United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, FIRST SESSION

Vol. 151 WASHINGTON, TUESDAY, JUNE 14, 2005 No. 78

Senate

The Senate met at 9:44 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

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

Let us pray.

Gracious God, we thank You for Your love offered and received, for Your calling issued and obeyed, and for Your support provided and trusted.

Help those of us so blessed to enter more fully into what You are doing in our world and to put our resources under the direction of Your spirit.

Bless our lawmakers in their work. May the goals they set and the efforts they expend bring honor to Your name. Give them the wisdom to back their rhetoric with ethical behavior. Remind them that doing right brings Your favor, but sin brings disgrace. Teach each of us that we harvest what we plant, whether good or bad.

We pray in Your righteous Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

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

RESERVATION OF LEADER TIME

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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning we will proceed at 10 a.m. to an up-or-down vote on Tom Griffith's nomination to the D.C. Circuit Court. I suspect the Senate will vote to confirm Mr. Griffith, and I thank the Senators who participated in the debate over the course of yesterday.

Immediately after that vote, we will begin consideration of the Energy bill. We have scheduled consideration of the bill for the entirety of this week and through next week. We will be completing the Energy bill by the end of next week, a fact that I mention so people will come down and make their amendments known to the managers of the bill early on. That will provide ample time for there to be debate and amendments over these next 2 weeks.

Senators should be prepared to offer those amendments beginning later today and throughout the week. The chairman and the ranking member of the Energy Committee will be here to manage the process. I do encourage Senators to offer and debate those amendments over the next 2 weeks. It will take a lot of cooperation to accomplish that goal.

I have been in discussion with the Democratic leader, who agrees with this plan of doing our very best to complete the bill. We will complete the bill by the end of next week. I thank all Members in advance.

EXECUTIVE SESSION

NOMINATION OF THOMAS B. GRIFFITH TO BE UNITED STATES CIRCUIT JUDGE

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to resume consideration of Calendar No. 66, which the clerk will report.

The legislative clerk read the nomination of Thomas B. Griffith, of Utah, to be United States Circuit Judge for the District of Columbia Circuit.

Mr. FRIST. Mr. President, in a few moments, we will be voting on Tom Griffith's nomination to the D.C. Circuit Court. Tom Griffith is a man of deep integrity, a man of skill, a man of experience who has won the respect and admiration of colleagues all across the political spectrum. I am confident that once approved, Mr. Griffith will serve the D.C. Circuit Court with honor and distinction.

Mr. Griffith graduated summa cum laude from Brigham Young University. He earned his law degree from the University of Virginia Law School where he served on the Law Review.

Over the course of his legal career, Mr. Griffith has developed a broad range of experience from civil and criminal law to regulatory and international issues. Mr. Griffith currently serves as assistant to the president and general counsel of Brigham Young University.

As Senate legal counsel during the impeachment trial of President Clinton, Mr. Griffith proved his ability to fairly and impartially interpret the law. David Kendall and Lanny Breuer, special counsel to President Clinton, wrote to the Washington Post:

Tom has been a leader in the bar and has shown dedication to its principles. The Federal bench needs judges like Tom.

Glen Ivey, former counsel to former Senate minority leader Tom Daschle, testified that during the Senate's Whitewater and campaign finance reform investigations, Mr. Griffith was scrupulous. Mr. Ivey says:

Even when we were handling sensitive and politically charged issues, he acted in a nonpartisan and objective manner. I believe Mr. Griffith has the intellect and temperament to make an outstanding jurist.

Tom Griffith is a dedicated public servant of tremendous ability. Two former presidents of the American Bar Association call Mr. Griffith ''extremely well qualified for service on the D.C. Circuit.'' They write:

The Federal bench needs people like him, one of the best lawyers the bar has to offer.

Senator HATCH has said that in all of his years in the Senate, he has never

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

Printed on recycled paper.

seen such a broad outpouring of support for a nominee from so many distinguished individuals on both sides of the aisle.

Senator DODD says:

Tom handled his difficult responsibilities as Senate legal counsel with great confidence and skill, impressing all who knew him with his knowledge of the law and never succumbing to the temptation to bend the law to partisan ends.

In that spirit, I urge my colleagues to vote in a few moments to confirm Tom Griffith to the D.C. Circuit Court.

I am pleased by the bipartisan progress we are making in the judge confirmation process. In the last 3 weeks alone, we confirmed Priscilla Owen to the Fifth Circuit Court of Appeals, Janice Rogers Brown to the D.C. Circuit Court of Appeals, William Pryor to the Eleventh Circuit Court of Appeals, David McKeague to the Sixth Circuit Court of Appeals, and Richard Griffin to the Sixth Circuit Court of Appeals. I now look forward to Tom Griffith being added to this outstanding list of confirmations.

Let us continue on this path of progress and cooperation. I believe it is our constitutional duty and responsibility to vote. We are doing so. Our constituents expect us to do just that—vote. Every nominee deserves the respect of a vote, fair, civil, up or down. That is what we will be doing today.

Mr. President, I yield the floor.

The PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Mr. President, I am glad to hear the distinguished leader say nominees deserve an up-or-down vote. Of course, he and other Republicans assured that 61 of the judicial nominees of President Clinton were not given a vote. They were subjected to pocket filibusters—61. In fact, this nomination is a measure of the double standards used by Republicans in connection with judicial vacancies. During President Clinton's Presidency, Senate Republicans said the 11th and 12th judgeships to the D.C. Circuit were not to be filled, that we did not need those seats. They had argued since 1995 that the caseload of the D.C. Circuit did not justify a full complement of the court. Indeed, at a hearing in 1995, Republicans called Chief Judge Laurence H. Silberman of the circuit to testify against proceeding to fill vacancies on the D.C. Circuit. Republicans have argued for years this circuit's caseload per judge is one of the lightest in the country. In a May 9, 2000, letter, Judge Silberman argued that the D.C. Circuit's caseloads had continued to decline from 1995 to 2000, and he opposed confirmation of additional Clinton nominees. In fact, the D.C. Circuit caseload has continued to decline and in 2004 was lighter than it was in 1999 when Senate Republicans pocket filibustered two highly qualified and moderate nominees by President Clinton to vacancies on that circuit.

Now with the confirmation of Janice Rogers Brown to the court last week, there are 10 confirmed, active judges on the D.C. Circuit, which is what Republicans have always maintained is the most that circuit should have. Now, of course, we find we have another one.

With all the self-righteous talk from the other side of the aisle about their new-found ''principle'' that ever judicial nominee is entitled to an up-or-down vote, the facts are that the nominations of Allen Snyder and Elena Kagan to the D.C. Circuit were pocket filibustered by those same Senate Republicans in 1999 and 2000. Ms. Kagan is now Dean of the Harvard Law School. Qualified? Undoubtably. One of the most qualified people to be nominated to that court in the 31 years I have been in the Senate. Was she given consideration in a Republican-led Senate? Not on your life. She was filibustered by Republicans. Likewise, the nomination of Allen Snyder, former clerk to Chief Justice Rehnquist and a highly respected partner in a prominent D.C. law firm, was pocket filibustered by Senate Republicans. When one of Mr. Synder's partners, John Roberts, was nominated to the same court by President Bush, he was, of course, unanimously supported by Senate Republicans. Senate Republicans played a cruel joke on Mr. Snyder when they allowed him a hearing but then went on to refuse to list him for a vote by the Judiciary Committee or the Senate.

I recall that in September 2000, Senator SESSIONS explained that Clinton nominees Allen Snyder and Elena Kagan were blocked: ''Because the circuit had a caseload about one-fourth the average caseload per judge. And the chief circuit judge said 10 judges was enough, instead of 12. And I actually thought that was too many. I thought 10 was too many.'' So this Republican Senator joined in the pocket filibuster of these two nominees.

Well, the D.C. Circuit's caseload per judge is lower now than it was during the Clinton administration, but suddenly with a Republican President, Republican Senators say we need to fill those seats. It is a bit hypocritical. Let us see whether the votes of Republican Senators this time will be based on the same rationale they gave in inflicting pocket filibusters on Clinton nominees.

Last week we witnessed a Republican Senator—who had voted against the confirmation of a Clinton judicial recess appointment and had explained his vote as representing his opposition to recess appointments reverse himself to vote for a Bush judicial recess appointment.

Last week, we witnessed dozens of Republican Senators—who voted against confirmation of Ronnie White of Missouri in 1999 and had explained their vote as compelled by the opposition of his home-state Senators—reverse themselves and vote in favor of Justice Janice Rogers Brown and ignore the strong, consistent and well-founded opposition of her two home-state Senators.

Ronnie White, now the first African American to be chief justice of the Supreme Court of Missouri, was turned down by a double standard used by Republicans. I wonder whether the many Republicans Senators who delayed and opposed the confirmation of Merrick Garland in 1996 and 1997 and pocket filibustered the nominations of Allen Snyder and Elena Kagan in 1999 and 2000 will vote against a nominee to the D.C. Circuit because the caseload of the circuit does not justify more judges. We will see if Republican Senators again abandon their earlier rationale.

It is sometimes embarrassing, I think, to some of my friends on the other side to be reminded of all the rationales they used in pocket filibustering President Clinton's nominees, when now all of a sudden those same rationales are out the window when a Republican nominates a judge.

In addition, as I explained yesterday, my opposition to this particular nominee, Mr. Griffith, is because he did not follow the law. His decision to practice law without a license for a good part of his career should be disqualifying. He has not honored the rule of law by first practiced law illegally in the District of Columbia for several years and then in Utah for several years without even bothering to fulfill his obligation to become a member of the Utah bar. In this regard he appears to think he is above the law. This is not the kind of nominee who should be entrusted with a lifetime appointment to a Federal court and, least of all, to such an important court as the D.C. Circuit, which is entrusted with protecting the rights of all Americans. He may be a fine gentleman, but what a standard. We turn down a partner in a prestigious law firm because he was nominated by a Democrat, and we turn down a woman highly qualified who becomes the dean of the Harvard Law School, but she committed a sin of having been nominated by a Democratic President. When a Republican nominates somebody for the same seat and he practiced law illegally for 7 years, well, all is forgiven. This is the wrong nomination for this court, and I will vote against it.

I think it is another in a series of inappropriate nominations the President has made to the same court. Of course, the takeover of this court is now complete. It becomes an arm of the Republican Party. Mr. Griffith is the third nominee from President Bush to be considered by the Senate. If he is confirmed with those 11 judges, a majority of 7 judges will be appointed by Republican Presidents, but interestingly enough, they have turned this court into an arm of the Republican Party by using some of the worst double standards we have seen. Instead of having a balanced court where we have nominees of both parties, the Republicans in the Senate filibustered, pocket filibustered judge after judge nominated by a Democratic President.

The D.C. Circuit is an especially important court in our Nation's judicial system for its broad caseload covering

issues as varied as reviews of federal regulation on the environment, workplace safety, telecommunications, consumer protection, and other critical statutory and constitutional rights. The White House has rejected all Democratic efforts to work together on consensus nominees for this court and refused to engage in consultation. I wish the President would work to unite the country instead of dividing it. But he has divided the Senate and the American people with several of his judicial nominees. It is unfortunate for the judiciary, the Senate, and the Nation. The President's unilateral approach is totally unnecessary and unlike his predecessors'.

I have been here with six Presidents. Five before this Senate always consulted with both parties on judges they sought to unite rather than divide.

This is the first President who has not.

To reiterate, I oppose the nomination of Thomas Griffith to the U.S. Court of Appeals for the D.C. Circuit. Mr. Griffith's decision to practice law without a license for a good part of his career should be disqualifying. Mr. Griffith has foregone at least 10 opportunities to take the bar in Utah, and has continued to refuse during the pendency of his nomination. In this regard he appears to think he is above the law. That is not the kind of person who should be entrusted with a lifetime appointment to a Federal court and, least of all, to such an important court as the D.C. Circuit, which is entrusted with protecting the rights of all Americans. This is the wrong nomination for this court and I will vote against it.

Given the fact that the Supreme Court routinely reviews fewer than 100 cases per year, the circuit courts, like the D.C. Circuit, end up as the courts of last resort for nearly 30,000 cases each year. These cases affect the interpretation of the Constitution as well as statutes intended by Congress to protect the rights of all Americans, such as the right to equal protection of the laws and the right to privacy. The D.C. Circuit in particular is an especially important court in our Nation's judicial system because Congress has vested it with exclusive or special jurisdiction over cases involving many environmental, civil rights, consumer protection, and workplace statutes. For example, the D.C. Circuit has exclusive or concurrent jurisdiction in cases involving the National Labor Relations Board, the Occupational Safety and Health Administration, the Federal Energy Regulatory Commission, the Federal Election Commission, and the Federal Communications Commission. The D.C. Circuit is entrusted with interpreting the Americans with Disability Act, the Endangered Species Act, and the Environmental Protection Agency, and has primary responsibility for ruling on the Resource Conservation and Recovery Act, Superfund, the Clean Water Act, and the Clean Air Act. It is crucial that this court retain its independence.

The White House has rejected all Democratic efforts to work together on consensus nominees for this court and refused to engage in consultation. That is too bad and totally unnecessary. This is another in a series of inappropriate nominations this President has made to this court. Last week, Senate Republicans voted in lockstep to confirm Janice Rogers Brown to this court. The takeover of this court is now complete. Mr. Griffith is the third nominee for this court from President Bush to be considered by the Senate. If he is confirmed the 11 judges on the court will include a majority of seven judges appointed by Republican Presidents.

At Mr. Griffith's hearing last March, I noted that unlike the many anonymous Republican holds and pocket filibusters that kept more than 60 of President Clinton's moderate and qualified judicial nominees from moving forward, the concerns about Mr. Griffith were no secret. Unlike the Republicans' pocket filibusters of Allen Snyder and Elena Kagan, who were each denied consideration and an up or down vote when nominated to the D.C. Circuit, Mr. Griffith knows full well that I think he has not honored the rule of law by his practicing law in Utah for 5 years without ever bothering to fulfill his obligation to become a member of the Utah bar.

By one count, Mr. Griffith has so far foregone 10 opportunities to take the Utah bar exam while applying for and maintaining his position as general counsel at BYU. He is about to forego an eleventh. This conscious and continuous disregard of basic legal obligations is not consistent with the respect for law we should demand of lifetime appointments to the Federal courts. He has yet to satisfactorily explain why he obstinately insists on refusing to do what hundreds of lawyers do twice a year in Utah and thousands of lawyers do around the country: apply for and take the State bar exam and qualify to become a member of the State bar in order to legally practice law.

He has testified that he has obtained a Utah driver's license and pays Utah State taxes, but he is not a member of the bar despite admitting practicing law there since 2000. This is not Mr. Griffith's first or only bar problem. Mr. Griffith was less than forthcoming with us on questions related to his repeated failures to maintain his D.C. bar membership and his failures to pay his annual dues on time not just once, not twice, but in 1996, 1997, 1998, 1999, 2000 and 2001. He was twice suspended for his failures, including one suspension that lasted for 3 years.

As was reported last summer in the Washington Post, and confirmed through committee investigation, Mr. Griffith has spent the last 5 years as the general counsel to BYU. In all that time he has not been licensed to practice law in Utah, nor has he followed through on any serious effort to become licensed. He has hidden behind a curtain of shifting explanations, thrown up smokescreens of letters from various personal friends and political allies, and refused to acknowledge what we all know to be true: Mr. Griffith should have taken the bar. I ask unanimous consent that the relevant Washington Post articles be printed in the RECORD.

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

[From the Washington Post, Nov. 17, 2004]

COURT NOMINEE GAVE FALSE DATA, TEXT SHOWS; LAW LICENSE WAS SUSPENDED DESPITE EARLY DENIAL

(By Carol D. Leonnig)

Thomas B. Griffith, President Bush's nominee to the U.S. Court of Appeals for the District of Columbia Circuit, appeared to provide inaccurate information to Utah bar officials about his legal work and lapses in obtaining law licenses over the past year, according to documents released yesterday at his nomination hearing.

Griffith's nomination has been stalled for months over concerns that he failed to maintain a valid license for three years while he practiced law in the District and Utah, and that he did not obtain a Utah license after taking a job as general counsel for Brigham Young University in Provo, Utah. Even as Griffith defended his record yesterday, the new documents added to that controversy.

They show Griffith reported to Utah state bar officials last year that his law license had never been suspended. It had been suspended from 1998 to 2001. He also told the state bar that he relied on his D.C. license to practice law in Utah. But at yesterday's hearing, Griffith testified that he had practiced law in Utah by relying on associations with licensed attorneys there.

Senate Judiciary Chairman Orrin G. Hatch (R–Utah), a longtime friend of Griffith's who pledged to ''do everything in my power'' to help him win confirmation, scheduled yesterday's hearing for the middle of a lame-duck session and was the sole committee member present to question Griffith. Democrats said they were surprised Hatch proceeded despite the slim chances of the Senate approving Griffith in the remaining days before Congress adjourns and the objections to the nominee.

''We're going to do our very best to get you confirmed before the end of the session,'' Hatch told Griffith, before acknowledging: ''It'll be miraculous if we do.''

Senator Russell Feingold (D–Wis.) asked that Griffith's application and letters to the Utah bar be released at yesterday's hearing.

The Washington Post reported this summer that Griffith's D.C. license had been suspended because he did not pay bar dues from 1998 to 2001, a lapse that prevented Griffith from obtaining a reciprocal law license in Utah after he took the Brigham Young job. Griffith applied late last year to take the bar exam to obtain a Utah license but never sat for the January 2004 test.

Last month, the American Bar Association gave Griffith the lowest passing grade for a judicial nominee, a ''qualified'' rating. A large minority of the review committee voted ''not qualified.''

Yesterday, in his first public comments on the matter, Griffith said he ''deeply regrets'' his failure to make sure that his law firm paid his dues so he could keep a valid District law license. ''I bear full responsibility for what happened,'' he said. ''I should not have relied on others.''

Griffith added that because his license was suspended for administrative reasons, he

never considered it a true suspension or disciplinary matter, and did not report it to Utah officials. ''The thought never crossed my mind that it was related,'' he said.

Griffith also defended his decision not to obtain a Utah law license since becoming general counsel at Brigham Young, Hatch's alma mater, in the summer of 2000.

''It was always my understanding that in-house counsel need not be licensed,'' he said, as long as he worked with lawyers who did have valid Utah state licenses when he dispensed advice on state matters. He said he has been ''meticulous'' in limiting his work by collaborating with the four lawyers he supervises in his office.

In the newly released licensing application to the Utah state bar, however, Griffith answered ''yes'' to a question on whether he practiced law in Utah. He reported that he did so as general counsel for Brigham Young, relying on his D.C. law license.

In April 2003, the documents show, Griffith wrote a letter seeking advice from the Utah bar on how he could obtain a state license. Griffith said he had erred in assuming that a new state rule might help him get a reciprocal license. The bar's general counsel, Katherine A. Fox, wrote back the next month urging him to apply to take the bar exam and warning him to work with licensed colleagues in the meantime.

''It is unfortunate that you anticipated relying on the rule without having an understanding of the restrictions it imposed,'' she wrote.

[From the Washington Post, Sept. 30, 2004]

APPEALS NOMINEE GETS LOW GRADE; ABA CITES LICENSING LAPSES IN GRANTING 'QUALIFIED' RATING

(By Carol D. Leonning)

The American Bar Association yesterday gave President Bush's choice for a seat on the U.S. Court of Appeals for the District of Columbia the lowest possible passing grade for judicial nominees, and sources said a Republican Senate chairman was expected to schedule a hearing next week on his nomination.

Thomas B. Griffith, who failed to obtain a law license in Utah or keep a current license in the District during parts of the past six years, received a slight majority from his peers after an unusually long, three-month investigation. Under the ABA's system, that means at least eight of the 15 members on the review panel rated him ''qualified'' for a seat on the court, and at least six rated him ''not qualified.''

The national lawyers group, which also offers a higher rating of ''well qualified,'' evaluates judicial nominees for the Senate.

Others have received the same rating and been appointed to the federal judiciary. Of the 10 Bush administration appeals court nominees who received the same rating, six were confirmed to the bench. In President Bill Clinton's second term, two of the five appellate court nominees who received that rating were confirmed.

Griffith has declined to discuss his pending nomination.

A spokeswoman for Senate Judiciary Chairman Orrin G. Hatch (R-Utah) declined to say whether he plans to hold a nomination hearing for Griffith, but committee sources said they expect Hatch to announce today that he will schedule a hearing for Oct. 7. Hatch has campaigned for Griffith's confirmation, telling senators it is personally important that the White House nominee, a friend who hails from Hatch's home state, join the bench.

''The chairman is pretty committed to this nominee and has a high impression of Mr. Griffith,'' said Hatch spokeswoman Margarita Tapia.

Griffith failed to renew his law license in Washington for three years while he was a lawyer based in the District from 1998 to 2000, as counsel to the U.S. Senate and a partner in the firm of Wiley Rein and Fielding. He said the licensing dues were not paid because of an oversight by his firm's staff.

But that lapse subsequently prevented Griffith from receiving a law license in Utah when he took a job as general counsel for Brigham Young University in August 2000. Griffith said he discovered his D.C. license had expired in 2001. The Utah Bar told Griffith that after so many years without a valid license, the only way he could obtain a Utah license was to take the Utah bar exam. Griffith applied to sit for the arduous test but never took it, bar officials said.

Opponents of Griffith's nomination said yesterday that the low rating and the lateness of the Senate session should prevent him from getting a hearing.

Sen. Patrick J. Leahy, (D-Vt.) who this month said Griffith's nomination was on ''life support,'' said yesterday that he was surprised the White House and Hatch continue to press for a nominee with ''not exactly a confidence-inspiring rating.''

''This is a nominee who has been suspended from one legal jurisdiction and who apparently continues to this day to engage in the unauthorized practice of law in another,'' he said.

Thomas Z. Hayward Jr., a Chicago lawyer with Bell, Boyd & Lloyd and chairman of the ABA standing committee on judicial nominations, acknowledged this is ''one of the more difficult'' nominee investigations for the bar. He said that after Griffith's license lapses were reported in The Washington Post in June and a preliminary investigation was conducted in July, committee members appeared ''very closely split'' about whether Griffith met the minimum qualifications for an appellate judgeship.

Hayward said he then ordered a supplemental investigation ''to be fair to the nominee.'' About 40 more people with direct knowledge of Griffith, his licensing lapses in the District and Utah, and his career were interviewed.

People can respectfully disagree, but we have probably done more investigation into the questions raised by this nomination than anybody else, including the White House, the FBI and the two sides of the [Senate] Judiciary Committee,'' Hayward said.

Mr. LEAHY. Practicing law without a license, or as the bars call it, unauthorized practice of law, is not a technicality. In some States it is a crime. In Texas, for example, it is a third degree felony. It is a serious dereliction of a lawyer's duty. It is a commonplace of American jurisprudence that no one is above the law. If the American people are to have confidence in our system of laws that must include the lawyers, and beyond question, it must include the judges. I continue to be disappointed by Mr. Griffith's unwillingness to do what is now long overdue: namely, to take the Utah bar exam and become properly licensed to practice law in Utah, where Mr. Griffith has been practicing law for the last 5 years.

Despite the evident controversy surrounding his practice of law in Utah for 5 years without becoming a member of the Utah bar, he appears to have comfortably and conveniently placed himself above the law. That is not something I look for in lifetime appointments to the Federal courts. For a court that decides some of the most important issues of law in our Nation, where the ruling in just one case can affect millions of people in the most critical areas of their lives, the President has chosen to send us a nominee whose disregard for the rules that apply to him is simply unacceptable.

Over the months that this nomination has been pending before us we have done a good deal of investigation into this matter on a bipartisan basis. The committee investigators questioned the nominee, spoke to officials and experts at the D.C. bar and the Utah bar, asked for and received correspondence and other documents relating to Mr. Griffith's bar memberships and worked to understand the facts and circumstances surrounding the two situations. Having reviewed all of this information and studied Mr. Griffith's many answers, I have come to the inescapable conclusion that he feels he cannot be bothered to live up to the laws that apply to everyone else.

I will begin with the D.C. bar dues problem. In his initial description of this problem Mr. Griffith did his best to downplay it, telling the committee in his questionnaire that his membership in the D.C. bar ''lapsed for nonpayment of dues . . . due to a clerical oversight.'' At the committee hearing on his nomination, he tried to do the same, telling us that from the time he first began practicing law in North Carolina, and continuing through the time he practiced with a firm in D.C., he counted on his law firm to pay his bar dues. He went on further to say that when he took the job as Senate legal counsel he discovered the Government does not pay your professional fees. Here, I quote his testimony, where he told us: ''[W]hen I learned that the Senate wouldn't pay, I notified the D.C. bar to send the bar notices to my home, where I pay personal bills. They did so in '95, '96 and '97, and every time they sent a notice, I paid.''

The only problem arose, according to Mr. Griffith, in 1998, when, for reasons he cannot explain, the D.C. bar suddenly stopped sending him mail. He says he never received his bill for the 1998 dues year, does not remember receiving any of the follow-up notices the bar routinely sends, and simply forgot about his obligation until 3 years later, when he was seeking a certificate of good standing from the D.C. bar.

All of this may seem relatively harmless but a more serious problem arises because what Mr. Griffith told us and what he testified to is not entirely true, it was not the whole truth. For example, his membership in the D.C. bar did not just lapse when he failed to pay his dues in 1998, it was actually suspended. That means for the 3 years the suspension lasted, he was not legally allowed to practice in reliance on his D.C. law license. And he was not only suspended once from the D.C. bar, he was suspended twice, once in 1998 for not paying his dues at all, and also the year before, in late 1997. Furthermore,

we have also learned that while he managed to avoid suspension in 1996, he paid his bar dues late that year, as well. Contrary to his misleading testimony at his hearing, it seems that the only year Mr. Griffith actually paid his D.C. bar dues on time, after coming to the Senate in 1995, was in 1995. Two suspensions from the practice of law in 2 years, 3 late or nonexistent payments in 4 years, and an attempt to mischaracterize this embarrassing record are hardly just a single ''administrative oversight'' unless by that Mr. Griffith means to indicate that his single admitted error is that he does not comply with the law.

What may be more disturbing than Mr. Griffith's failure to pay his D.C. dues, for whatever reason, is his lack of concern about the implications of having practiced law in D.C. without proper licensure. When I asked him if he had notified his clients from the period he was suspended, whether he had told his partners or even the law firm's liability insurance carrier, he brushed me off, telling me that his membership in good standing was reinstated once he paid his dues. Of course, that ignored my real question about the ramifications of having been suspended for 2 separate periods totaling more than 2 years. Clients should be notified, partners should be told, and courts should be contacted.

The Department of Justice apparently agrees that suspension for failure to pay bar dues is a serious matter. Recent newspaper reports disclosed that the Department's Office of Professional Responsibility takes such a matter seriously enough to have opened an investigation into the case of a longtime career attorney there who, like Mr. Griffith, was suspended from the D.C. bar because he did not pay his dues. Unlike Mr. Griffith's case, the Department is concerned enough about such a suspension that they filed notices with the courts in every case this attorney worked on during the period of his suspension, notifying them that he was not authorized to practice at the time. This may impact the matters that Government attorney was supervising, which included the treatment and proper compensation of black farmers. Practicing law without a license is a serious matter.

The facts surrounding Mr. Griffith's membership, or lack thereof, in the Utah bar are even more disturbing. Thomas Griffith began his service as assistant to the president and general counsel of BYU in the summer of 2000. At that time he was not a member of the Utah bar, he was suspended from membership in the bar of the District of Columbia, and he was an inactive member of the North Carolina bar. He apparently did not have a valid license to practice from any jurisdiction.

According to BYU, its general counsel ''is responsible for advising the Administration on all legal matters pertaining to the University.'' In addition:

All contracts, other legal documents and legal questions pertaining to the University or its personnel shall be presented to the Office of General Counsel or its staff members as directed for approval and/or recommendation. The General Counsel directs and manages all litigation involving the University and decides when to engage outside counsel and the terms and duration of outside counsel's representation. The General Counsel delegates the University's legal work among the lawyers in the office and supervises the work of the office.

—*https://bronx.byu.edurystlife/prod/Handbook/University/Organization/President.html*

Mr. Griffith gave us a similar description of his duties, telling the committee:

When University policy involves legal matters, I advise the President's Council and its members on the legal issues implicated . . . In addition, I supervise the work of the Office of the General Counsel, which includes interpreting University policy, participating in transactions involving the University and outside entities, overseeing litigation, assuring compliance with law, and coordinating activities with other University offices whose work involves legal issues such as human resources, risk management, and internal audit.

—Responses of Thomas B. Griffith to the Written Questions of Senator Russell D. Feingold, Dec. 3, 2004, Q.1.

But Utah law prohibits the practice of law in Utah by any person not ''admitted and licensed to practice law within this state.'' Rule 5.5 of the Utah Rule of Professional Conduct holds that, ''[a] lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.''

So, what made Mr. Griffith think he could practice law and not be a member of the Utah bar? Mr. Griffith testified to the committee that, ''it was my understanding that in Utah in-house counsel need not be licensed in Utah, provided that when legal advice is given, it is done so in close association with active members of the Utah bar.'' When I asked him in writing to explain how he came to that understanding, and to point out which Utah laws or bar rules might apply, Mr. Griffith told us only that this, ''understanding was formed over the course of the years of practicing law and as I had interacted with in-house counsel in a variety of settings including other Utah in-house counsel who were not members of the Utah bar.''

Mr. Griffith testified that he relied on an in-house counsel exception that does not exist in Utah statutes and is not recognized by the Utah Supreme Court, as Mr. Griffith was forced to concede. It was a most convenient and self-serving excuse. There is no such ''general counsel'' exception in Utah and there never has been. He could not point to any Utah statute or Utah Supreme Court pronouncement allowing this behavior because it does not exist as a matter of law. Moreover, his predecessor at BYU and the general counsels of the other universities in Utah are all members of the Utah bar.

Previously, in his April 2003 letter to John Adams, then the president of the Utah bar, Mr. Griffith explained the matter differently and relied specifically on a former BYU general counsel and on unnamed persons at the Utah bar, saying that, ''I was told by my predecessor that the Utah bar had created'' what he referred to as a ''general counsel exception'' and that ''I didn't need to become a member of the Utah bar to perform my responsibilities. Subsequent conversations with people in your office as well as discussions with other general counsel around the state confirmed that understanding.''

Mr. Griffith has never been able to identify who at the Utah bar he claims advised him that he did not need to join the bar. This fundamental refusal to abide by the law is all the more troubling by Mr. Griffith's obstinate behavior in refusing to take the bar in order to cure his failure. This is not complicated: Get licensed. Indeed, during the course of committee consideration he admitted that when he asked a second-year law student to research the matter she came back to him and advised that he should take the bar. Yet here we are, with the Senate being urged to confirm someone to a lifetime appointment as a Federal judge on a court with jurisdiction over important cases that can have nationwide impact and that nominee has adamantly refused to follow legal requirements in his own legal practice.

Mr. Griffith did respond for the first time in his December 3, 2004 answers to some of our written questions that he had spoken to Bar President Adams in March 2002. But in his answers, Mr. Griffith reported the subject of that conversation was whether or not, in order to join the bar, he would need to take the bar examination, rather than whether or not he needed to become a bar member in the first place. Mr. Griffith explained to the committee that he took Mr. Adams' silence on the unasked question to be an endorsement of his self-serving position that he did not need to be a member of the Utah bar to carry out his responsibilities at the University.'' To Mr. Griffith, Mr. Adams' silence on this unarticulated question apparently overrode all of the rules of the Utah bar and the laws of the State of Utah.

There was one official representative of the Utah bar who told Mr. Griffith in no uncertain terms what to do; namely, take the Utah bar examination. Asked by Mr. Adams to respond to the April 10, 2003 letter, Katherine Fox, Utah bar general counsel, wrote to Mr. Griffith on May 14, 2003, telling him she was ''surprised'' he thought there was a general counsel exception, and explaining that in his circumstances there was no way to waive into the Utah bar and become a member without taking the bar exam. In her letter, and in plain, simple-to-understand words, Ms. Fox instructed Mr. Griffith to take the bar examination at the earliest opportunity. Ms. Fox wrote Mr. Griffith: ''You are fortunate, however, to have a

viable option remaining, i.e., admittance by examination and I would encourage you to start preparing your application as soon as possible.'' In addition, she ''strongly'' encouraged him to, ''review [his] current duties,'' and to either limit his work to non-legal practice or, if legal activities were unavoidable in the interim until he could pass the exam, be admitted to the Utah bar and cure his deficiency, ''to closely associate with someone who is actually licensed here and on active status.'' She closed by reminding him that the character and fitness portion of the evaluation of prospective members of the Utah bar could be affected by ''[p]racticing law without a Utah license.'' I ask unanimous consent that Mr. Griffith's letter to the Utah bar and Katherine Fox's response be printed in the RECORD.

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

UTAH STATE BAR,
Salt Lake City, Utah, May 14, 2003.

THOMAS B. GRIFFITH,
Assistant to the President, Office of the General Counsel, Brigham Young University, Provo, UT.

DEAR MR. GRIFFITH: I have been provided with a copy of your letter dated April 10, 2003 and would like to respond on behalf of the Bar to a few issues which you raised. First, I was somewhat surprised that you were informed by your predecessor at Brigham Young University's Office of General Counsel and perhaps others that Utah had created a ''general counsel rule exception.'' As you are now aware from speaking with Joni Dickson Seko, the Bar's Deputy General Counsel in charge of admissions, Utah does not have and has never had such a rule. Second, although we were optimistic that the Utah Supreme Court would approve the proposed reciprocity rule, there was no guarantee that it would happen or that the rule would emerge in the format we submitted.

It is unfortunate that you anticipated relying on the rule without having an understanding of the restrictions it imposed. However, I know of no other jurisdiction where a reciprocity rule has no conditions or restrictions such as a years of practice requirement. For instance, North Carolina's reciprocity rule requires applicants to have been physically practicing law elsewhere for at least four out of the last six preceding years.

Your reading of the new reciprocity rule is accurate and admission to the Utah State Bar requires a minimal number of years of active practice in the reciprocating jurisdiction. As both Ms. Seko and her assistant Christy Abad have informed you, the Rules for Admission do not provide for Bar staff or our governing body, the Board of Bar Commissioners, to make any exceptions to uniform application of the rules. If an applicant seeks a waiver of a rule it can only be granted by the Utah Supreme Court through a petition. This route, however, historically has not proven very fruitful for those seeking waivers. See, e.g., In re Larry Gobelman, 31 P.3d 535 (Utah 2001).

You are fortunate, however, to have a viable option remaining, i.e., admittance by examination and I would encourage you to start preparing your application as soon as possible. The application is an extensive one and it takes time to complete including making arrangement for the necessary supporting documentation. While I know you spoke with Joni about your inability to meet the May 1st deadline, I wanted you to realize that the final (and again, non-waivable) deadline (with a $300 late fee) is December 1st for the February 2004 exam. Earlier deadlines are October 1st (no late fee) and November 1st ($100 late fee).

Finally, while I regret any misunderstandings or assumptions that may have occurred, I also would strongly encourage you to carefully review your current duties as Assistant to the President in the Office of General Counsel. As noted above, we have no general counsel exception rule allowing individuals who serve in such positions to actually practice law without Utah licensure. Towards that end, it would be a prudent course of action to limit your work to those activities which would not constitute the practice of law. If such activities are unavoidable, I strongly urge you to closely associate with someone who is actually licensed here and on active status. Finally, just so you know, all applicants are required to undergo a character and fitness assessment prior to being permitted to take the examination. Practicing law without a Utah license has been an issue for some applicants in the past and has resulted in delayed admission or even denial.

Very truly yours,

KATHERINE A. FOX,
General Counsel.

OFFICE OF THE GENERAL COUNSEL,
BRIGHAM YOUNG UNIVERSITY,
Provo, Utah, April 10, 2003.

JOHN ADAMS,
President, Utah Bar Association, c/o Ray Quinney & Nebeker, South State Street, Salt Lake City, Utah.

DEAR JOHN: I need your advice. When I moved to Utah to accept the position of Assistant to the President and General Counsel of Brigham Young University, I was told by my predecessor that the Utah Bar had created what he referred to as a ''general counsel exception'' and that I didn't need to become a member of the Utah Bar to perform my responsibilities. Subsequent conversations with people in your office as well as discussions with other general counsel around the state confirmed that understanding. I have, however, always been active in bar associations where I have practiced—Washington, DC and North Carolina—and I determined that I wanted to be admitted to the Utah Bar. To that end, I prepared to take the bar exam last summer. During the course of preparing my application materials, I learned that the Utah Supreme Court was then actively considering the reciprocity rule that it has only recently adopted. In discussions with the Utah Bar Association (maybe even you—my memory is not entirely accurate on this point), I was advised that the conventional wisdom was that the Court would in fact promulgate a reciprocity rule. For that reason, I suspended my preparations and did not submit my application nor take the bar exam last summer.

I have now read the reciprocity rule recently adopted by the Court and. as far as I can tell, it may not be helpful to me. The requirement that an applicant for admission under the reciprocity rule has been practicing law in the jurisdiction from which he or she is seeking reciprocity for three of the last four years is a bar to me inasmuch as I have been in Utah and not practicing in Washington, D.C. or North Carolina for the last two and one-half years. I am writing you to see if there might be some interpretation of which I am unaware that would allow me to be admitted to the Utah Bar without taking the exam. If there is not, I will prepare to take the bar exam next summer.

I look forward to hearing from you.

Sincerely,

THOMAS B. GRIFFITH,
General Counsel.

Mr. LEAHY. This response from a career lawyer in the Utah bar made before political pressure was ratcheted up to defend a Republican nominee, seemed pretty straightforward to me. That was almost 2 years ago and still Mr. Griffith has not taken the bar exam, has not made arrangements to take the bar and, according to his testimony in answer to my questions last month, has no intention of taking the bar and becoming a member of the Utah bar despite having practiced law there for 5 years.

In an interpretation worthy of the Queen of Hearts from Alice in Wonderland, Mr. Griffith and his supporters have defied logic and reason by turning Ms. Fox's letter upside down in an attempt to characterize it as something other than it is and to condone his conduct. If he will make this self-serving interpretation in this case, what makes anyone think that he will not be the same sort of ends-oriented judge that will twist facts and law in cases he rules on from the federal bench? Ms. Fox's recommendation that he ''closely associate'' himself with a Utah lawyer until he takes the bar and becomes a member of the bar was not offered as an indefinite safe harbor that permits him to violate Utah law. Ms. Fox's letter is being misused and mis-characterized as an invitation to flout the law. This is the kind of reinterpretation in one's own interest that characterizes judicial activism of the worst sort when employed by a judge.

Although he can point to no time before having read Ms. Fox's letter where he used the phrase ''closely associate,'' and can show us no evidence that he arranged his work at BYU in accordance with this advice, Mr. Griffith has in hindsight tried to assert that he somehow always knew he needed to ''closely associate'' with Utah lawyers. Indeed, he variously responded to the committee that in his view he ''closely associated'' if he first gave legal advice to a University official in a private meeting and then sometime later told a member of his staff who was admitted to the Utah bar about it.

He points to former bar president John Adams' letter of June, 2004, and to Utah bar executive director John Baldwin's letter of July, 2004 as support for his position, but these letters do not bolster his case. First of all, each is written long after Mr. Griffith's inquiry of the bar, and long after Katherine Fox told him to take the bar, but conveniently provided by his friends and supporters in the summer of 2004 as the investigation into his bar membership was beginning. In any case, neither of the letters says anything to undermine Ms. Fox's letter. Indeed, the support letters only speak in the vaguest, most noncommittal terms. Mr. Adams says that Ms. Fox's letter ''accurately answered your questions, and

. . . recommended a course of action to follow in your work so long as you were not licensed in the State of Utah.''

Mr. Baldwin's letter is even stronger, telling Mr. Griffith: ''[T]hose who engage in the practice of law in Utah must be licensed by the Utah Supreme Court through the Utah State bar. There is no general counsel exception rule.'' Likewise, the letter Mr. Griffith produced from five former presidents of the Utah bar is of no effect. Aside from their obvious interest in supporting Senator HATCH's candidate who President Bush nominated and who is affiliated with one of the State's most powerful and influential institutions, their letter does not say much. They reiterate that there is no general counsel exception to the Utah bar membership rules, and say only that if a lawyer is not practicing Utah law he may closely associate himself with a Utah lawyer to do those parts of the job. They make no judgment about the sort of work Mr. Griffith is doing, or even whether, in their words, he ''lived up to this standard'' or whether his vague implementation of how he ''closely associated'' was ever explained to them, let alone whether they would have viewed it as passing muster.

The other person we know of who looked at this question for Mr. Griffith was a second-year law student he asked to research the Utah laws and practice on bar admissions regarding in-house counsel in January 2004. By that time, Mr. Griffith had already been practicing law in Utah for 4 years. One can suspect he made this request at that time because his subsequent nomination was then under consideration at the White House. According to Mr. Griffith, who now seeks to claim attorney-client privilege and refuses to provide the committee and the Senate with the materials, she did not definitively complete her research: ''She recommended, therefore, that the safest course for a Utah corporation would be to ask its in-house lawyers to join the Utah bar.'' When we asked for the memorandum written by this law student, we were stonewalled by Griffith and BYU, which claimed privilege for this document. It is not clear to me why the university would be able to claim privilege for a document prepared in response to Mr. Griffith's personal problems with bar membership, or why once he himself revealed its contents we are not now entitled to see it. Nonetheless, we have not been able to see it.

But, whatever the status of the specific memo, it comes down to this: A second-year law student in a truncated research assignment had enough sense to recommend that in-house counsel join the Utah bar. If she had known that such in-house counsel admits to practicing law in Utah, I suspect her advice would have been even more definitive. Of course, that is the prudent course and the one consistent with Utah law. After 5 years, Mr. Griffith has refused to take the normal steps taken by scores of others every year in Utah and thousands of lawyers around the country and take the State's bar exam in order to gain admission to the State bar.

Mr. Griffith has offered nothing in the way of legal authority or analysis that might begin to refute the common-sense conclusion one must reach after an examination of the law. Mr. Griffith has been practicing law in Utah without a Utah license. His excuses to the contrary are insufficient and wrong. He admits that he is practicing law in Utah. He does not have a Utah license to do so. After 5 years, he would appear to be in violation of Utah Code Section 78–9-101, and Rule 5.5 of the Utah Rules of Professional Conduct. There is no ''general counsel'' or ''in-house counsel'' exception on which he can rely to justify his practice of law in Utah since 2000 without having become a member of the Utah bar.

In addition to that threshold matter of practicing law without being a member of the Utah bar, there are other reasons for serious concern about Mr. Griffith's fitness to be a member of the United States Court of Appeals for the District of Columbia Circuit. I have already alluded to his creative, ''activist'' reading of the facts in law in connection with his bar admission problems. In addition, he has spoken in Federalist Society circles of his judgment that President Clinton was properly impeached and that he would have voted for his conviction and removal from office. Given his role as Senate Legal Counsel at the time, these public musings are unseemly and unsound. Rather than campaigning for this nomination, Mr. Griffith would have better spent his time preparing for and taking the Utah bar exam.

His judgment is likewise brought into serious question by his views on title IX of our civil rights laws. This charter of fundamental fairness has been the engine for overcoming discrimination against women in education and the growth of women's athletics. I urge all Senators to think about our daughters and granddaughters, the pride we felt when the U.S. women's soccer team began winning gold medals and World Cups, the joy they see in young women with the opportunity to play basketball and ski and compete and grow.

With the recent reinterpretation of title IX being imposed by this administration in ways that will no doubt be challenged through the courts, we may now understand why the Bush administration sees the appointment of Mr. Griffith to the D.C. Circuit Court as such a priority. His narrow views on title IX were unveiled during his efforts as a member of the Bush administration Secretary of Education's Commission on Opportunity in Athletics, to constrict the impact of title IX. Does anyone doubt that he would rule that the Bush administration's revision through regulations should be upheld?

The U.S. Supreme Court recently decided that whistleblowers are protected in the title IX context. That was a close 5–4 decision in which Justice O'Connor wrote for the majority. Just the other day the Justices refused to hear a challenge to an appellate court decision that essentially found that title IX could not be blamed for cutbacks in men's athletic programs. These recent legal developments regarding title IX serve to remind us how important each of these lifetime appointments to the Federal courts is. In light of the record on this nomination, I am not prepared to take a chance on it and will vote against it.

It is my understanding we are voting at 10.

The PRESIDING OFFICER (Mr. VITTER). The Senator is correct.

Mr. LEAHY. Have the yeas and nays been requested?

The PRESIDING OFFICER. They have not yet been requested.

Mr. LEAHY. I request the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent to be given equal time as the Senator from Vermont.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. I am sorry. I could not hear.

Mr. HATCH. I ask that I be given the same amount of time that the Senator from Vermont had to speak on Mr. Griffith.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Mr. President, I probably would not object. I would point out that I was responding to the distinguished Republican leader who had spoken an equal amount of time on Mr. Griffith. I had spoken yesterday considerably less time, on the same nomination, than the distinguished senior Senator from Utah. I also know both the Republican and Democratic cloakrooms have notified their Members that we are going to vote at 10. There are a number of hearings that have been established based on that. As a matter of courtesy, I am not going to object, but I wanted the distinguished Senator from Utah to know I took the same amount of time the distinguished Republican leader did on the same thing, and overall less time than the distinguished Senator from Utah has taken. I will not object.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Utah.

Mr. HATCH. Mr. President, I appreciate my colleague not objecting, and I will limit myself to about half the time that he has taken this morning just out of courtesy to him.

I know Tom Griffith. We all know Tom Griffith. Tom Griffith was general counsel of the Senate. He served the Senate well. He did it in a nonpartisan way, even though he is a Republican. He helped all of us during the impeachment. Both sides acknowledge that he was terrific. He has all the academic and legal credentials necessary to fulfill this position. He is a person who is a consensus builder, someone who tries to get along with everybody and who, I think, will be perfect on this particular court.

So I hope everybody will vote for Tom. He is a member of our family. He served us all. As a general rule, in the past, people who have served us such as Tom Griffith has would pass this body 100 to zip. Unfortunately, we have had some very forceful partisan politics rear its ugly head in some of these judgeship issues, and from time to time it may have been on both sides, but in this particular case it has been all on one side.

I get a little tired of hearing the same arguments over and over again. The fact is, when President Bush 1 left office there were 54 holdovers with the Democrats in control of the Senate, and he only served 4 years. One could imagine how many there would have been if he served 8 years. The fact is, the all-time confirmation champion was Ronald Reagan who had 382 judges confirmed in his 8 years, but he had 6 years of a Republican Senate to help him. President Clinton got almost the same number, a total of 377, with only 2 years of his own party to help him.

As chairman of that committee, I know I did everything in my power to give the Clinton nominees an opportunity to get an up-or-down vote, and when they reached the floor I think virtually all of them got an up-or-down vote without any delays or filibusters.

The Clinton administration was treated very fairly. There were people left over at the end of his administration, and he had 8 years, no more than were left over basically when President Bush I left the Presidency.

Getting back to Tom Griffith, as most of my colleagues know, Tom served as Senate legal counsel for 4 years so many of us have had first-hand experience with him.

Because the D.C. Circuit reviews cases involving Federal statutes, regulations, and other important matter, this is a tough assignment. Many observers believe that the D.C. Circuit's jurisdiction makes it second in importance to that of the U.S. Supreme Court.

Tom Griffith is up to the task of sitting on this court.

At some length yesterday, I detailed his qualifications.

Time is short today, so I will make only a few summary comments.

In order to become the exceptional lawyer that he is today, Tom Griffith had to gain an exceptional educational foundation.

He accomplished this first as an undergraduate at my alma mater, Brigham Young University. He graduated summa cum laude and was the valedictorian of the BYU College of Humanities.

Tom then attended the University of Virginia School of Law, where he was a member of the law review.

Upon graduation, Tom joined the leading Charlotte, NC, law firm of Robinson, Bradshaw, and Hinson where he was an associate specializing in commercial litigation.

In 1989, Tom moved to Washington, DC, to become an associate, and then a partner, in the firm of Wiley, Rein and Fielding—by all accounts, a highly-regarded law firm.

He began his four year stint as Senate legal counsel in 1995 and served through the very challenging impeachment trial of President Clinton that concluded in early 1999.

Upon departing from the Senate, Tom returned to Wiley, Rein and Fielding for a period of time before he went to Utah in 2000 to serve as assistant to the president and general counsel of Brigham Young University. He serves in that capacity today.

This is a bare bones sketch of a distinguished professional career. Along the way, Tom Griffith has faced many challenges and he has impressed many with his legal skills.

Here is what associate dean and professor of law, Constance Lundberg, of the J. Reuben Clark School of Law has to say about Mr. Griffith:

> [Tom] is also a lawyer of unexcelled ability. He understands the differences between law and policy and has a deep understanding of the powers and prerogatives of each of the three branches of government. He is immensely fair and compassionate. The laws and Constitution of the United States could not be in better hands.

These comments do not stand alone in academic circles. Harvard Law Professor William Stuntz has said the following about Tom:

> I know a great many of talented men and women in America's legal profession. I have taught more than three thousand students at three top law schools, and I have friends scattered across the country in various kinds of law practice and in academics. I do not know anyone whom I would rather see on the federal bench than Tom Griffith. If he is confirmed, he will not be a good judge. He will be a great one.

I think that both of these professors have made assessments that we would be wise to take into account.

Over the past 10 years, Tom has demonstrated his commitment not only to the legal profession but to the broader justice system. He has volunteered a great deal of time in training judges and lawyers in Eastern Europe, impressing many, including Mark Ellis, the executive director of the International Bar Association, who had this to say about Tom Griffith:

> The duty of a judge is to administer justice according to the law, without fear or favor, and without regard to the wishes or policy of the governing majority. Tom Griffith will fervently adhere to this principle.

We in the Senate have ample evidence that Tom Griffith will place the law over partisan politics. Tom was Senate legal counsel during the Clinton impeachment trial and won praise from those on both sides of the aisle. Yesterday, I quoted from Senator DODD's speech in tribute to Tom on his departure from the Senate. Senator BENNETT, my colleague from Utah, has already explained the constructive role that Tom played in keeping the Senate together during the impeachment trial. I agree that the reputation of the Senate was enhanced rather than degraded through that time, in part because of the steady hand and solid guidance of Tom Griffith.

Few nominees that come before the Senate are as well-known by Senators as Tom Griffith and we know that he can handle complex problems in a charged atmosphere in a manner that brings consensus.

I think that the qualities that Tom displayed as Senate legal counsel are exactly those that we need on the Federal bench.

Many agree with this assessment. For example, here is what one of our Nation's leading appellate lawyers, the Clinton administration's Solicitor General Seth Waxman, had to say about Mr. Griffith:

> I have known Tom since he was Senate Legal Counsel and I was Solicitor General, and I have the highest regard for his integrity . . . For my part, I would stake most everything on his word alone. Litigants would be in good hands with a person of Tom Griffith's character as their judge.

This strong sentiment in favor of Tom Griffith's competence and character is shared, not surprisingly, by his former law partners and mentors. Fred Fielding, former White House Counsel to President Reagan and former chairman of the American Bar Association's Standing Committee on the Federal Judiciary, has described Tom Griffith as ''a very special individual and a man possessed of the highest integrity. He is a fine professional who demands of himself the very best of his intellect and energies.''

Another law partner of Mr. Griffith, Richard Wiley, has this to say about his qualifications:

> Tom is an outstanding lawyer, with keen judgment, congenial temperament and impeccable personal integrity. He would bring great expertise and fair-minded impartiality to the bench and, in my judgment, would be a considerable credit to the D.C. Circuit and the Federal Judiciary as a whole.

Tom Griffith has the education, experience, judgment, and character to make an outstanding member of the Federal judiciary. I commend President Bush for nominating an individual from Utah who has a proven track record as a lawyer and has strong bipartisan support.

In addition to this affirmative discussion of Tom Griffith's qualifications and bipartisan support, I do need to respond to the few arguments that have been raised against his nomination by some on the other side of the aisle.

First, my friend from Vermont, Senator LEAHY, referred to Mr. Griffith

yesterday as someone who ''admittedly practiced law illegally first in the District of Columbia and then in Utah.'' Mr. President, this statement is patently false.

Mr. Griffith has admitted no such thing because he did no such thing.

No court or administrative body, including no bar association, anywhere has ever concluded that Mr. Griffith has, in the Senator from Vermont's ill-chosen words, practiced law illegally.

Neither have they found that Mr. Griffith engaged in the unauthorized practice of law, either in the District of Columbia or in Utah.

Let me once again set this record straight with respect to both of these jurisdictions.

In 2001, Mr. Griffith discovered that his D.C. bar membership had been suspended for failing to pay his annual dues. As soon as he became aware of the problem, he rectified it. He paid his dues in full and was promptly reinstated as a bar member in good standing.

He remains a member in good standing today.

This matter involving Mr. Griffith's bar dues does involve several unfortunate mistakes. In the early 1990s, Mr. Griffith worked for a large law firm in Washington and became accustomed to the firm's practice of paying its attorneys' bar dues.

When he returned to that firm following his service as Senate legal counsel, he wrongly assumed the firm was once again paying his bar dues. He accepts full responsibility for the oversights and, as I said, is today a member in good standing.

Mr. President, the only, I repeat, the only question is whether this error was anything other than inadvertent. And Mr. Griffith has answered that question with a clear and resounding no. No one, including the Senator from Vermont, has offered a shred of evidence to suggest otherwise.

Each year, more than 3000 lawyers in the District of Columbia alone—and, I understand, a number of sitting judges—similarly see their law license suspended for failure to pay bar dues.

As in Mr. Griffith's situation, this is an administrative suspension, not a disciplinary suspension.

Despite the rhetoric from the Senator from Vermont, we do not have thousands and thousands of lawyers practicing illegally in the Nation's Capital.

In a letter to the Judiciary Committee dated June 14, 2004, former ABA Presidents Bill Ide and Sandy D'Alemberte wrote:

> By immediately paying his dues when he became aware of the oversight, Tom took the proper course of action. According to D.C. bar counsel, such an oversight is entirely common and of no major concern.

Yesterday the Senator from Vermont was trying to turn something entirely common and of no major concern into something untoward and of very grave concern. It will not work.

The story is no different with respect to the Utah chapter of this story.

Mr. Griffith graduated from the University of Virginia School of Law and practiced law in North Carolina and Washington, DC, for 15 years, including service as Senate legal counsel.

The position he accepted of general counsel of Brigham Young University was very different, in both content and location, than his previous experience. He consulted with Utah attorneys requiring Utah's requirement for in-house counsel, and he has always complied with the advice he has received in this regard.

Simply put, the advice he received was that he need not become a member of the Utah bar, so long as he worked with a bar member when engaged in legal practice activities. No one, including the Senator from Vermont, has documented that he has not met this standard.

In a letter to the Judiciary Committee dated June 28, 2004, five former presidents of the Utah bar affirmed that ''a general counsel working in the state of Utah need not be a member of the Utah bar provided that when giving legal advice to his or her employer that he or she does so in conjunction with an associated attorney who is an active member of the Utah bar.''

In a letter dated July 2, 2004, John Baldwin, executive director of the Utah bar, similarly affirmed that ''those who follow that advice are not engaged in the unauthorized practice of law.''

Mr. Griffith not only complied with the letter of the advice he received, his actions are consistent with the spirit of that advice as well.

In a letter to the editor of the New York Times dated July 4, 2004, law professors and legal ethics experts Monroe Freedman of Hofstra University and Thomas Morgan of George Washington University, emphasized that the requirement of bar membership is not a rule of legal ethics. Rather, it assures the public—those to whom lawyers offer their services—that lawyers are competent.

Their letter states:

> The requirement of membership in a particular bar is not in itself a rule of ethical professional conduct, but a lawyer's guild rule . . . designed to restrict competition . . . At best, the requirement of a license is intended to assure that one who holds himself out to the public as a lawyer is indeed competent to serve as a lawyer. In that regard, there is no question about Mr. Griffith's competence, which is the only ethical issue that is material.

Obviously, this does not apply to an in-house counsel who does not hold himself out to the public. Brigham Young University, Mr. Griffith's employer, was well aware that he was not a bar member and was thoroughly satisfied with both his status and his service.

The unsubstantiated charge that Mr. Griffith has practiced law without a license is pure hokum. Or as I explained yesterday, in the opinion of Abner Mikva, a former Democratic Congressman, White House Counsel to President Clinton, and former Chief Judge of the D.C. Circuit, this charge amounts to ''a whole lot of nothing.''

Judge Mikva has it right. My friend from Vermont is simply wrong.

The other area of criticism involves Mr. Griffith's views on title IX, a statutory provision which provides equal opportunities for women in college sports. Tom has proven that he is a strong supporter of title IX and women's rights.

In fact, he was appointed to the Secretary of Education's Commission on Opportunity in Athletics by Rod Paige in part because of his outspoken support of title IX's objectives.

In response to written questions from members of the Judiciary Committee, Tom Griffith expressed his personal convictions about title IX. He wrote:

> I am deeply committed to Title IX in particular and to expanding and advancing opportunities for women in all areas of our society. I am committed to that because it is the right thing to do. But it is also personal for me. I am the father of five daughters and a son. My entire adult life, I have been an outspoken advocate for expanding opportunities for women in part because it means more opportunities for my daughters and a better society for my son. Those who know me best know that about me.

Let us consider what those who know Tom Griffith say in this regard. Brian Jones, former title IX commissioner and general counsel of the Department of Education, said:

> During the Commission's months of deliberation it was quite clear that every member of the Commission—including Tom—strongly supports Title IX and is immensely proud of the progress brought about by its passage. . . . Tom was consistently a member of the Commission who was not only willing but also eager to engage every commissioner's opinions—listening and deliberating in a thoughtful manner, in a sincere effort to bridge disagreements and seek consensus where possible.

Graham Spanier, president of Penn State University and another former title IX commissioner, had this to say:

> During the many months that Mr. Griffith served on the Commission charged with reviewing Title IX, I found him to be supportive of the law that established Title IX. He was, in fact, outspoken in his support for the law while thoughtfully reflecting on matters of interpretation and commenting on potential refinements to enforcement protocols. . . . During our work, Mr. Griffith stated his belief that Title IX was one of the great landmarks in civil rights in our Nation.

Ted Leland, former cochair of the title IX commission and director of athletics at Stanford University, affirms Tom's clear commitment to title IX:

> During our numerous public meetings, I found Mr. Griffith not only a diligent commission member, but a staunch supporter of Title IX.

The list goes on, but because these baseless allegations linger, I want to also offer the views of Tom's colleagues at Brigham Young University. The executive director of BYU Women's Athletics, Elaine Michaelis, applauded Tom's efforts:

Tom has been very supportive of our women's athletic program, the coaches, and the athletes. I believe that he is committed to women and minorities and to fairness in all aspects of the law.

B.R. Siegfried, an associate professor of English literature and Women's studies at BYU, said the following:

I am an especially fierce advocate of equality for women, and of the civil liberties that lend themselves to the expansion and development of women's opportunities. . . . Tom is and has been a steadfast and enthusiastic advocate for women. In a local context in which there is tremendous social pressure to gloss over gender issues, he has spoken out repeatedly in support of fairness and justice. His support has been constant and resolute, and his words are founded on deeds of practical service.

As a member of a commission overseeing a review of title IX's application, Tom recommended some changes. He is the kind of person to take such a role seriously; I am sure he did not consider it sufficient to fill a chair and not bring his considerable judgment, insight, and experience to bear in a constructive way.

In some respects, however, Tom's recommendations are beside the point. As the many lawyers who now serve here in the Senate, lawyers wear many different hats over the course of their careers.

When Stephen Breyer, for example, was chief counsel to my friend, the Senator from Massachusetts, believe me, we did not always see eye to eye on issues. But when he was nominated to the U.S. Court of Appeals and later to the Supreme Court, I was confident that he would be able to put politics aside, apply the law to the facts, and make fair and objective judgments.

I hope there is no partisan double-standard at work here. Tom Griffith is also a fair, reasonable, and accomplished lawyer who has served us well here in the Senate and who will properly move into a judicial role. There is no justification for treating him differently because he happens to be the nominee of a Republican President.

Now let's address Tom's supposedly radical policy views. The Office of Civil Rights at the Department of Education uses a three prong test to determine an educational institution's adherence to title IX. That test requires that an institution demonstrate one of the following: that the male to female ratio of athletes is substantially proportionate to the male to female ratio of student enrollment; that the institution has a continuing practice of program expansion for members of the under-represented gender; or that the institution is fully and effectively accommodating the athletic interests and abilities of the under represented gender.

The first prong, the substantial proportionality test, has been designated by the Office of Civil Rights as a safe harbor. If an institution meets the requirements of a numeric formula, the university can avoid liability under title IX. The commission found that many institutions have transformed substantial proportionality into strict proportionality.

The problem represented by this legalese is clear. This automatic adherence to a numeric formula means that a quota system has been established. Regardless of the number of young women interested in collegiate sports, colleges and universities must offer equal numbers of athletic slots.

This is a radical revision of title IX's intention, which was to provide equal opportunity for participation in college sports, not equal results.

The perverse result of shifting from equal opportunity to equal results has been documented on numerous occasions. It has required closing down men's sports teams in swimming, wrestling, gymnastics, and baseball. In 1999, for example, Providence College cut its 78-year-old baseball program to bring it within the proportionality requirement.

In 1996, California State University at Bakersfield's wrestling program, a two-time PAC 10 champion, was eliminated to conform to the proportionality requirement. A General Accounting Office study found that from 1985–86 to 1996–97, no less than 21,000 male athletic spots disappeared, a 12-percent drop overall.

Carol Zaleski, the former president and executive director of USA Swimming, had this to say:

The unfortunate truth is that Title IX has evolved into something never intended. The act was intended to expand opportunity. The interpretation by the Office of Civil Rights and the evolved enforcement has turned into a quota system. Title IX is a good law with bad interpretation.

Tom Griffith argued that while such rigid numerical quotas may be easy to administer, they fail actually to provide women with more athletic opportunities and that using this quota went beyond the powers Congress had allocated to the Department of Education.

Tom has hardly been the only individual opposed to this quota approach. Our former colleague, Senator Birch Bayh of Indiana, said:

The word quota does not appear [in Title IX] . . . What we were really looking for was equal opportunity for young women and for girls in the educational system.

Despite divergent views over the best application of the law, Tom Griffith wholeheartedly joined the recommendations of the commission to strengthen title IX and ensure that the test did not simply become a quota. Specifically, he joined recommendations calling for clearer guidelines for implementation of title IX and a method of ''demonstrating compliance with Title IX's participation requirement that treats each part of the [three-part] test equally.''

The question here is not whether Tom Griffith agrees with a particular policy evaluation. The real question is whether he supports women's rights and is committed to equal opportunity. The answer to that is a resounding answer is yes.

Three Associate Deans at Brigham Young University Law—Constance Lundberg, Katherine Lund and Mary Hoagland—wrote to me and had this to say about Tom Griffith:

In specific instances of which we have personal knowledge, [Mr. Griffith] has fought for the promotion and recognition of women, including ethnic minorities. His support has been vigorous even when faced with substantial administrative roadblocks. . . . In our experience, some men in similar roles are not comfortable working with women as colleagues. Tom, on the other hand, seeks out and respects women's opinions. Indeed, if every person in university administration were as evenhanded on gender issues as Tom, Title IX and other ameliorative measures would be moot.

In both of these areas of criticism—whether he engaged in the unauthorized practice of law and whether he supports equal opportunity for women—the pattern is the same. The allegations bear no relationship whatsoever to the facts, and those who know Tom Griffith best and have worked with him most strongly support his nomination to the U.S. Court of Appeals.

I do think that this nominee has been treated badly, and I hope Senators will do the right thing and allow him to take this very important position. He will be a consensus builder and will work to make sure the law is implemented as the law was intended to be.

At one time, when another person was being nominated for this position, I had those in the minority say: You ought to nominate Griffith. Some of the chief staff people said: Why not nominate Tom Griffith? These senior staff members said that Tom would be a slam dunk because everybody knows how great he is and what a good person he is.

Well, I fought to get him nominated all the way to the White House itself. Almost immediately after he was nominated, we instead hear some of these ridiculous arguments that, if not frivolous, certainly off the mark. What is important is we have a man of integrity, ability, and capacity who could fulfill this position in a way that might bring other people together. We all know it because we have seen him for four solid years right here in the Senate doing the Senate's business.

I appreciate my colleagues on the other side, and especially those who are willing to vote for Tom Griffith. I think he deserves their vote. He deserves the vote of all of us, and I hope everybody in this body will give him a fair vote today.

Mr. FEINGOLD. Mr. President, I will vote no on the nomination of Thomas Griffith to be a Judge on the D.C. Circuit Court of Appeals.

The D.C. Circuit is widely regarded as the most important Federal circuit. It has jurisdiction over the actions of most Federal agencies. Many of the highest profile cases that have been decided in recent years by the Supreme Court concerning regulation of economic activity by federal agencies in

areas such as the environment, health and safety regulation, and labor law, went first to the D.C. Circuit. In the area of administrative law and the interpretation of the major regulatory statutes such as the Clean Air Act, the Clean Water Act, the Occupational Safety and Health Act, and the National Labor Relations Act, the D.C. Circuit is often the last word, as the Supreme Court reviews only a tiny minority of circuit court decisions.

After the confirmation of Judge Janice Rogers Brown last week, there are 6 judges on the D.C. Circuit who were appointed by Republican Presidents, and four by Democrats, and there are two vacancies. President Clinton, of course, made two nominations that were never acted upon by the Senate Judiciary Committee. In one case, the committee held a hearing but never scheduled a vote on attorney Alan Snyder, and in another case, Clinton nominee and now Harvard Law School Dean Elena Kagan wasn't even given the courtesy of a hearing.

I am disappointed that the Bush administration has not been willing to seek a compromise on judicial nominees, and on this circuit in particular. At the beginning of President Bush's first term, there were enough vacancies to accommodate the two nominations by President Clinton who were treated so badly in the 106th Congress and allow President Bush to nominate additional judges to the circuit. The administration squandered an opportunity to change the tone and repair some of the damage done to the nomination process by previous Congresses.

In light of this history, and the importance of this circuit, I believe it is my duty to give this nomination very close scrutiny. After reviewing Mr. Griffith's record and his testimony at two different Judiciary Committee hearings, I do not believe he should be confirmed to a lifetime appointment to this important court. Let me take a few minutes to outline the concerns that have caused me to reach this conclusion.

Mr. Griffith's adherence to professional rules of conduct and State laws regarding bar membership has been less than scrupulous. In the District of Columbia, Mr. Griffith twice was administratively suspended for failure to pay his bar dues, one time for over 3 years. During that time, Mr. Griffith continued to practice law in the District and then in Utah. This might not be all that troubling if he had later been honest about the administrative suspensions he received for failure to pay his dues. Instead, Mr. Griffith failed to note those suspensions in answering two separate questions on his Utah bar application in November 2003.

First, he answered ''no'' when asked if he had ''ever been disbarred, suspended, censured, sanctioned, disciplined, or otherwise reprimanded or disqualified, whether publicly or privately, as an attorney.'' At his hearing before the Judiciary Committee, Mr. Griffith claimed that he interpreted the question as referring only to disciplinary suspensions, and that he considered his suspension from the D.C. bar to be administrative. Given the clear language of the question, and the fact that the application gives an applicant the opportunity to explain a yes answer, Mr. Griffith's no response is cause for concern.

In addition, Mr. Griffith answered yes when asked whether he had ''ever given legal advice and/or held himself out as an attorney, lawyer, or legal counselor in the state of Utah.'' He stated:

> Since August 2000, I have served as Assistant to the President and General Counsel at [BYU]. When called up to act in my capacity as an attorney, I have done so as a member of the bar of the District of Columbia.

At the time he answered this question in 2003, Mr. Griffith certainly was aware that his license in D.C. had been suspended from November 1998 to November 2001.

Even more disturbingly, Mr. Griffith has practiced law in Utah without a Utah law license, and still does so to this day. Utah law does not provide that in-house counsel do not need to obtain a Utah law license. Yet Mr. Griffith failed to seek guidance from the Utah bar for almost three years on what he could and could not do without a Utah law license when he began working for BYU. Instead, according to this testimony, Mr. Griffith relied on his own professional experience and discussions with other in-house counsel in Utah. None of these people told him such an exception existed, yet he did not make inquiries to the bar until 2003. In 2003, Mr. Griffith received a letter from Katherine Fox, general counsel to the Utah bar, which indicated that he should limit himself to work that would not constitute the practice of law, and if he had to practice law, he should do so only in close association with members of the Utah bar. She also advised him to sit for the bar exam as soon as possible, and warned him that lawyers who have practiced in the state without a Utah license have later had difficultly obtaining such a license.

Since he received that letter, Mr. Griffith has had four opportunities to sit for the Utah bar, but has instead insisted that he may practice law in Utah without a law license so long as he works in close association with members of the Utah bar. He made it abundantly clear at his second hearing that he does not intend to sit for the Utah bar exam. I suppose that since he is now about to be confirmed to a D.C. Circuit seat for life, he won't have to. But his attitude toward a basic responsibility of every practicing lawyer was disturbing.

In response to these concerns, Mr. Griffith stated at his hearing that from the very beginning of his work as general counsel at BYU he has worked in close association with attorneys in his office who were licensed to practice in Utah. When I questioned him about his adherence to this close association requirement during his time in Utah, I was troubled by what I learned. Although Mr. Griffith insists that he has always worked in close association with members of the Utah bar when dispensing legal advice, he can provide no documentation of that practice whatsoever. It is not even clear how Mr. Griffith interprets the close association requirement. He testified, for example, that he does not require a licensed member of the Utah bar to be present on phone calls where he dispensed legal advice.

Mr. Griffith's failure to document his close association with other attorneys is disturbing and revealing, in light of the letter from Katherine Fox, which warned him about the consequences that practicing law without a license might have on his eventual application to the bar. It also makes it even more difficult to believe that when he began working for BYU he was aware of the issue and was taking steps to ensure he involved members of the Utah bar in activities that would be considered giving legal advice.

Mr. Griffith did submit several letters written beginning last summer from current and former officers of the Utah bar, to support his position that he has not violated bar rules so long as he works in close association with members of the Utah bar. These letters were written, however, long after Mr. Griffith approached the bar about a general counsel exception, and long after he received notice from Ms. Fox of the Utah bar's position on it. Furthermore, these letters reiterate that there is no general counsel exception to the requirement that a lawyer practicing law in Utah must be a member of the Utah bar.

Mr. Griffith's entire approach to the issue of his Utah bar membership has been to suggest that he knew all along what he was doing and took care to avoid any improper conduct. But a prudent and careful person, aware of and being careful to abide by restrictions on his activities, would have documented his actions. It seems clear to me that much of Mr. Griffith's argument is simply a post hoc rationalization. He has chosen to stick to his story and try and convince the Senate that he was fully aware of the Utah license issue from the beginning and acted at all times in accordance with part of the advice he received only in 2003. I find Mr. Griffith's explanations not credible and disdainful of his professional obligations. This is not the kind of conduct that the public has a right to expect from someone who will sit on the second most important court in the land.

Mr. President, I am not predisposed to vote against judicial nominees. In fact, I have voted for over 90 percent of this President's choices. Mr. Griffith served the Senate with distinction, and his foremost supporter is the former chairman of the Judiciary Committee,

for whom I have great regard. But we have an affirmative duty to place on the bench judges who adhere to the ethical standards of the legal profession. I am not satisfied that Mr. Griffith meets that test, and I will vote no.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Thomas B. Griffith, of Utah, to be United States Circuit Judge for the District of Columbia? The yeas and nays have been ordered. The clerk will call the roll.

The assistant journal clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Pennsylvania (Mr. SANTORUM), and the Senator from Pennsylvania, (Mr. SPECTER).

Mr. DURBIN. I announce that the Senator from Vermont (Mr. JEFFORDS) is necessarily absent.

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

The result was announced—yeas 73, nays 24, as follows:

[Rollcall Vote No. 136 Ex.]

YEAS—73

Alexander	Dodd	Martinez
Allard	Dole	McCain
Allen	Domenici	McConnell
Baucus	Dorgan	Murkowski
Bennett	Durbin	Nelson (FL)
Biden	Ensign	Nelson (NE)
Bingaman	Enzi	Obama
Bond	Feinstein	Pryor
Brownback	Frist	Reid
Bunning	Graham	Roberts
Burns	Grassley	Schumer
Burr	Gregg	Sessions
Carper	Hagel	Shelby
Chafee	Hatch	Smith
Chambliss	Hutchison	Snowe
Coburn	Inhofe	Stevens
Cochran	Inouye	Sununu
Coleman	Isakson	Talent
Collins	Kohl	Thomas
Conrad	Kyl	Thune
Cornyn	Levin	Vitter
Craig	Lieberman	Voinovich
Crapo	Lincoln	Warner
DeMint	Lott	
DeWine	Lugar	

NAYS—24

Akaka	Feingold	Mikulski
Bayh	Harkin	Murray
Boxer	Johnson	Reed
Byrd	Kennedy	Rockefeller
Cantwell	Kerry	Salazar
Clinton	Landrieu	Sarbanes
Corzine	Lautenberg	Stabenow
Dayton	Leahy	Wyden

NOT VOTING—3

Jeffords	Santorum	Specter

The nomination was confirmed.

The PRESIDING OFFICER. The President will be notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

The Democratic leader is recognized.

ORDER OF PROCEDURE

Mr. REID. Mr. President, what is the issue before the Senate?

The PRESIDING OFFICER. The Chair was about to lay down the Energy bill.

Mr. REID. It is my understanding the Senator from Nebraska wishes to speak for 3 minutes as in morning business prior to turning to the Energy bill. I ask consent that be the case.

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

230TH BIRTHDAY OF THE ARMY

Mr. HAGEL. Mr. President, I rise this morning to wish the U.S. Army happy birthday. It was 230 years ago today, June 14, 1775, that the Continental Army of the United States was born. Over the past 230 years, millions of men and women have served in the oldest branch of our Armed Forces. Their honor, courage, sacrifice, and service are woven into the culture of this great, country.

The principles of duty, honor, and country have been the foundation of our Army and of our country. Their honor, their courage, their sacrifice, and service are woven into the culture of this great Nation. It is America. Every generation of Americans who have served in the U.S. Army, from the Continental Army to our fighting men and women serving today in Iraq and Afghanistan, have been shaped by these principles, have molded lives in ways that are hard to explain.

Just as the U.S. Army has touched our national life and history, it has touched the lives of citizens of the world.

The U.S. Army has protected American values of liberty, freedom, and democracy and made the world a more secure, prosperous, and better place for all mankind.

It is only appropriate we recognize the monumental contributions of this great institution, contributions to America and the world.

On this 230th birthday of the U.S. Army, we also recognize and thank those who have sacrificed and served. We thank their families. Their examples are an inspiration to those who have had the privilege to serve in the U.S. Army. They will continue to inspire future generations.

On this, the 230th birthday of the Army, I say happy birthday to the Army. In the great, rich tradition of the U.S. Army, and as a proud U.S. Army veteran, I proclaim my annual Senate floor ''hoo-haw.''

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. 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. REID. I ask unanimous consent that the order for the quorum call be rescinded.

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

The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, as the senior Senator from Nebraska said, today, June 14, is the 230th birthday of the U.S. Army.

Although we commend the service of the men and women of all branches, Active Duty and Reserve components, on this day the Senate Army Caucus, which I cochair with my colleague, Senator AKAKA, particularly celebrates the soldiers of the U.S. Army as they answer the Nation's call to duty.

These brave men and women are giving something back to their country every day through the sacrifices they and their families make. Mr. President, 230 years ago, the Army was established to defend our Nation. Today, its mission remains the same as throughout the Army's history. America's soldiers have always answered the call to end tyranny, free the oppressed, and light the path to democracy.

As citizens and lawmakers, we appreciate our freedoms and our inalienable rights of life, liberty, and the pursuit of happiness. But we know our freedoms are not free and should not be taken for granted. The men and women of the Army and the other branches of the Armed Forces shoulder the load of being on freedom's frontier, defending our very way of life.

On this day, it would be easy for us as citizens of this great Nation to take for granted our God-given rights. In our daily routines, we all too often overlook the selfless commitment the American soldier is making to protect our national interests and freedoms around the globe in over 120 countries. Each mission is contributing to our safety and well-being here at home. For this reason, we should remember that June 14 is the day the U.S. Army was established and celebrates its birthday.

The men and women serving in the U.S. Army embody the ideals set forth in the Soldier's Creed and Warrior Ethos. They have the unwavering belief that they will be victorious in whatever they do. This belief stems from knowing that the American people support them, and from the confidence they have in their leaders at every level. They are well equipped and well led, and they will perform their sacred duty. Just listen to these words our soldiers live by every day:

I will always place the mission first.
I will never accept defeat.
I will never quit.
I will never leave a fallen comrade.

It is kind of interesting. Many years ago, I served in the U.S. Army. It is the same thing we said at that time. We have been living those words not just since the time I was in the Army but for 230 years. Both Senator AKAKA and I, the cochairmen of the Senate Army Caucus, were soldiers in the U.S. Army. The principles we learned then—the timeless principles of discipline, pride, integrity, honor, and sacrifice—have helped guide us throughout our lives. They still characterize the Army today.

So on behalf of Senator AKAKA and the rest of the Senate Army Caucus, I