Mr. MCCONNELL. The following Senators are necessarily absent: the Senator from South Carolina (Mr. DEMINT), and the Senator from Mississippi (Mr. LOTT).

Further, if present and voting, the Senator from South Carolina (Mr. DEMINT) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from Maryland (Ms. MIKULSKI) is necessarily absent.

The PRESIDING OFFICER. Are there any Senators in the Chamber who desire to vote?

The result was announced—yeas 96, nays 1, as follows:

[Rollcall Vote No. 189 Leg.]

YEAS—96

Akaka	Dole	Martinez
Alexander	Domenici	McCain
Allard	Dorgan	McConnell
Allen	Durbin	Murkowski
Baucus	Ensign	Murray
Bayh	Enzi	Nelson (FL)
Bennett	Feingold	Nelson (NE)
Biden	Feinstein	Obama
Bingaman	Frist	Pryor
Bond	Graham	Reed
Boxer	Grassley	Reid
Brownback	Gregg	Roberts
Bunning	Hagel	Rockefeller
Burns	Harkin	Salazar
Burr	Hatch	Santorum
Byrd	Hutchison	Sarbanes
Cantwell	Inhofe	Schumer
Carper	Inouye	Sessions
Chafee	Isakson	Shelby
Chambliss	Jeffords	Smith
Clinton	Johnson	Snowe
Cochran	Kennedy	Specter
Coleman	Kerry	Stabenow
Collins	Kohl	Stevens
Conrad	Kyl	Sununu
Cornyn	Landrieu	Talent
Corzine	Lautenberg	Thomas
Craig	Leahy	Thune
Crapo	Levin	Vitter
Dayton	Lieberman	Voinovich
DeWine	Lincoln	Warner
Dodd	Lugar	Wyden

NAYS—1

Coburn

NOT VOTING—3

DeMint	Lott	Mikulski

The bill (H.R. 2360), as amended, was passed.

(The bill will be printed in a future edition of the RECORD.)

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

The PRESIDING OFFICER. The clerk will please call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

APPOINTMENT OF CONFEREES—H.R. 2360

The PRESIDING OFFICER. Under the previous order, the Senate insists on its amendments and requests a conference with the House, and the Chair appoints the following conferees: Mr. GREGG, Mr. COCHRAN, Mr. STEVENS, Mr. SPECTER, Mr. DOMENICI, Mr. SHELBY, Mr. CRAIG, Mr. BENNETT, Mr. ALLARD, Mr. BYRD, Mr. INOUYE, Mr. LEAHY, Ms. MIKULSKI, Mr. KOHL, Mrs. MURRAY, Mr. REID of Nevada, and Mrs. FEINSTEIN.

UNANIMOUS CONSENT AGREEMENT—H.R. 3057

Mr. MCCONNELL. Mr. President, I ask unanimous consent that at 10 a.m. on Friday, tomorrow, July 15, the Senate proceed to the immediate consideration of Calendar No. 150, H.R. 3057. I further ask that the committee-reported substitute be agreed to and considered as original text for the purposes of further amendment, and that no points of order be waived by virtue of this agreement.

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

MORNING BUSINESS

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

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

THE SUPREME COURT

Mr. CORNYN. Mr. President, I yield myself 15 minutes out of the majority time, the manager's time, to address a different subject, but one that is timely given some developments earlier today.

On July 3, the Washington Post reported that Democrats signaled that whoever the nominee to the U.S. Supreme Court is, their three likely lines of attack will be to assert that the White House did not consult sufficiently, to paint the nominee as ideologically extreme, and to finally assert that the Senate has not received sufficient documents about the candidate.

I will address the second prong of this three-prong attack. That has to do with ideology and the personal views of the nominee, or perhaps asking the nominee to predict how they would likely rule on an issue were it to come before the U.S. Supreme Court.

Over the past few days, some Members on the other side of the aisle have stated their intention to ask whomever the President nominates to the Supreme Court a series of questions on where that nominee stands on controversial political issues. For example, yesterday the senior Senator from Massachusetts said he wants to know whether the nominee supports laws related to the environment, civil rights, and abortion. The senior Senator from New York today said he wants to know what the nominee thinks about any one of a number of things, including the appropriate role of religion in government and how to balance environmental interests against energy interests. Indeed, the senior Senator from New York has said that ''every question is a legitimate question, period.'' These questions must be answered, they say, because they have a right to know what the nominee's so-called ''judicial philosophy'' is.

Let me be clear. Any one of the 100 Senators who has been elected and who serves in this Senate has a right under the First Amendment, if nowhere else, to ask any question they want. However, these statements of the last few days indicating the scope of questions that some Senators intend to ask represents something of a change of heart.

During Justice O'Connor's confirmation hearing, for example, the Senator from Massachusetts declared:

> . . . [i]t is offensive to suggest that a potential Justice of the Supreme Court must pass some presumed test of judicial philosophy. It is even more offensive to suggest that a potential Justice must pass the litmus test of any single-interest group.

The Senator's colleagues have always agreed with him on that. And I agree with the position he took at that time, but not with the position he is taking more recently.

Also during Justice O'Connor's confirmation hearing, the senior Senator from Delaware noted:

> [w]e are not attempting to determine whether or not the nominee agrees with all of us on each and every pressing social or legal issue of the day. Indeed, if that were the test, no one would ever pass by this committee, much less the full Senate.

Similarly, the senior Senator from Vermont declared during the same hearing that:

> Republican or Democrat, a conservative or a liberal. That's not the issue. The issue is one of competence and whether she has a sense of fairness.

The question is, Why the change of heart? I submit that one potential answer is because it has been a long time since the Senate has considered a Supreme Court nominee and perhaps some need to be reminded what the role of a judge in a democracy is.

As a former judge myself, let me share a few observations with my colleagues. Put simply, judges are not politicians. Judges do not vote on cases like politicians vote on legislation. Judges do not vote for or against environmental laws because their constituents demand it or because their consciences tell them to. They are supposed to rule on cases only in accordance with the law as written by the people's representatives. If a judge disagrees with the law as written, then he or she is not supposed to substitute his or her views for the people's views. Any other approach is simply inconsistent with democratic theory, with government by the people, and with respect for the rule of law.

It is worth noting that this has not always been the case. The judicial system in England during and before the American Revolution was one where judges made the law. This is called our common law system or common law heritage. Judges made up the law as they went along, trying to divine the best rules to govern the interaction between citizens. This was a heady power, the common law-making power, to decide what policies best serve mankind.

This is not, however, the judicial system created by our Founding Fathers