

CONFIRMATION HEARING ON THE NOMINATIONS OF WILLIAM H. PRYOR, JR. TO BE
CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT AND DIANE M. STUART TO BE
DIRECTOR, VIOLENCE AGAINST WOMEN OFFICE, DEPARTMENT OF JUSTICE

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HEARING

before the

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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DIRECTOR, VIOLENCE AGAINST WOMEN OFFICE, DEPARTMENT OF JUSTICE

WEDNESDAY, JUNE 11, 2003

United States Senate,
Committee on the Judiciary,
Washington, DC.

The Committee met, pursuant to notice, at 9:38 a.m., in room G50, Dirksen Senate Office Building, Hon. Orrin G. Hatch, Chairman of the Committee, presiding.

Present: Senators Hatch, Specter, Kyl, Sessions, Chambliss, Cornyn, Leahy, Kennedy, Kohl, Feinstein, Feingold, Schumer, Durbin, and Edwards.

Chairman Hatch. We are happy to begin today. We have two stellar nominees on the agenda today: Bill Pryor, who has been nominated for the Eleventh Circuit, and Diane Stuart, who has been nominated to be Director of the Violence Against Women Office in the Department of Justice.

We also have several gentlemen who are here to introduce Mr. Pryor, and I understand that one of them, Congressman Jo Bonner, has to leave for another appointment. So if Senator Schumer agrees, I would like for us to postpone our opening statements until after the first panel of witnesses testifies.

Senator Schumer. Perfectly fine with me, Mr. Chairman.

Chairman Hatch. I knew it would be.

In addition, I will postpone my own introduction of Ms. Stuart, whom I am proud to call a fellow Utahn, just before her testimony.

So we will begin with you, Senator Shelby, and then we will go to Congressman Bonner.

PRESENTATION OF WILLIAM H. PRYOR, JR., NOMINEE TO BE CIRCUIT
JUDGE FOR THE ELEVENTH CIRCUIT, BY HON. RICHARD SHELBY, A U.S.
SENATOR FROM THE STATE OF ALABAMA

Senator Shelby. Thank you. Mr. Chairman, thank you very much for holding this hearing. I appreciate very much the opportunity to appear before the Judiciary Committee today to introduce Bill Pryor, the Attorney General of the State of Alabama and the President's nominee for the United States Court of Appeals, Mr. Chairman, for the Eleventh Circuit, as you just mentioned.

I have known Bill Pryor for many years, and I have the highest regard for his intellect and, more than that, his integrity. He is an extraordinarily skilled attorney with a prestigious record of trying civil and criminal cases in both the State and Federal courts. He has also argued several cases before the United States Supreme Court and the Supreme Court of our own State of Alabama.

As the Attorney General of the State of Alabama, Bill Pryor has established a reputation as a principled and effective legal advocate for the State of Alabama and has distinguished himself as a leader on many important State and Federal issues.

First and foremost, Mr. Chairman, Bill is a man of the law. Whether as a prosecutor, a defense attorney, or the Attorney General of the State of Alabama, he understands and respects the constitutional role of the judiciary and specifically the role of the Federal courts in our legal system. Indeed, I have no doubt that he will make an exceptional Federal judge on the Eleventh Circuit Court of Appeals because of the humility and the gravity that he would bring to the bench.

I am also confident that he would serve honorably and apply the law with impartiality and fairness, which I believe is required of a judge.

Again, Mr. Chairman and members of the Committee, I thank you for holding today's hearing on Bill Pryor's nomination. I am hopeful that the Judiciary Committee will favorably report this nomination to the full Senate in the near future, and I support this nomination without any reservation.

Chairman Hatch. Well, thank you so much.

Senator Shelby. And I ask that my complete statement be made part of the record, Mr. Chairman.

Chairman Hatch. Without objection, it will be, and we are grateful you took time out of your busy schedule to be here. Your recommendation means a lot to this Committee.

Senator Shelby. Thank you.

[The prepared statement of Senator Shelby appears as a submission for the record.]

Chairman Hatch. We are going to turn to Senator Sessions. I didn't see Senator Sessions there, and we will take your statement, Senator.

Senator Sessions. Well, Mr. Chairman, I would be pleased if Congressman Bonner, who may have to leave, could go next.

Chairman Hatch. That is very nice of you.

We will turn to you, Congressman Bonner.

PRESENTATION OF WILLIAM H. PRYOR, JR., NOMINEE TO BE CIRCUIT
JUDGE FOR THE ELEVENTH CIRCUIT, BY HON. JO BONNER, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Representative Bonner. Chairman Hatch, Senator Schumer, and distinguished members of the Senate Judiciary Committee, it is indeed a privilege for me to appear before you today for the sole purpose of introducing a man I believe to be one of the finest judicial nominees in recent history: Alabama's Attorney General William H. Pryor.

It is without reservation that I fully support Attorney General Pryor's nomination and ask that he receive bipartisan support from this Committee and that his nomination be granted a vote by the full Senate.

Mr. Chairman, I could not be more pleased with President Bush's choice for the Eleventh Circuit Court of Appeals. Bill Pryor is not only a good man, he is also an outstanding judicial nominee whose diverse legal experience and extensive qualifications illustrate his ability and his desire to serve from the bench.

Bill and I are both from Mobile, Alabama, and I have the honor of serving as his Congressman from the 1st District, just as he serves as my State Attorney General.

When Bill Pryor took office on January 2, 1997, he was the youngest Attorney General in the United States at the time. During his most recent campaign for re-election, the people of Alabama resoundingly indicated their approval of Bill's work, as he garnered 59 percent of the vote, the highest percentage

of any statewide official on the ballot.

Throughout the years, I have followed Bill's career in the Attorney General's office with pride, and I am especially pleased to note his efforts to reform Alabama's Sentencing Guidelines and to step up the prosecution of white-collar crime.

Bill Pryor believes that white-collar criminals should be apprehended and prosecuted to the same extent as all other criminals, and he firmly believes that racial disparity in sentencing is unacceptable. Equal crimes should receive equal punishment.

Bill Pryor has led the fight on civil rights issues in Alabama. As Alabama's Attorney General, Bill worked with the U.S. Attorney's office to prosecute the Ku Klux Klan murderers Thomas Blanton and Bobby Frank Cherry for the 1963 bombing of the 16th Street Baptist Church that tragically killed four little girls. Moreover, Bill personally argued before the Alabama Court of Criminal Appeals to uphold the Blanton conviction.

He authored the Alabama legislation that established cross burning as a felony, and he led the fight to abolish the Alabama Constitution's antiquated ban on interracial marriages.

Bill Pryor has gone above and beyond the duties of his office to improve the State of Alabama. As Attorney General, he started Mentor Alabama, a program to recruit positive adult role models for thousands of at-risk youth, 99 percent of which are African Americans. Throughout that program, Bill Pryor has served every week as a reading tutor for the children in the Montgomery, Alabama, public schools.

I could elaborate for hours on Bill's considerable record, but instead I believe it is more appropriate to defer to some of the people in our State that know Bill Pryor, that have worked with Bill Pryor, and that respect Bill Pryor.

Mr. Chairman, I have with me today a letter written by State Representative Alvin Holmes, one of Alabama's most distinguished civil rights leaders. Mr. Holmes has served in the Alabama House of Representatives for 28 years and has led the civil rights battle for African Americans, women, homosexuals, and other minorities. Here is what he has to say about Bill Pryor's nomination:

``As one of the key civil rights leaders in Alabama who has participated in basically every major civil rights demonstration in America, who has been arrested for civil rights causes on many occasions, as one who was a field staff member for Dr. Martin Luther King's SCLC, as one who has been brutally beaten by vicious police officers for participating in civil rights marches and demonstrations, as one who has had crosses burned in his front yard by the KKK and other hate groups, as one who has lived under constant threats day in and day out because of his stand fighting for the rights of blacks and other minorities, I request your swift confirmation of Bill Pryor to the Eleventh Circuit because of his constant efforts to help the causes of blacks in Alabama.''

Mr. Chairman, it is the people of Alabama, the people that have served with him and have worked with him that know Bill Pryor the best, the same people I am privileged to be representing here today. They know his ability, his integrity, and his commitment to do the right thing, regardless of the pressures that some political groups--even members of his own political party--have tried to use on him.

Bill Pryor is a friend and champion of the rights of all

people, a principled man who has used his position as Alabama's Attorney General to provide equality in sentencing, protect the common man, serve justice, and work for fairness and equality in the law. That is why I stand beside the people of my district who are so proud of their native son, and beside men like Representative Alvin Holmes and so many others, in recommending to this Committee that the nomination of William H. Pryor to the Eleventh Circuit Court of Appeals be supported from both sides of the aisle.

I thank the Chairman.

Chairman Hatch. Thank you, Congressman Bonner. That is a very impressive and powerful statement on behalf of General Pryor. We are grateful to have you here and grateful that you took the time to come over.

Mr. Bonner. Thank you, sir.

Chairman Hatch. So we will let you go at this time. I know that you have a very tough schedule. So thank you.

We will turn to you, Senator Sessions.

PRESENTATION OF WILLIAM H. PRYOR, JR., NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT, BY HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator Sessions. Thank you, Mr. Chairman. I want to thank Senator Shelby and Congressman Bonner and would note for the record that Representative Alvin Holmes, who is one of the most outspoken advocates for civil rights in the Alabama Legislature, wanted to be here and would have been here today, but the Legislature is in session today, as I understand it.

Let me deal with--

Chairman Hatch. Senator Shelby, if you need to go, too, we--

Senator Shelby. I am going to wait on the statement out of respect for my colleague.

Chairman Hatch. Okay. That is fine.

Senator Shelby. And also Bill Pryor. Thank you.

Senator Sessions. Mr. Chairman, a lot of things have been said here. We know that some advocacy groups have picked another target. They have picked Bill Pryor to be a nominee that they want to complain about. Some have suggested that he is an activist. I would say he is an active Attorney General, constantly and vigorously working to promote the legitimate and just interests of the State of Alabama and her people. But he is absolutely not an activist in the way that his opponents have defined that term and the way, Mr. Chairman, that this Senate has defined it in evaluating judicial nominees.

As Attorney General, he must be an advocate. He has proven to be a great one. But even as Attorney General and even as an advocate, he has consistently followed the laws courageously, even when doing so brings him personal or political complaints from his friends or others.

If members of this Committee would listen carefully to his testimony and would evaluate his real record--not the trumped-up charges that have been put out by out-of-the-mainstream groups that have taken his positions out of context--I think they would see something different.

Why would the leading African-American Democrats--like Alabam Congressman Artur Davis, himself a Harvard graduate and a lawyer and a former Assistant United States Attorney, like Representative Joe Reed, Chairman of the Alabama Democratic Conference, a member of the National Democratic Committee, one

of the most powerful political figures in the State for the last 30 years, an individual who has taken the Federal judiciary extremely seriously, who has always watched judicial nominations and like Representative Alvin Holmes, whom I just mentioned--why would they support Pryor? They support him because he has not been as people have caricatured him. He has been a champion for liberty and civil rights.

Much has changed in Alabama. We have more African-American office holders today than any other State. Today, I understand, marks the 40th anniversary of a sad day in which Governor George Wallace stood in the schoolhouse door. But you must note that Bill Pryor was not a part of that. First, he is just 41. Secondly, his parents were John F. Kennedy Democrats. And when he gave his inaugural speech after winning election as Attorney General with 59 percent of the vote, he opened with these words. This is very telling to me. This is what he led with: ``Equal under law today, equal under law tomorrow, equal under law forever.''

Those words were a fitting conclusion to a period begun 40 years ago by a promise of segregation today, tomorrow, and forever.

Bill is one of the good guys. He does the right thing. He has frequently refused pleas from his Republican friends when he thought the law did not support their position. For example, they rightly believed that the legislative district lines hurt their chances to have fair representation in the State legislature. They filed a voting rights suit, arguing against the majority-minority legislative districts.

Bill not only would not take their side, he courageously led the case for the African-American position, losing at some steps along the way, even with the U.S. Court of Appeals, but eventually winning in the United States Supreme Court. That is why Alvin Holmes and Joe Reed respect Bill Pryor.

Moreover, he has publicly and in legal briefs rejected the position of the Governor of the State of Alabama--the Governor who appointed him--on church-and-state issues. This is courageous action under difficult political circumstances.

As to Roy Moore, the Chief Justice of the Alabama Supreme Court, the fact is that Bill has defended his action of placing a monument of the Ten Commandments in the Supreme Court, but he would not agree to the way the Chief Justice wanted to argue that case. He had a more restrictive and limited argument he preferred to make, and eventually the Chief Justice had his own lawyers to argue the case and gone forward in that way.

In fact, Bill Pryor did not support Chief Justice Moore in the last election. Instead, he supported Justice Harold See in a bruising Republican primary for the Chief Justice spot in Alabama. It is clearly false to suggest he is some unthinking tool of Chief Justice Moore or the Christian Right.

So far as I can see, the only legal position he has taken as Attorney General on abortion, a practice that he abhors, has been to direct the Alabama district attorneys to give a very restrictive interpretation of Alabama's partial-birth abortion law and to make clear he would vigorously prosecute anyone who committed terrorist acts against abortion clinics.

While the controversy over school prayer was emotional and the people of Alabama became confused as a result of the Governor's stated positions, the Governor felt like coaches ought to be able to lead their ball team in prayer. That was the way he saw it. But Attorney General Pryor, as the State's chief law enforcement officer, objected. He sent all schools

carefully drafted guidelines on what they could and could not do based on the holdings of the United States Supreme Court. His positions were far less expansive than the Governor's. These were clear, practical guidelines and were praised by many, including the Atlanta Journal Constitution. Indeed, the Clinton Administration's Department of Education later adopted guidelines almost identical to those written by Attorney General Pryor.

There is no extremism here. He led the fight to win a statewide vote to eliminate an old constitutional amendment that prohibited interracial marriage. Not one single other politician, certainly not a white politician in Alabama, Republican or Democrat, was active in that struggle. He led that fight, and the people of Alabama removed that stain on our legal system.

The caricature that the attack groups have created of Bill Pryor is just not true. It is false. He is a breath of fresh air. He is a leader of the future, not the past. Everyone in Alabama knows it. If my friends on this Committee will just listen and review the evidence carefully, you will come to this conclusion too. And he will be confirmed as he should be.

Mr. Chairman, thank you for your leadership. Senator Schumer, we look forward to the hearing.

Chairman Hatch. Thank you, Senator. We appreciate both of you Senators. That is high praise indeed to have you both here for General Pryor, and I am sure he is very grateful to you, as are we. So we appreciate the time you have taken out of your busy schedules to be here.

Senator Sessions. Thank you, Mr. Chairman.

Chairman Hatch. Thanks so much.

Chairman Hatch. General Pryor, if we could have you step forward? Please stand to be sworn. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth?

Mr. Pryor. I do.

Chairman Hatch. Senator Schumer and I will make our opening statements at this time, and then we will turn to you. Why don't you sit in the middle if you could by the clock there. Thank you.

Senator Schumer. Senator Hatch was saying get away from the right side there and move to the middle of the--

[Laughter.]

Mr. Pryor. I am happy to do so, Senator.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM
THE STATE OF UTAH

Chairman Hatch. This side over here takes real offense at things like that, I have to tell you.

I am pleased to welcome to the Judiciary Committee this morning the Attorney General of Alabama, William Pryor, whom President Bush has nominated to fill a judicial emergency on the United States Court of Appeals for the Eleventh Circuit.

Now, in his last election, General Pryor garnered more than 59 percent of the vote, and if the letters of support for his nomination are any indication, the majority of Alabama people supporting him were not all Republicans. Let me share with you some of the letters that prominent Democrats have written about General Pryor.

Joe Reed, Chairman of the Alabama Democratic Conference, which is the State party's African-American caucus, writes that

General Pryor ``will uphold the law without fear or favor. I believe all races and colors will get a fair shake when their cases come before him...I am a member of the Democratic National Committee and, of course, General Pryor is a Republican, but these are only party labels. I am persuaded that in General Pryor's eyes, Justice has only one label-- Justice!''

Judge Sue Bell Cobb, who sits on the Alabama Court of Criminal Appeals, stated, ``I write, not only as the only statewide Democrat to be elected in 2000, not only as a member of the Court which reviews the greatest portion of General Pryor's work, but also as a child advocate who has labored shoulder to shoulder with General Pryor in the political arena on behalf of Alabama's children. It is for these reasons and more that I am indeed honored to recommend General Pryor for nomination to the Eleventh Circuit Court of Appeals.''

And Congressman Artur Davis encouraged President Bush to nominate General Pryor, declaring his belief that Alabama will be proud of his service.

Now, I will submit copies of these letters for the record, along with copies of the other many letters from Democrats and Republicans, men and women, and members of the African-American, Jewish, and Christian communities who support Bill Pryor's nomination.

Now, it is fundamental that a State Attorney General has the obligation to represent and defend the laws and interests of the State. General Pryor has fulfilled this responsibility I think admirably by repeatedly defending the public fisc and the laws and policies enacted by the Alabama Legislature. But one of the reasons for the broad spectrum of support for General Pryor is his demonstrated ability to set aside his personal views and follow the law. As you will undoubtedly hear during the course of this hearing, General Pryor is no shrinking violet. He has been open and honest about his personal beliefs, which is what voters expect from the people whom they elect to represent them. Yet General Pryor has shown again and again that when the law conflicts with his personal and political beliefs, he follows the law.

For example, in 1997, the Alabama Legislature enacted a ban on partial-birth abortion that could have been interpreted to prohibit abortions before viability. General Pryor is avowedly pro-life and has strongly criticized Roe v. Wade, so one might very well have expected General Pryor to vigorously enforce the statute. Instead, he instructed law enforcement officials to enforce the law only insofar as it was consistent with the Supreme Court's precedents of Casey and Stenberg v. Carhart, despite pressure from many Republicans to enforce broader language in the act.

Here is another example: I am sure that we will hear today about General Pryor's call for modification or repeal of Section 5 of the Voting Rights Act, which requires Department of Justice preclearance. By the way, General Pryor is not alone in his opinion of Section 5; the Democratic Attorney General of Georgia, Thurbert Baker, has called Section 5 an ``extraordinary transgression of the normal prerogatives of the States.''

Now, despite his opinion that Section 5 is flawed, General Pryor successfully defended before the Supreme Court several majority-minority voting districts approved under Section 5 from a challenge by a group of white Alabama voters. He also issued an opinion that the use of stickers to replace one candidate's name with another on a ballot required

preclearance under Section 5 of the Voting Rights Act.

Yet another example involves General Pryor's interpretation of the First Amendment's Establishment Clause. In an effort to defeat challenges to school prayer and the display of the Ten Commandments in the Alabama Supreme Court, both the Governor and the Chief Justice urged General Pryor to argue that the Bill of Rights does not apply to the States. General Pryor refused, despite his own deeply held Catholic faith and personal support for both of these issues.

And here is my final example, and there are many others, but I will limit it to this: General Pryor supported the right of teachers to serve as State legislators, despite intense pressure from his own party, because he believed that the Alabama Constitution allowed them to do so.

Now, these examples aptly illustrate why General Pryor's nomination enjoys broad bipartisan support from persons like former Democratic Alabama Attorney General Bill Baxley. He observed of General Pryor, ``In every difficult decision he has made, his actions were supported by his interpretation of the law, without race, gender, age, political power, wealth, community standing, or any other competing interest affecting judgment.'' Mr. Baxley continued, ``I often disagree, politically, with Bill Pryor. This does not prevent me from making this recommendation because we need fair minded, intelligent, industrious men and women, possessed of impeccable integrity on the Eleventh Circuit. Bill Pryor has these qualities in abundance... There is no better choice for this vacancy.''

During the course of this hearing, we will hear many things about Bill Pryor. We will hear many one-sided half-truths perpetuated by the usual liberal interest groups who will stop at nothing, it seems to me, to defeat President Bush's judicial nominees. Now, I want to make sure that this hearing is about fairness and about telling the full story of Bill Pryor's record and service.

We will hear that General Pryor is a devout pro-life Catholic who has criticized Roe v. Wade, but the rest of the story is that many prominent Democrats, such as Justice Ruth Bader Ginsburg and former Stanford Dean John Hart Ely, who are pro-choice, have also criticized Roe without anyone questioning their recognition of it as a binding Supreme Court precedent.

We will hear claims that General Pryor is against the disabled and elderly, but the real story is that General Pryor has done his duty as Attorney General to defend his State's budget from costly lawsuits. Other State Attorneys General, including respected Democrats like Bob Butterworth of Florida and now Senator Mark Pryor of Arkansas, have taken the same positions as General Pryor in defending their States. And while the Supreme Court agreed with the Attorneys General in these cases that the Eleventh Amendment protects States from monetary damages in Federal court, these rulings did not affect--and General Pryor did not seek to weaken--other important methods of redressing discrimination, like actions for monetary damages under State law, injunctive relief, or back pay.

We will hear claims that General Pryor's criticisms of Section 5 of the Voting Rights Act indicate a lack of commitment to civil rights. But the real story is that General Pryor has a solid record of commitment to civil rights, which includes defending majority-minority voting districts, leading the battle to abolish the Alabama Constitution's prohibition on interracial marriage, and working with the Clinton

administration's Justice Department to prosecute the former Ku Klux Klansmen who perpetrated the bombing of Birmingham's 16th Street Baptist Church, which resulted in the deaths of four little girls in 1963.

We will no doubt hear other claims during the course of this hearing distorting General Pryor's record or presenting only partial truths. And I want to urge my colleagues, and really everyone here, to listen closely so that the real story is heard. I think those who listen with an open mind may be surprised, and even impressed. And I look forward to hearing General Pryor's testimony.

Having said all that, you had an excellent record in law school. You have had an excellent record since law school. You have a record of honor and integrity. You have a record of speaking your mind, sometimes irritating everybody concerned or a lot of people, but standing up for what you believe the law really says and what the law really is. And I think you have won a lot of cases that some people might tend to criticize who don't realize that you won them in the end.

I just want to say that, knowing you and having spent some time with you, some extensive time with you, I am very impressed with you as a human being, as a person who is trying to do what is right, and as an Attorney General in this country who I think has stood up against a lot of special interest groups to do what is right and do what the law says should be done. And I hope my colleagues will feel the same at the end of this discussion. If they listen, I believe that they will.

So, with that, we will have the statement of Senator Schumer, who is representing the minority here today, and then we will go with your statement and then questions.

STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE
STATE OF NEW YORK

Senator Schumer. Thank you, Mr. Chairman, and first let me thank you for bringing the hearing down to this room, G50, accommodating some of those who are disabled, who very much wanted to be here. I want to thank my colleagues, Senators Shelby and Sessions. They are both very well respected by people on both sides of the aisle, and their endorsement will certainly be weighed and weighed carefully.

And finally, I just want to say something to the family of you, General Pryor. I see your two beautiful girls there, and I have two girls who are a little older now.

There are going to be some tough questions asked here. That is our responsibility. But we want to tell you that our respect for your dad as a public servant and as a father and as a husband, this has no bearing on our view of him as a person. This is how we do it here, because many of us believe the views are more important or just as important or certainly very important, do not even have to say, speaking for all my colleagues, where they stand, and we have to elicit those views. So I just wanted the family to understand, and welcome them here as well.

Now, Mr. Chairman, before I get into some of my concerns about General Pryor's nomination, I want to note that earlier this week the Senate confirmed Michael Chertoff to the Third Circuit Court of Appeals. He is the 128th judge confirmed by the Senate since President Bush took office. That is 128 confirmed of 130 who have come to the floor. That is a 99 percent success rate. Again, to call the minority

obstructionist because they have approved only 128 over 130 leads to the almost absurd conclusion that the only way not to be obstructionist is to approve every single one of the President's nominees. And hopefully later today we are going to confirm Richard Wesley from New York, from my State, to the Second Circuit. I know a little bit about Judge Wesley. He is a model nominee. He is conservative, no doubt about it, and based on the votes he took as a State legislator, it is a fair bet to say he is pro-life, but he is well within the mainstream. His personal views are sufficiently moderate that they do not get in the way of being a fair jurist. I start by nothing Wesley and Michael Chertoff and the remarkable success President Bush has had in getting his nominees confirmed by the Senate. Because of the hue and cry we hear from the White House and from across the aisle, you would think those numbers would be reversed and 99 percent of the nominees were stalled. Again, that is 128 confirmed against 2 we are opposing on the floor.

I note all of this, not only to make sure the record is clear on this point, but again to state the obvious. When the President sends us nominees who are legally excellent, diverse and within the ideological mainstream, even though we may not agree with them on most issues, and those who will respect to the Senate's constitutionally mandated coequal role in the process, the nominees pass through the Senate like a hot knife through butter.

In reviewing the record of the nominee before us here today, I am disappointed to say, at least on reading the record--and I look forward to hearing the questions. I am disappointed to say that the nominee looks more like the 9 nominees I have personally voted against than the 119 that I have voted for, and I want to say to my colleagues, both my good friend from Utah and my good friend from Alabama, as well as the Congressman who was here, these views are not based on any interest groups. We all know that there are groups on the left and groups on the right who pressure. That is the American way. But my view, my worries about General Pryor's record are based on statements he made, not based on that of any group. Looking at the record, it seems that it is almost unfair to say that he is like the 9 that I have opposed, because really in many ways, Attorney General Pryor looks like an amalgam of several of them.

On States' rights and women's rights he looks a lot like Jeffrey Sutton and D. Brook Smith. On choice and privacy he looks a lot like Priscilla Owen and Carolyn Kuhl. On gay rights he looks a lot like Timothy Tymkovich. On separation of church and State, he looks a lot like J. Leon Holmes and Michael McConnell. The list goes on. In a way, unfortunately, General Pryor's views seem to be an unfortunate stitching together of the worst parts of the most troubling judges we have seen thus far. I would say this, the one nominee he does not seem to resemble is Miguel Estrada. That is because while we know very little about Mr. Estrada's views, we know a lot about Mr. Pryor's, and we respect his candor. Candor is necessary, but not sufficient, at least in my view, in terms of approving a nominee. And I know that, and I have an expectation, that you will answer our questions about those views.

But I will say this, and I would caution my colleagues, it is just not enough to say, ``I will follow the law.'' Every nominee says that. And then we find when they get to the bench they have many different ways of following the law. And what I worry about, I do not like nominees too far left or too far

right, because ideologues tend to want to make law, not do what the Founding Fathers said judges should do, interpret the law. And in General Pryor's case his beliefs are so well known, so deeply held, that it is very hard to believe, very hard to believe that they are not going to deeply influence the way he comes about saying, ``I will follow the law,' ' and that would be true of anybody who had very, very deeply held views.

We all know that judging is not a rote process. If it were, we would have computers on the bench instead of men and women in black robes. I would refer my colleagues to an article on the op-ed page of today's New York Times, which shows that when those nominated by Democratic Presidents follow the law on cases of women's rights, environmental rights, et. al, they seem to follow the law in completely different ways or many different ways than the way nominees of Republican Presidents follow the law. We all know that. So a person's views matter. There is a degree of subjectivity, especially in close cases and controversies on hot-button issues, and it is hard to believe that the incredibly strong ideology of this nominee will not impact how he rules if confirmed.

We will get into much of this when we have an opportunity to question the nominee, but I do want to take a moment to review some of the remarks that seem more disturbing that Attorney General Pryor has made and some of the more worrisome positions he has taken. As my colleagues know here, I have no litmus test when it comes to these nominees. My guess is that most, certainly many of the President's judicial nominees have been pro-life, but I have voted for almost all of them because I have been persuaded they are committed to upholding the rule of law, and committed to upholding Roe v. Wade in particular. I for one believe that a judge can be pro-life, yet be fair, balanced, and uphold a woman's right to choose, but for a judge to set aside his or her personal views, the commitment to the rule of law must clearly supersede his or her personal agenda. That is something some can pull off, but not everybody can. Judge Wesley, our Second Circuit nominee, has proven he can do it.

But based on the comments Attorney General Pryor has made on this subject, I have got some real concerns that he cannot, because he feels these views so deeply and so passionately. Mr. Pryor has described the Supreme Court's decision in Roe v. Wade as, the creation--quote--this is not some liberal interest group quote; this is from General Pryor. He said it. Quote: ``Roe v. Wade is a creation,' ' quote, ``out of thin air of a constitutional right to murder an unborn child.' ' He has said that he, quote, ``will never forget January 22nd, 1973, the day seven members of our highest court ripped up the Constitution.' ' Mr. Pryor has said he opposes abortion even in the cases of rape or incest, and would limit the right to choose to narrow circumstances where a woman's life is at stake. He has described Roe as, quote, ``the worst abomination in the history of constitutional law.' ' Worse than Plessy v. Ferguson, worse than Dred Scott, worse than Korematsu. It is a remarkable comment to make, and I have to say, I do respect you, Mr. Attorney General, for speaking your mind.

But I am deeply concerned that any woman who comes before you, seeking to vindicate her rights, her constitutional rights as defined by the Supreme Court, will have a tough time finding objectivity with Bill Pryor.

But my concerns about this nomination hardly begin and end with the choice issue. On gay rights the Attorney General

believes it is constitutional to lock up gays and lesbians for having intimate relations in the privacy of their own homes. And he has equated gay sex with prostitution, adultery, necrophilia, bestiality, possession of child pornography, incest and pedophilia.

On criminal justice issues, whereas my colleagues know I tend to agree with the Republican side just about as often as I agree with the Democratic side, Attorney General Pryor defended his State's practice of handcuffing prisoners to hitching posts in the hot Alabama sun for seven hours without giving them even a drop of water to drink. And then when this Supreme Court held the practice violated the Eighth Amendment's ban on cruel and unusual punishment, he accused the Supreme Court Justices of, quote, ``applying their own subjective views on appropriate methods of prison discipline.''

Now, I am all for being tough on crime. I wrote on the House side the Capital Punishment Law, and the Three Strikes and You're Out Law, but to say that seven hours handcuffed to a hitching post in the Alabama summer sun without a drink of water is cruel and unusual, is not unreasonable at all. To accuse this not so liberal Supreme Court of imposing subjective views in a case that extreme, well, let me just say that goes a bit far, at least as far as I am concerned.

When it comes to separation of church and State, we have to be concerned as well. Again, I agree that some cases, in some cases courts have gone too far. I think the Ninth Circuit went off the deep end in the Pledge of Allegiance case. I personally am a deeply religious man. I believe that if we all behaved more in accord with traditional religious teachings, we would have a better, healthier and safer country. But the comments the Attorney General has made, coming from someone who if confirmed will be sworn to uphold and defend the Constitution and protect the rights of all Americans regardless of their religious beliefs, they are troubling as well.

When it comes to States' rights, the record gets even more disturbing. Attorney General Pryor has been one of the staunchest advocates of the Rehnquist Court's efforts to roll back the clock, not just to the 1930's, but even to the 1880's. He is an ardent supporter of an activist Supreme Court agenda, cutting back Congress's power and the Federal Government's power to protect women, workers, consumers, the environment and civil rights. For instance, on States' rights, as Alabama's Attorney General Mr. Pryor filed the only amicus brief from among the 50 states, urging the court to undo significant portions of the Violence Against Women Act. In commenting on that law, Attorney General Pryor said, quote, ``One wonders why VAWA enjoys such political support, especially in Congress.''

Well, I am one of the supporters of VAWA, and I am perplexed by that comment. One wonders why VAWA enjoys such political support? The millions of American women who have been beaten by their spouses? How can one wonder why we would want to protect women from violence, particularly when this issue had been swept under the rug for generations? It is another shocking statement that I find difficult to understand.

Attorney General Pryor's ardent support of States' rights extends even to the realm of child welfare. At the same time he was conceding that Alabama had failed to fulfill the requirements of a Federal consent decree regarding the operation of the State's child welfare system, he was demanding that the State be let out of the deal. It is not so much the position he took as the comments made afterward. Attorney

General Pryor said, quote, ``My job is to make sure the State of Alabama isn't run by the Federal Courts. My job isn't to come here and help children,' ' unquote. When a State fails to satisfy the requirements of Federal laws regarding the safety and welfare of children, I would say the Attorney General's job is to first ensure the protection of those children, not to fight the involvement in Federal Court. I do not see that as a controversial proposition, but at least by these statements, General Pryor, not some interest group, apparently believes otherwise.

The environment, same concerns. Bill Pryor was the lone State Attorney General to file an amicus brief arguing that the Constitution does not give the Federal Government the power to regulate intrastate waters that serve as a habitat for migratory birds. The Attorney General took this position despite decades of Supreme Court precedent and the Federal Clean Water Act standing for the contrary proposition.

So you might think that Attorney General Pryor's State right advocacy knows no bounds, but there is a limit. Bill Pryor was the only State Attorney General to file an amicus brief supporting the Supreme Court's intervention in Florida's election dispute during Bush v. Gore. It appears that when the Attorney General likes the outcome, he is on the States' rights side, but in this important case, where the Supreme Court overruled the States' position, there he was with Federal intervention.

Contrast the approach in Bush v. Gore to what happened when it came to the push for the Supreme Court to limit the application of the Americans With Disabilities Act to the States. Mr. Pryor was the driving force behind the Garret case in which a nurse contracted breast cancer, took time off to deal with her illness, and when she returned found that in violation of the ADA she had been demoted. Attorney General Pryor believed the State university hospital where she worked had every right to demote Ms. Garret and managed to convince five Justices on the Supreme Court to agree with him.

Mr. Pryor's antipathy for the ADA is obvious from the many extra-judicial comments he has made on the subject. At one point he claimed that, quote, ``When Congress passed the ADA in 1990 all 50 States had laws on the books protecting the rights of the disabled. Congress passed the ADA as a ``me-too`` approach, not as a way of protecting persons.' ' Sorry, the quotes are within his statement. ``Congress passed the ADA approach, not as a way of persons who were ignored or left behind,' ' unquote.

I have to say again as a Congressman, I was on the House side, who worked hard to get the ADA passed in the House, I find that comment somewhat offensive. I can only imagine what Senator Harkin, our leader on the ADA, would have to say to the nominee if he were asking questions here today.

Bill Pryor has praised every one of the Court's major States' rights and federalism decisions over the past decade, literally cheering as law after law protecting millions of Americans has been peeled off the books. As he said 2 years ago in an address to the Federalist Society, that federalism is a, quote, ``subject that is near and dear to my heart and to the heart of all members of the society,' ' unquote. Just a year earlier in another speech to the Federalist Society Mr. Pryor made these remarks, quote, ``We are one vote away from the demise of federalism, and in this term the Rehnquist Court issued two awful rulings that preserved the worst examples of

judicial activism, *Miranda v. Arizona* and *Roe v. Wade*. Perhaps that means that our last real hope for federalism is the election of Governor George W. Bush as the President of the United States, since he has said his favorite Justices are Antonin Scalia and Clarence Thomas. I will end with my prayer for the next administration. Please, God, no more Souters.'

I think that tells us a fair amount about where Mr. Pryor is coming from. If Bill Pryor becomes a judge, it seems hard to believe he will be a moderate. He will style himself, it would appear from his previous record and comments, after the most extreme and activist judges on the Federal bench.

Now, a few years ago several of my colleagues on this Committee, including my good friend Orrin Hatch from Utah, opposed the nomination of another nominee to the Eleventh Circuit on the ground that she, quote, ``would be an activist who would legislate from the bench,' ' unquote. I do not know how you can look at Bill Pryor's record and not come to the same conclusion. I do not know if that is why he received a partial ``not qualified'' rating from the ABA or whether the ABA found something else to be concerned about. But for me, Attorney General Pryor's record screams passionate advocate, and doesn't so much whisper judge.

Bill Pryor is a proud and distinguished ideological warrior. I respect that. That is part of America. But I do not believe the ideological warriors, whether from the left or the right, should predominate on the bench. They tend to make law, not interpret law, and that is not what any of us should want from our judges.

Mr. Chairman, I am looking forward to hearing Mr. Pryor address these issues. I mentioned to him I would ask some tough questions and raise some tough concerns. I would close by just saying that this appears to be another nomination that will divide us, not unite us. More than any administration in history, this White House is choosing judges through an ideological prism. I am disappointed we have to continue fighting these nominees who are chosen more for their allegiance to a hard-line ideological agenda than any other factor.

If we have a Supreme Court nomination later this summer, I really hope we see a nominee who looks a lot more like Richard Wesley, a nominee all 100 Senators could support, and a lot less like someone straight out of the right-wing wheel house. As everyone knows, I believe in balance. If Mr. Pryor were nominated to a court with a heavy liberal tilt, maybe I would view this nomination differently. If there were eight Harlans on the court, I would love to see a Scalia on the court to provide some balance, and that maybe was the way it was 30 years ago. But as everyone knows, the Fifth Circuit is already one of the most conservative courts in the country, and at least given his previous record, Attorney General Pryor may be more conservative than the most conservative judges already serving on this imbalanced court.

So in my view, Mr. Chairman, Mr. Pryor has a tough row to hoe here. He will get a chance to make his case, but to me at least, on first inspection, this is one of the most troubling records we have seen thus far, and Mr. Pryor, at least to this one member, has to go a long way before he will convince me, and I think many of us, that he will be a fair, down-the-middle dispassionate judge for all Americans.

Thank you.

Chairman Hatch. Thank you, Senator.

[Applause.]

Chairman Hatch. We will have no disturbances in here or I will have you removed. It is just that simple. We are going to run a very decent hearing, and we are just not going to have any more of that. So anybody who does that, I am directing the Sergeant of Arms to remove them from this room, on either side of this issue. This is an important hearing. It is for the Eleventh Circuit Court of Appeals.

Just one correction. We hear this, well, we Democrats have voted for 128 and we have only rejected 2. That is not quite the story, and I think people need to know this. Yesterday I was interested because former Senator Bob Griffin corrected me in our caucus meeting when I indicated that there has only been one filibuster in the history of the country of a Federal judge and that was Justice Fortas. He said that was not a filibuster. He said, literally, we had more votes up and down against Fortas that would have defeated it, and that nobody--and he gave me a letter with his comments, making it very clear that there was no desire on anybody's part to filibuster, but to fully debate that at that particular time.

In this particular case, over the last couple of years of this, actually 2-1/2 years of this President's tenure, we have had years of delay for a number of Circuit Court nominees. Yes, we have been able to get through a lot of District Court nominees, but when it comes to circuit nominees, it has been very, very much of an ordeal. Miguel Estrada is just one. Priscilla Owen is another. We have had an indication they are going to filibuster Judge Pickering, going to filibuster Judge Boyle, who has now been sitting here for better than 2 years. By the way, Roberts, who just got through, and Boyle, have been sitting here for 12 years, nominated three times by two different Presidents. They could not even get a hearing in the 2 years when the Democrats controlled the Committee. Judge Carolyn Kuhl, there has been some indication there is going to be a filibuster there. The nominee, J. Leon Holmes, some indication of a filibuster there. There are four nominees from Michigan that are being held up for no reason other than that two Senators are irritated because they did not get their two judges during the Clinton years. I feel badly about that, but the fact of the matter is, they should not be holding up six Circuit Court nominees, four of them who they admit, I think, have admitted that they are qualified people. There have been large negative votes against a significant number of Circuit Court nominees by our friends on the other side, sending a message, do not send a conservative to the Supreme Court.

You know, when you stop and think about it, it is not quite just 128 versus 2. So I just wanted to correct the record on that so that we all understand that we are in a crisis here in the United States Senate.

I also want people to understand, Mr. Pryor, I guess I might as well say this to you, you are an active person. I hope you will be given an opportunity by our colleagues on both sides to explain some of the statements you have made and why you have upheld the law, because you have. You do not get people like Senator Shelby coming here and praising you like he did, or Senator Sessions praising you like he did, unless you have upheld the law, even against your own viewpoints a number of times. You are a person of deep religious conviction. You believe very strongly in the Catholic faith, and you have said so publicly, and some of these criticisms come from your expressions of your own personal faith, which you have never,

to my knowledge, allowed to interfere with what the law is.

Now, we will see. Personally having chatted with you about a great number of these issues, you have not only reasonable explanations, but I think very good explanations for every criticism that could be brought your way.

Now, having said all that, let us give you an opportunity to make your statement. I hope you will introduce your family to us, and then we will turn to questions.

STATEMENT OF WILLIAM H. PRYOR, JR., NOMINEE TO BE CIRCUIT JUDGE
FOR THE ELEVENTH CIRCUIT

Mr. Pryor. Thank you, Mr. Chairman. With me today are my family, my spouse Kris, my daughters Caroline and Victoria, who are seated behind me. Thank you for the warm welcome.

I have only something very brief that I would like to say. First, I want to thank the President of the United States for giving me the honor of being nominated to the U.S. Court of Appeals for the Eleventh Circuit.

I want to thank the people of Alabama for giving me the privilege to serve as their Attorney General for the last 6-1/2 years. I want to thank Senator Sessions for the opportunities he afforded me, particularly while he was Attorney General.

And finally, I want to thank you, Mr. Chairman, and all the members of this Committee for giving me the opportunity to appear before you today and to answer your questions. Thank you.

[The biographical information of Mr. Pryor follows:]

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Chairman Hatch. Thank you so much.

We have had a number of issues raised. Let us just hit a few of them, and I am sure we will have an opportunity on both sides, because I want this to be a lively debate. I want Senators on both sides to be able to ask any questions they want to, and I believe you can answer all of them between you and me, and we have spent hours together discussing some of these things.

So let me just say you have openly criticized Roe v. Wade. Some will find that just awful. And you did use language, called it ``the worst abomination in constitutional law in history,' ' and Senator Schumer brought up your statement, ``I will never forget January 22nd, 1973, the day seven members of our highest court ripped the Constitution.' ' But you also-- well, let me just ask you, tell us about that. Tell us about why we should have you as a judge when you have criticized one of the hallmark opinions in the eyes of some, certainly not me, that has come forth in the last 40 years.

Mr. Pryor. Thank you, Senator. I appreciate the opportunity to answer that question. I have a record as Attorney General that is separate from my personal beliefs, and I have demonstrated as Attorney General that I am able to set aside my personal beliefs and follow the law, evenly when I strongly disagree with the law.

In the context of the issue that you raised, abortion, a couple of years ago, actually several years ago in my first year as Attorney General, our legislature had passed a partial birth abortion law, and you mentioned earlier, there were at least a couple of different ways that that law could have been interpreted; it could have been broadly interpreted. I knew that when a lawsuit was filed in a Federal Court challenging the application of that law, that it was going to be a formidable challenge to defend the law in the light of the precedents of the Supreme Court in Roe and in Casey. I had an obligation as Attorney General, though before Stenberg, to make whatever reasonable argument I could in defense of that law, so long as it was consistent with those precedents. So looking at that law and looking at those precedents, I required, I ordered the district attorneys of Alabama to apply that law in the narrowest construction available, that is, only to post-viability fetuses, because that was my reading of the case law. It was an interpretation that disagreed with the position of the Governor, who appointed me, who was a party to the lawsuit. It was criticized by some pro-life activists in Alabama, but it was my best judgment of what the law required.

Chairman Hatch. Even though you believe otherwise?

Mr. Pryor. Even though I believe strongly otherwise. I believe that abortion is the taking of innocent human life. I believe that abortion is morally wrong. I've never wavered from that, and in representing the people of Alabama, I have been a candid, engaged Attorney General, who has been involved in the type of--

Chairman Hatch. What does that mean with regard to the Eleventh Circuit Court of Appeals? If you get on that court, how are you going to treat Roe v. Wade?

Mr. Pryor. Well, my record as Attorney General shows that I

am able to put aside my personal beliefs and follow the law, even when I strongly disagree with it, to look carefully at precedents and to do my duty. That is the same duty that I would have as a judge. Now, as an advocate for the State of Alabama of course I have an obligation to make a reasonable argument in defense of the law, but as a judge I would have to do my best to determine from the precedents what the law actually at the end of the day requires. My record demonstrates that I can do that.

Chairman Hatch. So even though you disagree with Roe v. Wade you would act in accordance with Roe v. Wade on the Eleventh Circuit Court of Appeals?

Mr. Pryor. Even though I strongly disagree with Roe v. Wade I have acted in accordance with it as Attorney General and would continue to do so as a Court of Appeals Judge.

Chairman Hatch. Can we rely on that?

Mr. Pryor. You can take it to the bank, Mr. Chairman.

Chairman Hatch. Let me just--you have had some criticism. Let me just bring up just a couple of them, because my time is going, and I am going to hold everybody to 10 minutes, and we will do various rounds so everybody will have a chance to ask whatever questions they want.

I am one of the--it was Biden-Hatch Violence Against Women Act in the Senate. I took a very strong position on that bill, took a lot of criticism for it, because there were two different points of view with regard to that bill and how it was written. Now, you have been criticized because of litigation regarding the Violence Against Women's Act, as though your position on that bill was improper. Now, tell me about that.

Mr. Pryor. Well, my position, Mr. Chairman, was the position adopted by the Supreme Court of the United States in the Morrison case.

Chairman Hatch. In other words you followed not only the law, but you won in the Supreme Court of the United States of America.

Mr. Pryor. The argument I presented was the position adopted by the Court, that's right.

Chairman Hatch. So if anybody is out of the mainstream here, it has to be the Supreme Court I guess.

Mr. Pryor. Well, I would suggest that the Court is within the mainstream.

Chairman Hatch. I think so too. That is the point I am trying to make. The fact is, is that, yes, you can be criticized because you criticized a portion of the Violence Against Women's Act, believing that you were right and you were proven right in the Supreme Court, which is the law of the land, just as much as Roe v. Wade, right?

Mr. Pryor. Absolutely.

Chairman Hatch. So anybody that suggests that you were not following the law and that you went outside the mainstream happens to be wrong.

Mr. Pryor. I believe so.

Chairman Hatch. I think the Supreme Court believes so too. Now, I disagreed with the Supreme Court on that issue, but it is the law, and I accept it. So we have tried to go back to the legislative table and rework it, and we will try and do that.

Let me just give you a couple of others that are important. Your record on race is commendable, and I quoted Alvin Holmes, and so did others here today including the two Senators from Alabama and the Congressman, the black representative for

Alabama House of Representatives for 20 years. He said, ``During my time of service I have led most of the fights for civil rights of blacks, women, lesbians and gays and other minorities,' ' unquote. Representative Holmes, in his letter to us, lists a number of your accomplishments on race that I would just like to ask you about in my remaining three minutes, three-and-a-half minutes. In addition to your defense of majority/minority districts, which we have already discussed, or at least I have discussed it, you worked with Doug Jones who was President Clinton's U.S. Attorney for the Northern District of Alabama to convict two former Klansmen for the bombing of Birmingham's 16th Street Baptist Church in 1963; is that correct?

Mr. Pryor. That's correct. I actually appointed him as a deputy Attorney General to do that prosecution.

Chairman Hatch. Four little girls were killed in that particular despicable act of terror, am I right?

Mr. Pryor. That's right.

Chairman Hatch. You personally argued to uphold the conviction of one of the murderers on May 20th of this year, just a few weeks ago before the Alabama Court of Criminal Appeals; am I right on that?

Mr. Pryor. Yes.

Chairman Hatch. Now, you were instrumental in creating the Alabama Sentencing Commission, which Representative Holmes applauded for its purpose of ending racial disparities and criminal punishments. Am I right on that?

Mr. Pryor. That's right.

Chairman Hatch. In the year 2000 Representative Holmes, this great black leader in Alabama, introduced a bill in the Alabama legislature to amend the State Constitution to repeal Alabama's prohibition of interracial marriages. He writes, quote, ``Every prominent white political leader in Alabama, both Republican and Democrat, opposed my bill or remained silent except Bill Pryor, who openly and publicly asked the white and black citizens of Alabama to vote and repeal such racist law. It was passed with a slim majority among the voters, and Bill Pryor later successfully defended that repeal when the leader of a racist group called the Confederate Heritage sued the State to challenge it,' ' unquote. Is he right on that?

Mr. Pryor. Absolutely.

Chairman Hatch. Now, General Pryor, you were committed to ending Alabama's ban on interracial marriage from the moment you took office, were you not?

Mr. Pryor. I was.

Chairman Hatch. In fact, I understand that you discussed in your first inaugural address, I think you stated--let me get an actual quote. ``Any provision of the Constitution of Alabama or for that matter the Code of Alabama, that classifies our citizens or any persons on the color of their skin, their race, should be stricken,' ' unquote. Is that correct?

Mr. Pryor. That's what I said.

Chairman Hatch. In addition you started Mentor Alabama. Could you please explain that for a minute?

Mr. Pryor. Absolutely. Mentor Alabama is a program designed to recruit positive adult role models for thousands of at-risk children in our State. We've recruited more than 3,700 mentors for at-risk children in every county of Alabama. And I work as a reading tutor in the Montgomery County Public Schools. I have for the last 3 years as part of that initiative, as I encourage

others to do the same.

Chairman Hatch. Let me just say finally, Representative Holmes notes that a bill he sponsored to establish cross burning as a felony passed the State House in May 15th of this year; is that right?

Mr. Pryor. Yes.

Chairman Hatch. Now, he observes, quote, ``That bill was written by Bill Pryor, and he was the only white leader in Alabama that openly and publicly supported it.'' Did you write that bill, General Pryor?

Mr. Pryor. I did.

Chairman Hatch. Well, General Pryor, I think you can take some of your statements out of context and make a big fuss about them, and I think we have to look at the record and what you have stood for and what you have done. I think if people will do that and do that fairly, they will realize that you are a person who can set aside your personal, your very heartfelt personal views and go from there.

Now, my time is up.

I am going to interrupt everybody at 10 minutes, but we will have enough rounds so everybody will have an opportunity to ask the questions they want.

Senator Schumer.

Senator Schumer. Thank you, Mr. Chairman. I want to thank you for having this hearing, where we can fully question witnesses, and we are having just one witness here, and this is how it ought to be done, and we very much appreciate that.

Chairman Hatch. I appreciate you.

Senator Schumer. My first question is, I want to go back to that speech you gave, Attorney General, to the Federalist Society in 2000, where you said, ``We are one vote away from the demise federalism, and in this term the Rehnquist Court issued two awful rulings that preserved the worst examples of judicial activism, Miranda and Roe. Perhaps that means that our real last hope for federalism is the election of Governor George W. Bush as President of the United States, since he has said his favorite Justices are Antonin Scalia and Clarence Thomas. I will end with my prayer for the next administration. Please, God, no more Souters,'' unquote.

And one other comment you made to a journalist in 2000. Just after Bush v. Gore was decided, you said, ``I'm probably the only one who wanted it 5 to 4. I wanted Governor Bush to have a full appreciation of the judiciary and judicial selection, so we can have no more appointments like Justice Souter,'' unquote.

I take it from these comments and others that you have made in the past few years, you believe that a judge's ideology does at least in some circumstances drive how he rules on cases. I appreciate your candor in this regard, and the evidence supporting that position is more or less irrefutable now. The new case study by Professor Sunstein, excerpted in today's New York Times, provides empirical evidence for what I think you and I and pretty much everyone else in the room knows to be true, that ideology all too often drives how judges rule in particular cases. To my eye Justice Souter is a paragon of moderation. He was appointed by of course a Republican President. He appears to be a judge who does not have a strong personal ideology that drives his decision making. You disagree. Why? What's wrong with Justice Souter? Are you hostile to Justice Souter because he has not hewed the party line? Do you believe Justice Souter is trying to implement a

personal ideological agenda from the bench?

Mr. Pryor. Thank you, Senator. In the context of the first remark that you quoted, which was an accurate quotation and in which I said, ``Please, God, no more Souters,' ' that was my perhaps feeble attempt at humor at the very last comment in a speech in which I had earlier criticized a dissenting opinion of Justice Souter in a case in which I had been involved.

I have on several occasions disagreed with Justice Souter's interpretations of the law, particularly in cases in which I have been involved. And my comments are meant only in that light. It's certainly not meant as any personal animus toward Justice Souter who's had a--

Senator Schumer. Do you think he is too liberal? Do you think ideology motivates him in how he rules, or is he just following the law?

Mr. Pryor. The only thing I can say is that on several different occasions I have disagreed with his interpretations of the law.

Senator Schumer. So you think that--I mean you are saying you will follow the law. I am sure he says he is following the law. Is not ideology a motivating factor here?

Mr. Pryor. I don't know what is motivating Justice Souter.

Senator Schumer. Do you think he is out of the mainstream?

Mr. Pryor. I wouldn't use those terms. I would say that his interpretations in several cases in which I have personally been involved are different from mine, and I have disagreed with them. And the--I am an active, engaged Attorney General. I criticize rulings of the Supreme Court. I praise rulings. I share those views and my values with the people of Alabama who elect me. And I think that's part of our role as lawyers and advocates in the legal system, and in making it better. And in that context there have been several occasions where I have disagreed with Justice Souter's opinions.

Senator Schumer. Why Souter more than--I don't think Souter is regarded as any more liberal than the other three Justices who are regarded as sort of on the more liberal side, Ginsburg, Breyer and Stevens. Why have you always sort of singled out Souter in your comments?

Mr. Pryor. Well, in the context of the speech that you mentioned, where I said, ``Please, God, no more Souters,' ' I had specifically criticized his dissenting opinion in Morrison, which has already been discussed today, was the case involving one part of the Violence Against Women Act.

Senator Schumer. But the comments seem to go beyond just one case.

Mr. Pryor. It's only--

Senator Schumer. Especially the one on the other one, ``We should have no more appointments like Souter so everyone can appreciate' '--you are sort of saying how bad he is.

Mr. Pryor. Well, there have been two--those were two cases that I was in specific reference to, one in which he had written an opinion and the other in which he had written an opinion, and I disagreed with those opinions.

Senator Schumer. But why did you pick Souter? On all those cases he had--

Mr. Pryor. Not everyone wrote an opinion in those cases.

Senator Schumer. Okay. But Justice Breyer did write one in the Violence Against Women Act.

Mr. Pryor. Okay.

Senator Schumer. Okay. But again, you think Souter is within the mainstream?

Mr. Pryor. I don't know if I'm the evaluator of who is in the mainstream or not.

Senator Schumer. I know, but what is your opinion? We are just asking you your opinion.

Mr. Pryor. I think he's had a distinguished career as a jurist, and, and you know, I think there's a pretty broad definition of what constitutes the mainstream, and he would certainly be included in it.

Senator Schumer. Okay. Let me ask you this one. Again, you have fervent personal beliefs on Roe v. Wade.

Mr. Pryor. I do.

Senator Schumer. And I respect those. I mean I am friends with the Bishop in our community who says the rosary outside an abortion clinic, and I respect his right to do it. But please, what can you say? I mean you feel this so passionately and you have said repeatedly abortion is murder. What can you say today that will give comfort to a woman who might come before you trying to control the destiny of her body, trying to exercise her fundamental rights? Would it not be logical that she would be concerned that you would be looking for a way, quote, ``within the confines of the law''--because everyone looks that way, no judge will admit they are going outside the law--to deny her that right to choose? I mean how do you square feeling so vehemently. Many people believe abortion is wrong, but when you believe it is murder, how can you square that with--or how can you give comfort to women throughout America, the majority of whom believe in the right to choose, that you can be fair and dispassionate? I do not think it is enough, as I mentioned earlier, for us to simply hear you say, ``I will follow the law.'' What can you say directly to that woman, not in a legal way, but in a personal way, that might reassure her?

Mr. Pryor. I would say that that woman should be comforted by looking at my record as Attorney General, by looking at the fact that though I have vehemently disagreed with Roe v. Wade on the one hand, as Attorney General, where I've had a constitutional duty to uphold and enforce the law on the other hand, I have done my duty. And in the context specifically of when the Alabama partial birth abortion law was challenged, that law could have been interpreted in at least a couple of different ways, I looked at the precedents of the Supreme Court in Roe and in Casey, and gave the narrowest construction available to that law, and ordered the district attorneys of Alabama to enforce it only in that narrowest construction.

Senator Schumer. Now, you have said on occasion, on several occasions, that Roe v. Wade is quote, ``the worst abomination in the history of constitutional law.'' A) Do you believe that as of right now?

Mr. Pryor. I do.

Senator Schumer. I appreciate your candor, I really do. And second, would you endorse the Court's reversing Roe v. Wade at the first opportunity, just as you argued for the Court to constrict the Violence Against Women Act and you got five Justices to agree with you?

Mr. Pryor. Well, obviously, if I had the opportunity to be a Court of Appeals Judge, I wouldn't be in the position to do that, Senator Schumer.

Senator Schumer. But right now as a person would you endorse the Court's reversing Roe v. Wade at the first opportunity?

Mr. Pryor. Senator, I don't know what that opportunity would be, and that is a hard thing to speculate about unless I

know more about what the case involves. I would say--

Senator Schumer. Let's say this case is pretty much a rehearing of Roe. It comes up to the Court. They accept it. Would you endorse the Court reversing Roe?

Mr. Pryor. Well, I'll tell you this, in the context of the Stenberg case, when it was presented to the Supreme Court of the United States, the Attorney General of Nebraska at the time was a very dear friend of mine named Don Stenberg, and he presented two questions before the Supreme Court, and one of the questions he presented was an invitation for the Court to overrule Roe. I called him up and urged him not to include that question in his petition. So I would say that in that instance, I did not do that.

Senator Schumer. Just one quick. ``If you believe--this is what we have a hard time squaring, myself, I think some others--if you believe that Roe is the worst abomination in the history of constitutional law, it would seem to me to directly follow that you would want the Court to reverse Roe. It is a contradiction. You just said a minute ago that you believe that is still the case, and now you are saying you would not endorse the Court reversing it. It does not add up.

Mr. Pryor. Well, Senator, all I can tell you is that the last time the Court had that opportunity, I urged my colleague not to present that question to the Court.

Senator Schumer. Thank you, Mr. Chairman.

Chairman Hatch. Thank you.

Senator Cornyn?

Senator Cornyn. Thank you, Mr. Chairman.

Chairman Hatch. You had better get closer to the mike.

Senator Cornyn. Well, General Pryor, I want to welcome you here for this hearing. I guess you know you are in for a rough ride. But one of the things that I admire about you is that I believe you are a man of courage and a person of character, and someone who is not afraid to run away, or who is not willing to run away from strongly-held beliefs. I also believe that you are a person who cannot be pressured or intimidated, and I believe your record as Attorney General has demonstrated that.

I also believe or happen to believe, in contrast to some of the suggestions made by Senator Schumer, that your record is inconsistent with someone who is able to show that same courage and demonstrate that same character, and refuse to be pressured or intimidated in your new role as a member of the Eleventh Circuit Court of Appeals. Can you describe briefly how you see yourself making that transition, and perhaps answer for those who have never had to change a constitutional role because of their service in a different branch of government, how you can reconcile that?

Mr. Pryor. Well, it's a transition that I would relish and welcome. I can think of no higher calling for an American than to serve as a Federal Judge in the American system of government and to have the responsibility of protecting and defending the Constitution of the United States. I would leave behind an active public service of a different kind, where I have been a politician, I have been an elected official and run for office and had to share my values with the people of Alabama and to defend their laws and institutions in our State Government, to do it without fear of favor, and to do it to the best of my ability.

Now, sometimes that means, as I'm sure you recall from your service as a State Attorney General, Senator, that you have to make arguments that you think are reasonable in the defense of

your State, but not necessarily the one that ought to prevail in the end in resolving a controversy, and that it is probably not going to be the prevailing argument, but that you owe it to your client, the State Government, to make that argument and to let the Court decide. I wouldn't have that role any more.

I would have the role of making that tough final decision of resolving the controversy in accordance with the law to the best of my ability, honestly and diligently, quietly, and listening to all sides, reading the briefs, becoming familiar with the facts of any case, reading all the applicable case law, and hearing from my colleagues in arriving at a decision.

Senator Cornyn. I know Senator Schumer, when he was asking questions, said that it is almost irrefutable that judges will demonstrate an ideology on the bench, and so we ought to just face that and try to achieve some sort of ideological balance on any given court. He also said it is not enough to say, "I will follow the law," which I fundamentally disagree with, having been in a position of being an Attorney General and having been a judge before, knowing that you change when you put your hand on the Bible and you take an oath to uphold and defend the Constitution of the United States and our respective States in that capacity. But I do believe that more than just your statement that you would follow the law, that your record of enforcing the law, even though you might not agree with it, demonstrates the seriousness with which you approach your oath and recognize your duty. I think one of the things that you and I probably see eye-to-eye on is that judges who substitute their view, their personal view, whether it be a personal or political or any other agenda for what the law is, become lawmakers and thereby become law breakers. Could you perhaps state your own view in that regard?

Mr. Pryor. I couldn't agree more with that statement, Senator. That goes to the absolute core of my beliefs about the legal system and the role of the judiciary. The judiciary has a profound and humble, but vitally important role in interpreting the law and following the law, and putting aside personal beliefs and ensuring that the law has been faithfully executed, according to the real lawmaker, which is the legislature, or in the event of an interpretation of our highest law, the Constitution, by virtue of the people themselves.

Senator Cornyn. I appreciate that statement. I believe that the character and courage really you have shown and the willingness to resist intimidation, and perhaps those who have expressed displeasure at your enforcement activities as Attorney General can derive some confidence that you will show the same character and commitment to the law, and refuse to be intimidated or pressured in discharging your responsibilities as a member of the Eleventh Circuit Court of Appeals.

I know the--we have had some comment throughout my short service on the Judiciary Committee, and the debate we are currently engaged in about the use of a filibuster to prevent a up or down vote by a bipartisan majority of the Senate on at least two judicial nominees, and I just--I need to say that while some tout the fact that 128 of President Bush's judicial nominees have been confirmed, the fact remains that 2 are the targets of, in my opinion, an unconstitutional use of the filibuster. I do not see how anybody can be particularly proud of that because the Constitution being violated two times is, in my opinion, two times too many. And of course we are engaged within the Senate, as I think we should be, to try to resolve those differences now, and I am hopeful that the rule change

that Senator Frist has offered and which I have cosponsored along with a bipartisan group of Senators, gets a favorable decision in the Rules Committee and then on the floor, but frankly, it is going to be a little bit uphill.

But it strikes me as very odd, when you look at the charts that are sometimes displayed about how many of President Bush's judicial nominees have been confirmed, to hear out of the same mouth somebody who claims that President Bush is intent on appointing hard liners--those who have a hard-line ideological agenda, and so to me those are inconsistent, and I believe it is our obligation as Senators and under the Constitution to give an up or down vote to any nominee who comes before the Committee or before the Senate, and I hope that is the case in your instance. Obviously, each Senator is entitled under their oath, and according to the dictates of their conscience to vote as they see fit, but I am hopeful that you will have the opportunity to have the merits of your nomination debated not only in this Committee but on the floor of the Senate and that you receive the confirmation you deserve.

I believe your testimony here today and that you view the role as an advocate, your current job as Attorney General, far differently from that of a Federal Judge, and when you do put your hand on the Bible and take that oath, that you will hang up your boxing gloves, your instruments as an advocate, and you will accept and embrace your new responsibility as a judge and follow the law.

Thank you very much.

Mr. Pryor. Thank you.

Chairman Hatch. Senator Feinstein?

Senator Feinstein. Thank you very much, Mr. Chairman.

Welcome, Attorney General.

I am one that believes that an individual can be an advocate, can be counsel, and can relinquish those views and be a good, fair, impartial judge. However, I must say this, in this case my theory is really put to a test, and I want to let you know why and ask a couple of questions.

Virtually in every area you have extraordinarily strong views which continue and come out in a number of different ways. Your comments about Roe make one believe, could he really, suddenly, move away from those comments and be a judge? Your comments on voting rights, on church/State, Miranda, your comment about Justice Souter, your comments about Federal involvement, that the Federal Government should not be involved in education or street crime are just some example. So let me begin with a couple of questions. Let me do the first one on church and State.

One of the greatest ideals of our country is religious freedom and the religious pluralism that it fosters, and in a graduation speech to McGill-Toolen Catholic High School in 1997, I want to quote something you said. And I quote: ``The American experiment is not a theocracy and does not establish an official religion, but the Declaration of Independence and the Constitution of the United States are rooted in a Christian perspective of the nature of government and the nature of man. The challenge of the next millennium will be to preserve the American experiment by restoring its christian perspective.''

What are others to think of that statement, as to how you would maintain something that is important to this plural society, and that is an absolute separation of church and State?

Mr. Pryor. I would invite anyone to look at my record as

Attorney General, Senator, and see how I have faithfully applied the law in the area of the First Amendment.

I do believe that we derive our rights from God as stated in the Declaration, and that's what I was referring to in that speech. But in my first 2 years as Attorney General, we had a long-running battle about religious expression in the public schools of Alabama. The Governor who appointed me took the position that the First Amendment didn't apply to the States, that the Federal courts had no jurisdiction in this matter. On the other hand, a Federal district court ruled that not only could we not have teacher-led or school-sponsored religious expression or religious activity, but the school officials actually had a responsibility of censoring student-initiated religious expression at school-sponsored events.

I chartered an appeal from that ruling that rejected the arguments of both sides and adopted the argument--the position, the precedents of the Supreme Court of the United States. And that was that school-sponsored religious expression and religious activity was improper, was a violation of the First Amendment, as interpreted by the Supreme Court, but that the First Amendment also protected genuinely student-initiated religious expression.

That's the argument that I made in the Eleventh Circuit Court of Appeals, and the Eleventh Circuit Court of Appeals agreed with it. It was then taken to the Supreme Court of the United States by the plaintiffs who were represented by the ACLU, and after the Doe case, the high school football game prayer case by the Supreme Court, they asked the Eleventh Circuit to take another look at that decision, which they did. And I advocated the position that I did before, which was there could be no school-sponsored, government-sponsored religious activity, but that private religious expression, genuinely student-initiated religious expression, was fully protected by the First Amendment.

The Eleventh Circuit Court of Appeals agreed again for the second time with that argument and reinstated its opinion. The plaintiffs then brought the case back to the Supreme Court of the United States, which then denied certiorari.

That's my record as Attorney General, Senator, and that's what I would invite people to look at. I understand my obligation to follow the law, and I have a record of doing it. You don't just have to take my word that I will follow the law. You can look at my record as Attorney General and see where I have done it.

Senator Feinstein. Then why would you make a comment like that in a speech?

Mr. Pryor. Well, in part, one of my concerns at the time was that in the very case that I mentioned, where the Federal district court injunction required school officials to censor the religious expression of the students, but then--at many school-sponsored events, but then would allow religious expression in other more limited circumstances, it was my perspective that it was as if the government was picking and choosing when we had, as individual citizens, as private citizens, the right of religious freedom. And I thought that was topsy-turvy. I thought that was exactly the opposite of the view of the Constitution.

So it's that kind of perspective that I disagreed with.

Senator Feinstein. I appreciate that. That is just not what you said. Let's go on to voting rights.

In 1997, you testified before this Committee on the subject

of judicial activism, and in your opening statement at that time, you specifically mentioned Section 5 of the Voting Rights Act, the centerpiece of the legislation, as a source for the abuse of Federal power. And you encouraged its repeal or amendment because you said it is ``an affront to federalism and an expensive burden that has far outlived its usefulness.''

However, since the enactment of the statute in 1965, every Supreme Court case to address the question has disagreed with your view of Section 5. Time and again the Court has recognized that guaranteeing all citizens the right to cast an equal vote is essential to our democracy. Even as recently as in 1999, in the case of *Lopez v. Monterey County*, the Court squarely held that any intrusion on State sovereignty under Section 5 is fully justified by the imperative to enforce the 15th Amendment's prohibition of race discrimination in voting.

Can you please explain why you believe that Section 5 of the Voting Rights Act is unnecessary and a burden that has outlived its usefulness?

Mr. Pryor. My comments, of course, were not directed to any court but to Congress itself, which has to make the final decisions on reauthorization of Section 5 of the Voting Rights Act. As Attorney General, my record has been consistently to enforce Section 5 of the Voting Rights Act. The Voting Rights Act is, in my judgment, one of the most important and necessary laws in the history of the United States, and I support it. And I support the absolute fact that Section 5 was a necessary provision nearly 40 years ago when Congress was faced with the massive racial discrimination in election systems, particularly in my State and other parts of the Deep South.

Having said that, we have come a long way nearly 40 years from then, and now if we want to move a polling place from a school on one side of a street to a firehouse on another side of the street, we have to get permission from the Department of Justice to do so. It's routinely granted, but I have watched in my own capacity as Attorney General as members of my own political party and white voters, who I don't think were designed by Congress to be protected by this law, have used Section 5 as a sword in litigation for their own political opportunity.

Senator Feinstein. Do you believe it is an affront to federalism and an expensive burden that has far outlived its usefulness?

Mr. Pryor. Yes, I believe that it has outlived its usefulness. I have, nevertheless, as Attorney General actively enforced that law and would continue to do so if I had the privilege of serving as a judge. I have done that. I have a record of doing that. And I think Congress should look at Section 5. But that does not lessen in any way my commitment to the core of the Voting Rights Act, which is Section 2, which, of course, prohibits dilution of minority voting strength, and I fully support Section 2 and believe it remains a necessary law in our country. But this law that requires us to get permission for even minor changes in our election system I think could use some careful inspection by Congress. But my record is in enforcing that provision as Attorney General, and it would be my record if I had the opportunity to be a judge.

Senator Feinstein. All right. Now, one last question quickly. You made a statement about the New Deal, the Great Society, and the growing Federal bureaucracy, saying that we have strayed too far in expansion of Federal Government at the expense of both individual liberty and free enterprise. And

then you say, ``Congress, for example, should not be in the business of public education, nor the control of street crime.''

What do you mean by that?

Mr. Pryor. I believe that the primary and overwhelming responsibility for public education and the curtailment of ordinary criminal activity ought to be at the State and local level, and it is--

Senator Feinstein. And it is. And it is.

Mr. Pryor. And it is at the State and local level.

Senator Feinstein. Then why would you feel that Congress, for example, shouldn't pass a title of the Elementary and Secondary Education Act that provides money for poor children in the schools of America or why we shouldn't pass a crime bill that would put cops on the streets of our cities?

Mr. Pryor. Well, I didn't oppose those specific pieces of legislation, Senator--

Senator Feinstein. No--

Mr. Pryor. --and I do think that one of the things that Congress must do in being very careful about respecting the good work that can be done at the State and local level is that it not become over-centralized in the work in those areas, that it be supportive of the States but it not take over the work of the States. There has been more and more legislation in that area, and in my judgment, Congress needs to be careful about balancing that.

Chairman Hatch. Senator, your time is up.

Senator Feinstein. My time is up. Thank you.

Chairman Hatch. Senator Chambliss?

STATEMENT OF HON. SAXBY CHAMBLISS, A U.S. SENATOR FROM THE
STATE OF GEORGIA

Senator Chambliss. Thank you, Mr. Chairman.

Mr. Chairman, normally I don't make statements when we have nominees under consideration, but Attorney General Pryor happens to be a neighbor to my State and is very well thought of, very well respected by my Attorney General, who I have great respect for; and this nomination also is to the circuit that serves my State of Georgia. So there are certain things that I would like to put in the record.

Mr. Chairman, this is a very impressive nominee, so I do appreciate the opportunity to voice my strong support for the nomination of Alabama's distinguished Attorney General, Bill Pryor, to the Eleventh Circuit Court of Appeals. His legal intellect is unmatched, and he has a zeal for the law that is unquestioned, as we have already seen by the questions that have been asked of him today.

After graduating at the top of his class at Tulane Law School where he served as editor-in-chief of the Law Review, he practiced a number of years at two of Alabama's most prestigious law firms, specializing in commercial and employment litigation. He then served under our distinguished colleague, Senator Jeff Sessions, in the Alabama Attorney General's office as Deputy Attorney General in charge of civil and constitutional matters. Without question, Attorney General Pryor has the legal capacity to serve on the Eleventh Circuit.

Yet, Mr. Chairman, to my surprise, there are some detractors here today. I am surprised not only because of Attorney General Pryor's excellent qualifications but especially given the ringing pledge of support from Thurbert

Baker, the Democratic Attorney General from my State of Georgia. Attorney General Baker was first appointed in 1997 to his position by then Governor of Georgia and now our esteemed colleague, Senator Zell Miller. Attorney General Baker has since been re-elected twice by the people of my State. He has a perspective unique from any of those who oppose Attorney General Pryor here today because he has worked right beside Attorney General Pryor on issues of great concern to both our respective States and to this Nation.

Attorney General Baker's support for Bill Pryor represents the belief of the chief law enforcement officer of the State of Georgia that this nominee possesses the qualities and experiences needed to serve the people of Georgia on the Eleventh Circuit.

In a letter written to Senators Sessions and Shelby, Attorney General Baker had high praise for Mr. Pryor. I would now like to share a few of those comments with the Committee. Mr. Chairman, I also ask that Attorney General Baker's letter be added to the record at this point.

Chairman Hatch. Without objection, it will be.

Senator Chambliss. In his letter, Attorney General Baker states, ``Bill has distinguished himself time and again with legal acumen that he brings to issues of national or regional concern as well as with his commitment to furthering the prospects of good and responsive government.''

Thurbert Baker also lauded Attorney General Pryor's positions on crime, saying, ``Bill has made combating white-collar crime and public corruption one of the centerpieces of his service to the people of Alabama...Bill has fought to keep law enforcement in Alabama armed with appropriate laws to protect Alabama's citizens, pushing for tough money laundering provisions and stiff penalties for trafficking in date rape drugs.''

``Time and again as Attorney General, Bill has taken on public corruption cases in Alabama, regardless of how well connected the defendant may be, to ensure that the public trust is upheld and the public's confidence in government is well founded.''

Again I quote Attorney General Baker: ``He has always done what he thought was best for the people of Alabama. Recognizing a wrong that had gone on far too long, he took the opportunity of his inaugural address to call on an end to the ban on interracial marriages in Alabama law. Concerned about at-risk kids in Alabama's schools, he formed Mentor Alabama, a program designed to pair volunteer mentors with students who needed a role model and an attentive ear to the problems facing them on a daily basis.''

Again, Thurbert Baker concludes in his letter, ``These are just a few of the qualities that I believe will make Bill Pryor an excellent candidate for a slot on the Eleventh Circuit Court of Appeals. My only regret is that I will no longer have Bill as a fellow Attorney General fighting for what is right. But I know that his work on the bench will continue to serve as an example of how the public trust should be upheld.''

Mr. Chairman, those are not positions that people in the Deep South necessarily have adhered to over the years, and I think it is remarkable that a man of Attorney General Pryor's stature would take on those tough subjects. And I could not agree more with my State's Attorney General. A close review of Attorney General Pryor's record demonstrates that he has been a champion for justice.

In the area of crime prevention and administration of justice in Alabama, Bill Pryor has been a fair and impartial leader for all citizens of his State, making his decisions based on the law and not politics. He has fought corruption by cracking down on dishonest government employees of all political ideologies. He established a new division in the Attorney General's office designed to specifically investigate, prosecute, and defend Alabamians from public corruption and white-collar crime, problems that plague every single State. He even secured the conviction and imprisonment of a Republican former director of the Alabama Department of Transportation and two lobbyists on bribery charges.

His crackdown on corruption in statewide politics was saluted by the Montgomery Advertiser as having an "absence of partisanship" as he had successfully targeted Democrats and Republicans, blacks and whites, for ballot fraud.

In addition to working to eliminate corruption in Alabama, Attorney General Pryor has been a staunch supporter of reforming Alabama's criminal justice system to make it fairer with heightened standards of honesty and compassion. He has fought to modernize the State's criminal sentencing system by instituting a State Sentencing Commission to ensure that similar crimes result in similar punishments. He has advocated and created alternative programs, such as drug courts and substance abuse treatment, which emphasize victim resolution and community restoration for first-time non-violent offenders. He has endorsed the Prison Rape Reduction Act, sponsored by fellow Judiciary Committee members Senators Kennedy and Sessions.

Most importantly, Attorney General Pryor has made a difference in the lives of countless young children in Alabama by creating Mentor Alabama. This program is designed to reduce juvenile crime by introducing adults into the lives of children who need them most. Under Mentor Alabama, adult volunteers serve as mentors, tutors, and role models. Mentor Alabama has been so successful that it has been designated as the official Alabama affiliate of the National Mentoring Partnership, a partner of the America's Promise program founded by Secretary of State Colin Powell.

Attorney General Pryor not only implements these society-changing programs, he believes in them enough to get involved at the ground level. To this end, he has personally served as a mentor to a public school student in Montgomery for over 3 years.

As Attorney General, he has also been a champion for women in the State of Alabama by dedicating himself to furthering the case of women's rights and improving the lives of women. He has sought to protect women from the scourge of domestic violence while fighting to bring to justice those who would commit such atrocities. He was a key proponent in the year 2000 when the crime of domestic violence was enacted in Alabama.

General Pryor has advocated increasing the penalties for repeat offenders who violate protection orders. Now in Alabama, second-time offenders face a mandatory sentence of 30 days in prison, and further violations will result in mandatory 3-month prison terms. Attorney General Pryor supported passage of a law that now requires that those arrested for domestic violence in Alabama stay behind bars until the safety of the victim and society can be assured.

In other efforts to improve the legal protections available to women, Attorney General Pryor pushed to add the date rape

drug GHB to Alabama's drug-trafficking statute so that the punishment would meet the crime. Attorney General Pryor has also helped create innovative programs designed to improve the lives of Alabama women. Using money awarded from the State from a class-action settlement, he funded ``Cut It Out,' ' a program that helps encourage victims of domestic violence to seek help. This program seeks to educate the very people who are often confidantes for battered women, such as their hair stylists, on how to spot abuse and help victims.

He has also been a dedicated supporter of Penelope House, the first shelter designated for battered women and their children in the State of Alabama. Last year, Attorney General Pryor had the honor of being inducted into the Penelope House Law Enforcement Hall of Fame in recognition of his fight against domestic violence.

I have heard it argued that Attorney General Pryor is against the voting rights of some people simply because he disagrees with certain procedural provisions of the Voting Rights Act. The truth about Bill Pryor and the voting rights record is that he has done nothing but dutifully enforce all of the Voting Rights Act. He has simply stated that there are some procedural provisions in the Act that need fixing.

Well, I agree with that. The Attorney General of my State agrees with that. And minority legislators in Alabama and Georgia agree with that. Section 5 of the Voting Rights Act has some serious problems that inhibit the very goal the Act was designed to accomplish: the empowerment of minority voters. As the head attorney for the State of Alabama, though, he is constrained to enforce the law as it is written and interpreted by the courts, and that is exactly what Attorney General Pryor has done.

In conclusion, Mr. Chairman, Bill Pryor is a superb candidate, graduating at the top of his class from Tulane Law School, where he served as editor-in-chief of the Law Review, the highest honor one can receive in law school. A fair review of his record shows that he has used his gifted abilities to serve the people of Alabama and this country. He will make an excellent judge, and I am proud to support his nomination to the Eleventh Circuit Court of Appeals.

Chairman Hatch. Well, thank you, Senator.

We have a vote on, so I am going to recess for about 10 minutes so I can get over and get back. And then we will turn next to Senator Feingold, if he is available. But we will do that when we get back, Senator. We are going to recess for about 10 minutes.

[Recess 11:27 a.m. to 11:47 a.m.]

Chairman Hatch. Let's have order. We are going to turn to Senator Feingold at this time.

Senator Feingold. Mr. Pryor, welcome, and thank you for your testimony and your willingness to answer the questions.

In 1999, you helped found an organization called the Republican Attorneys General Association, or RAGA, to promote the election of Republican candidates for Attorney General, and I understand you served as its first treasurer. After its formation you gave a speech to the Steering Committee of the Civil Justice Reform Group. You said, ``Two years ago, I warned that the lawsuits filed by my fellow State Attorneys General against the tobacco industry threatened the entire business community.' '

You went on to describe ``a growing number of novel government suits against entire industries, no industry is

safe,' ' you said.

You offered five ideas for those who want to curb this new form of lawsuit abuse. Number five was the business community must be heavily engaged in the election process as it affects legal and judicial offices. You said, ``Frankly, this need is the most important of all.''

You then hailed the newly formed RAGA and then said, ``Hopefully it will help elect more conservative and free market-oriented Attorneys General.''

As I understand it, RAGA raised money from large corporate donors and then sent those contributions to the Republican National State Elections Committee, the RNSEC, which is a soft-money fund run by the RNC for use in State Attorney General's elections. I am concerned about involvement of the top law enforcement officer of a State in this kind of an operation, and I am not alone in that concern. A number of Democratic and Republican State Attorneys General criticized your organization as unnecessarily partisan, and some have characterized its fundraising practices as fraught with ``ethical land mines.''

For example, Mike Fisher, the Republican Attorney General of Pennsylvania, now a nominee to the U.S. Court of Appeals for the Third Circuit, refused to join RAGA, saying he wanted to keep politics out of his office. Despite these concerns, you said, ``I am proud to support RAGA and it does not create a conflict of interest.''

RAGA solicits financial contributions from large corporations that may be subject to State investigations. According to several news accounts, RAGA's contributors may include Aetna, SBC, GTE, Microsoft, and many tobacco companies. Yet RAGA has refused to disclose its contributors.

As Alabama Attorney General, you have asserted that your office has sole authority to determine which lawsuits will be filed on behalf of the State of Alabama. Consequently, one of RAGA's contributors--the identity, of course, is concealed from the public--could be under State investigation. You still have the last word on whether a lawsuit will be filed against that company.

Don't you agree that this scenario would present at least the appearance of conflict of interest given your role in RAGA?

Mr. Pryor. No, Senator. I helped form a Republican Attorneys General Association, as you mentioned, several years ago. I no longer serve as an officer, but I did for several years. There's now a Democratic Attorneys General Association. We modeled our organization after the Republican Governors Association and the Democratic Governors Association, both of which work with each of the National Committees. And as a political official, as an elected official who runs on a party label, I have been active in helping my party elect other candidates to office. I don't think that that creates a conflict of interest. I can assure you that in no instance would it in any way impair my judgment as Attorney General in enforcing the law against any lawbreaker and ensuring that the law is enforced. And it never has.

Senator Feingold. Well, let me reiterate my question. My question was not whether it would simply create a conflict of interest. It was whether it would create a conflict of interest or an appearance of a conflict of interest. Is it your testimony that undisclosed, large soft-money contributions to this organization could not possibly create an appearance of a conflict of interest?

Mr. Pryor. Well, first of all, the contributions that are

made are made to the Republican National Committee, not--they were not made to a separate organization called RAGA. And every one of those contributions, every penny, was disclosed by the Republican National Committee every month.

I don't think that that creates any appearance of impropriety, and I think that that's the obligation of the political party, to comply with the campaign finance laws, to make sure that the donations are properly disclosed. But it does not in my judgment create an appearance of a conflict of interest. After all, all of these State Attorneys General are already raising campaign funds in races in their own States, working with their own State political parties.

Senator Feingold. Our information is that there is a different trail to the money and there is a direct connection to RAGA, but we will pursue that with a written question. Let me also assure you the mere fact that the Democrats also do it, based on my 7 years of experience with soft money, is no defense.

Despite RAGA's refusal to disclose its contributors, we do know that soft money raised by RAGA and funneled to the Republican National State Elections Committee was then used in State campaigns in Alabama. In fact, the RNSEC made a contribution of \$100,000 to your own re-election campaign for State Attorney General.

How do you reconcile RAGA's relationship with the RNSEC and the RNSEC's contribution to your own campaign with your duty as State Attorney General? Do you think it is appropriate for Attorneys General to solicit funds or receive funds from corporations who they may later have to investigate?

Mr. Pryor. Well, I wasn't receiving in that instance a direct contribution, of course, from a corporation. I was receiving it from the Republican National State Elections Committee, just as I received contributions from the Alabama Republican Party and from political action committees in my own State. And it has never created a conflict of interest. If that was--

Senator Feingold. This doesn't concern you at all in terms of your role as Attorney General?

Mr. Pryor. The system that we have in America of elections requires candidates to raise funds to wage campaigns. I have done that, and I've disclosed every donation that my campaign has ever received.

Senator Feingold. All right. Then will you provide to the Committee a comprehensive list of RAGA's contributors and the amounts and dates of their contribution?

Mr. Pryor. I don't have such a list, Senator.

Senator Feingold. Who does?

Mr. Pryor. The Republican National Committee.

Senator Feingold. Will you urge them to provide that list?

Mr. Pryor. I would ask you if you need that kind of list that you really need to seek it from them.

Senator Feingold. I am asking whether you will help us as a former treasurer of RAGA, an officer of RAGA, to receive this information since you just stated that you were in favor of full disclosure.

Mr. Pryor. I'm in favor of the full disclosure according to the letter of the law.

Senator Feingold. You oppose the disclosure of this information?

Mr. Pryor. I'm not saying that I oppose it or I favor it. I support the Republican National Committee making its decisions

of what it has to do to follow the law.

Senator Feingold. I am taking this as a refusal to urge the release of this information. And are you saying that you never solicited a contribution for RAGA or the RNC to use in your own campaign?

Mr. Pryor. To use in my own campaign?

Senator Feingold. Did you--

Mr. Pryor. No, Senator.

Senator Feingold. Are you saying that you never solicited a contribution for RAGA or the RNC to use in your own campaign?

Mr. Pryor. I did ask the Republican National State Elections Committee to contribute to my campaign. And they did.

Senator Feingold. In a recent brief to the Supreme Court, you equated private consensual sexual activity between homosexuals to prostitution, adultery, necrophilia, bestiality, incest, and pedophilia. In addition, your office defended a statute that denied funding to the Gay-Lesbian-Bisexual Alliance, a student organization. The Eleventh Circuit unanimously declared the statute unconstitutional.

Furthermore, as Deputy Attorney General you joined an amicus brief in *Romer v. Evana*, arguing that local governments in Colorado were prohibited from enacting laws to protect gays and lesbians from discrimination. The Supreme Court later rejected your view, but you called the decision ``undemocratic.''' News accounts also report that you even went so far as to reschedule a family vacation at Disney World in order to avoid Gay Day.

In light of this record, can you understand why a gay plaintiff or defendant would feel uncomfortable coming before you as a judge? And I would like to give you this opportunity to explain why these concerns may or may not be justified.

Mr. Pryor. I think my record as Attorney General shows that I will uphold and enforce the law. In the *Lawrence* case, the first that you mentioned, I was upholding and urging the Supreme Court to reaffirm its decision of 1986 in *Bowers v. Hardwick*, which is the law of the land, and the argument to which you referred, the slippery slope argument, was taken from Justice White's majority opinion for the Supreme Court of the United States.

In the second instance that you mentioned, the Eleventh Circuit case involving university facilities and funds for homosexual groups in Alabama, that argument was presented by then Attorney General Jeff Sessions, not by me. And, in fact, after the decision came down--by the time the decision came down, I was Attorney General, but I did not file any papers to quarrel with the decision because, in fact, I agreed with it. When we worked together in the Attorney General's office, I declined to participate in that case for General Sessions because I had agreed with the district court ruling, and I agreed then with the Eleventh Circuit ruling.

In the case of *Romer v. Evana*, General Sessions again was the Attorney General at the time. I was his Deputy Attorney General, but he was the one who made the final decision. I have criticized the *Romer* decision.

As far as my family vacation is concerned, my wife and I had two daughters who at the time of that vacation were 6 and 4, and we made a value judgment, and that was our personal decision. But my record as Attorney General is that I will uphold and enforce the law, particularly, as I mentioned in my first example, in the *Lawrence* case, the brief that we filed defending Alabama law which prohibits sodomy between unmarried

persons follows the Supreme Court's precedent.

Senator Feingold. Well, I certainly respect going to Disney World with two daughters. I have done the same thing. But are you saying that you actually made that decision on purpose to be away at the time of that--

Mr. Pryor. We made a value judgment and changed our plan and went another weekend.

Senator Feingold. Well, I appreciate your candor on that.

Mr. Pryor, you have criticized those--

Chairman Hatch. Senator, your time is up.

Senator Feingold. Thank you, Mr. Chairman.

Chairman Hatch. Then let's turn to Senator Sessions and then Senator Kennedy.

Senator Sessions. To my colleagues, the comment that General Pryor just made about the case involving the university and homosexuality is a good example of his integrity and his commitment to the rule of law. I do recall that we had a statute that seemed to have validity that the district judge had found unconstitutional. We discussed what to do about it. Most Attorneys General use a test, Mr. Chairman, informally called the throw-up test. You probably have heard of it. If you can defend your State's law in court without throwing up, you should do so. Somebody has to defend it. You are the chief lawyer for the State. Nobody else has primary responsibility to defend the law. So I decided we would at least take it up one further step. Bill declined to participate because he didn't agree with it. Of course, he was proven correct by the ruling of the Eleventh Circuit.

Mr. Chairman, I would offer into the record a letter from Mr. Chris McNair. He is an African-American leader in the State of Alabama, a lifelong Democrat. He served in the Alabama House of Representatives from 1973 to 1986 and served as a member of the Jefferson County Commission--that represents Birmingham, and is our largest county commission--until his retirement in 2001. His daughter, Denise, was one of the four young girls that was murdered in the bombing of the 16th Street Baptist Church. This important African-American Democratic official writes in strong support for Bill Pryor for this position.

It has been suggested that your views are extreme, that they are outside the mainstream. You have been connected to positions of Governor James, which in fact you have resisted. You have been connected to positions of Chief Justice Roy Moore, many of which you have not endorsed and, in fact, have opposed.

I would like to talk to you about a very contentious issue that arose in the State involving the districting of the State legislature. Republicans have elected the Governor, two Senators, five out of seven Congressmen, but only about a third of the State legislature are Republicans. The Republicans are convinced that part of that is the way the district lines are drawn. So a group of Republicans came up with an argument to get those lines redrawn, and they sought your support, contending that they had some basis for their legal position.

We saw recently in Texas what happens when you start dealing with district lines and how important that can be in a political environment.

I would like for you, Attorney General Pryor, to say what you told to some of your friends and some of my friends about your views on that lawsuit they wanted to bring and, in fact, did bring.

Mr. Pryor. Well, the process of redistricting, Senator, as

you know, is an inherently political one. But the politics of redistricting are irrelevant to me in my capacity as Attorney General in representing the State's election officials. And when our State legislature redistricts itself and draws Congressional district lines and draws lines for the State Board of Education, it's my responsibility to meet what you described as the throw-up test, and that is, to defend those districts if an argument can be made in their defense.

I felt strongly, though, that in this instance--really, two separate occasions, both district lines that were derived in the 1990's following the 1990 census, and then again a series of litigation following the 2000 census, there was redistricting litigation. In each instance, I felt very strongly that there were meritorious defenses to be presented by the State that would defeat the claims of the Republican plaintiffs.

In the 1990's era, there was a case called Sinkfield v. Kelly. I had argued that--there were white plaintiffs complaining about alleged racial gerrymandering of black districts in which they did not reside. The district court, a three-judge district court, ruled in favor of the Republican plaintiffs and white plaintiffs on a couple of--several of the districts. But I believed that under Hayes v. United States that they lacked standing to bring that lawsuit, that there was a fundamental jurisdictional defense to be presented. And I took that argument to the Supreme Court of the United States, and they unanimously agreed with our argument and reversed the district court.

Following the 2000 census, lawsuits were filed challenging the new district lines. We obtained the preclearance of all of those district lines. My office was responsible for the preclearance process, and we obtained preclearance from the Justice Department of all the districting plans. And then we defended Congressional school board and legislative district lines in court, and all of those district lines have been upheld by the Federal courts.

Senator Sessions. As a practical matter, as Attorney General you felt it was your duty to defend the law. But, in fact, the way it turned out, the African-American community, they were supporting your position, which was contrary to the position of the Republicans.

Mr. Pryor. Oh, absolutely. In the Sinkfield case, the NAACP was alongside in our position filing their own brief, making the same arguments that we were making. And, yes, the legislature, as it has to do under the Voting Rights Act, had drawn majority-minority districts. That is how we obtained preclearance of those districts under the Voting Rights Act, and I, of course, defended those as the law required.

Senator Sessions. Mr. Chairman, just to follow up on that comment, people were really intense about that matter. I was called by State legislators, Republicans, who said, ``Bill used to work for you. You go tell Bill he ought to do thus and so.'' And I remember telling them then what I will now tell this Committee, and these were almost my exact words: ``If you have got a case that convinces Bill that he is wrong on the law, present it to him. If you don't, no need to talk about it because if he is convinced the law is contrary to your position, he is not going to change, and I am not going to ask him to.'' So that is the way he does business.

That was an example where you utilized a defense of standing. Is that correct?

Mr. Pryor. That's right.

Senator Sessions. To block the lawsuit, to favor the Democratic African-American position against the Republicans, that is what Attorneys General do. They just have to defend the law of the State in a number of different ways.

I would yield back my time.

Chairman Hatch. Well, thank you, Senator.

We will turn to Senator Durbin now.

Senator Durbin. Thank you very much, Mr. Chairman.

General Pryor, thank you for being here. A number of people have characterized your political philosophy. How would you characterize it?

Mr. Pryor. I'm a conservative.

Senator Durbin. Do you consider yourself a moderate conservative or one who is more conservative than most? Put yourself on the spectrum.

Mr. Pryor. Well, Senator, that's a difficult thing to do. In Alabama, I think sometimes I'm called a moderate.

[Laughter.]

Senator Durbin. That comes as no surprise.

Let me ask you on the issue of States' rights. Throughout your career you have argued very strongly for the issue of States' rights. I think of the employment discrimination case that you were involved in, the Garret case, as well as the decision relative to the Violence Against Women Act. Where would you put yourself in terms of believing in the concept of States' rights as opposed to Federal authority?

Mr. Pryor. I believe in the Constitution of the United States, Senator. I don't particularly like the term ``States' rights.' ' I can't say I've totally avoided it in my political career. But much more often than not, I refer to federalism. I believe in a balance of Federal and State power. I've expressed that perspective on a number of my writings and speeches. In the cases that you mentioned, the federalism perspective that I offered in Garret and in the Violence Against Women Act was the position that the Supreme Court of the United States sustained, and it's their responsibility to uphold the Constitution.

Senator Durbin. When I recently visited your State for the first time with Congressman Lewis of Georgia to look at Birmingham and Mobile and Selma, some of the civil rights shrines, I was told by Congressman John Lewis about Judge Frank Johnson, a Federal judge from Alabama, a Republican, appointed by President Eisenhower, who, according to John Lewis, has not received the credit he deserved because he had the courage to stand up against States' rights and even against some members of his own Federal judiciary, believing that there were more important issues at stake in terms of civil rights.

Tell me how you view Frank Johnson, civil rights, and the fact that traditionally States' rights have been used to justify discrimination, particularly during the civil rights era and when it comes to questions like disabled Americans and their rights. Do you view States' rights as often being the shelter that people who want to practice discrimination rush to?

Mr. Pryor. There's no doubt in the history of the United States, from John C. Calhoun to George C. Wallace, the mantra of States' rights has been used as an illegitimate defense of evil, frankly, of racial discrimination in more modern times and slavery in earlier times.

I think Judge Johnson is a hero. The Federal courthouse in Montgomery a few blocks from where I work is now named after

him, thanks to the Congress of the United States. I had the privilege of working, of clerking for another hero of the Deep South, a Republican who was appointed also by President Eisenhower to the Fifth Circuit Court of Appeals. I clerked for John Minor Wisdom. I'm proud that I clerked for him, especially because of his record on race and especially because he recognized the difference between what the Constitution requires in a balance of Federal and State power and the flawed and totally discredited and rightly discredited views of nullification and interposition that were advocated by Southern populists back in the 1950's and 1960's.

Senator Durbin. Well, General, let me just ask you then: Let's fast forward from an easy chapter in history, which many of us either just read about or witnessed, to the more contemporary challenges. Can you understand the anxiety and fear that many people have when they hear you argue about the fact that this is a Christian Nation and the many positions you have taken relative to the assertion of the Ten Commandments in a public setting and statements that are made. I am Christian myself, but I can understand how people who are not would feel that this is a form of discrimination against them. And I would ask you, how do you reconcile then your admiration for Frank Johnson's courage to stand up against discrimination against people of color and the fact that you seem to have an ambivalence when it comes to the whole question of asserting the rights of those who don't happen to be Christian to practice their religion in this diverse Nation.

Mr. Pryor. I have never used the term ``Christian Nation.'' I have said that this Nation as founded on a Christian perspective of the nature of man, that we derive our rights from God and not from government. And part of that perspective is that every individual enjoys human rights without regard to what the majority wants. Every individual enjoys human rights, like religious freedom and freedom of conscience, including the freedom not to worship.

That is what I have said. That's what I believe in. That goes to the core of what I believe in. It is, I believe, the perspective of the American form of government, and I have been faithful in my record as Attorney General in defending the Constitution when it comes to issues like religious freedom.

In the area of school prayer, when the Governor who appointed me was arguing that teachers should be able to lead prayer, I was the one taking the legal position in the State of Alabama that school-sponsored religious expression is incompatible with the First Amendment and that instead the Federal courts had overstepped their bounds in one regard in censoring genuinely student-initiated religious expression, because those children derive their right to pray genuinely on their own from God.

Senator Durbin. But let me just ask you, you seem to state that--you just noted the historical connection between the Founding Fathers and Christian faith. But you went further than that. You have said, ``The challenge of the next millennium will be to preserve the American experiment by restoring its Christian perspective.''

What I am asking you is: Do you not understand that that type of statement in a diverse society like America raises concerns of those who don't happen to be Christian, that you are asserting an agenda of your own, a religious belief of your own, inconsistent with separation of church and state, which we have honored since the beginning of this Republic?

Mr. Pryor. No, Senator, I think that would be a misunderstanding if someone came away with that impression. It goes to the core of my being that I have a moral obligation that is informed by my religious faith to uphold my oath of office, to uphold the Constitution of the United States, which protects freedom of religion and freedom of religious expression. My record as Attorney General has been just that.

When the Supreme Court of the United States struck down the Religious Freedom Restoration Act in the Bourne decision, I worked with a broad cross-section, liberals and conservatives, in Alabama to adopt our own religious freedom amendment to the Constitution of Alabama modeled after RFRA.

When the City of Huntsville tried to use its zoning ordinances to curtail what I thought was legitimate activity of a synagogue in Huntsville, I intervened as a friend of the court on their side because I thought their argument was supported by the religious freedom amendment to the Constitution of Alabama for which I had campaigned.

I think it would just be a misunderstanding to come away with that impression. My perspective is one that a Christian perspective of the nature of man is that every person enjoys freedom of conscience and freedom of religion, which, of course, is protected by the First Amendment to the Constitution.

Senator Durbin. General, unfortunately, we have a limited amount of time, and I can't follow up because you clearly have opened up a long series of questions related to the Establishment Clause. It is one thing to say that we have the freedom to practice. It is another thing to say that we condone by government action certain religious belief or, in fact, propose or promulgate that belief. And I am going to save those for written questions, but let me go to a more specific area in the limited time that I have remaining.

Are you a member of the National Rifle Association or its board of directors?

Mr. Pryor. The National Rifle Association? I'm a member of the National Rifle Association. I am not a member of its board of directors.

Senator Durbin. Are you familiar with the case of United States v. Emerson?

Mr. Pryor. Yes.

Senator Durbin. Which was filed in Texas, the case involving Timothy Joe Emerson, the subject of a domestic violence restraining order prohibiting him from threatening his wife or daughter or causing them bodily injury, and under Federal law he was prohibited from possessing a firearm because he was under this restraining order against domestic violence; and that although this was a Texas case being decided by the Fifth Circuit, you decided to file an amicus brief on behalf of the people of the State of Alabama in support of Timothy Joe Emerson being allowed to carry a gun. Can you explain why you went out of your way to say that a man that is under a restraining order for domestic violence who would threaten the life of his wife or former wife's boyfriend should be allowed to carry a gun?

Mr. Pryor. I was arguing a position to get the Fifth Circuit in that case to look at the Federal statute itself and avoid the question that the district court had ruled upon. The district court dismissed the indictment of that individual on the basis of the Second Amendment, claiming that the Federal law in question was unconstitutional under the Second

Amendment.

There were some confusing aspects to the Federal statute in question that I thought the court ought to look at. The court ended up looking at that and rejected my argument. But I had urged the court to--if my argument had prevailed, to avoid the question of a Second Amendment defense.

Senator Durbin. Should he have been allowed to carry a firearm if there was a domestic violence restraining order against him for threats to his wife and daughter and the boyfriend?

Mr. Pryor. The law should be enforced against him if he has violated it. It was not clear to me from the text of the law that he had. If it had been and this Congress had made that clear, then absolutely, it should have been enforced and he should be punished.

Senator Durbin. Is it customary for the Attorney General-- Chairman Hatch. Senator, your time is up.

Senator Durbin. If I could ask one last question? Is it customary for the Attorney General of the State of Alabama to file this kind of brief in a case involving Texas?

Mr. Pryor. We file as State Attorneys General amicus briefs in courts of appeals and the Supreme Court of the United States routinely. The Federal Rules of Appellate procedure give us a right to do so without permission.

Senator Durbin. Thank you very much.

Thanks, The Chairman.

Chairman Hatch. We will go to Senator Kennedy.

Senator Kennedy. Thank you, Mr. Chairman.

In your brief, General Pryor, you included the words ``a sweeping and arbitrary infringement on the Second Amendment right to keep and bear arms and a provision that is massively overbroad in its prohibition of firearms ownership.' ' You weren't interested in the technicalities of sending this back. You were stating what your position is with regards to bearing arms. Isn't that true?

Mr. Pryor. No, Senator, that's not--

Senator Kennedy. Well, you had that in your brief, nonetheless, and in response to the question of Senator Durbin, ``a sweeping and arbitrary infringement on the Second Amendment right to bear arms and a provision that is massively overbroad in its prohibition of firearms ownership.' ' That is what you were really concerned about.

Mr. Pryor. I'd be happy to look at the brief itself, Senator, to see what you're reading from. I know for a fact, though, that the argument that I presented to the Fifth Circuit was that they should avoid the question of the Second Amendment defense that had been relied upon by the district court.

Senator Kennedy. Well, I think a fair reading of the brief would include that as only a partial rather than the central thrust of the position.

Let me say, General Pryor, all of us are impressed about your background and about the success that you have had in the private sector and also in the political sector, and obviously you bring a great deal of energy and talent to this particular position that you have at the present time, and we congratulate you on the nomination.

Now, having said that, I think we have a very important responsibility to make sure that anyone that is going to serve on the courts is committed to the core values of the Constitution. And the way we do that, as you understand, is through this process and also reviewing the statements and

comments that you have made. And over the period of time we have had a number of nominees who have been very effective advocates for positions that we differ with but have been approved by the Senate and who we have voted for.

I think the very legitimate issue in question with your nomination is whether you have an agenda; that many of the positions which you have taken reflect not just an advocacy but a very deeply held view and a philosophy, which you are entitled to have. But you are also not entitled to get everyone's vote. If we conclude--in any particular vote we have a responsibility not to just be a rubber stamp for the Executive, but to make an independent judgment whether you have the temperament and also the commitment to interpret the law and also to enforce the law.

And I am troubled by these series--with the time that we have, the series of statements and all that they mean in terms of their significance on the public policy issues that are central to constitutional values. Your statements talk about the need to limit the power of Congress to remedy civil rights violations, restrict a woman's right to choose, uphold gay rights, restrict the rights of religious minorities, and reduce the separation of church and state. And many of your statements make clear that you want to roll back constitutional doctrine in a range of areas to fit your agenda.

So I don't understand looking at your record how one can conclude that you don't have an agenda. What concerns me is not simply that you have been an advocate, but that you are an advocate so extreme about so many core Federal and constitutional rights, that you are hostile, to so much that are existing law and that your statements at times are so intemperate that I don't know how you would be able to put that aside and be fair as a judge.

Earlier in the hearing, you were asked about why you said, ``Please, God, no more Souters.''' And I don't know that you adequately explained, but it seems to me that you made these statements about Justice Souter not simply because you disagreed with him on the two opinions. I know in earlier responses to Senator Schumer you indicated that you disagreed with him on two opinions, on the Violence Against Women and Bush v. Gore.

But isn't the real reason behind that statement because he was a Republican appointee whose ideological views as a Justice have not been to your liking? Isn't your concern that he has not voted to limit Congress' power to provide remedies for violations of civil rights the way you expected, the way that you had expected a Republican nominee to rule?

Mr. Pryor. I said earlier, Senator, that I have disagreed with Justice Souter's opinions in several cases, not just the two. The question was asked why did I pick Souter in those two instances. Well, he had written opinions in each of those instances. But there's no question that in several cases in which my office has either been a party or an amicus, Justice Souter has almost always been on the other side. And that's the reason I made this statement.

Senator Kennedy. Because of your differences with Justice Souter, your ideological differences.

Mr. Pryor. I've criticized his rulings. I've been open about it. I've had disagreements with his rulings.

Senator Kennedy. Now, in the same speech, you also said we are one vote away from the demise of federalism. This term the Rehnquist Court issued two, you characterized, ``awful

rulings'' that preserve the worst examples of judicial activism, *Miranda v. Arizona* and *Roe v. Wade*. So your characterizations of the *Miranda* case and also the *Roe* case, in this term, are two awful rulings that preserve the worst examples of *Roe v. Wade*.

Later on in the issue about the stay of execution in the electric chair case, which we will come back to, you actually ridiculed the Supreme Court of the United States by saying, ``This issue should not be decided by nine octogenarian lawyers who happen to sit on the Supreme Court.'' That is on the question about the use of the electric chair in Alabama.

And then on a case involving children's rights, you said, ``My job was to make sure the State of Alabama isn't run by a Federal court. My job isn't to come here and help children.''

Let's get to the issue on the electric chair. As I understand, by 2000 Alabama was one of the only States in the Nation that used the electric chair as the sole method of execution. After the Supreme Court had granted review in a case to determine the constitutionality of Florida's electric chair, Florida changed its law to provide for lethal injection. The Georgia Supreme Court ruled in 2001 that its use of the electric chair constituted cruel and unusual punishment. In February, the U.S. Supreme Court issued a stay of an execution for an inmate, Robert Tarber. Tarber had appealed his death sentence on the ground that Alabama's use of the electric chair violated the Eighth Amendment, and by a vote of five to four, the Supreme Court ultimately allowed Tarber's execution to proceed.

Before that happened, however, you made the following statement: ``This issue should not be decided by nine octogenarian lawyers.''

Do you think that is an appropriate way to refer to the Supreme Court of the United States?

Mr. Pryor. It was probably over-heated political rhetoric on my part, Senator.

Senator Kennedy. What was over-heated? What were the circumstances that would get you over-heated where you would make that kind of a comment?

Mr. Pryor. I don't remember the exact context. I'm a political figure, and I know it was not a statement that I made in any court of law and would not have made in any court of law.

Senator Kennedy. Well, it is entirely improper, is it not?

Mr. Pryor. I think that was over-heated.

Senator Kennedy. Well, it is improper. Either over-heated or not over-heated, it is improper, is it not?

Mr. Pryor. I think it was an inappropriate remark, Senator.

Senator Kennedy. You are familiar with the case--in 2002 you authored an amicus brief to the Supreme Court arguing that the Court should not hold that the execution of mentally retarded persons does not violate the Eighth Amendment. In its decision in *Atkins v. Virginia*, the Court rejected your argument by six to three. Just last month, a panel of the Eleventh Circuit unanimously stayed the execution of Alabama prisoner Glen Haliday over the strong objections of your office. Finding it a reasonable likelihood that Haliday is mentally retarded, the Eleventh Circuit concluded that pursuant to the Supreme Court ruling in *Atkins*, he should be allowed to file a second habeas corpus petition, raising this claim. The Eleventh Circuit specifically rejected your argument that Alabama's interest in executing Haliday outweighs his interest

in further proceedings.

Mr. Pryor. That's true, Senator, and we--

Senator Kennedy. You believe the Eleventh Circuit was wrong to stay Haliday's?

Mr. Pryor. I haven't really formed a judgment about that because I haven't read in detail that--it was a very recent ruling. I would say, however--

Senator Kennedy. Well, that should make it easier for you to remember. You don't remember the issue on the execution of a mentally retarded person and your intervention and your characterization?

Mr. Pryor. No, Senator, the question, as I understood it, was whether I agreed with the ruling or not. I have not read that recent Eleventh Circuit ruling in detail. I know that we're now going forward--

Senator Kennedy. You agree with its outcome, its conclusion.

Mr. Pryor. I don't know. We're going forward with an evidentiary hearing where we're going to determine whether Mr. Haliday is mentally retarded or not and subject to capital punishment or not.

Senator Kennedy. This is amazing that you are effectively ducking that. I don't mind people that duck, but, you found enough that you wanted to intervene in this case. You filed an amicus brief. You didn't have to. You were interested enough in the case to have filed an amicus brief about the execution of a retarded individual. And now the Eleventh Circuit found that Haliday scored 65 on his IQ test. The trial court had instructed the jury to consider mental retardation as mitigating evidence during the penalty phase. The prosecution noted Haliday's mental retardation during its closing argument.

Given these remarkable facts and the Supreme Court's decision in Atkins, how in the world would you be out there to prevent Haliday from litigating his rights and his claim?

Mr. Pryor. Haliday is litigating his rights, Senator, and he is going to be given an evidentiary hearing to determine whether he's mentally retarded or not.

Senator Kennedy. Well, what do you think about 65 on an IQ test?

Mr. Pryor. I don't know that that is a proper measurement of his IQ. The lawyers on my staff--

Senator Kennedy. Well, if it is--

Mr. Pryor. --have said it's not.

Chairman Hatch. Let him answer the question.

Senator Kennedy. Well, I--

Chairman Hatch. Let him answer.

Mr. Pryor. The lawyers on my staff have informed me that they don't believe it is based on the record.

I'm an active, engaged Attorney General, Senator, but I will admit to you that I don't read every page of every brief that's filed by my office. Now, the Atkins brief is one with which I'm very familiar with and am prepared to defend what we argued in that case. But in Haliday, the ruling that came down from the Eleventh Circuit, I have not had the time to study in detail.

Chairman Hatch. Senator, your time is up.

Senator Kennedy. Well, my time is up. I will file additional questions.

Chairman Hatch. Senator Kyl?

Senator Kyl. Thank you, Mr. Chairman, and I would like consent to file a statement for the record as part of my

presentation.

Chairman Hatch. Without objection, we will put it in the record.

[The prepared statement of Senator Kyl appears as a submission for the record.]

Senator Kyl. Mr. Attorney General, there have been some very serious charges made against you, some by people not on the dais but by interest groups who oppose your nomination. One is a well-known group, People for the American Way, some of whom are in the audience. They have a press release they have put out: ``News, news, news. William Pryor unfit to judge.' I don't know, maybe you have seen it. But it contains some very serious allegations.

Let me just read one paragraph and then ask you about four specific allegations that they make here. I would like to know whether they are true or not.

Among the other things, to kind of set the stage, they say, ``What can President Bush be thinking?' asked Neas.' That is Ralph Neas, the head of the organization. ``Maybe President Bush thinks Bill Pryor will make other far-right judicial nominees look tame. Maybe he thinks any Supreme Court nominee will look good in comparison. Or maybe Pryor is this month's political protection payment to satisfy the demands of the religious right political leaders and their allies who are constantly on guard for any signs of moderation.'

That kind of sets the stage for their point of view. But they make these very serious charges. The first has to do with amicus curiae briefs, and Senator Kennedy referred to one. For those who aren't familiar with it, the amicus brief is a brief that you file not if you are a party but if you are not a party to the case, and the courts frequently accept them, sometimes do, sometimes don't.

But here is the charge that they make about you, and I want to know whether this is really true: that you promote your position ``not only through litigation in which Alabama is a party'--and I am quoting now--``but also by filing amicus curiae briefs in cases in which Alabama was not involved and Pryor had no obligation to participate.'

Is that really true?

Mr. Pryor. Yes, Senator, that is true. I have on a number of occasions filed friend of the court briefs. The Supreme Court of the United States, of course, gives every State Attorney General an automatic right to do so on the presumption that the perspectives we can offer in those cases that come before them would be helpful to the Court in resolving the controversies.

Senator Kyl. Do you know of any cases in which the Court has, at least in part, accepted views that you have presented in those briefs?

Mr. Pryor. Yes. in fact, Senator, there have been several occasions when I have filed an amicus brief and the Court agreed with me. Of course, there have been some where they disagreed with me. If you're an active litigator, you get both kinds of notches on your belt.

But in the case, for example, of Morrison where I argued that one part of the Violence Against Women Act was beyond the power of Congress, the Supreme Court agreed.

In the migratory bird rule case where I argued that the Clean Water Act was properly interpreted only to apply to interstate waters, the Supreme Court of the United States agreed.

Most recently, in California v. Ewing, the three-strikes case, I filed an amicus brief on behalf of many States, and the Supreme Court agreed and reversed the Ninth Circuit. In fact, the National Association of Attorneys General tomorrow will award my office the Best Brief Award, one of their Best Brief Awards, for that amicus brief.

Senator Kyl. Well, congratulations. Incidentally, there has been some question about the legal position taken in the Violence Against Women Act litigation, which, I remind people, upheld your point of view against the political desires of a lot of people, but at least from a legal position obviously you are correct.

But did the legal position that you took in that case affect your personal views with respect to the need to protect women from violence?

Mr. Pryor. Oh, absolutely not. My personal views, if anything, run contrary to what I thought the proper legal argument was. I have on many occasions worked hard with advocates in Alabama to strengthen our laws, to add GHB, a dangerous date rape drug, to the list of controlled substances in Alabama, to enact a State domestic abuse law. I've worked with Penelope House out of Mobile, Alabama, which is a shelter for battered women and children, and promoted their work and helped them with their work.

I think the Violence Against Women Act is an important law. As an Attorney General, as a member of the National Association of Attorneys General, I have voted for resolutions urging Congress to reauthorize the law. I think it's important that you've provided resources to help Federal and State prosecutors do their job. But I did think that one provision of that law was unconstitutional. I so argued in an amicus brief, and the Supreme Court agreed.

Senator Kyl. Well, thank you. I guess on the first charge that you filed amicus briefs on, you do stand guilty as charged. I would like to see whether you are guilty of this second charge.

I am quoting exactly: ``Pryor is also a frequent public speaker whose speeches make clear that the ideological positions he has taken in these cases are his own.'' Meaning, I guess, you are not a hypocrite, anyway. Is that true that you are a frequent public speaker?

Mr. Pryor. I am a frequent public speaker, Senator.

Senator Kyl. And that the speeches you make are consistent with your ideological positions?

Mr. Pryor. I try to be honest in my speeches, Senator.

Senator Kyl. Guilty as charged.

There is another one here. You actually believe in federalism. Is that true?

Mr. Pryor. That is true.

Senator Kyl. Can you defend that?

Mr. Pryor. I believe I can. On many occasions when I have made federalism-based arguments in the Supreme Court of the United States, the Supreme Court has agreed with our argument because I think it's a central feature of our Constitution to balance the power of the Federal and State governments.

Senator Kyl. Maybe some folks need to go back and look at the Constitution and see whether that defense is an appropriate defense.

Let me ask one more, and I am quoting again: ``He personally has been involved in key Supreme Court cases that, by narrow five-to-four majorities, have restricted the ability

of Congress to protect Americans' rights against discrimination and injury based upon disability, race, and age.' ' Meaning, in other words, that you were involved in cases where your position was accepted by the Court as correct by five-to-four majorities that had the effect in their opinion of doing these things. Is it true that you have been involved in Supreme Court cases that you have won?

Mr. Pryor. Yes, it is true. On several occasions.

Senator Kyl. Well, I guess you stand guilty as charged. We will have to take that into consideration.

Let me close with one other thing. There have been a lot of letters filed on your behalf, one that struck my interest from Hon. Sue Bell Cobb, Judge of Alabama Court of Criminal Appeals. Here is part of what she wrote in January of this year: ``I write, not only as the only statewide Democrat to be elected in 2000, not only as a member of the Court which reviews the greatest portion of General Pryor's work, but also as a child advocate who has labored shoulder to shoulder with General Pryor in the political arena on behalf of Alabama's children. Bill Pryor is an outstanding Attorney General and is one of the most righteous elected officials in this State. He possesses two of the most important attributes of a judge: unquestionable integrity and a strong internal moral compass. Bill Pryor is exceedingly bright, a lawyer's lawyer. He is as dedicated to the rule of law as anyone I know. I have never known another Attorney General who loved being the people's lawyer more than Bill Pryor. Though we may disagree on an issue, I am always confident that the position is a product of complete intellectual honesty. He loves the mental challenge presented by a complex case, yet he never fails to remember that each case impacts people's lives.' '

What I was curious about, what I found arresting by that, was her reference to your work on behalf of children. And I would like to ask you to expand on that, if you could a bit.

Mr. Pryor. Thank you, Senator. Judge Cobb and I have been partners in a project known as Children First. She is the Chair of the Children First Foundation in Alabama, and I have the privilege of serving as the Vice Chair of that foundation.

And what we have worked to do in a nutshell over the last several years is to devote more of our State's resources to programs to help at-risk children, whether it's juvenile justice programs that are proved to work, whether it's alternative schools to remove troubled youths from the regular school environment to help promote a safer learning environment in the regular schools, but also to give more intensive help to kids who are having difficulty in regular schools, children's health insurance, just a number of issues. And we have been partners in that enterprise.

We do not always agree. We sometimes have our political differences. But we have worked in a bipartisan effort. It has been a very successful one in Alabama. There are times when I have had members of my own party disagree with the work that we were doing, but I'm proud of the success that we have enjoyed with Children First.

Senator Kyl. Well, thank you, General Pryor. And just let me say that not only, I think, have you demonstrated the intellectual ability, the experience, and the temperament to be a fine judge, but your candor, your willingness to confront a somewhat hostile dais here, I think, is another indication of the fact that you will be a fine judge and that my colleagues ought to confirm the nomination that President Bush has made.

Thank you.

Chairman Hatch. Thank you, Senator.

We will turn to the distinguished Democratic leader on the Committee, Senator Leahy.

Senator Leahy. Thank you, Mr. Chairman.

Chairman Hatch. Senator, as I understand it, unless there is someone else who wants to question. Okay. All right.

Senator, go ahead. I will tell you when we will reconvene as soon as you finish.

Senator Leahy. Thank you, Mr. Chairman. To answer one of the questions whether you speak out on a lot of things, I would assume as the Attorney General in elective office that that would be only natural. I can't think of an Attorney General in the country who wouldn't. And there is no criticism of you for doing that.

We did, however--and Senator Kennedy raised your quote in the Montgomery Advertiser, speaking about the electric chair and whether it is an unconstitutional method of execution, you said, ``This issue should not be decided by nine octogenarian lawyers who happen to sit on the U.S. Supreme Court.' ' And I understand these questions--I mean, you seem to find it amusing. Did I misinterpret the smile on your face during that time? I mean, do you think this is an amusing description of the Supreme Court?

Mr. Pryor. No, Senator. I said I thought it was inappropriate, and the reason I thought it was inappropriate was the use of the term ``octogenarian.' ' I stand by my statement, however, that I don't think the Supreme Court of the United States should have been the arbiter of the method of capital punishment in Alabama. I don't believe that that method of capital punishment violated the Eighth Amendment. That's the position we took in Federal courts. But we have since changed that method of execution, and I helped change it.

Senator Leahy. Do you have any question, though, whether the Supreme Court has the authority to decide that issue?

Mr. Pryor. Of course not, Senator.

Senator Leahy. Okay. You testified in July 2001 before this Committee on the subject of appointed counsel in capital cases. In your testimony, you quoted then professor, now Federal Judge Paul Cassell for the proposition that, ``The death penalty system in America is the most accurate criminal sanction in the world.' '

There have been about a dozen death row inmates that have been exonerated and released. They found they had the wrong person, some within days of their execution time. In Arizona, for example, Ray Krone was released from prison after DNA testing showed he did not commit the murder, the murder he had been convicted for 10 years before. And the local prosecutor said that Mr. Krone ``deserves an apology from us, that's for sure. A mistake was made here. An injustice was done, and we're sorry.' '

Had he not been successful in getting hold of the DNA results, he would have been executed. Interestingly enough, the DNA, when they did get it, found that it pointed the finger at the person who did commit the murder.

I look at well over a hundred in the past few years who outside of the criminal justice system, either because of journalism students or others, were found not to be guilty of the crime they were charged with. Do you still think that the death penalty system in America is the most accurate criminal sanction in the world?

Mr. Pryor. I agree with Professor Cassell's judgment that the system of capital--

Senator Leahy. What is your judgment? I mean, we have confirmed Professor Cassell. I actually voted for him. I disagree with him on this particular point, but what is your judgment?

Mr. Pryor. My judgment is that the system of capital punishment has extraordinary safeguards, many safeguards to ensure that we review every death sentence to ensure that, number one, we're executing only the guilty; number two, that it's free from discrimination; and, number three, that it's in cases of extreme and heinous crimes.

There's no question that that system catches errors. That's what the system is supposed to do.

Senator Leahy. Do you think that there have been--do you think there have never been people executed who were innocent?

Mr. Pryor. I'm not aware of any case, since the death penalty was reinstated after the Furman decision by the Supreme Court of the United States in the late 1970's, where an innocent person has been executed. If someone has a case that they would like to present to me, I would certainly review it objectively. But I'm not aware of one.

My own experience tells me, though, with the--I think it's now 14 executions that we have had in Alabama in my administration, that all of those were cases of extreme crimes and evidence of overwhelming guilt.

Senator Leahy. I am not questioning the heinousness of some of the crimes. I am questioning the fact that we have well, over 100 people, some of whom were found not by the criminal justice system, not by the kind of checks and balances you are referring to, either by somebody--I mean, in one case a group of college students who had taken an elective course on journalism, and then got heavily involved and found they had people on death row, some within days of being executed, and they found them and found gross mistakes, errors by the police, coverups within the criminal justice system. Most of Alabama's death row inmates were convicted and sentenced before 1999 when compensation of the appointed lawyers was capped at \$1,000 per year. Do you really think that you can get adequate representation in a capital case where compensation is capped at \$1,000?

Mr. Pryor. I am proud that our State increased the compensation--

Senator Leahy. I am talking about before 1999.

Mr. Pryor. Because I don't think that compensation was adequate, Senator. Does that mean, though, that the criminal defense lawyers who took on the responsibility by court appointment to zealously represent a capital defendant did an ineffective job? No, not at all.

Senator Leahy. So you are convinced that all those cases, many awaiting execution now, where it was capped at \$1,000, that in every single one of those cases there was effective representation?

Mr. Pryor. No, Senator. There were certainly cases, and we have procedures available in the courts to determine those cases, where there was ineffective assistance of counsel, and there have been findings by courts that there were, in fact, instances of ineffective assistance of counsel.

My point was only that it would be wrong to paint with a broad brush and assume that because our compensation was inadequate--and I concede it was inadequate. I'm proud the

State increased it. But it would be wrong to paint with a broad brush and say that all those criminal defense lawyers who were doing their duty to the bar and to the court and to the community in providing zealous representation--

Senator Leahy. General Pryor, that--

Mr. Pryor. --were ineffective.

Senator Leahy. --is not my statement. That is yours. That is not mine. I will accept your answers as you give them, and I won't characterize them differently than you do, and don't mischaracterize my questions. The fact is that you--I believe you have--you raise a real red flag when you have any State that caps defense lawyers at that amount. And the idea that always the bar will come through, and in another State near you the State Supreme Court said that when they had a lawyer who slept through much of the capital case, they said, well, the Constitution requires you to have counsel, it doesn't say it requires them to be awake.

I think the fact of the matter is that at the very least a warning sign should go up. At the very least, contrary to some of the feelings that you expressed back in 2001, at the very least we ought to be having strongly competent counsel for the defense, just as I feel we should have very competent prosecutors. I was a prosecutor for 8 years. I feel very strongly that way. I prosecuted a lot of murder cases. But I also know what can happen if you don't have good people on both sides.

I am looking at some of the amicus briefs. We have discussed some of them that you have filed as an example perhaps of your judgment. You were the only Attorney General out of all the States to file an amicus brief opposing the Federal Government in the case involving the Violence Against Women Act that allowed victims of gender-motivated violent to sue their attackers in Federal court. You have spoken many times with pride about your involvement and your lone opposition in this case. Incidentally, 36 other States took the other position.

Under your leadership, Alabama was the only State to submit an amicus brief in the case of Solid Waste Authority of Northern Cook County v. U.S. You argued the Federal Government did not have authority under the Constitution's Commerce Clause to prevent destruction of waters and wetlands that serve as critical habitat for migratory birds. I heard from a lot of hunters in my State on that.

And while you were Attorney General, Alabama was the only State to file an amicus brief in the famous case Bush v. Gore. Even conservative Republican Attorneys General were not willing to do that.

I only raise this because we expect circuit court judges to be able to reach consensus with their colleagues as much as possible. Obviously in these cases you were unique among your fellow Attorneys General, and I will concede, of course, that you represent only the State of Alabama, and you only have to answer to the State of Alabama, not the other 49 Attorneys General. But do you feel that you may be giving a signal that you might not be collegial enough to be on the court?

Mr. Pryor. No, not at all, Senator. You've raised several points. I'd like to address as many of them as I can, as I can recall.

Senator Leahy. Sure.

Mr. Pryor. First of all, in both the Swank case, the migratory bird rule or Clean Water Act case, and in the

Violence Against Women Act case, it's true I was the only State Attorney General who offered that perspective, but it was the perspective that the Supreme Court ultimately sustained.

There have been many other instances, though, where, as a State Attorney General, I have filed amicus briefs that many States have joined. In fact, my office has previously received the Best Brief Award from the National Association of Attorneys General because of our Supreme Court work, the first time that our office has ever received that, and tomorrow we'll receive another one of those awards for an amicus brief that we wrote.

Now, I think it's a misunderstanding, though, to say that I was the only State Attorney General to file an amicus brief in Bush v. Gore. There were at least a dozen Democratic Attorneys General who filed an amicus brief in Bush I. There were three Republican Attorneys General who filed an amicus brief in Bush I. And I filed one separately. I filed one because Alabama had a case that I personally handled called Roe v. Alabama that was a part of the legal argument that was being made by the two sides, and I wanted to offer my perspective about that case, and that's where our argument was principally focused. It was an equal protection and due process argument, and we offered it again in Bush II, which had a less than 24-hour deadline for filing an amicus brief. I don't know how many of my colleagues tried to meet that deadline. But it is untrue that other Attorneys General did not file amicus briefs in that case. There were several of them who did.

Senator Leahy. Unfortunately, my time is up. I will follow up on that particular point, as you can imagine, with follow-up questions. I would ask you just one last question, if I might, Mr. Chairman, and my others will be in writing.

You have been criticized because of your personal views and your political philosophy, which are always open to question for any one of us, except that no matter what your personal views, no matter what your political philosophy is, you are expected to be a fair and impartial Federal judge if you are confirmed.

What assurances can you give us that you would be that fair and impartial judge that people coming into your courtroom wouldn't look at you and say, well, I am the wrong political party or I am the wrong political philosophy so I am not going to be treated fairly? What assurances would you give?

Mr. Pryor. I would urge them first to look at my record as a State Attorney General. Of course, eventually I would hope that they could look at my record as a judge and see my decisionmaking and see my fairness and impartiality, but look before that at my record as a State Attorney General. When you raise issues of politics, I have prosecuted Republicans. I have prosecuted the former director of the department--

Senator Leahy. So have I.

[Laughter.]

Senator Leahy. I have also prosecuted Democrats, I must say.

Mr. Pryor. Me, too, and that's my responsibility as Attorney General. I have sided with Democratic interests several time in legislative redistricting cases because I thought their argument was the right legal argument. I prosecuted the former director of the State Department of Transportation in the Governor--in the administration of the Governor who appointed me and convicted him. I have prosecuted Republicans for voter fraud, for trying to rig elections.

I would urge people to look at my record. My record is one

that, whatever my political philosophy might be on the one hand, when it comes to my record as Attorney General and making tough decisions I strive to follow the law. And I would urge people to show otherwise. I believe that my record shows that I strive to follow the law.

Senator Leahy. Thank you, Mr. Pryor.

Thank you, Mr. Chairman.

Chairman Hatch. Thank you, Senator Leahy.

We are just about through for this morning, now afternoon hearing, but let me just clarify a few things, if I can, before we finally wind up.

Isn't it true that although you are clearly pro-life--and you have made that clear--you directed prosecutors to enforce--

Senator Leahy. Mr. Chairman, I just want to correct one thing. I moved Paul Cassell through while I was chairman, but I did vote against him on the floor. I had that error. I didn't want to--I had forgotten. I knew that--I resisted the urging of many to hold him bottled up in committee. I brought him out on the floor so he could have a vote.

Chairman Hatch. You did, and we appreciated that.

Let me go back again to this question because I think we need to clarify a few things before we break for lunch. It is true that you are strongly pro-life. That is apparent. So am I. You directed prosecutors to enforce the State partial-birth abortion ban only to the extent permitted by the Supreme Court. Is that right?

Mr. Pryor. That was what I strived to do.

Chairman Hatch. Even though you had people pushing you to go farther.

Mr. Pryor. Absolutely.

Chairman Hatch. To try and expand that law beyond what the Supreme Court had said.

Mr. Pryor. Absolutely.

Chairman Hatch. So you went along with the Supreme Court, which is the law of the land.

Mr. Pryor. Yes.

Chairman Hatch. Even though you might have believed otherwise.

Mr. Pryor. Absolutely.

Chairman Hatch. Even though you did believe otherwise.

Isn't it true that even though you have been critical of Section 5 of the Voting Rights Act, you defended majority-minority voting districts created under the Act all the way to the Supreme Court, which sided with you? Isn't that right?

Mr. Pryor. Absolutely, Senator.

Chairman Hatch. In other words, even though you disagreed with it, you defended them, and you defended the rulings that you disagreed with all the way to the Supreme Court, and the Supreme Court found you were right.

Mr. Pryor. Yes.

Chairman Hatch. Isn't it true that although you filed a brief in *Lawrence v. Texas*, you relied on the language of Justice White of the United States Supreme Court in *Bowers v. Hardwick*, right?

Mr. Pryor. Absolutely.

Chairman Hatch. So you were following the law of the land.

Mr. Pryor. Absolutely.

Chairman Hatch. The law as determined by the Supreme Court of the United States of America.

Isn't it also true that although you defended the display of the Ten Commandments in the Alabama Supreme Court and

student-led prayer, you did so only to the extent permitted by precedent and on much narrower grounds than that suggested by the Governor who appointed you?

Mr. Pryor. Absolutely.

Chairman Hatch. And you were right.

Mr. Pryor. Yes.

Chairman Hatch. You were found to be correct by the courts.

Mr. Pryor. Yes.

Chairman Hatch. Well, isn't it true also that although you filed briefs in the Garret and Kimmel cases as well as the Morrison case, the cases involving the Americans With Disabilities Act, et cetera, those briefs challenged only small portions of the Americans With Disabilities Act, the ADEA, and VAWA, or the Violence Against Women Act? You filed briefs in those cases, but who did the Supreme Court agree with?

Mr. Pryor. They agreed with our arguments every time.

Chairman Hatch. They agreed with you. So all these criticisms that seem to be criticisms and arguments against you are arguments against decisions by the Supreme Court. I wonder who is outside the mainstream. It certainly isn't you. That is a shibboleth that is used around here far too often.

Now, let me just go a little bit further here. On the death penalty, is it not true that you strongly support increasing payments for appointed counsel up to \$15,000 in capital cases?

Mr. Pryor. I do.

Chairman Hatch. Per case.

Mr. Pryor. In the first stage of appeals, and I've been unsuccessful in that urging, but it is something I still urge.

Chairman Hatch. And it is something you think would be a step in the right direction?

Mr. Pryor. Yes.

Chairman Hatch. Now, just for the record, what is your religious affiliation?

Mr. Pryor. I'm a Roman Catholic.

Chairman Hatch. Are you active in your church?

Mr. Pryor. I am.

Chairman Hatch. You are a practicing Roman Catholic.

Mr. Pryor. I am.

Chairman Hatch. You believe in your religion.

Mr. Pryor. I do.

Chairman Hatch. I commend you for that. But I would like to ask you just a few questions to follow up on Senator Durbin's concerns that your strong statements about Christianity indicate some sort of insensitivity towards religious minorities. I would like to say something very important that debunks that allegation. As Attorney General you have been a tireless defender of religious liberties and freedoms for people of all faiths, have you not?

Mr. Pryor. Yes.

Chairman Hatch. Now, as you mentioned in response to Senator Durbin, you worked tirelessly to promote the passage of the Alabama Religious Freedom Amendment to the Alabama Constitution, which requires the government to show, quote, ``a compelling interest,' ' unquote, in other words, a higher standard, before it imposes religious restrictions, and the restriction has to be, quote, ``the least burdensome,' ' unquote, possible. And that applies to people of all faiths, does it not?

Mr. Pryor. It does, Senator.

Chairman Hatch. And you were advocating for that?

Mr. Pryor. Yes.

Chairman Hatch. As a committed Catholic.

Mr. Pryor. Yes.

Chairman Hatch. For everybody, regardless of religious belief.

Mr. Pryor. Absolutely.

Chairman Hatch. Now, I would like to submit for the record a letter written by an active member of the Birmingham Jewish community, Herc Levine, who writes that Attorney General Pryor--quote, ``That Attorney General Pryor has''--I've got the quote right, who writes that you have his support, quote, and here is what he says, ``and the support of many in the Alabama Jewish community because of his personal integrity and commitment to ensure that all of our citizens are treated fairly and receive equal justice under the law. He has been a true friend to the Alabama Jewish community on many important issues,' ' unquote. Are you aware of that letter?

Mr. Pryor. I am.

Chairman Hatch. I want to say something else that is equally important. You have been honored for protecting the religious liberties of incarcerated prisoners, have you not?

Mr. Pryor. I have.

Chairman Hatch. Many states have considered exempting prisoners from religious freedom protection, but not you.

Mr. Pryor. No. I demanded otherwise.

Chairman Hatch. You successfully prevented the Alabama Religious Freedom Act from including a prison exemption; is that correct?

Mr. Pryor. Absolutely.

Chairman Hatch. You fought for that?

Mr. Pryor. I did.

Chairman Hatch. Now, in recognition of your efforts, if I have it correctly, you were honored with the 1999 Guardian of Religious Freedom Award by the Prison Fellowship Ministries, the Justice Fellowship and the Neighbors Who Care, right?

Mr. Pryor. That's correct, Mr. Chairman.

Chairman Hatch. I think, you know, it is easy to take somebody who has been in politics as long as you have, and pick statements out of literally thousands of paragraphs and writings and records and briefs that maybe you have not even written, as has been indicated here, and pick out isolated paragraphs with which you think you can disagree or you could make a fuss over, and then try to undermine a person's credibility. Here we have a religious person who is very up front about his religious beliefs and his personal views, but who in every case that I can see--and I have really gone through this with pretty much of a fine-tooth comb--has followed the law regardless of his personal, deeply felt, strongly felt religious beliefs. And in virtually every case except a few that you lost, you won. The Court sustained your positions. And yet almost every point that has been made, or at least attempted to be made against you here today, has been a point made in areas where you have won, where your point of view was agreed to. I think that is a fair statement, and I have seen what they tried to do to you when your nomination came up here. I am not talking about people on this Committee. I am talking about the outside groups who do not seem to care how outrageous their smears are. I thought Senator Kyl did a very good job of showing how really ridiculous it gets around here.

I think it is also ridiculous to make such a fuss against people just because you disagree with them, and try to paint

them as outside of the mainstream of American jurisprudence, especially somebody like you who wins all these cases, and whose point of view has been sustained by the Supreme Court time after time after time. We may not like that from time to time, but who are we? It seems to me we are outside the mainstream if we start trying to make a fuss about some of the things that Supreme Court has done. Now, we can differ with them just like you have. You have differed with Justice Souter in a number of ways. That does not mean that you hate the guy or that you do not think he has a redeeming quality or that you do not think he should be sitting on the Supreme Court, and maybe you have used some language that you wish in retrospect, sitting there, you had not used. You have said that in that one quote that it was a, quote, ``feeble attempt,' ' if I recall it correctly, to be humorous. Did the people laugh who were there?

Mr. Pryor. In that mixed audience, mostly conservative, yes, there were a fair number of laughs.

Chairman Hatch. Well, I just would suggest from hereon in, as we make you judge, you should probably be very careful about criticizing Justice Souter, how is that?

[Laughter.]

Chairman Hatch. Or any other Supreme Court Justice for that matter, although it is very legitimate for lawyers, and especially Attorneys General, and especially lawyers on this Committee, to find fault with Supreme Court decisions, and to wish that they were otherwise.

Now, you have wished that Roe v. Wade were otherwise. But you have sustained Roe v. Wade in your job as an Attorney General which is a much more political job than being a Circuit Court of Appeals Judge. You have done what is right, regardless of your personal views that are deeply held. Look, I wish we could find more people like you to be on the Federal bench. We would be a lot better off in this country, and I have to say, I think we are finding a lot of good people, just like you or similar to you or similar to great Democrats and Republicans of the past who have distinguished themselves once they became judges. And I can name great Democrat judges and I can name great Republican judges, and I can name lousy Democrat judges and lousy Republican judges, who really have not distinguished themselves.

One thing we do as lawyers, we do criticize each other, and that is not unhealthy. That is a good thing. But I wanted to get some of those things across, that some of the things that some have criticized you for were the mainstream.

Senator Leahy. Mr. Chairman, before we go to the next person, I just want to make, if I could, a couple quick points.

Senator Specter. Mr. Chairman, I would very much like to go to the next person.

Senator Leahy. I would like, Mr. Chairman--

Chairman Hatch. I will go to the Senator.

Senator Leahy. Thank you. Mr. Chairman, I--

Senator Specter. Mr. Chairman, are we rotating here?

Chairman Hatch. Yes, but we are going to go to Senator Leahy for whatever comment he wants to make.

Senator Leahy. Just went from a Republican to a Democrat now you see, that is rotation.

I am not going to ask questions, but just to note two things. One, you were asked about your religion. In 29 years in the Senate and thousands of nominations hearing in all the different committees I sit on, I never asked a nominee what his or her religion was because I think that that is irrelevant to

our consideration. And I would hope, I would hope that that is not going to become a question that nominees are going to be asked because we should be, just so as we are supposed to be color blind, we should be religious blind, as far as that is somebody's personal choice, and has nothing to do with their qualifications. And I would hope that that would not become a question.

Also in looking over the transcripts, so there could be no question in your mind, when I spoke about Bush v. Gore, obviously I was speaking about the final decision, the decisive one.

Thank you, Mr. Chairman.

Chairman Hatch. Well, let me just make it clear, I do not usually ask that question either, but lately we have been finding situations where some of the questions that come up clearly go to that issue. And I just wanted to make it very clear that he is a very strong Catholic who believes in what he is doing, but yet has abided by the law, and that is a very important point because some of the criticisms have been hitting below the belt, frankly.

Senator Specter?

Senator Specter. Thank you, Mr. Chairman. I withdraw my objection to Senator Leahy's latest intervention because I want to associate myself with his remarks. I do not believe that religion ought to be a question either. If you have been attacked for being a Catholic, that is one thing. Have you been attacked for being a Catholic?

Mr. Pryor. In my life, Senator?

Senator Specter. No, in connection with this judicial proceeding? I would hate to go back over my life to answer that question with my religious background.

Mr. Pryor. I wouldn't want to characterize anyone as having--

Chairman Hatch. Well, I interpreted it that way.

Senator Specter. If I may proceed, Mr. Chairman?

Chairman Hatch. Sure.

Senator Specter. In the absence of an attack, if there is an attack, it is a different matter. Then you have to defend yourself and it becomes a relevant issue if it is an attack, but I would hope that this Committee would not inquire into anybody's religion. There are enough questions to inquire into and enough substantive matters that that ought to be out of bounds. So I want to associate myself with what Senator Leahy said.

The Chairman has asked about whether you have made some comments which you now consider intemperate, and I regret that I could not be here earlier today, but as you know, we have many conflicting schedules. But I note the comment you made after Planned Parenthood v. Casey, where you were quoted as saying--first I would ask you if this quote is accurate. I have seen a quote or two not accurate. ``In the 1992 case of Planned Parenthood v. Casey the Court preserved the worst abomination of constitutional law in our history,' ' close quote. Is that an accurate quotation of yours?

Mr. Pryor. Yes.

Senator Specter. Is that one which would fall into the category that Senator Hatch has commented on, you wish you had not made?

Mr. Pryor. No, I stand by that comment.

Senator Specter. Why do you consider it an abomination, Attorney General Pryor?

Mr. Pryor. Well, I believe that not only is the case unsupported by the text and structure of the Constitution, but it had led to a morally wrong result. It has led to the slaughter of millions of innocent unborn children. That's my personal belief.

Senator Specter. With that personal belief, Attorney General Pryor, what assurances can you give to the many who are raising a question as to whether when you characterized it an abomination and slaughter, that you can follow a decision of the United States Supreme Court, which you consider an abomination and having led to slaughter?

Mr. Pryor. I would invite anyone to look at my record as Attorney General, where I've done just that. We had a partial birth abortion law in our State that was challenged by abortion clinics in Alabama in 1997. It could have been interpreted broadly or it could have been interpreted narrowly. I ordered the district attorneys of Alabama to give it its narrowest construction because that was based on my reading of Roe and Casey. I ordered the district attorneys to apply that law only to post-viable fetuses. I could have read it easily more broadly. The Governor who appointed me was Governor at the time and a party to the lawsuit, disagreed with me and openly criticized me. A pro-life activist in Alabama criticized me. But I did it because I thought that was the right legal decision. I still had an obligation to defend Alabama law. This was a recently-passed Alabama law. When the Supreme Court of the United States later of course struck down this kind of partial birth abortion law, we conceded immediately in district court that the decision was binding, but until then I was making the narrowest argument I could make, trying to be faithful to the Supreme Court's precedent, while also being faithful to my role as Attorney General and my oath of office to defend a law recently passed by the legislature.

Senator Specter. When you talk about post-viability and you have the categorization of partial birth or late-term abortion, is not that statute necessarily directed toward post-viability?

Mr. Pryor. That was one of the main arguments I made in construing it, but if you look at the actual language--

Senator Specter. Well, I asked you that question as to whether there was a basis for construing it to the contrary. When you talk about partial birth abortion, we are talking about an event in the birth canal which is definitely post-viability. When you talk about late-term abortion, we are also talking about post-viability. So aside from having some people who will raise a question about anything, whether there is a question to be raised or not, was it not reasonably plain on the face of the statute that they were talking about post-viability?

Mr. Pryor. No, I don't think anyone would contend that. In fact, the abortion clinics argued that that was not how you could interpret the law, and that my instructions to the district attorneys, while helpful in narrowing the construction of the law, gave them no real benefit because I could withdraw it at any time. That was the argument they made. They made the argument that you could easily broadly construe the law to apply pre-viability, so, no. There was a legitimate issue there.

There was also a law passed by the legislature in the same session that was a post-viability law itself. So you had a partial birth law and a post-viability law, and when you read the text of the partial birth law, that was not so clear,

Senator.

Senator Specter. In *Casey v. Planned Parenthood* that was an opinion, plurality, written by Justice O'Connor, a strong pro-life Justice, Justice Anthony Kennedy, a strong pro-life Justice, and also Justice Souter. Now, some might raise a question as to Justice O'Connor's instincts being a little more concerned with the woman's point of view, but in Justice Anthony Kennedy, you have a Justice of impeccable pro-life credentials, a man whom I voted to confirm, as I did Justice O'Connor, and Justice Souter, and for that matter, Justice Rehnquist, and Scalia, and Justice Clarence Thomas.

What do you find in the writings of that plurality opinion, noting the presence of Justice O'Connor and especially the presence of Justice Anthony Kennedy, to be an abomination?

Mr. Pryor. Well, they preserved Roe and they were following Roe and I considered Roe to be the abomination because it involves abortion, involves, from my perspective, the killing of innocent, unborn children.

Senator Specter. Well, let's move on then. On the Civil Rights Act, you have objected to Section 5 of the Act and have urged its repeal. Why have you taken that position, Attorney General Pryor?

Mr. Pryor. I believe the Voting Rights Act is an important and necessary law in American history, and Section 5 was vitally needed in 1965 and for many years thereafter. It has now been almost 40 years afterwards. And what we routinely see in Alabama and in other states, is that when we want to change a polling place from say a firehouse on one side of the street to a schoolhouse on the other side of the street, we have to submit that to either the Department of Justice or Federal District Court in D.C. to obtain permission. They are routinely now granted, but if we miss any identification of what change in law was precisely made in the preclearance process, there's a ``gotcha'' game that is played by lawyers representing white voters, Republican voters, and others for their own political opportunity that has nothing to do with protecting the voting rights of minorities. That's what I've seen in my own capacity as Attorney General.

Senator Specter. Are there any other provisions of the Voting Rights Act which you would like to see repealed?

Mr. Pryor. No. I think that Congress--

Senator Specter. The rest of it has been in existence for 40 years too. Is any of it outmoded beyond Section 5 which you have already testified about?

Mr. Pryor. No. In fact, Section 2, the core provision, which applies to every jurisdiction in the United States, and prohibits dilution of minority voting strength, I have actively enforced, as I have Section 5. As Attorney General my record has been one of enforcing the Voting Rights Act, and I very sincerely believe in those protections and the importance of the Act, including the importance of Section 5 of the Act for the time of its enactment and for many years afterwards. And there may be, if Congress reviews it very carefully, even consistent with my perspective, a need for continued vitality of aspects of Section 5.

Senator Specter. I see I have 12 seconds left on the clock, so I will start another line here if I may. That relates to the decision on the Age Discrimination Act and the move by the United States Supreme Court on States' rights, overruling the Lopez case, which stood for 60 years under the commerce clause, and now an interpretation of the 14th Amendment and legislation

under Article 5 of the 14th Amendment, very difficult to find a line of discernment.

In the most recent case there was a shift in position with Chief Justice Rehnquist voting to uphold the Family Leave Act. Do you agree with that most recent Supreme Court decision?

Mr. Pryor. I filed an amicus brief on the other side, on the side that was the losing side in that case, Senator. It was obviously a very close case, and if you look at whether the Act was designed to prohibit gender discrimination, as the Court found, then Congress's authority was much more likely to be sustained. If on the other hand you argued, as I and several State Attorneys General did, that it was more of an employee benefit offered to all without regard to gender discrimination, then it was much less likely to prevail. Our argument did not prevail, and I respect the decision of the Supreme Court.

Senator Specter. Do you agree with it?

Mr. Pryor. We made the argument on the opposite side. I did not have the opportunity to go through what the Supreme Court Justices did and read everything in the record and all the briefs. I think it was a very--that was a very close case.

Senator Specter. Do you agree with it?

Mr. Pryor. I don't know whether I do or not without going through that process, Senator.

Senator Specter. ``I don't know'' is an answer.

Mr. Pryor. Okay. I'm sorry.

Senator Specter. In looking at your involvement with the Age Discrimination in Employment Act matter and the Americans With Disabilities where you were very active on both those cases, and you now have the family leave case, and if you try to discern a rational line on what the Supreme Court is going to do, I think it is virtually incomprehensible, I think it is incomprehensible as to whether there is a sufficient record by the Supreme Court to satisfy the Supreme Court. The Court has come to the position on so many Congressional enactments that they haven't been thought through. And it is a matter of grave concern to me, and you talk about judicial activism, which we frequently do, as to the lack of deference that the Supreme Court gives to Congress.

The whole point is that we are supposed to make the laws, and they are supposed to interpret them. But they have some line of delineation as to whether there is a sufficient record, and really it boils down to whether it has been thought through by the Congress.

And then I always raise the question as to whether it has been thought through by the Court. These decisions are five-to-four; the most recent one was six-to-three. Could you articulate a standard for trying to decide this complex area? And I ask you that because so many people are concerned about-- Attorney General Pryor, you are obviously a man with a very distinguished record, magna cum laude undergrad and magna cum laude in law school, and you are a very articulate witness. You have had a very distinguished career, and what arises as a point of concern is that when these questions come up and they are so very, very close, whether your own philosophical orientation will steer you one way as opposed to another.

So could you give us a statement as to the prevailing principles on these decisions which go both ways and have a very hard time to see if somebody could find a clear path as to what the standard is?

Mr. Pryor. I will do my best, Senator. I will do so noting that in some of the cases I have made the arguments that were

prevailing arguments, but in some, like Hibbs, the Family Medical Leave Act case, I was on the losing side. So I may not be the best--

Senator Specter. Well, you might be wrong. You haven't told us if you disagree with the Court yet.

Mr. Pryor. Well, it may be that I might not be the best judge of how do you delineate it. It was our prediction--

Senator Specter. You are the only one we have--

Mr. Pryor. Fair enough. From my understanding, though, of the case law, when the Supreme Court looks at the Congressional exercise of its power under Section 5, its remedial power, its power to enforce the guarantees of the 14th Amendment and ensure that when violated, that those violations are corrected, that when they look at the pattern of State conduct, they want to see whether Congress has compiled a record of unconstitutional activity by the States. Congress is owed more deference when the form of discrimination involved is, for example, racial discrimination, which is subject to the highest level of scrutiny, strict scrutiny, and Congress is given less deference in an area that is subject to rational basis scrutiny, as in the case of age discrimination or disability discrimination.

Senator Specter. Where is Congress given no deference?

Mr. Pryor. Pardon me?

Senator Specter. And where is Congress given no deference?

Mr. Pryor. I don't know that it's ever anywhere given no deference.

Senator Specter. I read a great many of the decisions that way.

Mr. Pryor. Well, that's my best perspective of where the Court is coming from, Senator.

Senator Specter. Okay. Thank you very much, Attorney General Pryor.

Thank you, Mr. Chairman.

Chairman Hatch. Thank you, Senator Specter.

Here is what we are going to do. We are going to recess until 3 o'clock. The reason is some of the Senators have some additional questions of you. And at 3 o'clock we are going to-- let me just see here.

At 3 o'clock we are going to give you a little extra time here. We are going to proceed with Diane Stuart, which shouldn't take a long time. Diane has sat here all day, and she is, of course, to be the Director of the Violence Against Women Office, and that is at the Department of Justice. So what we will do is we will proceed with her, and I think you should be back here somewhere shortly after 3 o'clock. And then we will resume with you, hopefully for not too long a time after that, and go through these questions.

Now, I want to make this clear because I am really upset with some of the things that have gone on in this Committee over the ensuing months. It is not the Committee's usual proceeding to ask a nominee about his or her religious beliefs. And I agree with that position and with both Senator Leahy and Senator Specter. But perhaps Senators Leahy and Specter were not here when you were asked whether, in light of your statements about Christianity, you could be fair to religious minorities. You have also been asked extensively about your personal beliefs with regard to Roe v. Wade, which almost everybody for a circuit court judgeship is asked--in fact, everybody is because that seems to be the be-all, end-all issue to some people in this Committee.

But, of course, being asked those questions, as I understand it, that stems from your pro-life beliefs, which in turn are rooted in your religious beliefs.

Senator Leahy. Well, Mr. Chairman, one more time--

Chairman Hatch. Let me just--

Senator Leahy. --I must object if we are going to go into people's religious beliefs.

Chairman Hatch. Let me just finish with my remarks and you can say whatever you want to. So though it is unusual to ask about a nominee's religion, I think it is in this case because--it perhaps should have been raised in some prior cases as well with what has gone on in this Committee.

In this case, General Pryor's religious beliefs have been put squarely at issue, and if not directly, indirectly. But I think directly. So that is the reason why I raise it. I don't intend to raise it again, but the fact of the matter is that I just wanted to make sure that that is clear why I did that. And I don't intend to do it in the future, but I sure hope we can get off some of the approaches that the outside groups are encouraging us to do up here. And we can be more fair to people who do have deeply held religious beliefs regardless of religion.

And the point I am making with you is that your whole career has been spent making sure that there is religious freedom and respect for religious beliefs throughout your career, and I just wanted to make that point. Would you disagree with that?

Mr. Pryor. I appreciate the Senator's perspective very much.

Chairman Hatch. Thank you.

With that, we will recess--

Senator Leahy. Mr. Chairman, you said I could respond.

Chairman Hatch. Sure, go ahead.

Senator Leahy. Mr. Chairman, I have to disagree with you, and you are my friend. I think it is inappropriate if we start raising what a candidate's religion is. Going into their philosophy beliefs, that is fine. But to somehow jump from there to what their religion is and, thus, what their philosophy is I think is very, very dangerous.

Chairman Hatch. I agree.

Senator Leahy. I think if we start down that track, we are going to all regret it.

Now, sometimes in the political arena a person's religion has been attacked in an elective office. I know when the Chairman, my good friend's religion was attacked, I took to the Senate floor to defend him. In the political context I have had my religion attacked by some members on the other side of the aisle, and I assume someday one of them will defend me. But I do not think it is an appropriate question to ask a nominee.

I admire people who hold deeply religious views, whatever they might be, but I really strongly believe in the First Amendment and feel that that should be their belief or their family's belief. I admire them for it, but I don't think it should be part of the questions that we ask. I really don't. I think that we could run into a very difficult thing if we started doing that. I think it would be a terrible, terrible precedent to start.

Chairman Hatch. Then let's get the outside groups to stop doing that.

We will recess until 3 o'clock.

[Whereupon, at 1:32 p.m., the Committee was adjourned, to

reconvene at 3:00 p.m., this same day.]

AFTERNOON SESSION [3:03 p.m.]

Chairman Hatch. Let me call the Committee to order, and I would like to start by welcoming Ms. Stuart before the Committee. Diane is an old friend of mine, and I want to congratulate her for being nominated by President Bush.

It is a true pleasure to have Ms. Stuart before the Committee. Her impressive background, dedication to the issue of domestic violence and violence against women as well as her past Government service make me very confident that she will be a great asset to the Department of Justice, to this Committee, and to the American people, above all to women.

On a personal note, I want to express on behalf of myself and the Committee my sympathy to you, Diane, for the tragic loss of your grandson. I want you to know that my thoughts and prayers are with you and have been with you and your family as you cope with this terrible loss.

Let me turn to your nomination. Since it was created in 1994, the Office on Violence Against Women has played a vital role in protecting our children and women from the tragedy of violence and abuse. I have been and will continue to be a strong supporter of the office, along with my colleagues Senator Biden, Senator Leahy, Senator Specter, Senator Schumer, and others on this Committee.

Since 2001, Diane Stuart has demonstrated her ability to lead this important office to bring new energy and focus to its many missions and to continue to help our Nation's women and children who fall victim to abuse and violence.

Ms. Stuart is a dedicated public servant who has a longstanding record of accomplishment in promoting programs and policies to protect women from violence. Anyone who knows Diane Stuart also knows that her public service and commitment to this area began long before 2001, when she assumed the position of Director of the Violence Against Women Act Office.

From 1989 to 1994, Ms. Stuart served as the executive director of the Citizens Against Physical and Sexual Abuse from Logan, Utah, where she was responsible for a 20-bed shelter for victims of domestic violence and in addition was responsible for a rape crisis center.

From 1994 to 1996, Ms. Stuart was a victim advocate specialist for the State of Utah in Salt Lake City. From 1996 to 2001, she served as the State of Utah's coordinator for the Governor's Cabinet Council on Domestic Violence.

Finally, from 1995 to 2001, she served as a member and later became spokesperson for the National Advisory Council on Violence Against Women.

That was such an impressive background at both the State and Federal level, I am confident that Diane Stuart is the right person for this critical post at the Justice Department, and I am really hopeful that the Committee and the Senate as a whole will move quickly to confirm her, and I expect them to do so.

So, Diane, maybe you can stand and we will swear you in. Would you raise your right hand? Do you affirm that the testimony you are about to give before the Committee is the truth, the whole truth, and nothing but the truth, so help you God?

Ms. Stuart. Yes.

Chairman Hatch. Thank you. Now, if you have a statement you would care to make, we will be glad to take it at this time.

STATEMENT OF DIANE M. STUART, NOMINEE TO BE DIRECTOR, VIOLENCE
AGAINST WOMEN OFFICE, U.S. DEPARTMENT OF JUSTICE

Ms. Stuart. Thank you, Senator. I do.

First, Chairman Hatch, I would like to thank you for holding this hearing today and for your sensitivity in the death of our grandson and the postponement and rescheduling of this hearing. I am honored to be here, and I am very thankful to the President of the United States for the honor of nominating me to the Office of Director on the Office on Violence Against Women.

I am also extremely grateful to the President and the Attorney General for their unwavering support and leadership in our National efforts to end violence against women, from the President's Domestic Violence Month proclamation to the White House Roundtable on Violence Against Women, from the Attorney General's Symposium on Domestic Violence to the President's DNA Initiative. This administration's commitment to this issue has been and continues to be extremely strong.

As the former director of the domestic violence shelter that you mentioned and rape crisis center, I know very deeply of the importance of Federal leadership on these issues, and, of course, Congress recognized that when they passed the Violence Against Women Act in 1994 and when the office was created in 1995. At its very core, the Violence Against Women Act is about coordinated community response to these crimes. We have learned over and over again that collaboration among law enforcement, prosecutors, judges, advocates, health care workers, businesses, the faith community, and many others in the community that this is the key to ending violence against women. It's this coordinating and working together effort. And through the grants that the Office of Violence Against Women administers, we know that it works. Policies and procedures are being impacted by this coordinated community response.

But, Senator, when the Justice Department statistics reveal that in a single year there are almost 700,000 incidents of domestic violence, 248,000 rapes and sexual assaults, and over 1 million incidents of stalking, there is, as we all recognize, still much to do.

Should I have the honor of being confirmed as the Director of the Office on Violence Against Women, I want to commit to you now to serve with integrity, compassion, and dedication. And then I welcome any questions.

Chairman Hatch. Well, thank you so much. I have no doubt that you will do exactly that, knowing you as well as I do. And I am very proud to see you in this position and, of course, I am proud of your willingness to come here to Washington and serve here, giving up staying in the beautiful State of Utah, our home State. That is a big sacrifice in my book, and I understand it myself.

But since 2001, you have done, in my opinion, a remarkable job as the Director of the VAWA office. Could you take a few moments and, in addition to your opening statement, give us some of what you consider to be the most significant accomplishments since you assumed the position of Director?

Ms. Stuart. Mr. Chairman, when I came to the office, the first thing that I recognized after interviewing with each one of the staff was that the office needed to be reorganized, if you will, to better meet the needs of staff and, more importantly, better meet the needs of the individual grantees. And so that was one of the first things that we did, was to

organize the office in such a way so it would be more responsive to grantees, and ultimately more responsive to victims.

At the same time, we started working on the application process for grants, mostly for discretionary grants. There are 11 grant programs and 9 discretionary grant programs. And we began working with that process of what was needed from the discretionary grant programs, what applicants needed to know in order to successfully gain an award from that very, very highly competitive process that we had.

And so we rewrote the solicitation so that it would be very easy for an applicant to look at it and see clearly what we are looking for, the kind of elements. We put it on a scoring form, which elements would be important. So refining the grant application process we think is an accomplishment.

Also, refining and improving our technical assistance program. I believe that technical assistance is a key to communities, to States implementing what is intended with the Violence Against Women Act in a way that really works. Congress asked grantees to measure their effectiveness, and that's another accomplishment. We've moved very, very far down the road in a very complicated process in order to help grantees with the tools that they need in order to measure how effective they are and where they need to go in the future. So combining the technical assistance program that we have, that initiative that we have, and making it better than it was with their effectiveness project is certainly an accomplishment.

I think we've accomplished a better communications with the State administrators, with national organizations, with individual grantees even, a lot through the technical assistance projects but just on the day-to-day communications with grantees in our office.

I think that a lot of policy is being directed through many of the initiatives that are coming out through our office. For instance, we have had a--we have begun with a focus group on specific elements that are in the African-American community. What is the same? What is different? And how can we be more responsive to that particular community?

Re-entry, the same thing. Very often members that are-- individuals that have been in jail go back into the homes that they were abusing. And so working on that initiative and helping States and communities learn more about how to deal with those that are re-entering their community and keeping victims safe as they do so.

We have organized a Federal coordinating board which--I discovered that local communities were organized. They had understood the Violence Against Women Act and the coordinated community response. States were coordinated. But we in the Federal Government weren't very coordinated. What was happening at Labor was not available to the Department of Justice, not available to the Department of Human Services. And so bringing key people from those Federal agencies together and talk about what they are doing and what needs to be done in a coordinated fashion I think is as major accomplishment.

And, finally, you are aware that the National Advisory Council has been reorganized. It is very, very effective. It is very--what a marvelous group of people, and many of the Senators on this Committee suggested people for that National Advisory Council on Violence Against Women. Energetic group. They're going to accomplish quite a bit in the future, and we're looking forward to their accomplishments.

Chairman Hatch. Thanks so much. That is very helpful.

Now, looking forward and hopefully after a quick confirmation of your nomination here in the Senate, can you outline--I think you have pretty well outlined the issues that you have been concerned with up to now. Can you outline any significant issues and challenges you think you are going to face as Director of the Violence Against Women Office?

Ms. Stuart. Excellent question, Senator. Always looking to improve what is happening is a challenge. But most specifically, as I said, the grant--discretionary grant programs are highly competitive. I think one of our largest challenges is how to figure out how individual communities, individual States can sustain the programs that they initiate and how to keep that going far beyond Federal funding. There's no guarantee that they will be a continued recipient of any grant funds, so how do we help them be effective in what they're doing and really change the way they do business in that community, even change the fabric of that society so that they can continue what they've started with Federal funding, if it's 2, 3, 4 years, or maybe an organization or a State that doesn't get a particular--an arrest grant or a rural grant. There are many rural areas in our State that are seeking out how do we do this. How are we effective? How do we reduce violence against women? How do we keep victims safe?

So our challenge is how to get information and resources to those areas that are not receiving them now, and those areas that are receiving them, how they can continue it on in the future.

Chairman Hatch. Thank you.

I think what we are going to do, we have one questioner who would like to question you, and that is Senator Biden. We are supposed to have a vote that is supposed to start right now, but the Senate is not the most efficient organization in the world, as you know. I think what I am going to do is recess until Senator Biden gets here, because those are the questions I had, and I knew you would answer them pretty much like you did.

But let me put into the record several significant letters that the Committee has received, letters of support for your nomination. Specifically, we have received letters from the National District Attorneys Association, the Utah Domestic Violence Advisory Council, the National Council of Juvenile and Family Court Judges, and the Minnesota Program Development, and we will put those in the record without objection.

I think that I will head over to the floor. We will recess until Senator Biden gets here. Is Senator Biden's staff here? Just have him begin his questions if he gets here before I do. And our staff, you make sure that happens. Okay? And then I will get back as soon as I can, and hopefully after 10 minutes or so we can move on to our judgeship.

Well, thank you, and Senator Biden is the prime author of the Violence Against Women Act. It was the Biden-Hatch bill, and I remember when we decided to do this together. We hadn't been too successful up until then, but we were able to get it through. And we both take a tremendous interest in it, and Senator Biden in particular deserves a great deal of credit for the Violence Against Women Act. So we are showing this complete deference because of his efforts in this area. And I would do it, anyway, but I would certainly do it because of his efforts.

So, with that, hopefully we will get this vote over and Senator Biden could get here and ask you whatever questions he

wants, and then we are going to go back to our judgeship nominee, General Pryor, and hopefully finish that up within a short period of time.

So, with that, we will recess until after we get back from the vote.

Ms. Stuart. Thank you, Senator.

[Recess 3:17 p.m. to 3:30 p.m.]

Chairman Hatch. We will call the Committee back to order.

Diane, Senator Biden isn't here. I hate to have to ask you to wait. I know it has been inconvenient all day, and we could have gotten this done. But I think what we will do is just start with the other hearing again and call you back as soon as I can.

Chairman Hatch. General, you will have to understand why I might have to interrupt you again, if it is all right with you. But I just don't see wasting this time. So if you will be kind enough and forgive me for this, we will go ahead and do that. General, if you will take the seat again.

While we are waiting, I might as well ask some questions myself. General Pryor, you have been criticized for a number of positions you have taken in your role as Attorney General of Alabama, I think very unjustly criticized. I think that my good friend Senator Biden said it best during the confirmation of Justice Souter, about whom we have heard a good deal today. Senator Biden said, ``I am mindful, of course, that a State Attorney General has an obligation to defend the actions and politics of the State even when his own views are at variance with them and even when he would not, if he were a judge, adopt the arguments he is making as an advocate.' ' And that is what you have demonstrated here today, and you agree with that.

Mr. Pryor. I do.

Chairman Hatch. You agree with Senator Biden.

Mr. Pryor. I do.

Chairman Hatch. What strikes me as ironic is that you are being criticized for your position in a number of cases that you won before the United States Supreme Court. Sure, you lost some, too, but every good lawyer does. Nobody wins them all if you have had any kind of a practice. But I think that the fact that the Supreme Court agreed with you in a number of these cases indicates that your arguments were hardly out of the mainstream, you know, as some would try and indicate or as some would believe.

For example, you have been criticized for your comments relating to Section 5 of the Voting Rights Act, but in *Sinkfield v. Kelly*, you defended several majority-minority voting districts approved under Section 5 from a challenge by a group of white Alabama voters. And the Supreme Court agreed with you, didn't it?

Mr. Pryor. Unanimously.

Chairman Hatch. In other words, you didn't agree with the present-day application of Section 5 because you think it needs to be changed. But you did uphold that, and the Supreme Court agreed with you.

Mr. Pryor. I did uphold--

Chairman Hatch. So here they are criticizing you for your honesty in saying that Section 5 needs to be changed because it is no longer applicable in a more modern time, 40 years later, as it was in the past and it needs to be modified. I think most Attorneys General in the South would certainly agree with you. And yet when push came to shove and you had to defend the statute itself, you did so, even though you disagreed with it.

I mean, I don't see how you get criticized for that, but we do everything wrong here on the Judiciary Committee from time to time.

In the Garret case, you argued that the Americans With Disabilities Act could not constitutionally authorize money for damage suits against States in Federal court. Isn't that right?

Mr. Pryor. That's correct.

Chairman Hatch. And the Supreme Court agreed with you, didn't it?

Mr. Pryor. They did.

Chairman Hatch. So now it is kind of ironic for you to be criticized here before this august body for having won a case sustaining the Americans With Disabilities Act, an Act that I had a major role in, even though you--you know, well, let me just leave it at that. It seems just ironic that they would criticize you for that.

Now, in the Kimmel case, you and a bipartisan group of 23 other State Attorneys General argued that the Age Discrimination in Employment Act could not constitutionally authorize money damage suits against States in Federal court. You were making a federalism argument. Is that right?

Mr. Pryor. That's correct. General Butterworth from Florida and I presented that argument together.

Chairman Hatch. That is right. And what did the Supreme Court do?

Mr. Pryor. And the Supreme Court ruled in our favor.

Chairman Hatch. It agreed with you.

Mr. Pryor. Right.

Chairman Hatch. Now, it is interesting to me how some might try to say, as they did against Jeffrey Sutton, that you must be against the Americans With Disabilities Act, and yet you took a case up and sustained that Act.

Mr. Pryor. That's right, Senator.

Chairman Hatch. At least you took a case up where you won on that issue.

Mr. Pryor. That's right.

Chairman Hatch. In U.S. v. Morrison, where you, I guess, criticized Justice Souter for his dissent in that case, you argued that the civil remedies provision of the Violence Against Women Act could not withstand constitutional scrutiny. And, again, the Supreme Court agreed with you, didn't it?

Mr. Pryor. They did.

Chairman Hatch. Sure did. Well, now, Senator Biden and I might not like that decision, but they agreed with you.

Mr. Pryor. They did.

Chairman Hatch. Now, that doesn't mean you are against the Violence Against Women Act, does it?

Mr. Pryor. Oh, absolutely not. I support the Violence Against Women Act, and as a State Attorney General and as a member of the National Association of Attorneys General, I have joined resolutions of our organization urging Congress to reauthorize that law.

Chairman Hatch. Okay, but some of the criticisms from these outside groups have been in all of these cases, haven't they?

Mr. Pryor. They have. I abhor domestic violence. I abhor rape and sexual assault of women. I've dedicated a large part of my administration to fighting that criminal activity in the State of Alabama. I think we've been very successful with our efforts. We've promoted the work of shelters for battered women and children. We've strengthened our laws dealing with the possession of dangerous substances like GHB, which is a

dangerous date rape drug. We've passed important laws, like the domestic violence law, in a bipartisan package with my former Governor.

That's the core of who I am, but when it came time to uphold the Constitution and to present the argument that I did, I felt that it was important that the Court consider that argument and was pleased the Court agreed with it.

Chairman Hatch. And in many cases, you set aside your own personal beliefs in order to do your job and duty to sustain the statutory language.

Mr. Pryor. I would like nothing more than to have more remedies to go against those who would perpetrate violence against women, but it has to be done consistent with the Constitution.

Chairman Hatch. Now, in Solid Waste Agency of Northern Cook County, you argued that the Army Corps of Engineers did not have the authority under the Federal Clean Water Act to exercise Federal jurisdiction over entirely intrastate bodies of water--in this case, an abandoned gravel pit, if I recall it correctly.

Mr. Pryor. That's correct.

Chairman Hatch. And the Supreme Court again agreed with you, right?

Mr. Pryor. They did.

Chairman Hatch. So you are being criticized as being anti-environment because of the case that you won in the Supreme Court.

Mr. Pryor. Well, I don't perceive it as--

Chairman Hatch. By some of these outside groups, that is.

Mr. Pryor. And I don't perceive it as anti-environment at all. Making sure that there's the proper balance of Federal and State power allows State authorities and Federal authorities to know where the lines are so that State environmental protectors can do their jobs as well.

Chairman Hatch. But, again, there are some of these inside-the-Beltway groups that have criticized you even though you won the case in front of the Supreme Court.

Mr. Pryor. Well, I was pleased that they ruled in our favor. I thought it was the correct decision. I thought, again, that as a State Attorney General I had a perspective that would be helpful for the Court in resolving a very difficult controversy.

Chairman Hatch. You can see why I am upset and why I am not going to sit here and allow a well-qualified, fair-minded nominee like yourself to be categorized as ``an extremist,' which some of these outside groups that have tried to make you out to be. You know, you won these cases. These are cases--this is the law of the land.

Mr. Pryor. It is.

Chairman Hatch. The ones who are outside the mainstream are these people who are the critics, especially when the positions you have taken have been consistently supported by the Supreme Court majorities.

Now, these are some of the things that have bothered me a great deal about some of the unjustified criticisms that you have received, and that is one reason why I have taken the time to go through these.

Senator Sessions, I think you had a couple things you would like to say.

Senator Sessions. I do. Thank you, Mr. Chairman. Thank you for your leadership. And it amazes me how you are able to

master all the details of so many of these cases in so many of these hearings that we go through. And I know you are involved in a lot of other issues at this time, such as an asbestos bill and also the prescription drug legislation that is moving forward today. And I thank you for your leadership.

Chairman Hatch. Well, thank you, Senator. And so everybody understands, I am going to have to leave in a little while because of some of the other duties I have, and I am going to ask Senator Sessions to continue to chair this hearing until we finish it.

Senator Sessions. Attorney General Pryor, I think the thing to me that is distressing is that the groups that are making the complaints about you and some of our Members of the Senate don't understand the reality of life in Alabama today. They have a rather unfair 1960's image of the state. But we have a vigorous two-party system. We have a substantial number of very able and outspoken African-American leaders in the State. We talked earlier about the very strong support you have gotten from Dr. Joe Reed, who is a State representative and Chairman of the Alabama Democratic Conference for probably 30 years, the most powerful African-American political force in the State, also a member of the Democratic National Committee. I have talked with him over the years, and I know he knows about Federal courts and has always taken that as a real interest.

So we have some people from outside the State that might complain, but the people who really have been carrying the water for civil rights in Alabama are supporting you. Alvin Holmes is one of the most outspoken members of the legislature. I have gotten to know and admire him and watched him over the years. He would be here today were not the State legislature in session. His letter on your behalf says, ``From 1998 to 2000, Bill Pryor sided with the NAACP against a white Republican lawsuit that challenged the districts of the legislature. Pryor fought the case all the way to the United States Supreme Court and won a unanimous ruling in *Sinkfield v. Kelly* in 2000.''

The lawsuit was filed by Attorney Mark Montiel, who both you and I know, and a three-judge federal court ruled in favor of Judge Montiel. But despite that, you carried it forward.

Why were you willing to take the political heat, oppose a position of your friends, and take the position that Mr. Alvin Holmes did? What motivated you to do that?

Mr. Pryor. I took an oath of office when I became Attorney General. I swore to uphold the Constitution and laws of not only the United States but the State of Alabama, and I firmly believed in that lawsuit that the laws required the dismissal of the case, that Mr. Montiel's--Judge Montiel's, as you referred to him--his clients lacked standing to sue and to complain about those districts when they did not even reside in those districts. I thought the precedents of the Supreme Court were clear, and we took the case up on that basis, and that's how the Court ruled on that basis and agreed with our argument unanimously.

Senator Sessions. Now, there is a good government group in Alabama, and they concluded that one of the legal problems with reform in education was that teachers or junior college administrators were able to serve in the legislature. A large number of them in fact had key positions in the legislature, and there was a dispute about whether this was legal or not. And you were the Attorney General for the State of Alabama, and the group wanted you to join in that lawsuit, which had wide support within the State.

How did you analyze that tough call? And what decision did you make?

Mr. Pryor. I looked at the complaint that they filed in the circuit court and concluded that, in fact, the complaint was contrary to the law, that the teachers and junior college employees had a right to serve in the Alabama Legislature. And I took that position. I did my duty as Attorney General and defended the case and defended the practice that was complained about. And the Supreme Court of Alabama agreed with our argument.

Chairman Hatch. Senator Sessions, could I interrupt you?
Senator Sessions. Please.

Chairman Hatch. Diane, we are going to let you go because Senator Biden is unable to come, and he has agreed to end the hearing at this point for you. And what we are going to do is keep the record open for questions by close of business next Tuesday, so you will need to get your questions back because we will put you on, not tomorrow's markup but we will put you on next Thursday's markup. And I don't want you put over for a week at that time, and hopefully we can report you out next Thursday--not tomorrow but next Thursday.

So, with that, we will let you go, and your family, and we appreciate having you here and we are proud of you.

Now, General Pryor, I have been informed that there are no further requests for time for questions. I think that is probably because you have handled yourself very well. I am hopeful that that is so because I believe you have. I believe you not only answered every question in a fresh, honest, straightforward way, but you have done it in a very intelligent way in each situation. And I am hopeful that some of the threats that have been issued in the past, without having met you on the part of some of our Senators, will dissipate because they should. You have clearly been a very intelligent, very gifted witness here today. You are clearly a person of great conscience and clearly a person of great ability. You clearly have our support. And, frankly, I am hopeful that we will be able to get you through within a relatively short period of time so that you can go on the Eleventh Circuit Court of Appeals and do what you have been doing as an Attorney General in the sense that you are following the law. And you are intelligent enough to know how to decide cases where there is no law, which is all we can ask of judges, and to decently and honestly do so.

We have to set our personal preferences aside and do what is best for the law. And I have no doubt that you are going to do exactly that. And I believe with that, Senator, if you have no objection, I think we will formally close the hearing and wish you well. We are going to keep the record open for you to answer questions until--any member of this Committee can submit questions as of the close of business at 5 o'clock on next Tuesday. So that gives staff and members of the Committee until next Tuesday to submit written questions. We would suggest that you get your answers back immediately, as soon as you can, so that we can move your nomination.

We will put you on the next Thursday--not tomorrow but the next Thursday markup, like Diane as well. And under our Committee rules you may very well put over for another week. I hope not but you may be. That has kind of become the rule lately, and I would like to see us not always have to use that rule, and we can vote and support good people and get them out to the floor and get them voted on. But that would be about as

early as I think you are going to be able to have a vote on your nomination. But that will be good if we could get that all done.

So, with that--

Senator Sessions. Mr. Chairman, I would just offer for the record a strong editorial in support of Attorney General Pryor from the State's largest newspaper, the Birmingham News.

Chairman Hatch. Well, without objection, that will go in the record, and I want to compliment the State of Alabama for having such high-quality people working for them as you and those who associate with you and work with you. I think it is a real tribute to you that you have been able to handle some very, very difficult questions today with aplomb, with ability, with a keen sense of the law, and with a straightforward approach towards always sustaining the law of this land that you will be obligated to sustain. And that is all we can ask of you.

And, with that, we are grateful to have had you and your family here. I thought your two little daughters were terrific to last as long as they did without making any noise or difficulty. You tell them we are real proud of them, and your wife as well.

So, with that, we will recess the Committee until further notice.

[Whereupon, at 3:49 p.m., the Committee was adjourned.]

[The biographical information of Ms. Stuart, questions and answers, and submissions for the record follow.]

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