from working together to slow the pollution from heavy-duty vehicles. The result of this resolution, if passed, would be to waste at least 450 million more barrels of oil than we need to. That is wrong.

We also would like to finish two important conference reports. One, we have the supplemental war appropriations bill that will give our commanders and troops the equipment and resources they need to succeed and fund disaster assistance in the parts of the world that need it the most. Our military is about to undertake the most important mission of the war in Afghanistan, the largest operation since the war started. We have given them this mission, and now we have to give them what they need to accomplish the mission. Two, we have to finish the Wall Street reform bill. This is legislation that protects families' life savings and seniors' pensions. The bills both the House and Senate passed will enforce the toughest protections ever against Wall Street greed and will guarantee taxpayers they will never again be asked to bail out a big bank and will make sure no bank will become too big to fail. We hope to send our bill to the President this month, after the conference is completed.

There are other items on our agenda as well. We must protect voters and ensure our elections are being decided by the people, not by the richest corporations with the most money to spend. We want to empower public safety employees, such as firefighters, police officers, and paramedics, with a voice in decisions that affect their lives and their livelihoods. We want to ensure they have the same rights in the workplace as everyone else. We have a food safety and child nutrition bill to consider. We have a Defense authorization bill to pass. The Judiciary Committee will start its hearings this month on President Obama's tremendous nominee for the Supreme Court, Elena Kagan.

Although we may not get to it in this short work period, the Senate must take definitive action to hold companies such as BP more accountable for disasters such as the one that is poisoning our waters and shores more and more every day.

About that oilspill. Oil has gushed into the gulf for more than a month and a half now, but we have finally started to see a trickle of good news. BP managed to control some of the spill this weekend, and it is estimated that from 50 to 80 percent of the oil that is bubbling out of the middle of the Earth is being captured. That still leaves a leak of too many barrels every day. That is an enormous and unacceptable amount of pollution harming our water, wildlife, beaches, and businesses. As much as 35 million gallons has already leaked, and that oil is now making its way to the south of Florida, up the eastern seaboard. It is estimated that the Exxon Valdez, which was an awful mess, was only one-third as big as the BP spill currently is.

Beyond the immediate damage and our anger at those whose irresponsibility allowed it to happen in the first place, this bill underscores our need for a new energy policy. We need a policy that fully recognizes the obvious costs of the way we produce and consume energy today. We need to confront and limit the risks of future catastrophes. We cannot wait to act until after more tragedies and disasters happen.

A new energy policy must strongly encourage companies to invest rapidly in technology that makes us safer, more competitive, and more energy independent. That means immediately refocusing our efforts on clean and renewable energy, such as the Sun, the wind, and geothermal energy, and improving energy efficiency and using more biofuels. We need better options than oil, and we need it done yesterday.

Finally, I wish to say a word about the biggest story in sports over this past week; that is, the near-perfect game thrown by Detroit Tigers pitcher Armando Galarraga. It would have been just the 21st time in 150 years—although, remarkably, already the third time in this young season—that a pitcher had retired every opposing batter over nine innings—no hits, no walks, no errors. The perfect game is one of the most special, most difficult, most coveted accomplishments in sports. It is exceedingly rare, which, by the way, makes it all the more incredible that one of our own colleagues, the junior Senator from Kentucky, JIM BUNNING, himself once a Detroit Tiger like Galarraga, achieved the feat for the Philadelphia Phillies on Father's Day in 1964.

A perfect game means 27 men up, 27 men down. Galarraga had taken care of 26. We all know what happened to the 27th. The play was made, the runner was out, the game should have been over. Galarraga's name should have been added to an elite list that includes giants of the game such as Cy Young, Sandy Koufax, and Randy Johnson. But it didn't end that way. The first base umpire, Jim Joyce, badly blew the call. In an instant, a superhuman success story was spoiled by an all-too-human error.

Yet what makes this story so significant is not what happened in the split second between the pitcher getting the out and the umpire yelling ''safe.'' It is what happened right after that. First of all, the umpire, Jim Joyce, admitted he was wrong. He apologized to the pitcher, the players, and the fans he let down. He didn't make any excuses. This umpire didn't hire a PR firm or run television ads defending the indefensible or try to spin his mistake; he just owned up to it.

Armando Galarraga graciously accepted the apology and moved on. He didn't raise his voice or point his finger. When every sports fan in America pitied the pitcher, the pitcher pitied the umpire. The 28-year-old player summoned the strength to throw the game of his life but then somehow summoned the grace not to throw the tantrum some say he was entitled to. It was an incredible act of class and compassion, an incredible display of perspective and sympathy. It was, appropriately enough, perfect.

In recent days, we have seen insurance companies try to avoid responsibility for denying health care to the sick. We have seen Wall Street executives try to avoid responsibility for millions of layoffs and millions more foreclosed homes. We have seen oil companies try to avoid responsibility for environmental disasters of historic proportions. We have seen too many fail to own up to their own mistakes or take responsibility for their own actions. But more than that, we have seen too many actively turn away when others have tried to hold them to account. In that context, what Jim Joyce did was as exceptional as the perfect game itself.

One call may be just one of hundreds that an umpiring crew makes each day. A single game may be just one of 162 each team will play each year. And even though baseball is the national pastime, it is merely that—a diversion. But in this episodes lies a lesson for athletes about sportsmanship, for adversaries about forgiveness, for Members of Congress and for our children about integrity, and for all of us about accountability.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. There will now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. REID. Mr. President, as in executive session, I ask unanimous consent that the debate time controlled today by Senator LEAHY with respect to Executive Calendar Nos. 730, 731, and 759 be divided as follows: 5 minutes each for Senators BOXER and MCCASKILL and the remaining 20 minutes under the control of Senator LEAHY.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask unanimous consent to speak for up to 45 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SENATE'S ROLE IN SUPREME COURT NOMINATIONS

Mr. SPECTER. Mr. President, I have sought recognition to comment on the way in which the Senate discharges its constitutionally assigned responsibility to consent to the appointment of Justices to the Supreme Court of the United States.

With almost 30 years of experience, my thinking on this subject has evolved and changed. At the outset, I thought the President was entitled to considerable deference, providing the nominee was academically and professionally well qualified, under the principle that elections have consequences. With the composition of the Supreme Court a Presidential campaign issue, it has become acceptable for the President to make ideological selections. As the Supreme Court has become more and more of an ideological battleground, I have concluded that Senators, under the doctrine of separation of power, have equal standing to consider ideology.

For the most part, notwithstanding considerable efforts by Senators, the confirmation process has been sterile. Except for Judge Bork, whose extensive paper trail gave him little choice, nominees have danced a carefully orchestrated minuet, saying virtually nothing about ideology.

As I have noted in the past, nominees say only as much as they think they have to in order to be confirmed. When some nominees have given assurances about a generalized methodology, illustrated by Chief Justice Roberts and Justice Alito, their decisions have been markedly different. In commenting on those Justices, or citing critical professorial evaluations of their deviations, I do not do so to challenge their good faith. There is an obvious difference between testimony before the Judiciary Committee and deciding a case in controversy. But it is instructive to analyze nominees' answers for Senators to try to figure out how to get enough information on judicial ideology to cast an intelligent vote.

In seeking to determine where a nominee will go once confirmed, a great deal of emphasis is placed on the nominee's willingness to commit to, and in fact follow, stare decisis. If the nominee maintains that commitment, then there are established precedents to know where the nominee will go. But, as has frequently been the case, the assurances on following stare decisis have not been followed. I use the illustrations of Chief Justice Roberts and Justice Alito as two recent confirmation processes—in 2005 and 2006—as illustrative.

Chief Justice Roberts testified extensively about his purported fidelity to stare decisis. For example, during his confirmation hearing, he said:

> I do think that it is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and evenhandedness. It is not enough—and the Court has emphasized this on several occasions. It is not enough that you may think the prior decision was wrongfully decided. . . . I think one way to look at it is that the Casey decision itself, which applied the principle of stare decisis to Roe v. Wade, is itself a precedent of the Court, entitled to respect under principles of stare decisis.

He went on to say:

> Well, I think people's personal views on this issue derive from a number of sources, and there's nothing in my personal views based on faith or other sources that would prevent me from applying the precedents of the Court faithfully under principles of stare decisis.

Less than a year later, Justice Alito was no less emphatic. He testified:

> I think the doctrine of stare decisis is a very important doctrine. It's a fundamental part of our legal system, and it's the principle that courts in general should follow their past precedents. . . . It's important because it protects reliance interests and it's important because it reflects the view that courts should respect the judgment and the wisdom that are embodied in prior judicial decisions.

He went on to say:

> There needs to be a special justification for overruling a prior precedent.

Of consequence, along with adhering to the principle of stare decisis, is the Justices' willingness to accept the findings of fact made by Congress through the extensive hearing processes in evaluating the sufficiency of a record to uphold the constitutionality of legislative enactments. Here again, Chief Justice Roberts and Justice Alito gave emphatic assurances that they would give deference to congressional findings of fact.

Chief Justice Roberts testified as follows:

> The Court can't sit and hear witness after witness after witness in a particular area and develop a kind of a record. Courts can't make the policy judgments about what kind of legislation is necessary in light of the findings that are made. . . . We simply don't have the institutional expertise or the resources or the authority to engage in that type of a process. . . . The courts don't have it. Congress does. It's constitutional authority. It's not our job. It is your job. So the deference to Congressional findings in this area has a solid basis.

Chief Justice Roberts went on to say:

> [A]s a judge, you may be beginning to transgress into the area of making a law . . . when you are in a position of reevaluating legislative findings, because that doesn't look like a judicial function.

But what happened in practice was very different, illustrated by the decision where the Chief Justice, in discussing McConnell v. Federal Election Commission, did not say whether McConnell was correctly decided. But the Chief Justice did acknowledge, as the Court emphasized in its decision, that the act was a product of an ''extraordinarily extensive [legislative] record. . . . My reading of the Court's opinion,'' said Chief Justice Roberts in his testimony, ''is that that was a case where the Court's decision was driven in large part by the record that had been compiled by Congress. . . . [T]he determination there was based . . . that the extensive record carried a lot of weight with the Justices.''

When the issue of campaign finance reform came up later before the Court, Chief Justice Roberts took a very different view of the weight to be given to congressional findings of fact. On the issue of the deference to be given to congressional findings of fact, Justice Alito's testimony was equally emphatic. He testified as follows:

> [The] judiciary is not equipped at all to make findings about what is going on in the real world, not this sort of legislative findings. And Congress, of course, is in the best position to do that. . . . Congress can have hearings and examine complex social issues, receive statistical data, hear testimony from experts, analyze that and synthesize that and reduce that to findings. . . . I have the greatest respect for [Congressional] findings. This is an area where Congress has the expertise and where the Congress has the opportunity to assemble facts and assess the facts. We on the appellate judiciary don't have that opportunity.

In practice, there was very material deviation by both Chief Justice Roberts and Justice Alito, when it came to evaluating legislation with the point being what deference would be given to congressional factfinding. The commentators have been very critical of both of the Justices. For example, Prof. Geoffrey Stone, the Edward H. Levi Distinguished Service Professor of Law at the University of Chicago Law School, had this to say, referring to the testimony just referred to, given by Chief Justice Roberts in his confirmation hearing. Professor Stone wrote that their records on the Court '' . . . speak much louder than their words to Congress.'' Their ''abandon[ment] of stare decisis'' in ''case after case'' has required Chief Justice Roberts to ''eat'' his words.

Professor Stone has written that the two Justices have:

> . . . abandoned the principle of stare decisis in a particularly insidious manner, and their approach to precedent has been ''dishonest.''

A similar judgment was rendered by Prof. Ronald Dworkin of the New York University School of Law. Professor Dworkin said Chief Justice Roberts and Justice Alito, ''who . . . promised fidelity to the law'' during their confirmation hearings, have ''brazenly ignore[d] past decisions.''