judicial. As it is one of the three coequal branches of our Government, the judiciary has the crucial role of applying the laws of Congress and interpreting the Constitution. With experience in all three branches. Judge O'Connor promises to bring to the Supreme Court a thorough understanding of how the Constitution divides authority among them.

In her exercise of judicial authority, Justice O'Connor is neither doctrinaire nor adventurous. She is a judge. Her record on the bench indicates that she sees it as her duty to apply the law, and not to make it.

In response to anyone who may question her views concerning certain issues, let me strongly emphasize that assessing a candidate on the basis of his or her views on specific issues should play no part in the process of selecting a Supreme Court Justice. It would be inappropriate for a judge or a prospective judge to have a preconceived position on something that might be an element in a case which should be decided on its legal merits alone. We must strive for an independent judiciary, one that decides issues solely on their legal merits and not upon some extra constitutional litmus test. I commend Judge O'Connor for taking this position herself during the recent Judiciary Committee hearings.

There can be no dispute that Judge O'Connor's record is an outstanding one. Her experiences as an attorney, legislator, and judge indicate that she is eminently qualified for the position of Supreme Court Justice. She has also demonstrated that she possesses the integrity, intellect, and the temperament so necessary for a Justice of the Supreme Court. I have no doubt that Sandra Day O'Connor is exceptionally well prepared to serve with distinction on the Supreme Court of the United States. A large, empty space exists in the Court. Sandra Day O'Connor can fill it. She deserves not only my personal support, but the support of this Senate as well.

My daughter served as a fellow trustee with Sandra O'Connor at Stanford University for a number of years, and as a result of her outstanding work there has long held her in the highest possible regard from every standpoint.

I hope and fully expect that our vote today will be a unanimous one.

Mr. NICKLES. Mr. President, today I rise in support of the nominee, Sandra Day O'Connor, to be an Associate Justice of the U.S. Supreme Court. I say, with all of my colleagues, that the appointment of a woman to the high court is long overdue. In Judge O'Connor, we have a very bright, articulate, and accomplished judge. I am sure that as an Associate Justice to the Supreme Court, Judge O'Connor will be an example of tremendous commitment and achievement not only to all women, but to everyone who works in the field of law and strives for excellence.

This is my first opportunity to participate with the Senate in the confirma-

tion of a Justice to the Supreme Court. As I understand it, our role is one of advice and consent on the President's nomination. We are asked to examine the nominee's background, character, academic achievement and judicial philosophy based upon his or her past record of activity. We are then asked to decide if the nominee is qualified to serve in the lifetime position of Justice to the Supreme Court.

Because of the magnitude and far reaching influence that a Justice may have on the Supreme Court, the advice and consent function of the Senate is indeed a very serious and important one. I, for one, have given much time and thought to this matter. And in the end, I feel compelled to say that even despite the obvious integrity and intelligence of the President's nominee, Judge O'Connor, I do not stand in support of this nomination without some unanswered questions.

I, like many of my colleagues, feel very strongly that the Supreme Court's 1973 decision in Roe against Wade, which legalized abortion by declaring that the unborn is not a person, was not only a moral fiasco, but a thoroughly unconstitutional court decision. In his dissenting remarks, Justice Byron White stated:

I find nothing in the language or history of the Constitution to support the Court's judgement. The Court simply fashions and announces a new constitutional right for pregnant mothers and, with scarcely any reason or authority for its action, invests the right with sufficient substance to override most existing State abortion statutes.

I stand in total agreement with Justice White's words.

During the confirmation hearings, Judge O'Connor was asked many questions about abortion. From her testimony, I know that she is personally opposed to it. For this I am glad, but, as she pointed out, this should in no way influence her opinion as a judge.

As a participant in the Arizona State Senate, Judge O'Connor had five votes that related to abortion. The first—House bill 20—which came prior to Roe against Wade, sought to totally decriminalize abortion. In her explanation, Judge O'Connor states that her knowledge and perception of this issue has increased greatly in the years following that vote and that if she were a State senator today and this issue were to come before her framed in the exact same way, she would not vote for a total repeal of the Arizona laws prohibiting abortion. However, nowhere could I find, even in a personal visit with the nominee last week, an explanation of what she would support as appropriate public policy in this area. So, what I am left with is some indication that Judge O'Connor has modified her position as to appropriate public policy in regard to abortion, but I have no idea as to what this new position might be.

Thus, from the information available, I can conclude that first, as a person, Judge O'Connor is personally opposed to abortion. Second, as a legislator, Judge O'Connor is against abortion on demand. But, the final and most important area—in fact the only truly important area—is what Judge O Connor's position as a judge is concerning the constitutionality of Roe against Wade. And, it is precisely in this area that I know the least about Judge O'Connor's position.

I can appreciate the fact that it would be improper for a nominee to the Supreme Court to speculate on cases that might come before the Court during his or her tenure on the Court. However, I do not understand why a nominee cannot respond to questions concerning the constitutionality of cases already decided by the Court, such as Roe against Wade. If the Senate is to perform its advice and consent function, we must be able to determine the judicial philosophy of the nominee. As a Senator, I have a responsibility to represent the concerns and wishes of my constituents. As a human being, I feel it necessary to live within the confines of my conscience. However, to fulfill either of these becomes virtually impossible without the necessary information from Judge O'Connor as to how she will stand as a Supreme Court Justice in her interpretation of the Constitution.

I am also concerned that this refusal to answer questions on past Supreme Court cases will set in stone the precedent for future nominees in their approach to the Senate s confirmational inquiries. If this becomes the precedent, the Senate would then be asked to confirm nominees to the High Court without having any idea as to what their judicial philosophy is and how their appointment will influence generations to come.

I have labored long and hard over whether, in the midst of such unanswered questions, I could vote for the nominee, Sandra Day O'Connor, to be an Associate Justice of the Supreme Court. In the final analysis, I have to say that I do not feel that I have a strong enough basis from which to vote against Judge O'Connor's confirmation. I simply have unknowns. Therefore, I feel forced to resolve this issue based on outside considerations, the greatest of which is the trust, faith, and confidence that I have in the ideals and judgment of our President. I also have confidence in Judge O'Connor's overall judicial restraint and her claim to be a strict constructionist in her interpretation of the Constitution.

So, I stand with my colleagues in support of Judge O'Connor, with much hope in my heart that her appointment to the Supreme Court will herald a new era in the Court's history—one that will be characterized by restraint, wisdom, and devotion to God and to the Constitution which have preserved our freedoms for so many years.

Mr. JEPSEN. Mr. President, I rise today to speak to the question of whether Judge Sandra D. O'Connor should be approved by this body to serve as an Associate Justice to the Supreme Court of the United States.

I intend to vote in support of the nomination of Sandra Day O'Connor. I have no doubts about the capability, intelligence, or judicial temperament of Judge O'Connor. She brings to the Supreme Court the qualities necessary to be a competent jurist.

As a Senator from Iowa, I am pleased to advise the Senate that it was the great State of Iowa that produced the first woman attorney in the United States, Arabelle Mansfield, of Mount Pleasant, Iowa. It was the Iowa education system that trained her. Finally, it was the Iowa Bar Association, one of the oldest bar associations west of the Mississippi, which admitted Miss Mansfield to the bar.

Mr. President, history and time have afforded me the opportunity to represent Iowa and vote today for the first woman to be appointed to the U.S. Supreme Court. I shall vote "aye" for her confirmation.

Mr. CRANSTON. Mr. President, I am extremely pleased that the Senate Judiciary Committee has concluded that Sandra Day O'Connor is extraordinarily well-qualified to be an Associate Justice of the U.S. Supreme Court. She is eminently qualified. I support her nomination.

Judge O'Connor's direct experience with both the legislative and the judicial process augurs well for an outstanding term on the Supreme Court bench.

As a Californian, I am particularly pleased by the prospect of having a southwesterner on the bench. As a lifelong resident of California and Arizona, our sister State to the east, Judge O'Connor is familiar with the special problems of the Southwest such as water, land resources and their uses. These will be important issues before the court in coming years and her knowledge in this area should be most helpful.

President Reagan is to be especially commended for naming a woman to the Supreme Court—the first such nominee in our Nation's history and one that is very long overdue.

Judge O'Connor's nomination is a major step in the battle to elimnate sex discrimination in our society and a major step toward achieving full equality of opportunity for women. Furthermore, Judge O'Connor has displayed sound judicial temperament, brilliant legal scholarship, personal integrity, sensitivity to individual rights and a firm commitment to the principle of equal justice under the law.

Mr. President, I am honored to join my colleagues in support of this history making nomination.

Mr. SASSER. Mr. President, with its action today, the Senate has taken a historic step. Sandra Day O'Connor is the first woman appointed to the Supreme Court—61 years after women were given the right to vote. My own State of Tennessee was the 36th State to ratify the 19th amendment, thereby making it a part of the Constitution and it gives me great pleasure to be able to vote today to confirm Judge O'Connor's nomination.

However, as significant as the appointment of a woman to the Court may be, it must be remembered that once confirmed Judge O'Connor becomes one of nine justices sitting on the Supreme Court. Therefore, the most important question in voting on this nomination is whether the person has the judicial temperament

and legal qualifications which are required of a member of the Nation's highest court.

In the 3 days of hearings conducted by the Judiciary Committee, Mrs. O'Connor's legal philosophy and record were subjected to a searching examination. Her responses showed a proper appreciation for the proper role of the judiciary—to adjudicate, not to legislate. The whole thrust of her responses on whatever topic, demonstrated a clear and well-defined philosophy, consistently applied. In addition, the nominee's experience in private practice, the Arizona State Senate, as well as on the bench give her a breadth of perspective which qualifies her for this position.

I congratulate Judge O'Connor, soon to be Madam Justice O'Connor, as she undertakes her new responsibilities.

Mr. MOYNIHAN. Mr. President, on this day that we are congratulating Judge Sandra Day O'Connor on her nomination and confirmation as Associate Supreme Court Justice—and for President Ronald Reagan for nominating her—I direct the Senate's attention to a serious problem facing our courts of which we are the authors, you might say.

Yesterday's New York Times magazine carried a brilliant essay by Judge Kaufman of the U.S. Court of Appeals for the Second Circuit. Judge Kaufman addresses an issue that has been central to our debates over the past few months—legislation designed to strip the courts of their jurisdiction.

Judge Kaufman, whose career on the bench has spanned 35 years, has written an article that contains lessons which I believe will be of value to all Members of this body. I ask unanimous consent that the article be printed in the RECORD.

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

CONGRESS VERSUS THE COURT

(By Irving R. Kaufman)

The first Monday in October, the commencement of the new Supreme Court term, is normally one of the more exciting dates on Washington's calendar. The long summer recess over, the nine Justices don their black robes and enter the marble and oak courtroom where they will ponder questions of truth and justice. This year, however, Oct. 5 will also be a time of no little concern for these esteemed jurists—as it should be for us all. The reason: The role of the High Court as a counterbalance to the legislative and executive branches of government—a fundamental pillar of the American system—is under attack. Congress currently has before it more than 30 bills designed to sharply restrict the authority of the Federal judiciary and limit its power to interpret the Constitution.

These bills have been introduced by Members of Congress new conservative coalition, individuals who have been profoundly disturbed by many of the decisions the Supreme Court has made over the last two decades. For example, the Court has forbidden mandatory prayer in public schools, upheld a woman's right to abortion during the first three months of pregnancy, and characterized busing as the only constitutionally adequate remedy in some instances of racial imbalance in public schools. These decisions, all formed on the basis of constitutional principle—and constitutional principle alone—undoubtedly appear as obstacles to the social changes the new legislative coalition intends to make in this country now a number of individual liberties, but also the that the political pendulum is swinging in its direction. The way the coalition proposes to overcome these obstacles threatens not only very independence of the Federal courts, an independence that has safeguarded the rights of American citizens for nearly 200 years.

The current legislative outlook is ominous. A subcommittee of the Senate Judiciary Committee has already aproved a bill that would forbid the lower Federal courts to entertain challenges to state antiabortion legislation (even legislation that defined abortion as murder). In the last Congress, the Senate easily passed a proposal to withdraw lower Federal court jurisdiction in school prayer cases. A discharge petition to move the bill from the House Judiciary Committee to the floor failed by only 32 votes. The bill has been reintroduced and its chances for passage are rated better in this year's Congress. Other bills which would take from the Supreme Court the power to revise state and lower Federal court decisions in school prayer, abortion and busing cases, are now wending their way through the Senate-House Judiciary Committees.

Legal experts from all sections of the political spectrum have begun stepping forward to denounce these proposals. The American Bar Association calls them a danger to the fundamental system of checks and balances. And Prof. Laurence H. Tribe, of the Harvard Law School, has gone so far as to characterize one of the bills as "too palpably unconstitutional to permit reasonable persons to argue the contrary." Still, the possibility that some of these bills may be enacted into law cannot be dismissed. If that should happen, the Supreme Court would either have to accept the Congress's mandate or adjudicate the constitutionality of the laws. If the Supreme Court then decided that the laws were, indeed, unconstitutional, it would be up to Congress either to back down or to permanently reduce the Court's power through constitutional amendment.

Such dilemmas have come close to occurring in the past. Today, it is the conservative wing that is attempting to circumscribe the Court's historical role. At other times in the past, the attack against the Court has been led by liberal reformers—while conservatives stood as sentinels guarding the sanctity of the Constitution. In the early 20th century, the Court struck down many pieces of legislation that sought to promote social change, including laws regulating child labor, setting minimum wages and maximum hours, forbidding the use of injunctions in labor disputes, and providing compensation for accident and illness. In response, liberals, and progressive led by Robert M. La Follette, attacked not only the concept of judicial review but the judges themselves. Statutes were introduced in Congress to require the votes of at least six justices to invalidate legislation, and some Congressmen supported constitutional amendments that would have mandated the popular election and recall of Federal judges.

Some years later, after the Supreme Court invalidated much New Deal legislation, President Roosevelt proposed a bill that would have allowed him to increase the Court's membership. Had that bill passed, Roosevelt would have been able to "pack" the Court with political allies, insuring that it would always decide as he saw fit. Fortunately, that plan died in the Senate Judiciary Committee.

Efforts to curb the courts have, if anything, become more frequent in recent years, and they have been proposed by politicians of almost all political stripes. After the Supreme Court's 1954 decision in *Brown* v. *Board of Education*, which declared an end to the purposeful segregation of public schools, a number of bills were introduced in Congress proposing to remove all Federal court jurisdiction in desegregation cases. At about the same time, the call for popular election of Federal judges was renewed. Later, in 1958, at the height of the cold war, serious and widespread support gathered for a bill that would have overturned Supreme Court decisions guaranteeing First Amendment freedoms to political dissidents by removing appellate jurisdiction in cases involving alleged subversive activity. And in 1964, the House of Representatives (but not the Senate) passed a bill that would have deprived the Supreme Court and the lower Federal courts of the power to hear cases regarding enforcement of the Court's new rule of one-man, one-vote for apportionment of state legislatures, a rule that was intended to redress inequities in voting strength caused by racial animus. The reapportionment decisions spurred a furious attack on the Court led by proponents of states' rights, some of whom went so far as to propose that a "Court of the Union," composed of the Chief Justices of all the states, be established to review the decisions of the Supreme Court.

All the bills under consideration this year invoke the concept of jurisdiction, the basic authority of a tribunal to decide a case. Sponsors of the bills cite Article III of the Constitution, which assigns to Congress the power to define and regulate the jurisdiction of all Federal courts including the Supreme Court. Using this power, the Congress has, for example, denied Federal judicial authority in some cases involving lawsuits for less than $10,000. No one questions the legitimacy of that restriction. So why, the sponsors ask, can Congress not also declare, as one bill does, that "the Supreme Court shall not have jurisdiction to review . . . any case arising out of any State statute, ordinance, rule or regulation . . . which relates to abortion?" The answer is not simple. It rests on an understanding of the scope of Congress authority over the jurisdiction of the Federal courts, which, in turn, depends on an understanding of the Constitution and the role the Constitution mandates that the Federal courts play in the American system.

The framers and early expositors of the Constitution did not fear the power of the courts. With no innate authority either to enforce its own judgments or to control the purse strings, the judiciary was expected to be the weakest of the three branches of government. It was rather the legislative branch that the framers felt a need to restrain. Steeped in English parliamentary history, they knew the dangers of legislative tyranny. James Madison, the principal architect of the Constitution, observed: "The legislative department is everywhere extending the sphere of its activity and drawing all power into its impetuous vortex."

The framers set up the Federal court system as one means of checking the Congress. Using the power of judicial review, the courts would invalidate any legislative acts that were inconsistent with the strictures of the Constitution. The theory was, and still is, that Congress should exercise only a delegated authority, derived from the people. The Constitution, in contrast, was intended to represent the actual embodiment of the people's fundamental and supreme will. Thus, when presented with a case in which a legislative act contravenes the constitutional mandate, it is the duty of the courts to uphold the latter. "To deny this," said Alexander Hamilton, "would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves."

The Supreme Court has therefore struck down laws passed by Congress that conflict with the Constitution ever since the landmark 1803 case of *Marbury* v. *Madison*. For almost as long, the Court has invalidated constitutionally offensive state statutes as

well. That duty, scholars insist, is grounded in Article VI of the Constitution, which commands: "This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land."

It was inevitable that the judiciary, of the three branches of government, would be charged with the responsibility of assessing the constitutional validity of legislation. To insure the judiciary's ability to perform this sensitive duty faithfully and neutrally, the framers deliberately shielded the judges from political pressures by guaranteeing them, within the Constitution itself, life tenure, and by further providing that their salaries could not be diminished through legislative act. Their independence, to quote Hamilton again, would insure "that inflexible and uniform adherence to the rights of the Constitution, which we perceive to be indispensable in the courts of justice."

This is not to say that the Federal courts' judgments relating to the constitutionality of legislation—including legislation on such issues as abortion, school prayer and busing—cannot be overridden. An unpopular Supreme Court decision on a constitutional issue can be overturned through a constitutionally prescribed means: an amendment of the Constitution. In fact, three times amendments have been proposed and ratified as a way of nullifying controversial Supreme Court decisions. (The 11th Amendment, which forbids a suit in Federal court against a state without its consent, was adopted to overrule a 1793 holding that the Supreme Court had jurisdiction over a case brought by two South Carolinians against the State of Georgia. In 1868, during the Reconstruction period following the Civil War, the 14th Amendment was enacted. This amendment, which proclaims that all persons born in the United States are full citizens of the United States, with all "rights and immunities" of citizens, overruled the infamous Dred Scott decision of 1857, which had declared that black slaves, as no more than pieces of property, lacked the rights of citizens. Finally, in 1913 the 16th Amendment was adopted to overturn a Supreme Court decision holding that the Federal income tax was unconstitutional.)

Constitutional amendments, however, are not a means most critics of the Court are eager to employ to bring about the changes they seek. Their passage requires a cumbersome procedure of ratification—as supporters of the proposed equal rights amendment well know. The framers deliberately made the amendment process cumbersome because they did not want expediency to prevail over constitutional rights. They believed that any alteration of the fundamental law of the land should enjoy the overwhelming and sustained support of the citizenry. A simple majority in both Houses of Congress, sufficient to pass the ordinary statute, should not be enough to justify permanent changes in the nation's charter of basic freedoms.

Herein lies the tactical appeal of the withdrawal-of-jurisdiction stratagem. Many supporters of the 30 or so divestiture bills now before Congress freely admit that they are attempting to bypass the amendment process. Their rationale is simple: Since the popular support to override Court decisions by amending the Constitution is difficult to garner, why not accomplish the same result with a simple statute restricting the power of the courts to consider the constitutional principles they dislike? In 1964, following the Supreme Court's landmark decision on legislative reapportionment, Senator Everett M. Dirksen introduced a bill to withdraw Federal court jurisdiction in apportionment cases. When asked whether he was attempting to enact a constitutional amendment in the form of a statute, he responded: "[There is] no time in the present [legislative] session to do anything with a constitutional amendment. . . . We are dealing with a condition, not a theory." A candid and revealing response, then as now.

The rationale of our Constitution is not to be lightly ignored. It was designed to protect individual rights by vesting the Federal courts with the final, binding authority to interpret the fundamental law. The only way to override the Constitution as so interpreted is to amend it. The backdoor mechanism of withdrawing the Court's jurisdiction is clearly antithetical to the judiciary's role in the constitutional scheme. If the bills depriving the Court of the authority to hear cases on such topics as abortion, school prayer and busing are considered constitutional, Congress might just as well pass laws depriving the Court of the authority to hear constitutional claims based on such freedoms as speech and religion. The potential consequences are astonishing.

There is another contention being put forward by the proponents of the withdrawal-of-jurisdiction bills that needs to be discussed. These legislators note that the Constitution states that "the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make." The "exceptions-and-regulations" clause, they argue, grants Congress wide-ranging authority to restrict the substantive categories of cases that may be appealed from the state and lower Federal courts to the Supreme Court. But to assert that the framers, who clearly intended the Supreme Court to exercise the power of judicial review, also intended to grant Congress plenary authority to nullify that power is to charge the framers with baffling self-contradiction. Indeed, the history of the exceptions-and-regulations clause suggests that it was never intended to carry the heavy constitutional baggage with which the bill's supporters are now loading it.

The clause originated in the fears of some members of the Constitutional Convention that Supreme Court review of factual determinations (appellate review was to be "both as to law and fact") would impair the right-of-jury trial in the states. Hamilton stated: "The propriety of this appellate jurisdiction has scarcely been called in question in regard to matters of law; but the clamors have been loud against it as applied to matters of fact." Since the practices with respect to appellate review of factual determinations varied so widely from state to state, the framers decided to leave to Congress, in the exceptions-and-regulations clause, the authority to regulate the scope of Supreme Court review of facts.

The clause was never meant to confer a broad control over appellate review of substantive legal issues, including issues of Federal constitutional law. Indeed, the Convention considered and rejected proposed constitutional language that "the judicial power shall be exercised in such manner as the legislature shall direct." far from a mandate to effectively abrogate the vindication of constitutional rights, the clause was intended merely as a way to give Congress the authority to regulate the Supreme Court's docket with reasonable housekeeping measures. Thus, in the Judiciary Act of 1789, Congress restricted the Court's appellate jurisdiction over cases coming from the United States Circuit Courts to those in which the amount in controversy exceeded a prescribed minimum.

On only two or three occasions in its history, has the Supreme Court passed upon the constitutionality of legislation seeking to limit its appellate jurisdiction. Both cases occurred over a century ago and both reveal constitutional defects in the current proposals relating to jurisdiction. In the first case, *Ex parte McCardle*, decided in 1869, the Court upheld a restriction on its appellate jurisdiction. Although relegated to a small niche in history, this case was enormously important in its day, for it involved a challenge to the post-Civil War Reconstruction program, in which Congress had placed 10 of the former Confederate states under military rule. McCardle had been imprisoned by the military government of Mississippi for the publication of allegedly libelous material. Pursuant to a Federal statute passed in 1867, he applied to a lower Federal court for a writ of *habeas corpus* ordering his release. He asserted that the Reconstruction Acts were unconstitutional. The court denied his application, and he appealed to the Supreme Court on the basis of that same Federal statute. Before the case was decided by the Court, however, Congress repealed that part of the 1867 statute which authorized appeals to the High Court. "We are not at liberty to inquire into the motives of the legislature," the Court held. "We can only examine into its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of the Court is given by express words."

Despite this pronouncement, the McCardle case is not ordinarily read as authority for a broad Congressional power to restrict the enforcement of constitutional rights in the Supreme Court. Under the Judiciary Act of 1789, McCardle could still apply for an original writ of *habeas corpus* in the Supreme Court. Therefore, the repealing act actually cut off only one avenue of *habeas* relief. The Court concluded as much in the 1869 case of *Ex parte Yerger*, a case that was in many ways strikingly similar to *McCardle*. Yerger held that the repealing statute did not affect the petitioner's right to apply for an original writ pursuant to the act of 1789. In contrast with the statute under consideration in *McCardle*, the bills that would forbid any Supreme Court review of busing, school prayer and abortion decisions would totally foreclose the possibility of a Supreme Court hearing on a claim of Federal constitutional right. Surely, *McCardle* cannot be considered a precedent for that.

This view is confirmed by *United States* v. *Klein*, decided in 1872, in which the Court struck down a limitation on its powers of appellate review. Klein administered the estate of a cotton plantation owner whose property was seized and sold by Union agents during the Civil War. Under legislation providing for recovery of seized property of noncombatant rebels upon proof of loyalty, Klein sued and won in the Court of Claims, proffering a Presidential pardon as proof of loyalty. The Court had previously interpreted a Presidential pardon as carrying with it a proof of loyalty. But pending the Government's appeal to the Supreme Court, Congress passed an act which legislated that acceptance of a pardon was, on the contrary, conclusive proof of disloyalty and one which, in addition, required the Supreme Court to dismiss for want of jurisdiction any appeal in which the claim for recovery was based on a pardon.

Invalidating that legislation, the Court concluded that Congress had unconstitutionally attempted to interfere with the Court's duty to interpret and give effect to a provision of the Constitution: "The language of the proviso shows plainly that it does not intend to withhold appellate jurisdiction except as a means to an end. Its great and controlling purpose is to deny pardons granted by the President the effect which this Court had adjudged them to have. The proviso declares that pardons shall not be considered by this Court on appeal. We had already decided it was our constitutional duty to consider them and give them effect, in cases like the present, as equivalent proof of loyalty."

In a similar manner, the current withdrawal-of-jurisdiction proposals do "not intend to withhold appellate jurisdiction except as a means to an end." And the end, in

this instance, is precisely the same as it was in *Klein*, the circumvention of the Supreme Court's authoritative interpretation of a constitutional provision. As *Klein* demonstrates. Congress does not have the power to subvert established constitutional principles under the guise of regulating the Court's appellate jurisdiction.

Those who would read the exceptions-and-regulations clause broadly also argue that state courts, which frequently rely on the Federal Constitution in striking down state legislation, could adequately protect constitutional rights without review in the Supreme Court. The short answer to this contention is that a Federal constitutional right is of dubious value if it means one thing in Mississippi and another in Minnesota. State courts have at times differed profoundly on the meaning of constitutional provisions. To cite but one illustration, in 1965, the Supreme Judicial Court of Massachusetts concluded that the book "Fanny Hill" was unprotected by the First Amendment. At about the same time, the New York Court of Appeals found that it was. Obviously the need for uniformity in matters of Federal constitutional interpretation is essential, and the appellate jurisdiction of the Supreme Court was designed to meet that important need. Chief Justice John Marshall said in *Cohens v. Virginia*: "The necessity of uniformity as well as correctness in expounding the Constitution and laws of the United States, would itself suggest the propriety of deciding, in the last resort, all cases in which they are involved. . . . [The framers of the Constitution] declare that, in such case, the Supreme Court shall exercise appellate jurisdiction."

In connection with this uniformity function, there is an interesting tale concerning one of the most eminent jurists in American history, Judge Learned Hand of the United States Court of Appeals for the Second Circuit. In 1958, at the ripe age of 86, Hand, still nimble of mind and capacious of spirit, was asked by Senator Thomas C. Hennings, Jr. of Missouri, chairman of the Senate Judiciary Subcommittee on Constitutional Rights, to comment upon a then-current bill to remove Supreme Court appellate jurisdiction in cases regarding internal security. Hand promptly responded: "It seems to me desirable that the Court should have the last word on questions of the character involved. Of course there is always the chance of abuse of power wherever it is lodged, but at long last the least contentious organ of government generally is the Court. I do not, of course, mean that I think it is always right, but some final authority is better than unsettled conflict."

It should also be self-evident that the framers saw independent, tenured Federal judges—knowledgeable in Federal law, drawn from all over the country and, as prescribed in the Constitution itself, appointed by the President and confirmed by the Senate—as more appropriate arbiters of conflicts between constitutional and state law than elected state judges, many of whom are popularly elected and who might be partial to state law. The framers realized that only the Federal judges could insure the supremacy of Federal law. As James Madison said: "In controversies relating to the boundary between the two jurisdictions [Federal and state], the tribunal which is ultimately to decide is to be established under the general Government. . . . Some such tribunal is clearly essential to prevent an appeal to the sword and a dissolution of the compact."

The argument for giving Congress the authority to determine the kinds of cases and the types of remedies that the inferior Federal courts may hear is a bit more complicated—if equally unpersuasive. It too is based on Article III of the Constitution, which gives Congress the right to establish "such inferior courts as the Congress may from time to time ordain and establish." Since this provision has been interpreted by many legal experts as giving Congress the right to establish or abolish the lower courts, does it not follow that it also gives Congress the authority to regulate the subject matter of their jurisdiction? The fallacy of this argument is that the framers predicated Congressional discretion on the assumption that litigants would in all cases be able to present their Federal claims or defenses to *some* Federal court, either in the district court or on appeal. And it was further assumed that, even if no lesser Federal courts were created, the Supreme Court itself would serve as the requisite forum by hearing all constitutional cases appealed from the state courts.

Throughout most of the 19th century, this was possible. The Court's docket was almost empty by today's standards and it could ordinarily hear a constitutional case any time one of the parties so desired. But beginning about 1875, the Supreme Court's case load began to grow enormously, giving rise to a series of acts, culminating in the Judges Bill of 1925, which gave the Court the discretion to decide which cases, within certain categories, it would hear. In the process, the Supreme Court was transformed from a general court of appeal into a court which would decide only cases of great constitutional moment or high precedential value.

As the Supreme Court has found itself deciding a progressively smaller percentage of the cases involving Federal, constitutional and statutory law, the role of the lower Federal courts in protecting constitutional rights has expanded to the point of practical and effective primacy. And over the last two decades, a period during which there has been an explosive growth of litigation, the inferior Federal courts have become, in most instances, the only forums in which a litigant could secure a decision on his constitutional claims by a judge life tenured under Article III of the Constitution. If Congress were now to abolish the lower Federal courts, it would effectively cut off almost all opportunity for Federal adjudication of Federal rights. And clearly, the framers did not wish to leave to the states final authority to decide matters of Federal constitutional law. For this reason, the argument that Congress can withdraw jurisdiction over certain classes of Federal cases or rights because it has discretion to abolish the lower courts does not hold up under examination.

Authoritative precedent also strongly suggests that even if Congress had the power to abolish some or all of the lower Federal courts, it may not use its power over lower court jurisdiction to thwart the vindication of constitutional rights. The Court of Appeals for the Second Circuit said in Battaglia v. General Motors Corporation, decided in 1948, that, "while Congress has the undoubted power to give, withhold and restrict the jurisdiction of courts . . . it must not so exercise that power as to deprive any person of life, liberty, or property without due process of law."

The conclusion that can be drawn from all of these arguments is this: Congress does indeed have broad discretion to withdraw jurisdiction from lower Federal courts—where no substantive constitutional rights are at issue. The statutory rights that owe their existence to Congress, as distinguished from constitutional rights, may be taken away either by a repealing statute or by a provision withdrawing Federal court jurisdiction. Where rights embodied in the Constitution are concerned, however, the discretion of Congress is limited. When Congres deprives a Federal court of the authority to hear a litigant's constitutional claims or defenses, it must provide that litigant with another Federal forum in which to seek an adequate remedy. The distinguished legal scholar Henry Hart once decried the use of statutes withdrawing lower court jurisdiction to undermine constitutional rights: "Why, what monstrous illogic! To build up a mere power to regulate jurisdiction into a power to affect rights having nothing to do with jurisdiction! And into a power to do it in contradiction to all the other terms of the very document which confers the power to regulate jurisdiction!"

Applying these lessons to the divestiture bills now before Congress, there can be no doubt that all of them trench upon established constitutional rights. The Supreme Court has determined that busing may be a constitutionally required remedy in an appropriate case for violations of schoolchildren's equal-protection rights to an education in a desegregated public school. Chief Justice Burger has written for the Court: "Bus transportation has long been an integral part of all public educational systems, and it is unlikely that a truly effective remedy could be devised without continued reliance upon it." In the landmark case of *Roe v. Wade*, the Court firmly established a woman's constitutional right to an abortion. And for nealy two decades, the Court has found mandatory prayer in the public schools to violate the constitutional principal of separation of church and state.

One may disagree with these decisions; they may even transgress one's deepest moral convictions. But one cannot doubt that they were based upon informed interpretation of the Constitution—and not on the basis of political or ideological expediency. It is worth recalling the pungent words of Chief Justice Charles Evans Hughes: "We are under a Constitution, but the Constitution is what the judges say it is, and the judiciary is the safeguard of our liberty and of our property under the Constitution." Depriving the Federal courts of the power to adjudicate cases relating to such issues as desegregation, abortion and school prayer effectively precludes Federal protection—the constitutionally envisaged and most reliable form of protection—of our cherished constitutional rights.

The result of the proposed legislation would be to deny citizens the protection of constitutional rights that the Supreme Court has declared they possess. It would be strange indeed if Congress could accomplish through a jurisdictional bill what it clearly must not accomplish directly: a reversal of constitutional principle by an act of Congress The law is clear, for example, that Congress has no power to declare racial discrimination in Federal Government employment legal. The "logic" of the arguments raised by the proponents of the divestiture bills would, however, permit Congress to remove from the Federal courts all jurisdiction to hear cases involving racial discrimination against Government employees. The motive, discrimination, would be equally patent in either instance.

If one needs to find language in the Constitution as a source for these restrictions on the power of Congress to control the jurisdiction of the lower Federal courts, it is in the due process clause of the Fifth Amendment. The overarching guarantee of due process is the sacred assurance that the Federal Government will govern fairly, impartially and compassionately. All the powers of Congress—to tax, to make war, to regulate commerce—are constrained by its constitutional inability to deprive us of our rights to life, liberty and property without due process of law. As a power of Congress, the authority to control jurisdiction is therefore restricted by the right of due process. That is the wonder of the American Constitution as it lives and breathes.

Should Congress insist upon restricting the judiciary in ways that the Supreme Court may view as unconstitutional, the Supreme Court might well strike down the withdrawal-of-jurisdiction legislation, leav-

ing Congress and the judiciary in conflict. This institutional dissension would continue, until Congress either accepted the Court's determination or passed a constitutional amendment restructuring the basic relationship between the judicial and legislative branches of government.

It is understandable that politically vulnerable legislators would react adversely to judicial nullification of their enactments. Yet those who criticize the courts for their unresponsiveness to the present national mood tend to forget that the judicial branch was not designed as just another barometer of current public opinion. Congress is superbly adequate for that function, and we ought not to presume that the framers intended the judiciary as an institutional redundancy. In exercising their power of judicial review, the courts have represented the long-term, slowly evolving values of the American people, as enshrined in the Constitution. And when the people have recognized Congressional court-curbing efforts for what they are—assaults on the Constitution itself—they have in every instance rejected them.

It is of no small interest that even some of the supporters of the divestiture bills have begun to question the constitutionality of these proposals. And, indeed, there is a glimmer of hope that these doubts will eventually permeate Congress. The long history of Congressional court-curbing measures reveals that the legislative branch has in every instance ultimately yielded to the judiciary's duty to interpret the Constitution and has not (at least since passing the statue involved in the *Klein* case more than a century ago) challenged the courts with a jurisdictional bill that would impinge upon the fulfillment of that duty. Robert McKay, former dean of the New York University Law School, wrote of bills to withdraw jurisdiction over apportionment cases: "Once again, as so often in the past, when the implications of the proposed legislation were made clear, the Congress would not quite cross the threshold of no return."

The political risks attending bills to withdraw Federal jurisdiction create another check on the legislative goal of certain Congressmen. Groups of all persuasions have attempted to achieve their politcial aims through attacks on the Court's authority to decide constitutional cases. While it is true that political conservatives are the strongest supporters of the current efforts to withdraw jurisdiction, liberal reformers have also utilized this strategy in the past. Employed successfully by today's political majority, it could easily be manipulated tomorrow by a different majority—and to other ends.

In the final analysis then, while the current divestiture bills should be a cause for concern about the ability of our constitutional system to withstand the onslaught of restrictive legislation, there is also room for hope. In the long history of court-curbing efforts, the majority has always, in the end, acknowledged the clear intention of the framers. To preserve the rights of the people, the Federal judiciary must interpret and apply the Constitution unfettered by unseemly limitations on its jurisdiction. The current Congress is a body of distinguished and wise legislators who are unlikely to sacrifice the long-term good of the Republic for speculative and short-term political gain. As the New England poet James Russell Lowell once said, "Such power there is in clearеyed self-restraint." As the first Monday in October draws near, there is reason to believe that Congress will be instructed by the lessons of history and see that the constitutional powers of the highest court in the land—and of other Federal courts—should remain inviolate.

Mr. DURENBERGER. Mr. President, 5 months ago I prefaced the introduction of the Economic Equity Act by noting that in the first 200 years of the American experience only two women had been elected to the Senate in their own right; only 14 women had served on the Federal bench; and that no woman had ever served on the Nation's highest court.

I must confess a special satisfaction in the realization that just 9 months into the new beginning we proclaimed for this country in January, the most significant of those barriers is about to fall.

The nomination and confirmation of Sandra O'Connor is an affirmation of the President's and the Senate's faith in a remarkable woman. Her intellectual ability has been evident in every phase of her life, from law school—where she was third in a class that included Supreme Court Justice William Rehnquist—to her years of service on the Arizona bench. She is an extremely intelligent woman and a very capable jurist. Her command of the law was evident throughout the confirmation hearings. Her ethical background is spotless and her integrity has never been questioned even by her most critical foes. Her life's record is impressive evidence of the competence, intellect, and leadership she will bring to the Nation's highest court.

The nomination of Sandra O'Connor is also an affirmation of faith in every American woman. It is recognition of the fact that every person in this Nation feels the loss when society fails to utilize the talents, judgment, and intellectual capacity of half its people. The decisions reached by the Supreme Court touch the lives of every woman, just as they touch the lives of every man. It is a paradox that a nation born in reaction to legislation without representation should have allowed the same inequity to remain for so long in its judicial system. When Mrs. O'Connor takes her seat on the Supreme Court, the stakehold of every American in that Court will be more real and visible than ever before.

The O'Connor nomination, and the Senate's vote to confirm that nomination, are also reaffirmations of the unique balance of power that underlies our system of government. As I listened to her testimony during last week's hearings, I became convinced that Mrs. O'Connor's greatest qualification for the Court is her perspective on the role a Supreme Court Justice—or any justice for that matter—plays in the formulation to policy. Mrs. O'Connor has served both on the bench and in the legislature. She understands the difference between the judicial and legislative role. Her testimony—like her judicial record—emphasize the primacy of the Congress and the legislatures of the 50 States in defining legislative policy. She well understands that while the courts play an essential role in applying these policies on a case-by-case basis, they cannot preempt the role of policymaker without disrupting the constitutional balance that has supported the federal system for more than two centuries.

There are areas where I agree with Mrs. O'Connor and areas where we take different views. But as we prepare to vote this evening, it is equally essential that every Member of this body bear in mind the limits as well as the responsibilities of the Senate's power to advise and consent on Presidential nominations. That power was never intended as authority for any Senator to substitute his or her judgment for the Presidents on judicial nominations. The issue is not whether I or any other Senator would have chosen Sandra O'Connor from the field of men and women qualified to fill the Stewart vacancy. The responsibility of advise and consent is the limited but essential responsibility to insure that the Presidents choice does fall within that field, that she meets the ethical and intellectual requirements to serve on the highest court. The intellectual and ethical capabilities of this nominee are beyond question, and by making that judgment the Senate has fulfilled its role. The nomination of Mrs. O'Connor should be confirmed.

The vote we are about to cast is truly an historic vote. It is an affirmation of faith in this nominee, and in the millions of American women she represents. It is a reaffirmation of the willingness of the Senate and the members of the Court to accept the limits as well as the responsibilities of their constitutional roles. I am convinced that this nomination is not the culmination of a 200-year effort by American women to add their wisdom to the accumulated wisdom of the Court. It is just the beginning of that process, and it is a privilege to play a role by casting my vote for Sandra O'Connor this evening.

Mr. MITCHELL. Mr. President, since I was sworn in as a U.S. Senator last year, I have missed only a handful of Senate votes. I consider each vote I have cast significant and important. But there are occasions when the Senate considers a matter which is of utmost significance and of the highest importance.

The approval of a nomination to the U.S. Supreme Court is such a matter. The vote each of us is about to cast will have an indirect effect on the development of American law which is far greater than the direct effect of most legislation considered by this body. The confirmation of Judge O'Connor to the Supreme Court is a responsibility which we should not, and do not, take lightly.

I am pleased to be able to vote to approve the appointment of Judge O'Connor. I have carefully reviewed her record as a judge and have read with great interest her intelligent and comprehensive discussions of the law with the members of the Senate Judiciary Committee. I was extremely impressed with her knowledge of Federal law and Supreme Court precedents. She has already established her scholarly qualification for her appointment.

In addition, Judge O'Connor has demonstrated a demeanor and temperament appropriate for a Supreme Court Justice. I am especially pleased that a jurist of this caliber is being elevated to the Supreme Court.

Mr. BRADLEY. Mr. President, Emerson once wrote that "integrity is better than a career." Fortunately with President Reagan's nominee for Supreme Court Justice we do not have to make a

choice between the two. For Sandra Day O'Connor combines a distinguished career with great personal integrity.

I am pleased to say that in this nomination I have found a common ground on which to stand with the Reagan administration. As House Speaker O'NEILL stated in the New York Times of July 9, 1981, "It's the best thing he's (Reagan) done since he was inaugurated." I extend my support to the appointment of Mrs. Sandra Day O'Connor.

As we consider this nomination, I know it is not necessary to remind my fellow Senators that not only is Mrs. O'Connor highly capable, highly skilled and highly educated, but she will be the first woman to sit on the Supreme Court in a nation where women comprise 52 percent of the population. Clearly her qualifications, which are impressive, are more important than her gender. The important point is that it is noteworthy whenever our society becomes more inclusive and truly integrated.

The role of the Supreme Court in American society is an extraordinary one for a group of nine people. The Justices must balance conflicting societal interests to determine what is in the best interests of the American society as a whole.

The Court's impact is not always easy to predict, especially in areas such as the status of minorities and labor management relations. It is also more limited than one might imagine. For instance, criminal penalties are designed to deter people from committing crimes. Civil rights policies are intended to prevent discriminatory behavior. But the behavior of people is not changed that easily. A variety of influences are beyond the reach of government.

The Supreme Court is one of many public and private institutions that shape American society. However, it is clearly a strong force in defining a direction for our society. It is the final assurance that we are a Nation of laws, not men—and women. For this reason, its members have significant responsibility. Sandra Day O'Connor is able to fulfill this responsibility.

To elaborate on her credentials, she graduated among the top 10 of the 1952 class of Stanford Law School. For 3 years she was a civilian lawyer for the Army in Germany. When she returned to Arizona she practiced law for 2 years. When her youngest son entered into school she returned to her legal practice, then became Assistant Attorney General of Arizona and entered Republican Party politics.

She was elected to the Arizona State Senate and later became the majority leader in 1973. Arizona politicians describe her as a conservative which is supported by her record on the abortion issue. But on some issues concerning women she often took the liberal position and led fights to remove sex-based references from State laws. In addition she led the way toward the elimination of job restrictions in order to open more positions for women. Mrs. O'Connor left the Senate and won election as a Phoenix trial judge in 1975. In 1979 she accepted an appointment to the Arizona Court of Appeals from Governor Babbitt, a Democrat.

Naturally, there are those who differ with Mrs. O'Connor because of political affiliation or opinions. I say that Sandra Day O'Connor is an excellent choice because she has the ability needed to do the job. I have every hope that she will consider and decide the issues before her—not as a liberal or conservative, not as a woman, not as a Republican—but based on the facts of the case and the Constitution, which we are all sworn to uphold.

● Mr. WILLIAMS. Mr. President, I am extremely pleased to cast an affirmative vote for the confirmation of Sandra Day O'Connor. While I have my differences with many aspects of the President's program, his fulfillment of his campaign pledge to nominate a qualified woman jurist to our Nation's highest legal forum deserves the praise of every American devoted to equality.

Judge O'Connor has, I feel, impressed every Member of this body and the vast majority of the American people with her cool and reasoned demeanor through an exhaustive hearing examination. She forthrightly outlined her view of the role of the courts and the nature of our federal system, while respectfully demuring when asked to comment on issues which may come before her as an Associate Justice. It is clear that Sandra O'Connor will not let her own personal views interfere with reaching opinions based solely on the facts before the Court and on the law as it presents itself to the Court.

Mr. President, this does not mean that I agree with all of Judge O'Connor's personal views, or that I will necessarily concur with the understanding of the Constitution which emerges in her opinions as a Supreme Court Justice. But that, in my view, is not the proper role of the Senate when presented with an occasion to advise and consent to the nominations of a President. I believe that the President is entitled to those individuals who he, or perhaps someday she, feels is best suited to the position at issue. Our duty as Senators is not to decide whether that nominee agrees with us on any single issue or is in substantial agreement on a wide range of issues. Rather, our job is to ascertain that the individual is qualified by training, experience, and temperament for the post in question, and will abide by the paramount duty to uphold our laws and our great Constitution. The 17-to-0 vote of the Judiciary Committee in favor of reporting this nomination to the Senate tells me that Sandra O'Connor meets and exceeds that criteria of judgment.

In concluding, Mr. President, let me add a personal note which underlines the historic importance of this occasion. Last night I spoke on the telephone with my mother. She is 92 years old, and has personally lived through nearly half of our Nation's history. When I noted that this vote was to occur today on the first woman to be confirmed as an Associate Justice of the Supreme Court, she commented, "You know, I'm so glad that I was able to live to see this day."

Mr. President, when Sandra O'Connor ascends the Supreme Court bench, the words "Equal Justice Under Law" which [illegible] will take on new meaning for our Nation which has waited its whole life for this great occasion.●

Mr. THURMOND. Mr. President, I suggest the absence of a quorum under the same conditions.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. THURMOND. 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. THURMOND. Mr. President, I yield to the majority leader such time as he wishes.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. BAKER. Mr. President, I thank the Chair.

Mr. President, what is the next order of business under the order previously entered?

The PRESIDING OFFICER. The Senate is to proceed to the consideration of the nomination of James C. Miller III, to be a Federal Trade Commissioner.

Mr. BAKER. Mr. President, is the time for the control of debate for the proponents assigned to the majority leader?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. Mr. President, I assign that to the distinguished Senator from Wisconsin (Mr. KASTEN).

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

Who yields time?

FEDERAL TRADE COMMISSION

NOMINATION OF JAMES C. MILLER III TO BE A MEMBER OF THE FEDERAL TRADE COMMISSION

Mr. KASTEN. Mr. President, in accordance with the previous order, I call up the nomination of James C. Miller III to become a member of the Federal Trado Commission.

Tho PRESIDING OFFICER. The nomination will be stated.

The assistant legislative clerk read the nomination of James C. Miller III, of the District of Columbia, to be a Federal Trade Commissioner.

The Senate proceeded to consider the nomination.

Mr. KASTEN. Mr. President, there is a time limit on this nomination of 2 hours of debate to be equally divided between the majority and minority leaders, or their desiegnees, and 1 hour will be under the control of the distinguished Senator from Ohio (Mr. METZENBAUM).

Is that the Chair's understanding?

The PRESIDING OFFICER. That is correct.

THE SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination of Sandra Dav O'Connor to be an Associate Justice.

The PRESIDING OFFICER. The Chair inquires of the chairman of the

Judiciary Committee and the Senator from Delaware whether or not they have yielded back their time on the nomination of Sandra Day O'Connor and whether or not the Senate will now proceed to this nomination?

Mr. BIDEN. Mr. President, the Senator from Delaware at this point has not yielded back the remainder of his time. I wish for this time for the purpose of continuing on the O'Connor nomination to yield whatever time I have remaining to the last person on our side who indicated an interest in speaking, and that is the Democratic leader.

Mr. BAKER. Mr. President, if the Senator will yield to me just for a moment, there are Members on this side, including the majority leader, who wish to speak. I am perfectly willing to do that whenever it is most convenient, but when I was brought to the floor I was under the impression we were prepared now to proceed to the Miller nomination.

The PRESIDING OFFICER. The Chair will advise the majority leader that presently 2 minutes and 26 seconds remain to the chairman of the Judiciary Committee and 22 minutes and 31 seconds remain to the Senator from Delaware.

Mr. BAKER. Mr. President, I am prepared to do it either way the Senator wishes or the minority leader wishes.

Mr. President, I ask unanimous consent that the Miller nomination be temporarily laid aside so that the Senate may resume consideration of the O'Connor nomination.

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

Mr. BAKER. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield such time as the majority leader desires, and if he desires, if we have time, I have been promised time by the ranking member, Senator BIDEN.

Mr. BIDEN. I would be delighted to yield the time I have left beyond what the Democratic leader will use, but I believe I only have 2 minutes.

The PRESIDING OFFICER. The Senator has 22 minutes.

Mr. BIDEN. I beg your pardon. There is plenty of time.

Mr. BAKER. Mr. President, will the Senator from South Caroina give me a minute and a half and the minority leader whatever time he wishes?

Mr. BIDEN. We have plenty of time for us all.

The PRESIDING OFFICER. The majority leader.

Mr. BAKER. Mr. President, I thank the minority leader for permitting me to proceed at this point, and my thanks to the distinguished ranking member of the Judiciary Committee and, of course, to the distinguished chairman of the Judiciary Committee, the Senator from South Carolina.

Mr. President, today is truly a historic day, a rare historic day, that embraces all three branches of our Federal Government—the executive branch, for President Reagan's courageous decision to nominate Judge O'Connor to the Supreme Court: The legislative branch, for supporting and confirming Judge O'Connor; and for the judicial branch, the new home of the first woman to serve on our highest court and only constitutional court.

I would like to take this opportunity to thank Judge O'Connor for her cooperation with the Senate Judiciary Committee. It seems that the more we get to know her, and the more we come to recognize her judicial prowess, the more honored we become to have her serve on our Nation's Highest Court.

The chairman of the Judiciary Committee, Senator THURMOND, and his entire committee should be commended for their swift and responsible action on this nomination.

I express my appreciation as well to the distinguished ranking member, and all of the members on the minority side of the Judiciary Committee who handled this nomination, in my judgment, in a most responsible and most nonpartisan way.

I expect that Mrs. O'Connor will be confirmed. I hope she is confirmed overwhelmingly, even unanimously, for I believe this is a milestone in the further evolution and development of the democratic process in this great Republic.

My thanks to Judge O'Connor for permitting her nomination to be submitted, my congratulations to the President for making it, and my hope that she will serve with the distinction I feel confident she will bring to our highest court.

The PRESIDING OFFICER (Mrs. KASSEBAUM). Who yields time?

Mr. BIDEN. I yield time to the Democratic leader.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Madam President, first of all, I wish to thank the distinguished Senator from Delaware (Mr. BIDEN) for his courtesy, and also to thank him for the fine way in which he has gone about the consideration of this nomination.

I congratulate the entire Committee on the Judiciary for the hearings that have been held, for the questions which have been asked and, most of all, I commend Mrs. Sandra O'Connor for the way in which she succinctly and cogently responded to those questions.

I marveled at her equanimity, I admired her judicious responses to questions, and I think she came through those hearings with flying colors.

Several weeks ago, I had the good fortune of meeting Judge O'Connor shortly after she had been nominated by the President to serve as an Associate Justice of the U.S. Supreme Court. I told her then that I intended to vote for her confirmation unless something of an adverse nature that was then unforeseen should come to light.

I followed the hearings carefully, and I observed her day-to-day conduct at those hearings, her demeanor and her bearing, and I was impressed. Today, I shall cast my vote in favor of her nomination.

I would also like to take the time on this occasion to commend President Reagan for this outstanding nomination. I have been persuaded, both in her testimony at the Judiciary Committee hearings and from the record of her distinguished career in public life, of her commitment to the fundamental values that made this country great.

I believe that her philosophical approach to the proper role of the Supreme Court has evolved from her own experience in State government, as a State's attorney, as a State legislator, and, most recently, as a State Appellate Court judge, and I would expect, of course, that what she has learned from all of these various perspectives has had a great deal to do with the shaping of her present attitude concerning the scope of the Supreme Court.

I trust that she will always be mindful of the necessity of maintaining a proper balance between national and local responsibilities.

I also commend her on taking a position with regard to her very own personal views on given matters. She should not in advance attempt to state what her position will be with regard to any given subject area that might come before the Supreme Court at a future time, and she did not so state.

I commend her on taking a position with regard to one's own personal views. One's responsibility in a position such as serving on the Supreme Court is to interpret and to construe the Constitution of the United States, not according to one's own personal opinion or viewpoint, not according to one's own personal biases and prejudices—we all have them at one time or another—but only in light of the Constitution, which is a living document for all time.

I congratulate the Senators who asked her difficult questions, and I find no fault in those who sought to satisfy their own personal views in asking some questions, hoping the responses would be similar to their own feelings about a given matter.

I congratulate Judge O'Connor on maintaining throughout those days of questioning that she would construe the Constitution on all fours and apply that Constitution to the circumstances as they came before the Court on future matters.

She also stated that the doctrine of stare decisis—let the decision stand—would be a very compelling one with her, but that, nevertheless, there come times when new precedents have to be set and occasionally, in the light of changing circumstances, old precedents have to give way. However, she maintains that precedents will have a very persuasive and heavy weight in her deliberations, and that is the way I think it ought to be.

I am satisfied that when she goes to tend to cases that come before the Court, she will attempt to see beyond her own personal viewpoint, and view cases in the light of what the Constitution says, what the Constitution forefathers thought as they wrote, and what the precedents are that have been handed down from generation to generation in the various constructions and interpretations of that Constitution.

So, Madam President, I would like to express my deep sense of pride in my country and in our elected officials as we have finally reached a moment in our history when gender is not a factor to be considered in the selection of Associate Justices to the Supreme Court of the United States. By force of her intellect, character, integrity, and temperament, Judge O'Connor has brought distinction and honor, not only to the women of this country, but to all of us. And she will continue to do that, I am confident, as she sits on the highest Court of the land.

I am proud to vote to confirm Judge O'Connor as an Associate Justice of the U.S. Supreme Court.

I again thank my ranking member, Mr. BIDEN, for his courtesy in yielding to me.

Mr. BIDEN. I thank the Senator.

I was about to yield back the time, but there has been a request from the distinguished Senator from Florida. She asked whether I would yield her some time. I would be delighted to yield time for the purpose of discussing this nomination.

The PRESIDING OFFICER. The Senator from Florida.

Mrs. HAWKINS. Thank you, Madam President.

Madam President, it is great pleasure to participate in this historic event, the confirmation proceedings of the first woman to be nominated to the Supreme Court. The pleasure is the sweeter in that the nomination was submitted by a Republican President, who is perceived by some as a hidebound conservative. This nomination demonstrates conclusively that conservatism does not imply denigration of women, or less than a full commitment to equal rights for all.

John Ruskin said that there is not a war in this world, nor an injustice, but that women are responsible; not that they provoke them, but that they do not stop them. I have felt the accuracy of that charge all my life, and it is part of the reason I have been active in politics. It is evident to me that Sandra Day O'Connor is moved by the same sense of responsibility. I welcome her to Washington, and will be happy to vote to confirm her as an Associate Justice of the Supreme Court.

There was concern about this nominee, given the intensity of feeling surrounding certain social issues, and her record as a member of the legislature of the State of Arizona. But there was never the slightest hint, that I ever detected, that opposition to her was based on her sex. All of the debate has taken place over policy issues and technical qualifications, and that is as it should be.

The debate has shown that Judge O'Connor is well qualified for this position. Her record as a law student was excellent, leading to academic honors and a spot on the staff of the Stanford Law Review. She practiced law, in both public and private practice, and then held elective office for 5 years, one of the very few judicial nominees to have that kind of important experience. If her judicial experience has not given her the opportunity to break new ground on constitutional issues, it has demonstrated that she has a remarkable degree of legal competence and commonsense.

In general, the hearings disclosed that Judge O'Connor is sensitive to the social issues that are of so much concern to millions of families today. She showed a reluctance to justify the intrusion of government power into the intimate details of family life, and a good understanding of the delicate nature of our complex civilization. She will have, of course, a responsibility to carry out the promise she showed in the hearings, by adhering closely to a doctrine of judicial restraint and true constitutionalism. Our social fabric has been strained in recent decades by an unwarranted judicial activism, and in my view Judge O'Connor has the appropriate view of the proper role of the courts. In many ways, it appears to me that Justice O'Connor will continue to be a part of the recent tendency of the High Court to defer to the political branch of government, and to permit many more decisions to be made at local levels. If she does fulfill that promise. she will be welcome news to those who now oppose her, and a far better justice than they now appear to think she will be.

There is no reason to think that Sandra O'Connor will be a doctrinaire feminist or other sort of judicial activist. During the hearing she was asked if she had experienced sex discrimination herself. Her response was perfectly in keeping with her understanding of the complexity of society and human emotions, and attuned to the differences in attitude that come with the passage of time. Her views appear to coincide with my own on this issue: That it is needlessly divisive and inaccurate to talk about "women's issues," when there are so many "people's issues" that have to be dealt with. We do not have surplus time and energy to waste on breaking people up into separate blocks.

As a strong opponent of abortion myself, I was concerned about the charges that Sandra O'Connor had a proabortion record as a State legislator. In evaluating Judge O'Connor on this issue, one of the most persuasive aspects of the hearing was the appearance of numerous Arizona legislators who know Judge O'Connor well as a fellow legislator. Many of these legislators are strongly antiabortion. One of them, in fact, Tony West, is a leader in the Arizona prolife movement. These legislators endorsed the nomination with great enthusiasm, and that endorsement has to carry a great deal of weight.

In addition, of course, we have the recommendation of President Ronald Reagan, a strongly prolife President, who has assured us that we will not be unhappy with this nomination. These endorsements have to be taken into account by anyone attempting to evaluate this nomination. Certainly they should be considered at least as important as a legislative voting record almost 10 years old, 10 years during which much more has been learned about abortion and the unborn child.

The Court has recently shown some disposition to withdraw from its mode of judicial activism. In several decisions last term there were clear indications that the present membership of the Court feels uncomfortable with the legislative role, and that restraint is likely to be more the order of new term as well. Judge O'Connor, it appears to me, will fit very well with that more restrained attitude. Her opinions and her writings show that she understands the problems created by judicial activism, and her experience as a State legislator certainly gives her the practical exposure to dictation from above that should lead her to shun it.

I expect, then, that in confirming Judge O'Connor as the first woman justice on the Supreme Court, we will be setting the stage for many long years of decisions which will be truly satisfying to those of us interested in defending the family, neighborhood, work, prosperity, and peace. These are the values of our President, and the Republican Party who campaigned on them, and of our constituents. I expect history to show that Justice O'Connor effectively championed these causes, too. Madam President, I yield back the floor.

Mr. THURMOND. Madam President, I wish to take this opportunity to thank Senator BIDEN for allowing several of those on our side extra time. I appreciate his agreeing to give extra time, and I wish to thank him for doing it.

I am so glad that Senator HAWKINS got here to make her speech, because we certainly wanted her to speak on this subject.

Madam President, I also wish to take this opportunity to express my appreciation to the ranking member of the Judiciary Committee. Senator BIDEN of Delaware, for the fine cooperation he has given throughout these hearings.

No one could have cooperated more than he did. I am very grateful to him and those on his side of the aisle for every cooperation extended in expediting these hearings and completing them on time. I just want him to know how much we appreciate it on this side of the aisle.

Mr. BIDEN. I thank the Senator. We are always delighted to expedite excellence, and that is what we have the opportunity to do today.

I notice at one point in the record when the managers of a bill were about to yield back their time any student of the record, as they read it, would assume it is an automatic, mutual admiration society, but I would like to say something, and I mean this sincerely.

I would like to thank the Senator from South Carolina for his judicial demeanor. Quite frankly, when I had the opportunity to become the ranking minority member, I was not sure how the young fellow from Delaware would be able to get along with that older fellow from South Carolina because he had a reputation for being a hardbitten, tough old boy you did not want to get in the way of. and our views are not always compatible.

But I would like to say this to this body; there probably would be a more appropriate time but I may not have it, and I hope he will forgive me for re-

peating a conversation we had in private that he did not expect to be made public.

About a month ago I said:

You know, Strom, it has only been 8 or 9 months that we have been working together. You have been as good as I can ask for. You have been a real chairman. You have even sometimes submerged your own views for the good of the committee in order to expedite movement in the committee, which any leader in this body must do. I am impressed.

We got off the elevator and he turned around as he is wont to do and he put his hand on my arm.

When you talk to STROM, he is not quite like RUSSELL LONG, he does not pull you closely and whisper in your ear. But he put his hand on my arm and said:

Joe, the only thing I want to be known as is the fairest chairman that the Judiciary Committee has ever had.

I must tell all Senators that based on his track record so far he will meet that goal that he has, being known as the fairest chairman the Judiciary Committee has ever had.

I wish I could change his views on many issues. I wish he was as amenable to those changes as he is to being fair. But I guess you cannot have everything.

This really does not have much to do with the nomination, but I wanted to thank the chairman for the gentlemanly way in which he conducts his committee business.

Madam President, I am not prepared at this point to yield back the remainder of my time.

With the permission of the chairman, I will ask unanimous consent that the remainder of the time not have to be yielded back at this point but that we proceed to the Miller nomination so that the few minutes left would be available to anyone who might want to speak about this nomination prior to 6 o'clock.

Mr. THURMOND. Madam President, if the distinguished Senator will yield, I first want to thank him for his kind remarks. I deeply appreciate what he had to say. Also, I presume by now the Senator from Delaware has found that the Senator from South Carolina is younger than he thought.

Mr. BIDEN. That is precisely true. I never doubted that.

Mr. THURMOND. Madam President, since we are now ready to go to another matter, I ask for the yeas and nays on the O'Connor nomination.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BIDEN. A parliamentary inquiry, Madam President. How much time remains on this nomination?

The PRESIDING OFFICER. The Senator from Delaware has 4 minutes and 12 seconds.

Mr. BIDEN. I ask unanimous consent that that time be made available just prior to the vote at 6 o'clock.

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

FEDERAL TRADE COMMISSION

NOMINATION OF JAMES C. MILLER III, TO BE A FEDERAL TRADE COMMISSIONER

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of the nomination of James C. Miller III, of the District of Clumbia, to be a Federal Trade Commissioner. Time for debate on this nomination is limited to 2 hours to be equally divided between majority and minority leaders or their designees, with 1 hour under the control of the Senator from Ohio (Mr. METZENBAUM).

The Senator from Wisconsin.

Mr. KASTEN. Madam President, I rise today to urge the Senate to act promptly to confirm Dr. James C. Miller as Chairman of the Federal Trade Commission.

Jim Miller is uniquely qualified to Chair this important agency. As you know, Madam President, Dr. Miller received a Ph. D. in Economics from the University of Virginia in 1969. He has distinguished himself since that time both in the academic world and working for several Government agencies in the areas of transportation, regulation, and antitrust policy.

Most recently, of course, Dr. Miller has served as Administrator of the Office of Information and Regulatory Affairs at the Office of Management and Budget and as Executive Director of the President's Task Force on Regulatory Relief. In that capacity, Dr. Miller has made a great contribution to President Reagan's regulatory reform initiatives. Under Dr. Miller's leadership, more than 180 potentially unnecessary or burdensome regulations have been withdrawn, modified, or reviewed by the task force, generating a possible one-time savings of $15 to $18 billion and an annual savings of up to $6 billion.

Madam President, I share the view expressed by some of my colleagues both in committee and on the floor, that the antitrust laws should be vigorously enforced.

The Government must actively police competition to preserve its effectiveness. It is with good reason, therefore, that maintaining a vigorous antitrust enforcement effort has been a traditional Republican concern.

At the same time, it is counterproductive to rely only on a limited number of judicial decisions or a certain body of economic thought. To do so would establish an inflexible basis for our Nation's antitrust policy. Economic research constantly adds to our understanding of market operation and competition. Furthermore, American industries is constantly evolving. For example, many American industries are facing increased competition from abroad. Antitrust policy must be reviewed periodically to account for new economic developments, to insure that law enforcement continues to serve consumers in the most effective and efficient way.

This process of review is underway both inside and outside of the administration. Assistant Attorney General William Baxter has announced that the Justice Department merger guidelines are being revised. On August 26, the House Judiciary Committee held a hearing on merger policy. Legislative proposals would provide for the creation of a Presidential Commission to study the international application of our antitrust laws. In addition, we can expect appropriate Senate committees to continue to insure that the antitrust laws are applied in a manner than is consistent with the national interest. This kind of review, the debate that has been initiated, and the concerns that have been expressed are extremely important.

At his confirmation hearing, Dr. Miller committed himself to a vigorous antitrust enforcement effort. He indicated that if confirmed as chairman, he would enforce the laws administered by the Commission, including the Robinson-Patman Act. He repeatedly made clear that there is no understanding of any kind with the administration to "gut" the FTC or phase out the agency's antitrust mission. Rather, he made perfectly clear that he would work through and consult with Congress to achieve any proposed reforms suggested by a broad review of antitrust policy.

I strongly believe in the merits of our antitrust laws, and I want to emphasize as chairman of our Consumer Subcommittee that it is the responsibility of Congress to determine whether and when these laws should be amended. It is not a determination to be made by the executive branch, and it is not a determination to be made through the budget process. If a change is to be made in the substance of the antitrust laws, it should be made by the committees with authorizing jurisdiction, the Commerce Committees and the Judiciary Committees.

For these reasons, and because of his personal qualifications, Madam President, I believe that Dr. Miller is uniquely qualified to assume the chairmanship of this important enforcement agency. His commitment to relieve unnecessary regulatory burdens at the FTC and to modernize antitrust policy does not mean that he is closeminded on broad policy issues, such as dual enforcement, that must be studied in consultation with Congress. Madam President, I am pleased to support Dr. Miller, and I urge the Senate to act promptly to confirm his nomination.

I reserve the remainder of my time, Madam President.

I understand that, at this time, the Senator from Kentucky may wish to make a statement.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Madam President, I thank the chairman of the Consumer Subcommittee for his fine remarks. Let me say that I find myself in the same position as some of my colleagues—wanting to support the view that a President should have those people in the administration that he desires. Some differences of opinion, I guess, as to Mr. Miller's views have

ROLLCALL VOTES ON NOMINATIONS

NOMINATION OF SANDRA DAY O'CONNOR TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The VICE PRESIDENT. All time has expired. The question is, Will the Senate advise and consent to the nomination of Sandra Day O'Connor to be an Associate Justice of the Supreme Court of the United States?

The yeas and nays have been ordered, and the clerk will call the roll.

Mr. CRANSTON. I announce that the Senator from Montana (Mr. BAUCUS), is necessarily absent.

I further announce that, if present and voting, the Senator from Montana (Mr. BAUCUS), would vote "yea."

The VICE PRESIDENT. Are there any other Senators wishing to vote?

The Chair would remind the galleries that there will be no expressions of approval or disapproval.

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 274 Ex.]

YEAS—99

Abdnor	Glenn	Moynihan
Andrews	Goldwater	Murkowski
Armstrong	Gorton	Nickles
Baker	Grassley	Nunn
Bentsen	Hart	Packwood
Biden	Hatch	Pell
Boren	Hatfield	Percy
Boschwitz	Hawkins	Pressler
Bradley	Hayakawa	Proxmire
Bumpers	Heflin	Pryor
Burdick	Heinz	Quayle
Byrd, Harry F., Jr.	Helms	Randolph
	Hollings	Riegle
Byrd, Robert C.	Huddleston	Roth
Cannon	Humphrey	Rudman
Chafee	Inouye	Sarbanes
Chiles	Jackson	Sasser
Cohen	Jepsen	Schmitt
Cranston	Johnston	Simpson
Cochran	Kassebaum	Specter
D'Amato	Kasten	Stafford
Danforth	Kennedy	Stennis
DeConcini	Laxalt	Stevens
Denton	Leahy	Symms
Dixon	Levin	Thurmond
Dodd	Long	Tower
Dole	Lugar	Tsongas
Domenici	Mathias	Wallop
Durenberger	Matsunaga	Warner
Eagleton	Mattingly	Weicker
East	McClure	Williams
Exon	Melcher	Zorinsky
Ford	Metzenbaum	
Garn	Mitchell	

NOT VOTING—1

Baucus

So the nomination was confirmed.

The VICE PRESIDENT. The majority leader is recognized.

Mr. BAKER. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to this nomination.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. BAKER. Mr. President, could I inquire, are rollcall votes ordered on the next two nominations to be considered at this time?

The VICE PRESIDENT. They have been ordered.

Mr. BAKER. If I may have just a moment, could I inquire of the managers of the remaining nominations if they wish to have their rollcalls at this time?

Mr. President, I yield to the Senator from Kentucky.

The VICE PRESIDENT. Will the Senate be in order? The Senator is recognized.

Mr. FORD. Mr. President, let me say to the majority leader there is no desire on the part of the minority, so far as I know, to have a rollcall vote on the FTC nominee.

Mr. BAKER. I thank the distinguished Senator.

Mr. President, could I inquire of the distinguished Senator from Wisconsin if there is any desire for a rollcall vote on the FTC nominee on this side? Will the Senator from Wisconsin (Mr. KASTEN) indicate whether he wants to have a rollcall vote?

Mr. KASTEN. A number of Senators have indicated they would prefer a rollcall vote.

Mr. BAKER. Mr. President, I ask unanimous consent that the next two succeeding rollcall votes be back-to-back and be for not more than 10 minutes each.

The VICE PRESIDENT. Without objection, it is so ordered.

NOMINATION OF JAMES C. MILLER III TO BE A FEDERAL TRADE COMMISSIONER

The question is, Will the Senate advise and consent to the nomination of James C. Miller III, of the District of Columbia, to be a Federal Trade Commissioner? On this question the yeas and nays have been ordered and the clerk will call the roll.

(Mr. DANFORTH assumed the Chair.)

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Montana (Mr. BAUCUS), is necessarily absent.

I further announce that, if present and voting, the Senator from Montana (Mr. BAUCUS), would vote "yea."

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

The result was announced—yeas 97, nays 2, as follows:

[Rollcall Vote No. 275 Ex.]

YEAS—97

Abdnor	Garn	Mitchell
Andrews	Glenn	Moynihan
Armstrong	Goldwater	Murkowski
Baker	Gorton	Nickles
Bentsen	Grassley	Nunn
Biden	Hart	Packwood
Boren	Hatch	Pell
Boschwitz	Hatfield	Percy
Bradley	Hawkins	Pressler
Bumpers	Hayakawa	Pryor
Burdick	Heflin	Quayle
Byrd, Harry F., Jr.	Heinz	Randolph
	Helms	Riegle
Byrd, Robert C.	Hollings	Roth
Cannon	Huddleston	Rudman
Chafee	Humphrey	Sarbanes
Chiles	Inouye	Sasser
Cochran	Jackson	Schmitt
Cohen	Jepsen	Simpson
Cranston	Johnston	Specter
D'Amato	Kassebaum	Stafford
Danforth	Kasten	Stennis
DeConcini	Kennedy	Stevens
Denton	Laxalt	Symms
Dixon	Leahy	Thurmond
Dodd	Levin	Tower
Dole	Long	Tsongas
Domenici	Lugar	Wallop
Durenberger	Mathias	Warner
Eagleton	Matsunaga	Weicker
East	Mattingly	Williams
Exon	McClure	Zorinsky
Ford	Melcher	

NAYS—2

Metzenbaum	Proxmire

NOT VOTING—1

Baucus

So the nomination was confirmed.

Mr. STEVENS. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nomination.

The VICE PRESIDENT. Without objection, it is so ordered.

NOMINATION OF JAMES R. RICHARDS TO BE INSPECTOR GENERAL OF THE DEPARTMENT OF ENERGY

Mr. STEVENS. Mr. President, this will be the last rollcall vote tonight.

The VICE PRESIDENT. The question is, Will the Senate advise and consent to the nomination of James R. Richards, of Virginia, to be Inspector General of the Department of Energy? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Montana (Mr. BAUCUS) is necessarily absent.

I further announce that, if present and voting, the Senator from Montana (Mr. BAUCUS) would vote "nay."

The PRESIDING OFFICER (Mr. DANFORTH). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 71, nays 28, as follows:

[Rollcall Vote No. 276 Ex.]

YEAS—71

Abdnor	Glenn	McClure
Andrews	Goldwater	Melcher
Armstrong	Gorton	Murkowski
Baker	Grassley	Nickles
Bentsen	Hatch	Packwood
Boren	Hatfield	Pell
Boschwitz	Hawkins	Percy
Burdick	Hayakawa	Pressler
Byrd, Harry F., Jr.	Heflin	Quayle
	Heinz	Roth
Cannon	Helms	Rudman
Chafee	Hollings	Schmitt
Cochran	Humphrey	Simpson
Cohen	Jackson	Specter
D'Amato	Jepsen	Stafford
Danforth	Johnston	Stennis
Denton	Kassebaum	Stevens
Dixon	Kasten	Symms
Dole	Laxalt	Thurmond
Domenici	Long	Tower
Durenberger	Lugar	Wallop
East	Mathias	Warner
Ford	Matsunaga	Weicker
Garn	Mattingly	Zorinsky

NAYS—28

Biden	Hart	Proxmire
Bradley	Huddleston	Pryor
Bumpers	Inouye	Randolph
Byrd, Robert C.	Kennedy	Riegle
Chiles	Leahy	Sarbanes
Cranston	Levin	Sasser
DeConcini	Metzenbaum	Tsongas
Dodd	Mitchell	Williams
Eagleton	Moynihan	
Exon	Nunn	

NOT VOTING—1

Baucus

So the nomination was confirmed.

Mr. STEVENS. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nomination.

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

Mr. STEVENS. Mr. President, I ask unanimous consent that it be in order to move to reconsider all these nominations en bloc that have been confirmed.

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

Mr. STEVENS. Mr. President, I move to reconsider the votes by which the nominations were confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.