or by the Federal Constitution to govern the Federal courts, including the U.S. Supreme Court.

The Founding Fathers did not believe it was consistent with democracy to allow unelected judges to make laws that govern the people. We know this for three reasons. First, we know this because the Constitution says so. The Constitution quite clearly at the very outset says ''all legislative powers''—the power to make the law—''shall be vested in [the] Congress.'' This means no power to make law is vested in our courts, even in the U.S. Supreme Court.

Second, we know this because the Framers told us explicitly this is what they had envisioned. In Federalist Paper No. 47, for example, James Madison noted:

> [W]ere the power of judging joined with the legislative, the life and liberty of the [people] would be exposed to arbitrary control, for the judge would then be the legislator.

Finally, we know this because the Supreme Court has also told us so. In 1938, in the famous case of Erie v. Tompkins, the Supreme Court declared in no uncertain terms that ''[t]here is no federal general common law.''

Judges in our Federal system do not make law, or I should say are not supposed to make law. The laws are made for them and indeed for the entire Nation by the people's representatives in the form of statutes enacted by the Congress and in the form of the Constitution that we the people have ratified to govern our affairs. These are legal texts and they are supposed to tie the hands of judges in our system. Judges in our system are not supposed to make up the law as they go along. They are simply supposed to apply the laws made by the people to the facts at hand.

If the law is to change, it is because the people are the ones who are supposed to change it, not because judges do. Federal judges, again, have no general common law-making power.

Once we remember the role of judges, unelected judges, in our democracy, it is clear why the questions some members of the body intend to propound to the President's nominees are so wrongheaded. So long as we satisfy ourselves that the President's nominee will do what the President has said he wants his nominee to do—which is to not make up the law but to simply implement the law as it has already been enacted by the people's representatives—there is simply no reason to demand answers from the nominee on particular cases. Indeed, the only possible reason a Member would ask these kinds of questions is to try to make political hay out of the nominee's personal views.

Special interest groups, in order to raise money from donors, are pressing members of this Senate to do just that. But I sincerely hope we can resist the temptation to turn the impending confirmation hearings into a political fundraising opportunity. After all, a precedent for the right way to do things exists in the confirmation of Justice Ruth Bader Ginsburg in 1993.

Prior to her service on the Federal bench, Justice Ginsburg, a distinguished jurist and liberal favorite, served as the general counsel for the American Civil Liberties Union, an organization that has championed the abolition of traditional marriage laws and challenged the validity of the Pledge of Allegiance for invoking the phrase ''One nation under God.''

Before becoming a judge, Justice Ginsburg expressed her belief that traditional marriage laws are unconstitutional and that prostitution should be a constitutional right. She had also written that the Boy Scouts and Girl Scouts are discriminatory institutions and the courts must allow the use of taxpayer funds to pay for abortions—hardly views the American people would consider mainstream.

Yet Senate Republicans and Senate Democrats alike did not try to exploit her personal views; rather, they overwhelmingly approved her nomination.

There are other reasons why it is inappropriate to demand answers to questions about particular political issues. The Founding Fathers wanted our judges to be independent from the political branches. It threatens the independence of the judiciary to parade nominees in front of this body and then to ask them to state their views on whether, for example, this body has the constitutional power to enact certain environmental and civil rights laws.

How a nominee can remain independent if his or her confirmation is conditional on whether he or she pledges to uphold legislation from this body is beyond me. A nominee could not remain independent having made such a pledge, so they should not make that pledge nor, I submit, should they be asked to make that pledge.

In addition, judges in our system are supposed to be impartial. That is why Lady Justice has always been blindfolded. It undermines a nominee's ability to remain impartial once he or she becomes a judge if he or she has already taken positions on issues that might come before him or her on the bench. For example, if we force nominees to pledge to uphold certain environmental or civil rights laws enacted by this body in order to win confirmation, how is a litigant, challenging one of those laws in court, supposed to feel when the nominee sits to hear that case? The litigant would certainly not feel as though he or she is receiving equal and open-minded justice, I can promise you that.

It is for this reason the American Bar Association has promulgated a canon of judicial ethics that prohibits a nominee from making ''pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.'' It is also why, as Justice Ginsburg has recently noted in an opinion she wrote, that, although ''how a prospective nominee for the bench would resolve particular contentious issues would certainly be of interest to the . . . Senate in the exercise of [its] confirmation power[,] . . . in accord with a longstanding norm, every member of [the Supreme] Court declined to furnish such information to the Senate.'' In other words, just because some Members may ask these questions does not mean the President's nominee should answer them. In accordance with long tradition and norms of the Senate in the confirmation process, they should not answer them.

In conclusion, Mr. President, let me say that I hope Members reconsider their intention to condition the confirmation of the President's nominees on their adherence to a particular political platform. Judges are not politicians, and we do a disservice to the judicial branch and its role in our democracy by trying to treat them as such.

Mr. President, I reserve the remainder of our time and yield the floor.

HONORING OUR ARMED FORCES

NAVY SEAL SHANE PATTON

Mr. REID. Mr. President, Boulder City, NV, lies 25 miles east of Las Vegas, near Lake Mead. The city was constructed in 1931 to serve as a home for the workers who built Hoover Dam. It has seen limited growth over the last 70 years and has never lost its smalltown feel.

Every summer, Boulder City holds a Fourth of July celebration. Like most communities, it has fireworks, parades, and barbeques. But what separates Boulder City is its people. Folks who left long ago return to Boulder City on the Fourth of July to reunite with family and friends, and to remember the freedoms that make this country great.

This year, one of Boulder City's sons did not come back. Shane Patton, a lifelong resident and 2000 graduate of Boulder City High, was killed in action last month defending our freedoms in Afghanistan. He was a Navy SEAL and a hero to us all.

I did not know Shane, but I am very familiar with his grandfather Jim and his great-uncle Charlie. We were high school rivals some 50 years ago. They played sports for Boulder City. I played for Basic High. Jim and Charlie were athletes, and we competed against each other in baseball and football.

At that time, anyone who went to Boulder City was an arch enemy of anyone who went to Basic. But eventually we mixed and had friends in common. Jim even took a roadtrip from Nevada to the Panama Canal and another to Mexico with my friend Don Wilson in the 1970s.

Shane's grandfather has a sense of adventure and a commitment to country. It rubbed off on Shane's dad J.J., who was a SEAL, and eventually on Shane, who followed in his father's footsteps by joining the Navy and becoming one of our country's elite SEALs.

Being a Navy SEAL is one of the most physically and mentally difficult jobs in the world. The SEALs' training is legendary for its toughness. Their missions are dangerous and secret. They work in small teams, on the frontlines of war. Only the best of the best can serve as Seals, and Shane Patton did it with honor and distinction.

In Afghanistan, Shane died during a combat mission. He was buried last Saturday at the Southern Nevada Veterans Cemetery in Boulder City. He now rests among other Nevada heroes—brave men and women who dedicated part of their lives to protecting and preserving the freedoms we hold dear. I attended Shane's funeral and extended the appreciation of a grateful Nation.

A year from now Boulder City will again celebrate the Fourth of July. As is tradition, people from all over will journey back to the city they used to call home. Shane Patton will not be there. But he will live on in the hearts and minds of everyone in Boulder City and in everyone who pauses to remember the freedoms we enjoy.

Shane's life's work was keeping us safe. His service was his gift to us all. And his sacrifice will never be forgotten.

LANCE CORPORAL THOMAS WILLIAM FRITSCH

Mr. LIEBERMAN. Mr. President, I rise today to pay tribute to LCpl Thomas William Fritsch, U.S. Marines, of Cromwell, CT. Lance Corporal Fritsch lived as a true patriot and defender of our great Nation's principles of freedom and justice.

While serving during the Vietnam War, a group of marines from Battery D, including Lance Corporal Fritsch, was assigned to search for Sergeant Miller and medic Thomas Perry. The search had become necessary when it was apparent that the medic was missing during the evacuation of the base at Ngok Tavak which had come under enemy attack early on the morning of the 10th of May, 1968. It was during the course of this search when the small group was attacked by enemy fire.

Although it has been 37 years since his loss, his repatriation serves as a testament to our Nation's commitment to our Prisoners of War, those Missing in Action, and their families. I commend the Department of Defense Prisoner of War and Missing Personnel Office for their remarkable and tireless efforts during their numerous investigations which have once again been successful in identifying one of our Nation's heroes. I can only imagine the range of emotions caused by the loss and years of uncertainty experienced by Lance Corporal Fritsch's family, as well as other families of our servicemen missing in action.

In addition to his family, there are many in Connecticut who still remember him fondly. As a 1966 graduate of the EC Goodwin Technical-Vocational School in New Britain, CT, he is remembered as a good friend, a good neighbor, and an active member of the community who enjoyed volunteering for the Portland Fire Department and participating in the Boy Scouts. Perhaps, Lance Corporal Fritsch will most be remembered as an aspiring chef as his former guidance counselor, Jane Rich, vividly recalls.

Lance Corporal Fritsch will soon be laid to rest at Rose Hill Cemetery in Rocky Hill. Lance Corporal Fritsch lives on through his parents, William and Mary, and his siblings, Patricia, Gloria, Bill and Steve whom I thank for his patriotic service.

Our Nation extends its heartfelt condolences to his family. We extend our appreciation for sharing this outstanding marine with us, and hope that they may find peace and closure. They may be justifiably proud of his contributions.

CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT OF 2005

Mr. HATCH. Mr. President, I rise to speak of the Controlled Substances Export Reform Act of 2005. This bill would make a minor, but long overdue, change to the Controlled Substances Act to reflect the reality of commerce in the 21st Century and to protect high-paying American jobs, while maintaining strong safeguards on exports.

Before I discuss this bill, I want to thank Senator BIDEN for working with me on this important legislation. Senator BIDEN has long been recognized as a national leader on drug-related measures, and we have a history of working together on a bipartisan basis to enact sensible reforms in this area, as evidenced by the recent enactment of our steroid precursor bill. I respect his thoughtful collaboration, and I thank him for his work on this proposal.

I would also like to thank Chairman SPECTER for his critical work on this legislation. We would not be able to move this important bill without his efforts. Furthermore, I would like to thank the majority leader for moving this legislation during the last Congress. We were able to pass the measure last fall, and I hope that we may do so again in the near future.

This Hatch-Biden bill has been my priority for a number of years. The need for this legislation was first brought to my attention by a number of Utah companies, who had experienced significant difficulties in exporting their pharmaceutical products.

Under current law, there are two differing regulatory schemes governing export of U.S.-manufactured pharmaceutical products. One system, adopted by the Congress 10 years ago, governs products regulated under the Federal Food, Drug and Cosmetic Act. The other, which we are today proposing to harmonize with the food and drug law, governs pharmaceuticals with abuse potential regulated under the Controlled Substances Act. In sum, our proposed legislation amends the Controlled Substances Act to allow greater opportunities for U.S. manufacturers to send their products abroad, still retaining full Drug Enforcement Administration authority over those exports.

At present, U.S. pharmaceutical manufacturers are permitted to export most controlled substances only to the immediate country where the products will be consumed. Shipments to centralized sites for further distribution across national boundaries are prohibited, even though this same system is allowed under the Federal Food, Drug and Cosmetic Act for products which are not controlled substances. The current system for export of controlled substances should be contrasted with the freedom of pharmaceutical manufacturers throughout the rest of the world to readily move approved medical products among and between international drug control treaty countries without limitation or restriction.

The unique prohibitions imposed on domestic manufacturers disadvantage U.S. businesses by requiring smaller, more frequent and costly shipments to each country of use without any demonstrable benefit to public health or safety. By imposing significant logistical challenges and financial burdens on U.S. companies, the law creates a strong incentive for domestic pharmaceutical manufacturers to move production operations overseas, threatening high-wage American jobs.

The Controlled Substances Act of 1970 permits U.S. manufacturers of Schedule I and II substances and Schedule III and IV narcotics to export their products from U.S. manufacturing sites only to the receiving country where the drug will be used. The law prohibits export of these products if the drugs are to be distributed outside the country to which they are initially sent. The effect of this restriction is to prevent American businesses from using cost-effective, centralized foreign distribution facilities. In addition, under the current regime, unexpected cross-border demands or surges in patient needs cannot be met. Likewise, complex and time-sensitive export licensing procedures prevent the shipment of pharmaceuticals on a real time basis.

European drug manufacturers face no such constraints. They are able to freely move their exported products from one nation to another while complying with host country laws. This is entirely consistent with the scheme of regulation imposed by international drug control treaties. Only the United States imposes the additional limitation of prohibiting the further transfer of controlled substances. Thus, while a French or British company can ship its products to a central warehouse in Germany for subsequent distribution across the European Union, an American company must incur the added costs of shipping its products separately to each individual country.

S. 1395, the Controlled Substances Export Reform Act, would correct this imbalance and permit the highly-regulated transshipment of exported pharmaceuticals placing American businesses on an equal footing with the