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# House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, June 6, 2006, at 2 p.m.

# Senate

FRIDAY, MAY 26, 2006

The Senate met at 8:45 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:

May we pray.

Eternal, sovereign Lord, supply our needs for today.

Give strength to the weak as they shoulder heavy responsibilities. Give rest to the weary, that their tired hands will find new vigor. Give comfort to the sorrowful and compensate them for every joy that life takes away. Give all of us the presence of Your love, that we may find the peace of sins forgiven and the power to break the chains of temptation.

Use our Senators today for Your glory. Uphold them when they reach the limits of their strength.

We pray in Your powerful 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, leadership time is reserved.

## EXECUTIVE SESSION

## NOMINATION OF BRETT M. KAVANAUGH TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session and resume the consideration of Calendar No. 632, which the clerk will report.

The legislative clerk read the nomination of Brett M. Kavanaugh, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit.

The PRESIDENT pro tempore. The distinguished minority leader is recognized.

Mr. REID. Mr. President, the distinguished ranking member of the Judiciary Committee wishes to speak on the nomination of Brett Kavanaugh. I also wish to do that.

I ask that the Senator from Vermont be recognized.

The PRESIDENT pro tempore. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, we are concluding the debate on the controversial nomination of Brett Kavanaugh to a seat on the Court of Appeals for the District of Columbia Circuit.

I spoke last evening, and I shall not speak longer today except to again express my concern that we are putting a person with no judicial experience on the second most powerful court in the land.

This vote will go forward, unlike the votes for two far more qualified people nominated by President Clinton who were pocket-filibustered by the Republican leadership of the Senate, along with 59 other judges nominated by President Clinton who were pocket-filibustered by the Republican leadership.

What I worry about with this nomination of Mr. Kavanaugh, whose ABA rating has been downgraded—it is almost unprecedented to see that happen—is that he is a man who in all his statements spoke of making rulings that would make President Bush proud. This is an independent branch of Government. He is not supposed to make any President—Republican or Democratic—proud. He is not supposed to be a rubberstamp for anybody.

I think when you have a Republican-controlled Congress which has refused to be a check on the Bush-Cheney administration, whether it is the war in Iraq, the lack of weapons of mass destruction, the failures of Homeland Security with Katrina, or this latest fiasco in the Veterans' Administration, there is no accountability. We at least should be able to speak to our courts and to expect our courts to be accountable.

This is an administration that has been secretly wiretapping Americans for years without warrants, despite the requirements of the law. This is an administration that refused to allow the Justice Department's own Office of Professional Responsibility to proceed

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



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with an investigation into whether Justice Department lawyers violated their responsibilities or the law in establishing and justifying programs to spy on Americans. This is an internal government investigation that is being stymied by the administration.

This is an administration that has operated behind a wall of secrecy and that has issued secret legal opinions justifying the use of torture and rendition of prisoners to other countries, ignoring the dangers such tactics pose to our own soldiers and Americans around the world. This is an administration that is talking about prosecuting reporters and newspapers for trying to inform the American people about their government. This is an administration that says the law is what the President decides the law should be not what Congress passes.

What is desperately lacking throughout this administration and this Republican-controlled Congress is accountability. I will give you one example.

Yesterday, those responsible for Enron's collapse, which caused so many employees and investors to lose their savings, were held accountable in a court of law. Precious little was done by the Republican-controlled Congress to look into that. It required an independent court of law. Of course, Enron had been very generous to the President and to others and to many among the Republican leadership in the House and Senate in their contributions.

I compliment the President, who yesterday expressed some regrets over the disastrous course he charted in Iraq; he began to acknowledge the harm done to this country in Abu Ghraib—far different than during his campaign when he said he could not think of a mistake he had ever made except for some of his nominations.

Well, the President's picks for important judicial nominations continue to fare no better than his picks to head the CIA or FEMA or the VA. But bad judicial nominations will continue for lifetimes, not just the 2 years left to the Bush-Cheney administration. In just the past few months, we have learned that Judge Terrence Boyle, President Bush's pick for the Fourth Circuit and a sitting U.S. district judge, has ruled on multiple cases involving corporations in which he held an interest. The President's nominee to the Tenth Circuit, Judge James Payne, was withdrawn after it was revealed that he, too, sat on many cases where he held stock in one of the parties. Another of President Bush's nominees to the Fourth Circuit, Claude Allen, who would be a sitting Circuit Judge now if Democrats had not opposed his nomination, is now the subject of a criminal prosecution for charges akin to stealing from retail stores. And Michael Wallace, President Bush's pick for the Fifth Circuit, recently received the first unanimous not qualified rating from the ABA for a Circuit Court nominee in nearly 25 years.

Now we are considering a nominee today, Brett Kavanaugh, who is a young and relatively inexperienced, but ambitious member of the White House's inner circle. He is the President's pick to put another ally and trusted vote on the DC Circuit. He has spent most of his legal career in partisan political positions. As Staff Secretary to the President, Mr. Kavanaugh has been involved in President Bush's use of 750 Presidential signing statements designed to reserve for the President alone the power to choose whether to enforce laws passed by Congress. As an Associate White House Counsel, Mr. Kavanaugh worked with Karl Rove on the President's plan to pack the Federal bench with ideologues such as William Pryor, Janice Rogers Brown and others. He helped justify the wall of secrecy that has shrouded so many of the White House's activities.

At his hearing Mr. Kavanaugh emphasized, as if a qualification, that he had ''earned the trust of the President'' and his ''senior staff.'' All that may be useful for advancement within this President's administration or Republican circles, but those are hardly qualities or qualifications for an independent judge of this President and this administration's actions. Indeed, when pressed at his confirmation hearing to provide answers about his qualifications for this lifetime appointment and how he would fulfill his responsibilities as a judge, Mr. Kavanaugh sounded like a spokesman and representative for the administration. Over and over he answered our questions by alluding to what the President would want and what the President would want him to do. We heard from a nominee who parroted the administration's talking points on subject after subject. Rather than answer our questions, he referred us to the bland explanation offered by a former Presidential spokesman. I do not think the Senate should confirm a Presidential spokesman to be a judge on the second highest court in the land. I do not believe that Mr. Kavanaugh demonstrated that he has left his role as a member of the President's administration or that he will.

The reasons for the downgrading of Mr. Kavanaugh's ABA rating also raise concerns about his independence. Not only did those who have seen Mr. Kavanaugh in his limited legal practice describe him as ''less than adequate,'' but those who were interviewed recently raised concerns about Mr. Kavanaugh's ability to be balanced given his many years in partisan positions working to advance a political agenda. They described him as ''insulated,'' ''sanctimonious,'' and ''immovable and very stubborn and frustrating to deal with on some issues.'' These may be good qualities for a partisan political operative, but they are not qualities that make for a good judge.

My concerns about Mr. Kavanaugh's judicial independence are heightened by the fact that he has been nominated to the DC Circuit, a court which the Republicans have spent more than a decade trying to pack. They spent President Clinton's second term blocking his highly-qualified nominees, Elena Kagan, now Dean of Harvard Law School, and Allen Snyder, a former clerk to Chief Justice Rehnquist and highly respected litigator. Nonetheless, I voted to confirm Judge John Roberts to be a member of the DC Circuit and later supported his nomination to be Chief Justice of the Supreme Court.

After the Senate last year confirmed two of President Bush's nominees that I strongly opposed—Janice Rogers Brown and Thomas Griffith—Republican appointees now comprise a two-to-one majority on this important court. This is not a court that needs another rubberstamp for the President's political ally.

The Senate Republican leadership is catering to the extreme rightwing and special interest groups agitating for a fight over judicial nominations. With a number of judicial nominees ready for bipartisan confirmation, the Senate Republican leadership would rather concentrate on this controversial and divisive nominee. That this nomination has not moved forward for 3 years is indicative of the fact that even Republican Senators know what a poor nomination this is. They have made no secret of the reason for rushing this nomination through the Senate now, after it has languished for 3 years under Republican control, and after the nominee admitted to slow-walking his responses to this committee. They want to stir up a fight. They want to score cheap political points at the expense of another lifetime appointment to the courts.

The Senate Republican leadership is apparently heeding the advice of the Wall Street Journal editorial page, which wrote, ''[a] filibuster fight would be exactly the sort of political battle Republicans need to energize conservative voters after their recent months of despond.'' Rich Lowery, editor of the conservative National Review, listed a fight over judges as one of the ways President Bush could revive his political fortunes, writing that he should, ''[p]ush for the confirmation of his circuit judges that are pending. Talk about them by name. The G.O.P. wins judiciary fights.'' Republican Senators are relishing this chance for a political fight. Senator THUNE has said, ''A good fight on judges does nothing but energize our base. . . . Right now our folks are feeling a little flat.'' Senator CORNYN has said, ''I think this is excellent timing. From a political standpoint, when we talk about judges, we win.'' On May 8, 2006, the New York Times reported: ''Republicans are itching for a good election-year fight. Now they are about to get one: a reprise of last year's Senate showdown

over judges.'' The Washington Post reported on May 10: ''Republicans had revived debate on Kavanaugh and another Bush appellate nominee, Terrence Boyle, in hopes of changing the pre-election subject from Iraq, high gasoline prices and bribery scandals.''

We should not stand idly by as Republicans choose to use lifetime Federal judgeships for partisan political advantage. In a May 11, 2006, editorial The Tennessean wrote:

> [T]he nation should look with complete dismay at the blatantly political angle on nominations being advocated by Senate Republicans now. . . . Republicans are girding for a fight on judicial nominees for no reason other than to be girding for a fight. They have admitted as much in public comments. . . . In other words, picking a public fight over judicial nominees is, in their minds, the right thing to do because it's the politically right thing to do. . . . Now, Republicans are advocating a brawl for openly political purposes. The appointment of judges deserves far more respect than to be an admitted election-year ploy. . . . It should be beneath the Senate to have such a serious matter subjected to nothing but a tool for political gain.

On May 3, 2006, the New York Times wrote in an editorial:

> The Republicans have long used judicial nominations as a way of placating the far right of their party, and it appears that with President Bush sinking in the polls, they now want to offer up some new appeals court judges to their conservative base. But a lifetime appointment to the DC Circuit is too important to be treated as a political reward.

Our job in the Senate should not be to score political points or advance partisan agendas. Our job is to fulfill our duty under the Constitution for the American people. We must be able to assure the American people that the judges confirmed to lifetime appointments to the highest courts in this country are fair to those who enter their courtrooms and to the law.

We have heard from many who are concerned about the nomination of Mr. Kavanaugh: The AFL–CIO, United Auto Workers, and Service Employees International Union have all written to us opposing this nomination. The Leadership Conference on Civil Rights, NARAL PRO-Choice American, and the National Council of Jewish Women have all written to us opposing this nomination. The Society of American Law Teachers, National Employment Lawyers Association, and the Alliance for Justice have all written to us opposing this nomination. Earthjustice and Community Rights Counsel have written to us concerned about this nomination.

The Senate's job is to fulfill our duty under the Constitution, rather than act as a rubberstamp for the President's attempt to pack the courts with political allies. We must be able to assure the American people that the judges confirmed to lifetime appointments to the highest courts in this country are being appointed to be fair and protect their interests, rather than those of a Presidential patron. Mr. Kavanaugh has given the Senate no reason to believe he has the capacity for independence.

I am prepared to vote on Mr. Kavanaugh right now unless others on the other side would wish to talk, which, of course, would lead others to talk. As I said to the two leaders last night, I would be willing to go to a vote soon.

Mr. FEINGOLD. Mr. President, I wish to first note my concern about the procedure followed in the Judiciary Committee to report out this nomination precipitously to the floor. Our practice on nominations in the committee has been first to hold a hearing. Next, Senators are given the opportunity to review the transcript of the hearing and submit written questions. Normally, we are given a week to do that, which is a reasonable length of time. Then, once a nominee answers any written questions, the nomination can be noticed, and we have the right to hold that nomination over for 1 week. That is not an extraordinary amount of time, but it is at least sufficient for the Senators on the committee to do their jobs and have confidence that the nomination has been considered with due diligence.

There is no good reason that we couldn't follow that schedule in this case. Mr. Kavanaugh's situation is unusual because he was first nominated several years ago, but his first nomination was essentially abandoned when he decided not to respond to written questions for a full 7 months after his hearing in April 2004. Senators on the Democratic side requested a new hearing for him over a year ago, after he was renominated. His nomination lay dormant until just a few weeks ago.

Then, all of a sudden, there was a full court press to get this nomination done. Why is that? The rush to judgment in the committee, as far as I can tell, was based on nothing more than the majority leader's desire to have a floor vote on the nomination before our next recess. There was no reason for the rush except for the majority leader's political timetable. There is no crisis in the District of Columbia Circuit, which has the lowest caseload of any circuit in the country. All we were asking on the Democratic side in the committee was that we follow the regular order—a timely hearing and the opportunity to ask written questions.

I do want to note that I finally received answers the day before the committee vote to some of the questions that I first asked back in April 2004. I was not entirely satisfied with those answers, but they were certainly more complete than those the nominee provided when he first answered my questions in November 2004. The fact that these questions were finally answered just completes the record from 2004. I believe Senators deserved a chance to review the transcript of the hearing held on May 9, 2006, and ask further questions if they wanted to. A lot has happened in this country and in this administration where Mr. Kavanaugh works during the interval between his hearing in May 2004 and the hearing earlier this month. That is one of the reasons a second hearing was necessary. So it was a mistake for the chairman of the Judiciary Committee to short-circuit the process by simply decreeing that written questions would not be permitted.

Since the leader has decided to press forward on this nomination, I will vote no. I do not think Mr. Kavanaugh is the right choice for this vacancy. He is a very bright young lawyer and he has some impressive credentials. He may well be ready for appointment to a district court judgeship. But his record does not give me confidence that he is ready to serve on the District of Columbia Circuit, widely seen as the second highest court in the land.

Mr. Kavanaugh has written almost nothing that we can look to for a sense of his judicial philosophy, of his judgment, of his temperament. In addition, so much of his career after clerking has been spent in partisan political positions that it is certainly legitimate to wonder whether he can be fair and impartial in a judicial role. Partisan political work does not necessarily disqualify someone from taking the bench. As has been pointed out, many very good appellate or Supreme Court judges held political posts. But most held other positions as well that demonstrated the capacity for independence. The Senate is entitled to ask for evidence that the nominee can be nonpartisan and impartial, not just assurances. In Mr. Kavanaugh's case, there is simply no record to examine to give comfort on that score. Furthermore, we know from the latest ABA evaluation that at least some people who have come in contact with him in his work do not think that he is prepared to be an appellate judge.

Of the currently serving judges on that court, only one—Judge Douglas Ginsburg—had less legal experience when he or she was confirmed than Brett Kavanaugh now has. Ginsburg had 13 years of legal experience, including a year as a Senate-confirmed Assistant Attorney General and 8 years as a professor at Harvard Law School. He had a record that the Senate could much more easily evaluate. Other judges on that circuit had much longer careers when they were appointed. Judge Sentelle had 19 years of experience, including 10 years of private practice and 5 years as a judge; Judge Henderson had 18 years, including 4 as a U.S. district judge; Judge Randolph had 21 years of legal experience; Judge Garland, 20 years; Judge Edwards, 15 years, including 10 years as a law professor at Michigan and Harvard; Judge Tatel, 28 years; Judge Judith Rogers, 30 years, including 11 years as a judge; Judge Janice Rogers Brown, 28 years, including 11 years as a judge; Judge Griffith, 20 years.

The District of Columbia Circuit is not a place to learn the judicial ropes,

nor is it a place to reward a loyal employee. It is a court that makes decisions every day that have a huge effect on the lives and livelihoods of American citizens and American businesses. It has a caseload that demands not only a good legal mind but judgment, wisdom, and experience. Brett Kavanaugh has impressive credentials, but his limited record makes it impossible for me to be confident that he will be the fair and impartial judge that this country needs on such an important court. So I will vote no.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

• Mrs. BOXER. Mr. President, I oppose the nomination of Brett Kavanaugh to be U.S. Circuit Judge for the District of Columbia.

Mr. Kavanaugh's lack of experience, partisan ideological leanings, lack of judicial temperament, and refusal to adequately answer questions posed by the Judiciary Committee make him unqualified to sit on the second highest court in the country.

Mr. Kavanaugh is a young lawyer who has spent most of his career in partisan positions. He lacks substantive courtroom experience and has never tried a case to a verdict. In fact, a judge before whom he appeared characterized Mr. Kavanaugh work as ''less than adequate'' and at the experience level of an associate.

Nor is Mr. Kavanaugh a noted legal scholar. The highlight of his career has been working with Kenneth Starr in the Office of the Solicitor General and at the Office of the Independent Counsel, where he spent 4 years and coauthored the infamous Starr Report.

Upon further review the nonpartisan American Bar Association panel downgraded Mr. Kavanaugh's rating from ''well-qualified'' to ''qualified.'' He was described by interviewees as ''sanctimonious,'' and ''immovable and very stubborn and frustrating to deal with on some issues.'' These are not qualities that make for a good judge. His low rating and nonjudicious demeanor put him in stark contrast to the majority of appointments to the DC Circuit who received ''well-qualified'' ratings and respectful reviews from the American Bar Association review panel.

The President can and should do better than this. The country deserves better than this.•

Mr. LEVIN. Mr. President, although I may not agree with a judicial nominee on policy matters, I will support that nominee as long as his or her values are consistent with the fundamental principles of American law and there is no indication that the nominee is so controlled by ideology that ideology distorts his or her judgment. Regardless of their political views, I will support a nominee who demonstrates fairness and openmindedness and whose reasoning is straightforward, clearly expressed, and worthy of respect.

Brett Kavanaugh is, unfortunately, not such a nominee. Because Mr. Kavanaugh does not have a judicial record to review, evaluating his fitness for the bench is not easy. We do not have written opinions from him that would reveal whether he looks objectively at both sides of an issue before making a decision. Therefore, we must judge his temperament on how he has conducted himself in interviews before the American Bar Association Standing Committee on the Federal Judiciary and how he answered questions posed by the Senate Judiciary Committee. Neither assessment gives me the confidence necessary to vote to confirm Mr. Kavanaugh to the DC Circuit.

In its 2003 assessment of Mr. Kavanaugh, the ABA record noted concerns with the breadth of Mr. Kavanaugh's professional experience. It was noted that he had never tried a case to verdict or judgment; that his litigation experience over the years was always in the company of senior counsel; and that he had very little experience with criminal cases. Specifically, the committee said: ''Indeed, it is the circumstance of courtroom experience that fills the transcripts that make the record before the Court of Appeals, and concerns were expressed about the nominee's insight into that very process.''

In its report on its recent reassessment of Mr. Kavanaugh, the ABA's Standing Committee on the Judiciary down-graded its rating of his qualifications. The report states that one judge who saw Kavanaugh's oral presentation in court said that Kavanaugh was ''less than adequate,'' and that he had been ''sanctimonious,'' and had demonstrated ''experience on the level of an associate.'' A lawyer in a different proceeding said: ''Mr. Kavanaugh did not handle the case well as an advocate and dissembled.''

According to the report, the 2006 interviews of Mr. Kavanaugh raised a new concern involving his potential for judicial temperament. Interviewees characterized Mr. Kavanaugh as, ''insulated,'' which one person commented was due to his current position as Staff Secretary to the President. Another interviewee questioned Mr. Kavanaugh's ability ''to be balanced and fair should he assume a federal judgeship.'' And another said that Kavanaugh is ''immovable and very stubborn and frustrating to deal with on some issues.''

A judge needs to be able to balance competing viewpoints and objectively determine a fair and equitable outcome. Mr. Kavanaugh's lack of judicial or courtroom or scholarly experience added to my doubts about his impartiality and lead me to vote no.

Mr. DODD. Mr. President, I rise to briefly state my reasons for opposing the nomination of Brett Kavanaugh to serve as a judge on the Court of Appeals for the District of Columbia Circuit Court.

I must say at the outset that I regret having to cast this vote. Throughout my tenure here in the Senate, I have supported the vast majority of presidential nominees—regardless of the party to which a president has belonged. With regard to the current administration, I have joined with my colleagues in voting to confirm the overwhelming majority of its judicial nominees—including those with whom I differed on matters of legal and public policy. I had assumed that, when nominated, Mr. Kavanaugh would likely be among this large group of judicial nominees to receive broad bipartisan support. After all, he has a commendable academic background, and served as a law clerk to two Circuit Court judges and one Supreme Court Justice.

However, it appears—that after emerging from a confirmation process where his conduct can be described as disappointing at best, and dismissive at worst—Mr. Kavanaugh has practically invited opposition to his nomination. In my view, there are few duties more important to the Senate than the consideration of the nomination of article III jurists. Other than considering a declaration of war or an amendment to the Constitution, nothing is more important than deciding on a judicial nominee. The reasons for that view are practically self-evident: article III judges are appointed for life, and they are appointed to lead and populate an entirely separate branch of government. Our entire constitutional framework rests on an act of faith, first taken by our Founders, that is in some respects as audacious as it is vital: that the President will nominate, and the Senate will confirm, only those judicial nominees who demonstrate the temperament, intellect, experience, and character to stand independent of the executive and legislative branches of government and hold those branches accountable to the law. If a nominee does not demonstrate those qualities during the nomination process, if he or she does not show a capacity to render independent judgments and uphold the principle of equal justice under law, then the outcome of a vote on that nomination is, in this Senator's view, a foregone conclusion: the nomination must be opposed.

During Mr. Kavanaugh's two confirmation hearings, he failed to demonstrate the requisite qualifications for the high position to which he has been nominated. He failed to provide meaningful responses to many of the questions put to him. After his first hearing, he delayed providing any answers at all to written questions for seven months. It was not until after the 2004 elections that he finally decided to provide those answers. When asked the reason for this delay, he offered only a feeble rationale, saying he took responsibility for what he termed a ''misunderstanding''. I found this explanation to be implausible, to say the least. As Associate White House Counsel, one of Mr. Kavanaugh's responsibilities was to prepare judicial nominees to successfully navigate the confirmation process. So for him to say he

had a ''misunderstanding'' about the need to promptly answer questions put to him by Senators strains credulity.

Mr. Kavanaugh also failed to provide full and candid answers to important questions about his role and views in helping to shape some of the administration's most controversial policies—from the development of legal rationales for torture to the drafting of Executive orders to reduce the public's access to presidential records. He also refused to tell the committee on what types of matters, if any, he would recuse himself if such matters came before him as a judge.

This refusal to be forthcoming with the Judiciary Committee—and by implication, with the Senate as a whole—bespeaks a dismissive attitude toward the confirmation process that I find highly troubling. We have seen in recent years a growing tendency of candidates to treat the confirmation process more as a game of hide-and-seek than a profoundly serious process designed by the Senate to provide Senators with the information that they need to make careful, reasoned decisions about nominees. If candidates do not provide vital information about their background and their views, they make it impossible for Senators to adequately discharge their constitutional duty to advise and consent with respect to article III nominees.

I would be remiss if I did not also mention two other facts about this nomination that make it highly unusual. One is that the American Bar Association, ABA, downgraded its rating of the nominee, from ''highly qualified'' to ''qualified''. Six of the eight members of the ABA committee who voted previously on this nomination voted to downgrade his nomination based on new information about his ability to act independently and his sparse record as a judge and legal practitioner. It also bears mentioning that this nominee, if confirmed, would be one of the least experienced judges to have served on this particular court. Only former Judge Kenneth Starr had less experience.

For these reasons, I must oppose this nomination. I hope that, if confirmed, this nominee will prove me wrong by growing into a wise, independent, and fair-minded jurist. But regrettably, at this time, he has given the Senate paltry and insufficient facts on which to believe he is prepared for the high office to which he has been nominated.

Mr. KENNEDY. Mr. President, the Court of Appeals for the DC Circuit is the second-highest court in the Nation. As such, its judges bear a unique responsibility.

By law, the DC Circuit has exclusive jurisdiction over many issues that other appellate courts cannot deal with. Only the judges of the DC Circuit can hear appeals under many critical laws that affect our economy, our environment, and our election system. Because the Supreme Court only hears a limited number of cases, the judges of the DC Circuit often have the final word on laws that affect the lives of millions of Americans, at home and in the workplace.

Unlike most of the members of the DC Circuit. Brett Kavanaugh is not a judge, an experienced litigator, or a legal scholar. Far from it. Mr. Kavanaugh is a political operative, a man whose ambition has placed him at the center of some of the most politically divisive events in recent memory. He is not qualified for this position. If his nomination is approved, I can say with confidence that Mr. Kavanaugh would be the youngest, least experienced and most partisan appointee to the court in decades.

Mr. Kavanaugh blatantly lacks the broad legal experience that is the hallmark of Federal judges—particularly those at the highest levels. He has never tried a case to verdict or to judgment. In fact, Mr. Kavanaugh has only practiced law for 10 years. Even counting his time as a law clerk, he still has only half of the average legal experience of nominees to the DC Circuit. To put this in context, Mr. Kavanaugh would be the least experienced member of the DC Circuit in almost a quarter century.

His lack of experience is underscored by his responses to questions from Judiciary Committee members. When he was asked to name his 10 most significant cases, Mr. Kavanaugh could only cite five cases for which he actually appeared in court, and only two cases in which he was lead counsel. He even cited two cases for which he merely wrote a friend-of-the-court brief for someone who was not a party to the lawsuit.

I am not alone in my judgment that Mr. Kavanaugh is not qualified for this position. Aside from my seven colleagues on the Judiciary Committee who voted against his appointment, organizations from around the country are united in their opposition to his nomination. The AFL–CIO, the Leadership Conference on Civil Rights, the NAACP, the National Urban League, the United Auto Workers. The list reads like a who's who of citizen representatives.

Most troubling, however, is the lukewarm evaluation of the American Bar Association, which has now conducted three separate evaluations of Mr. Kavanaugh. On the latest and perhaps closest evaluation, the ABA took the unusual step of downgrading its rating of Mr. Kavanaugh. Today, a majority of that committee does not believe Brett Kavanaugh can meet their highest standard for Federal nominees.

Why did the ABA downgrade its rating? It did so after confidential interviews with judges and lawyers familiar with his work, when numerous questions were raised about Mr. Kavanaugh's ability as an attorney and potential appellate judge.

A judge who heard Mr. Kavanaugh's oral arguments found that his presentation was ''less than adequate,'' and that he demonstrated skills ''on the level of an associate''—a young lawyer at a law firm. Lawyers familiar with his work raised additional questions about his impartiality and partisanship. One attorney specifically questioned whether Mr. Kavanaugh was capable of being ''balanced and fair should he assume a Federal judgeship.''

But Mr. Kavanaugh's lack of qualifications goes beyond years of experience or individual interviews. More important, Mr. Kavanaugh is almost completely unfamiliar with the substantive issues of law that consistently arise in the DC Circuit.

These aren't arcane concerns. The DC Circuit has a key role in upholding the rights of American workers. That court decides far more appeals than any other circuit of decisions by the National Labor Relations Board on unfair labor practices. Usually, these cases are filed by employers across the country attempting to overturn unfair labor practice findings against them by the Board. Recently, almost one in three such appeals have been heard by the DC Circuit.

During our hearings, I asked Mr. Kavanaugh whether he had any experience handling labor law matters. He couldn't provide a single example of work in this area—not one. Instead, he made vague reference to his work as a law clerk and his brief time in the Justice Department.

The DC Circuit is also important to anyone who breathes our air or drinks our water. It is the only Federal appellate court that can hear appeals on rules to protect the environment under the Clean Air Act and the Safe Drinking Water Act. It is the only Federal court that can grant a remedy when the executive branch fails to follow congressional mandates to protect the environment under these laws.

Nothing in Mr. Kavanaugh's record suggests that he would be willing to keep the executive branch in compliance with the law on these matters. More generally, nothing in his record suggests that he would be able to avoid the partisanship and politics that have marked his brief career.

In fact, partisan politics is the only area in which Mr. Kavanaugh's qualifications cannot be questioned. He has been deeply involved in some of the most bitterly divisive political events in the last decade—and always on the same side.

At the Office of the Independent Counsel, Mr. Kavanaugh authored the infamous Starr Report, wrote the articles of impeachment against President Clinton, and investigated the tragic suicide of Vince Foster.

As an Associate White House Counsel, Mr. Kavanaugh worked to support the nomination and confirmation of Jay Bybee, the author of the notorious—but then still secret—torture memo. He also was personally responsible for drafting the executive order that made presidential records less accessible to the public and the press.

This was order was so restrictive that one observer said it would ''make Nixon jealous in his grave.''

We gave Mr. Kavanaugh an opportunity to prove that he was independent and impartial in spite of his partisan past. I personally noted that this was my chief concern with his nomination, and I know that my colleagues did the same. Mr. Kavanaugh refused to specify the issues and policies on which he would recuse himself—in spite of the fact that he was at the center of a number of executive policy directives in recent years.

His answers to our questions resembled political talking points more than they did the answers we would expect from a nominee to such a prominent lifetime position in the Nation's Judiciary. He has shown nothing to suggest that he will stand up to the President when his duties require it.

Mr. Kavanaugh is not qualified for this job. Even worse, his nomination is a harsh reminder of the partisan and ideological pressures that have marked many recent judicial nominations. His nomination seems little more than a crass administration attempt to politicize the courts and provide a solid vote in favor of even the most extreme political tactics of the administration. The Federal courts need experienced, independent judges who can rise above their partisan beliefs and enforce the rights and guarantees of our Constitution and the rule of law. Mr. Kavnaugh is not such a nominee, and I urge my colleagues to oppose his nomination.

Mr. SESSIONS. Mr. President, I rise today to urge my colleagues to confirm President Bush's nomination of Brett M. Kavanaugh to be a U.S. circuit judge on the U.S. Court of Appeals for the District of Columbia Circuit.

President Bush first nominated Brett Kavanaugh to the DC Circuit on July 25, 2003. He received a hearing before the Judiciary Committee on April 27, 2004, but the committee did not vote on Mr. Kavanaugh's nomination. President Bush renominated Mr. Kavanaugh on February 14, 2005, and again on January 25, 2006. It is past time for Mr. Kavanaugh to receive an up-or-down vote on the Senate floor.

Brett Kavanaugh is a well-respected attorney with impeccable academic credentials and the background and experience necessary to serve as an excellent judge on the DC Circuit. He currently serves as Assistant to the President and staff secretary. He previously served in the White House Counsel's Office as Senior Associate Counsel and Associate Counsel to the President.

Mr. Kavanaugh graduated from Yale College, cum laude, and Yale Law School where he served as the notes editor on the Yale Law Journal. He served as a judicial law clerk for Justice Anthony Kennedy on the Supreme Court of the United States, as well as Judge Walter Stapleton of the U.S. Court of Appeals for the Third Circuit and Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit.

Prior to his Supreme Court clerkship, Mr. Kavanaugh earned a fellowship in the Office of the Solicitor General of the United States. After his clerkship, Mr. Kavanaugh served as an Associate Counsel in the Office of Independent Counsel, where he handled a number of the novel constitutional and legal issues. He was a partner at the prestigious Washington law firm of Kirkland & Ellis and has argued both civil and criminal matters before the Supreme Court and appellate courts throughout the country.

Besides his obvious academic and professional credentials, I would note that Mr. Kavanaugh believes in giving back to his community. While in private practice, Mr. Kavanaugh took on challenging pro bono matters, including representation of the Adat Shalom congregation in Montgomery County, MD, against an attempt to stop the construction of a synagogue in the county.

Those who know Mr. Kavanaugh best strongly praise his intelligence, integrity, and approach to the law. Mark Touhey III, Mr. Kavanaugh's supervisor at the Independent Counsel's Office, wrote in his support: ''Mr. Kavanaugh exhibit[s] the highest qualities of integrity and professionalism in his work. These traits consistently exemplify Mr. Kavanaugh's approach to the practice of law and will exemplify his tenure as Federal appellate judge.''

Judge Walter Stapleton said of Mr. Kavanaugh: ''He really is a superstar. He is a rare match of talent and personality.'' After arguing against Mr. Kavanaugh in the Supreme Court, Washington attorney Jim Hamilton stated, ''Brett is a lawyer of great competency, and he will be a force in this town for some time to come.''

Some of Mr. Kavanaugh's critics have tried to argue that he is too young to be a Federal appellate judge. In truth, Mr. Kavanaugh is 41 years old and has had a broad range of experience that makes him an ideal candidate for the DC Circuit.

Mr. Kavanaugh's legal work ranges from service as Associate Counsel to the President, to appellate lawyer in private practice, to experience as a prosecutor. He clerked at two of the U.S. Courts of Appeal, the Third and Ninth Circuits, and at the Supreme Court. In private practice and during his service as a prosecutor, Mr. Kavanaugh participated in appellate matters in a number of the Federal courts of appeal and in the Supreme Court.

Besides, at age 41, Mr. Kavanaugh is considerably older than many of our Nation's most distinguished judges were at the time of their nomination. In fact, all three of the judges for whom Mr. Kavanaugh clerked were appointed to the bench before they were 41. All have been recognized as distinguished jurists. Justice Kennedy was appointed to the Ninth Circuit when he was 38 years old. Judge Kozinski was appointed to the Ninth Circuit when he was 35 years old. Judge Stapleton was appointed to the district court at 35 and later elevated to the Third Circuit. There are many other examples of judges who were appointed to the bench at a young age and have had illustrious careers:

| Name | Circuit | Age |
|---|---|---|
| Judge Harry Edwards | DC Circuit | 39 |
| Judge Douglas Ginsburg | DC Circuit | 40 |
| Judge Kenneth Starr | DC Circuit | 37 |
| Judge (now Justice) Samuel Alito | Third Circuit | 40 |
| Judge J. Michael Luttig | Fourth Circuit | 37 |
| Judge Karen Williams | Fourth Circuit | 40 |
| Judge J. Harvie Wilkinson | Fourth Circuit | 39 |
| Judge Edith Jones | Fifth Circuit | 35 |
| Judge Frank Easterbrook | Seventh Circuit | 36 |
| Judge Donald Lay | Eighth Circuit | 40 |
| Judge Steven Colloton | Eighth Circuit | 40 |
| Judge Mary Schroeder | Ninth Circuit | 38 |
| Judge Deanell Tacha | Tenth Circuit | 39 |
| Judge Stephanie Seymour | Tenth Circuit | 39 |
| Judge J.L. Edmondson | Eleventh Circuit | 39 |

Age should not be the sole measure of a person's experience. Many Senators began their service at a young age. Senators BIDEN and KENNEDY were elected to the Senate at the age of 30, and Senator LEAHY was elected at age 34.

Some of Mr. Kavanaugh's critics have suggested that we should hold his service in the White House for President Bush against him. They seem to suggest that Mr. Kavanaugh's public service to his Nation is somehow a disqualifier for later serving on the bench. I disagree.

Public service in the executive or legislative branches of Government should not be a disqualifier for judicial office. This has never been the case, nor should it be. Justice Stephen Breyer was once the chief counsel to the Senate Judiciary Committee before being nominated and confirmed to the First Circuit by a substantial majority. I hope that none of us believe that his service on Senator KENNEDY's staff should have disqualified him.

Judge Abner Mikvah spent most of his career prior to the bench as a Democrat in elective office. He was a State legislator in Illinois and later a U.S. Congressman. In fact, he was a sitting Congressman when he was nominated to the DC Circuit. He, too, was confirmed by a substantial majority.

The Senate has not considered service as a Democratic staff member or as a Democratic Congressman a bar to service as a U.S. Circuit Judge, nor should it consider Mr. Kavanaugh's service in President Bush's White House as a strike against him. Suggesting that service in an elective branch of Government somehow tarnishes a lawyer's reputation would be a terrible message for this body to send to the legal community and to all citizens. Mr. Kavanaugh is superbly qualified to serve as a U.S. circuit judge, and he has made clear that he understands the role of a judge is different from the role of a member of the White House staff.

Some of Mr. Kavanaugh's critics have raised concerns about Mr. Kavanaugh's ABA rating. The ABA's Committee on the Federal Judiciary has consistently and unanimously

found that Mr. Kavanaugh has the integrity, professional competence, and judicial temperament to serve on the DC Circuit. Each year Mr. Kavanaugh's name has been in nomination the committee has rated Mr. Kavanaugh, and each year every member of the committee has found him ''qualified'' or ''well qualified.''

According to the ABA:

To merit a rating of ''well qualified,'' the nominee must be at the top of the legal profession in his or her legal community; have outstanding legal ability, breadth of experience and the highest reputation for integrity; and either demonstrate or exhibit the capacity for judicial temperament. The rating of ''qualified'' means that the nominee meets the Committee's very high standards with respect to integrity, professional competence and judicial temperament and that the Committee believes that the nominee will be able to perform satisfactorily all of the duties and responsibilities required by the high office of a federal judge.

In 2004 and 2005 a majority of the committee thought Mr. Kavanaugh had earned its highest rating, ''well qualified''; the rest thought he had earned a ''qualified'' rating. This year the balance changed, with more members of the committee believing he deserved a ''qualified'' rating and the rest thinking he deserved a ''well qualified'' rating.

Despite the fact that the ABA committee has included many committed Democrats, the committee remains unanimous that Mr. Kavanaugh is indisputably competent, intelligent, and qualified to serve on the DC Circuit. In response to what some of my Democratic colleagues have said about Kavanaugh's ABA rating, listen to what ABA committee chairman, Stephen Tober had to say:

Let me underscore . . . that we didn't find him not qualified. There's not a breath of that in this report or any earlier report. We found him qualified/minority well qualified. What I said at the end is what, in fact, many people said, that he has a solid reputation for integrity, intellectual capacity—a lot of people refer to him as brilliant—and an excellent writing and analytical ability. Those are great skills to bring to the court of appeals. There is just no question about that.

According to Mr. Tober, in all of the ABA's ratings, Mr. Kavanaugh's ''positive factors haven't changed a whole lot. He is found to have high integrity. He is found to be brilliant. He is a very skilled writer and legal analyst. He has those components, and I have said this before . . . he has those skills that will serve him well, certainly, on a Federal court.

Finally, Mr. Tober acknowledged that ''there is not a single not qualified vote in the picture.''

Brett Kavanaugh is a highly qualified attorney who has experience as an appellate litigator presenting arguments in court, and experience as a judicial law clerk on the other side of the bench evaluating appellate arguments. He has spent most of his career as a public servant. I am confident that he will perform his duties as a judge in a fair and even-handed manner.

Today's vote on this nominee is long past due. I urge my colleagues to confirm Brett Kavanaugh to be a U.S. circuit judge.

Mr. REID. I intend to vote against the confirmation of Brett Kavanaugh to the DC Circuit Court of Appeals. This youthful, relatively inexperienced nominee lacks the credentials to be approved for a lifetime appointment to the second most important Federal court in the country.

At the outset, let me contrast this nomination with a circuit court nomination we recently approved: the nomination of Milan Smith to the Ninth Circuit Court of Appeals. Mr. Smith is a pillar of the California legal community, a distinguished practicing lawyer with 27 years of experience in complex legal transactions. His nomination was the product of extensive consultation with Democratic Senators. The Judiciary Committee approved his nomination 18 to 0, and the full Senate gave its consent unanimously.

The Smith nomination is an example of the way the process is supposed to work. The Constitution gives the President and the Senate a shared role in filling vacancies on Federal courts. Working together, we can move highly qualified nonpartisan nominees through the process without rancor or delay.

But when the President uses judicial appointments as a reward to the extreme rightwing of the Republican Party, he invites controversy and conflict. Regrettably, that may be just the result that the White House wants.

Cesar Conda, a former domestic policy adviser to Vice President CHENEY, recently wrote in the Roll Call newspaper: ''For Bush, a renewed fight over conservative judges . . . just might be the cure to the Republican Party's current political doldrums.''

One of my Republican colleagues is quoted in the National Review earlier this month as saying: ''A good fight on judges does nothing but energize our base. Right now our folks are feeling a little flat. They need a reason to get engaged, and fights over judges will do that.''

At the same time, a lengthy debate over judges serves to distract attention from the pressing problems facing the Nation: an intractable war in Iraq, soaring gas prices, millions of Americans who lack health insurance. Instead of addressing these vital issues, this Senate has been forced to spend days and weeks and months talking about divisive judicial nominees.

The nomination of Brett Kavanaugh is nothing if not divisive. All eight Democrats on the Judiciary Committee oppose his confirmation. Every leading civil rights, environmental, and labor organization in the country has urged that he be rejected.

This nomination is not the product of consensus and consultation—it is a poke in the eye to the Senate. It is a wedge that disrupts the wonderful bipartisanship which has characterized the immigration debate over the past 2 weeks.

I recently met with Brett Kavanaugh. He seems like a bright young man. But he is a 41-year-old lawyer who has spent his short legal career in service to partisan Republican causes.

His two principal accomplishments as a lawyer are his work as an aide to Special Counsel Kenneth Starr during the misguided crusade to impeach President Clinton, and his current duty as a political lawyer in the Bush White House. Those positions do not disqualify Mr. Kavanaugh from future service, but they do not constitute the kind of broad experience in the law that we should expect from a nominee to the District of Columbia Circuit.

The DC Circuit is a uniquely powerful court. It has jurisdiction over challenges to Federal activities affecting the environment, consumer protections, workers and civil rights. This court hears appeals from the Environmental Protection Agency, the National Labor Relations Board, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration and other agencies.

As a result, DC Circuit judges sit in a unique position to judge Government actions that affect our lives in fundamental ways. Mr. Kavanaugh's slim, partisan record gives me no confidence he is the right person to assume this awesome responsibility.

In the 113 years since the Court of Appeals for the DC Circuit was established in 1893, 54 judges have sat on the court. Only three of those judges came to the court with less experience than Kavanaugh. DC Circuit judges have averaged over 26 years of legal experience at the time of their appointment to the DC Circuit. Mr. Kavanaugh, in contrast, graduated from law school a mere 16 years ago.

It is not just Mr. Kavanaugh's youth but his lack of practical experience that renders him unfit for this post. In his 16 years as a lawyer he has never tried a case to verdict or judgment. When questioned about this deficiency at his committee hearing, the nominee presumed to compare himself to Chief Justice John Roberts. But at the time of his appointment to the DC Circuit, Roberts had argued dozens of cases before the Supreme Court. Kavanaugh has argued just one such case, on behalf of the Starr investigation.

There are other kinds of experience one might bring to an appellate court. Some nominees are respected scholars. Some are sitting judges. Kavanaugh is neither. His high-ranking position in the Bush White House might constitute relevant experience, but we have little idea what he has accomplished in that role. He largely refused to answer questions from the committee about the issues he has handled or the positions he has advocated.

We know he helped to select many of the controversial judicial nominees

who have tied the Senate in knots in recent years. We know he was the author of a far-reaching government secrecy policy, despite his own role in stripping President Clinton of every vestige of privacy and privilege during the Starr investigation. Other than that, all we know is that Mr. Kavanaugh has had a fancy west wing title.

Most nominees gain more stature over the course of their legal careers, but Mr. Kavanaugh is headed in the opposite direction. The American Bar Association recently took the rare step of lowering its rating of this nominee.

Lawyers and judges interviewed by the nonpartisan ABA Committee described Mr. Kavanaugh as ''sanctimonious,'' ''immovable'' and ''very stubborn and frustrating to deal with on some issues.'' A judge before whom Mr. Kavanaugh appeared considered him ''less than adequate'' and said he demonstrated ''experience on the level of an associate.'' A lawyer who observed him during a different court proceeding stated: ''Mr. Kavanaugh did not handle the case well as an advocate and dissembled.''

Needless to say, these are not qualities that make for a good judge.

Still others described Mr. Kavanaugh as ''insulated.'' That is the last quality we want in a 41-year-old man who will soon begin the cloistered life of an appellate judge. Mr. Kavanaugh lacks the wide-ranging experience that breeds wisdom and judgment, and he is unlikely to acquire those qualities on the bench.

Mr. Kavanaugh's thin legal resume contrasts with the resumes of the two Clinton nominees who were blocked by the Republican-controlled Senate when they were nominated to the same court. Elena Kagan, now the Dean of Harvard Law School, had been both a practicing lawyer and a leading administrative law scholar at the time of her nomination. Allen Snyder, a former clerk to Justices Harlan and Rehnquist had been a litigation partner at the law firm of Hogan and Hartson for 26 years.

Under what definition of fairness do my Republican colleagues insist that Brett Kavanaugh is entitled to a Senate vote while Elena Kagan and Allen Snyder were denied a vote? By what standard do they consider Kavanaugh qualified to sit on the DC Circuit when these two other distinguished lawyers were denied that honor?

Unlike Kagan and Snyder, Mr. Kavanaugh will be considered by the Senate. But I will cast my vote against confirmation. This nominee's record is too sparse and the court to which he is nominated is too important to the rights that Americans hold dear.

I urge the Senate to reject this unacceptable nomination.

Mr. President, even in this Bush Presidency, I continue to believe that a judge should have experience in a courtroom. I know that is somewhat heretical in the environment we have, but I really believe that if you are going to be a judge, you should have some practical experience, at least picking a jury, arguing to a jury, appearing before a court, making your views known to the judge. That is largely lacking with this young man.

We have testimony before the Judiciary Committee from two judges for whom he worked. It is unusual that people clerk for two separate judges. These clerkships are usually a year long, and you sit back there and you shuffle papers for the judge and you draft opinions for the judge on the cases that come before the judge—but that is very different than courtroom experience as a practicing lawyer. You may go watch a few arguments, but clerking for two judges doesn't do the trick. That doesn't give you the experience to be a judge, especially a judge on the District of Columbia Circuit Court of Appeals, the second highest court in the land.

I understand that Mr. Kavanaugh has argued several appeals. But not very many, and in any event that's not the same as trying cases in my view.

I am going to vote against confirmation of Brett Kavanaugh. I want to make four brief points about this nomination.

First, Brett Kavanaugh is a youthful partisan who lacks the credentials to be approved for a lifetime appointment to the second most important Federal court in our country. He is 41 years old. He has spent his short legal career in service to Republican causes.

He worked as an aide to Special Counsel Kenneth Starr. I think the work of Kenneth Starr will go down in history as a blight on this country. This partisan investigation disrupted this country and it was aided by the nominee who is before the Senate at this time.

He has been a lawyer in the White House for President Bush. The fact that he worked for Starr and now works in the White House doesn't disqualify him, but these do not add up to the kind of experience we should have from a nominee to the District Circuit Court. It doesn't add up.

Second, Mr. Kavanaugh's lack of practical experience renders him unfit for the post. In his years as a lawyer, he has never tried a case to a verdict or to judgment.

There are other kinds of experience one might bring to an appellate court. Some nominees are respected scholars and some are sitting judges. Mr. Kavanaugh is neither.

His high-ranking position in the White House might constitute relevant experience, but we have little idea about what he accomplished in that role. He has largely refused to answer questions from the committee about the issues he has handled or the positions he has advocated.

The big push for this man comes from partisans who want to push the majority in the Senate toward the nuclear option. They think it would be a great thing to disrupt the Senate in this way.

Third, the American Bar Association recently lowered its rating of this nominee. Most nominees gain more stature over the course of their legal careers, but Mr. Kavanaugh is headed in the opposite direction, and rightfully so. Lawyers and judges of the nonpartisan ABA committee described Mr. Kavanaugh as being ''sanctimonious'' and ''frustrating to deal with.'' That says it all.

A judge before whom Mr. Kavanaugh appeared described him as ''less than adequate'' and said he demonstrated experience ''at the level of an associate.''

A lawyer who observed him during a different court proceeding stated that:

> Mr. Kavanaugh did not handle the case well as an advocate and dissembled.

Needless to say, these are not qualities which make a good judge. But the right wing wants him, and he is going to become a judge.

Finally, let me say this: The nomination of Mr. Kavanaugh is divisive. All eight Democrats on the Judiciary Committee oppose his confirmation. Every leading civil rights, environmental, and labor organization in the country urged that he be rejected.

The Constitution gives the President and the Senate a shared role in filling vacancies on the Federal court. Working together, we can move highly qualified, nonpartisan nominees through the process without rancor or delay. But when the President uses judicial appointments as a reward to the extreme rightwing of the Republican Party, it invites controversy and conflict. And that is what we have. In sum, this nominee's record is too sparse. The court to which he is nominated is too important. I hope we get a lot of votes against this nomination. I understand that everyone on the other side of the aisle will walk over here and vote for this unqualified candidate, but that is not how it should be.

If there is no one else wishing to speak, I ask that we proceed to the vote on Mr. Kavanaugh.

Mr. FRIST. Mr. President, 2 weeks ago before the Senate Judiciary Committee, Brett Kavanaugh, the President's nominee for the DC Circuit Court of Appeals, pledged that if he is confirmed:

> I will interpret the law as written and not impose personal policy preferences;
>
> I will follow precedent in all cases fully and fairly, and, above all, [I] will at all times maintain the absolute independence of the judiciary, which, in my judgment, is the crown jewel of our constitutional democracy.

Listen to the words that Brett Kavanaugh used: Fair, independent, committed to the rule of law. These are the qualities America wants in our federal judges.

We need more qualified nominees on the bench who practice judicial restraint and respect the rule of law, and Brett Kavanaugh fits that description.

President Bush nominated Mr. Kavanaugh on July 25 of 2003. And since this time, he's endured not one—

but two—hearings before the Senate Judiciary Committee.

He has been candid and forthcoming in answering countless oral and written questions from the Judiciary Committee. And he has met one-on-one with numerous Members—both Republican and Democrat.

And now it's time that Brett Kavanaugh gets the fair up-or-down vote that he's been waiting on for 3 years.

Later this morning, the Senate will give him that vote. We will fulfill our constitutional duty of advice and consent.

Over the last few weeks, we've heard a lot about his sterling credentials and professional experience.

He is a graduate of Yale College and Yale Law School and was awarded a prestigious Supreme Court law clerkship.

He has an extraordinary range of experience in both the public and private sectors.

He has dedicated more than 16 years to public service—as an appellate lawyer, a prosecutor, and an Assistant to the President.

He has argued both civil and criminal matters before the U.S. Supreme Court and appellate courts throughout the country.

And he has received the American Bar Association's stamp of approval to serve on the Federal bench on three separate occasions.

Brett Kavanaugh is respected in the legal community for his keen intellect and legal prowess. And he has earned the reputation as a man of integrity, fairness, and honesty.

In a larger sense, today's vote is about more than just Brett Kavanaugh as an individual nominee. Today's vote is another sign of progress for the judicial nominations process.

The Senate is continuing on a path we began a little more than a year ago. At that time, the Senate turned away from judicial obstruction and advanced the core constitutional principle that every judicial nominee with majority support deserves a fair up-or-down vote.

I am proud of the Senate for continuing on this path—for fairness, for principle, for the Constitution.

And I urge my colleagues to support the nomination of Brett Kavanaugh.

Mr. LEAHY. Mr. President, have the yeas and nays been ordered?

The PRESIDENT pro tempore. The yeas and nays have not been ordered.

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. ISAKSON). Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Brett M. Kavanaugh, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit?

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from North Carolina (Mrs. DOLE) and the Senator from South Dakota (Mr. THUNE).

Further, if present and voting, the Senator from North Carolina (Mrs. DOLE) and the Senator from South Dakota (Mr. THUNE) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from North Dakota (Mr. CONRAD), the Senator from Hawaii (Mr. INOUYE), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from Colorado (Mr. SALAZAR) are necessarily absent.

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

The result was announced—yeas 57, nays 36, as follows:

[Rollcall Vote No. 159 Ex.]

YEAS—57

| | | |
|---|---|---|
| Alexander | Crapo | Martinez |
| Allard | DeMint | McCain |
| Allen | DeWine | McConnell |
| Bennett | Domenici | Murkowski |
| Bond | Ensign | Nelson (NE) |
| Brownback | Enzi | Roberts |
| Bunning | Frist | Santorum |
| Burns | Graham | Sessions |
| Burr | Grassley | Shelby |
| Byrd | Gregg | Smith |
| Carper | Hagel | Snowe |
| Chafee | Hatch | Specter |
| Chambliss | Hutchison | Stevens |
| Coburn | Inhofe | Sununu |
| Cochran | Isakson | Talent |
| Coleman | Kyl | Thomas |
| Collins | Landrieu | Vitter |
| Cornyn | Lott | Voinovich |
| Craig | Lugar | Warner |

NAYS—36

| | | |
|---|---|---|
| Akaka | Feinstein | Menendez |
| Baucus | Harkin | Mikulski |
| Bayh | Jeffords | Murray |
| Biden | Johnson | Nelson (FL) |
| Bingaman | Kennedy | Obama |
| Cantwell | Kerry | Pryor |
| Clinton | Kohl | Reed |
| Dayton | Lautenberg | Reid |
| Dodd | Leahy | Sarbanes |
| Dorgan | Levin | Schumer |
| Durbin | Lieberman | Stabenow |
| Feingold | Lincoln | Wyden |

NOT VOTING—7

| | | |
|---|---|---|
| Boxer | Inouye | Thune |
| Conrad | Rockefeller | |
| Dole | Salazar | |

The nomination was confirmed.

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

## GENERAL MICHAEL V. HAYDEN TO BE DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to a vote on Executive Calendar No. 672, which the clerk will report.

The legislative clerk read the nomination of General Michael V. Hayden, United States Air Force, to be Director of the Central Intelligence Agency.

Ms. MIKULSKI. Mr. President, there are five criteria I use to evaluate all executive branch nominees: competence, integrity, commitment to the core mission of the department, commitment to the Constitution, and independence. Based on what I know about General Hayden after working closely with him for more than 5 years, and based on his testimony last week, I will support his nomination to be Director of the Central Intelligence Agency, CIA. I have no question about his competence or personal integrity and expect him to remain an independent voice, committed to the Constitution not just with words but with deeds.

My confidence in General Hayden should not be interpreted as confidence in this administration. I have flashing yellow lights about the Bush administration's willingness to politicize this important intelligence agency. I am also concerned that this administration sometimes pays lip service to the law of the land, as we have seen with recent revelations about the warrantless surveillance program.

In more than 35 years as military intelligence officer, General Hayden has clearly demonstrated his competence, both in his work as Director of the National Security Agency, NSA, and as Deputy Director of National Intelligence. He led NSA at a critical time in the Agency's history, as the United States took the offensive against those who had attacked us. He inherited an agency that needed to be transformed: from its Cold War orientation, from analogue to digital, from concentrating on the Soviet threat to looking at multiple threats and nonstate actors. He accomplished this transformation at breathtaking speed. As Deputy Director of National Intelligence, General Hayden helped stand-up a brand new intelligence organization, recruiting a top-notch team, breaking down ''stove pipes'' between agencies, and helping to unify the entire intelligence community.

I have known and worked closely with General Hayden since 1999, when he came to NSA. I have no question about his personal integrity. He has always been a candid reformer. But recent revelations about the warrantless surveillance program have raised serious questions: questions about the integrity of surveillance programs that may have side-stepped the law; questions about a decision at the highest level to keep most members of the Senate Select Intelligence Committee in the dark about these programs; and questions about whether a candid reformer has become a cheerleader for this administration. I discussed my concerns with Hayden during the confirmation hearing, and he promised to ''speak truth to power.'' I take him at his word, but the proof will be in his deeds.

I have no question about General Hayden's commitment to the mission of the intelligence community. He has worked in almost every aspect of collecting and analyzing intelligence. But his expertise is technical intelligence, known as signals intelligence, SIGINT, and the CIA is our Nation's lead agency for human intelligence, HUMINT.