

those statutes, with their five year maximum penalties.

This bill, then, would create a new 25 year felony for securities fraud—a more general and less technical provision comparable to the bank fraud and health care fraud statutes in Title 18. It adds a provision to Chapter 63 of Title 18 at section 1348 which would criminalize the execution or attempted execution of any scheme or artifice to defraud persons in connection with securities of publicly traded companies or obtain their money or property. The provision should not be read to require proof of technical elements from the securities laws, and is intended to provide needed enforcement flexibility in the context of publicly traded companies to protect shareholders and prospective shareholders against all the types schemes and frauds which inventive criminals may devise in the future. The intent requirements are to be applied consistently with those found in 18 U.S.C. §§1341, 1343, 1344, 1347.

By covering all “schemes and artifices to defraud” (see 18 U.S.C. §§1344, 1341, 1343, 1347), new §1348 will be more accessible to investigators and prosecutors and will provide needed enforcement flexibility and, in the context of publicly traded companies, protection against all the types schemes and frauds which inventive criminals may devise in the future.

#### VOTE EXPLANATION

Mr. BIDEN: Mr. President, I arrived in Washington this morning after the vote to invoke cloture on the nomination of Julia Smith Gibbons, to be United States Circuit Judge for the Sixth Circuit.

It was my intention to be here in time to vote in favor of this cloture motion.

Unfortunately, the catenary wire providing power for Amtrak was knocked down in Elkton, MD. This delayed the train on which I was traveling and regrettably prevented me from being present to vote.

#### THE FEDERALIST SOCIETY: SETTING THE RECORD STRAIGHT

Mr. HATCH. Mr. President, I also take this opportunity today to right a wrong. Over the past 2 years, members of The Federalist Society have been much maligned by some of my Democrat colleagues, no doubt because they see political advantage in doing so. The Federalist Society has even been presented as an ‘evil cabal’ of conservative lawyers. Its members have been subjected to questions which remind one of the McCarthy hearings of the early 1950’s. Detractors have painted a picture which is surreal, twisted and untrue.

The truth is that liberal orthodoxies reign rampant and often unchecked in a majority of this country’s law schools and in the legal profession, and that the left is shocked that an association of constitutionalist lawyers would exist, much less include the notable legal minds it does.

During the mid-1990’s, Professor James Lindgren of Northwestern University Law School conducted a survey

of law school professors and came to the following conclusion. At the faculties of the top 100 law schools 80 percent of law professors were Democrats, or leaned left, and only 13 percent were Republicans, or leaned right. These liberal professors promulgate their ideology in and outside the classroom.

Anyone associated with America’s campuses or law schools knows that nonliberal views are regularly stifled and those espousing those views are often publicly shunned and ridiculed. It was this environment of hostility to freedom of expression and the exchange of ideas in universities that set the stage for the formation of the Federalist Society. And given my Democrat colleagues’ reaction to the Society, it appears to be fighting against liberal narrow-mindedness still.

In 1982, the Federalist Society was organized, not to foster any political agenda, but to encourage debate and public discourse on social and legal issues. Over the past 20 years the Federalist Society has accomplished just that. It has served to open the channels of discourse and debate in many of America’s law schools.

The Federalist Society espouses no official dogma. Its members share acceptance of three universal ideas: 1. that government’s essential purpose is the preservation of freedom; 2. that our Constitution embraces and requires separation of governmental powers; and 3. that judges should interpret the law, not write it.

For the vast majority of Americans, these are not controversial issues. Rather, they are basic Constitutional assertions that are essential to the survival of our republic. They are truths that have united Americans for more than two centuries. Recently we have seen the emergence of some groups that seek to undermine the third of these ideas—that judges should not write laws. These groups have attempted to use the judiciary to circumvent the democratic process and impose their minority views on the American people.

This judicial activism is a nefarious practice that seeks to undermine the principle of democratic rule. It results in an unelected oligarchy, government by a small elite. Judicial activism imposes the will of a small group of politicized lawyers upon the American people and undermines the work of the people’s representatives.

Indeed, if the radical left is successful, if we continue to appoint judges that are committed to writing law and not interpreting it, than all of us can just go home. We can resign ourselves to live under the oligarchical rule of lawyers. I happen to know a few lawyers, and please trust me when I say, this is not a good idea.

Beyond acceptance to its three key ideas, freedom, separation of powers, and that judges should not write laws, it is challenging, if not impossible, to find consensus among Federalist Society members. Its members hold a wide

array of differing views. They are so diverse that it is impossible to describe a Federalist Society philosophy.

The assertion that members are ideological carbon copies of each other is ludicrous. The Society revels in open, thoughtful, and rigorous debate on all issues. It rests on the premise that public policy and social issues should not be accepted as part of a party-line but rather warrant much thought and dialogue. Any organization that sponsors debate on issues of public importance, as opposed to self-serving indoctrination, is healthy for us all.

Now, how does the Federalist Society accomplish its goal? Not by lobbying Congress, writing amicus briefs, or issuing press releases. The Federalist Society seeks only to sponsor fair, serious, and open debate about the need to enhance individual freedom and the role of the courts in saying what the law is rather than what it should be. The Society believes that debate is the best way to ensure that legal principles that have not been the subject of sufficient attention for the past several decades receive a fair hearing.

The Federalist Society’s commitment to fair and open debate can be seen by a small sampling of some participants in its meetings and symposiums. They have included scores of liberals like Justices Ruth Bader Ginsburg and Stephen Bryer, Michael Dukakis, Barney Frank, Abner Mikva, Alan Dershowitz, Laurence Tribe, Steve Shapiro, Christopher Hitchins and Ralph Nader, just to name a few.

I would like to include for the RECORD a list of 60 participants in Federalist Society events that demonstrates the remarkable diversity of thought of Federalist Society events. One of them is Nadine Strossen, President of the ACLU, who has participated in Federalist Society functions regularly and constantly since its founding. She has praised its fundamental principle of individual liberty, its high-profile on law school campuses, and its intellectual diversity, noting that there is frequently strenuous disagreement among members about the role of the courts. Strossen has even said that she cannot draw any firm conclusion about a potential judicial nominee’s views based on the fact that he is a Federalist Society member.

It seems to me that an organization that includes such a wide array of opinion serves this nation well and does not deserve the vilification it gets from the usual suspects.

There are many notable conservatives that also affiliate with the Federalist Society. But as the members of the Senate demonstrate, even amongst those that are often labeled “conservatives” there is a much disagreement on most social and political issues. Some often portray the Federalist Society as a tightly-knit, well-organized coalition of conservative lawyers who are united by their right-wing ideology. This is far from true. Allow me to illustrate further.