I have the honor of chairing the Water and Wildlife Subcommittee of the Environment and Public Works Committee. We are holding hearings, thanks to Senator BOXER, next month to start the accounting process, to make sure there is an independent, objective accounting as to the full damages that BP has caused and its related organization—economic damages and environmental damages. Then, going forward with drilling, we all understand mineral management is a critical part of our energy strategy. We cannot drill unless we have an independent agency issuing the permits. We have to make sure the public's interest is protected as new permits are granted.

Yes, there are areas where we don't drill today because they are environmentally too sensitive and there is not enough oil to make it worth the risk. I include in that the area I represent in the Mid-Atlantic, where there was a site they were going to move forward with drilling just 50 miles from Assateague Island, just 60 miles from the mouth of the Chesapeake. If we would have had a spill a fraction of the amount that occurred in the gulf, with the prevailing winds and currents, it would have a devastating impact on the Chesapeake Bay and the beaches of Maryland and also Delaware and Virginia. It is not worth the risk. The oil is not significant enough there for that.

Lastly, I hope we use this opportunity, as President Obama suggested, to move forward with a new energy policy for our country. We need to rely less on oil and more on alternative and renewable energy sources. I agree we need to do more with nuclear power. We need to consume less energy and improve the way we operate our buildings and the way we manage our transportation systems. We need to become energy independent, and we can do that. But we cannot do it through drilling. We can do it through a comprehensive energy policy so we can protect our national security and create jobs in America rather than exporting those jobs overseas and, yes, so that we can protect our environment from the type of disaster that has occurred in the Gulf of Mexico. I hope that is how we respond.

My trip to the gulf reinforced my efforts, and I hope the efforts of all my colleagues, to say that we can do things better. Let's clean up this mess, let's hold BP responsible, and let's develop an energy policy that will protect America's security, help our economy, and protect our environment.

With that, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF TANYA WALTON PRATT TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF INDIANA

NOMINATION OF BRIAN ANTHONY JACKSON TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF LOUISIANA

NOMINATION OF ELIZABETH ERNY FOOTE TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF LOUISIANA

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nominations, which the clerk will report.

The assistant legislative clerk read the nominations of Tanya Walton Pratt, of Indiana, to be United States District Judge for the Southern District of Indiana; Brian Anthony Jackson, of Louisiana, to be United States District Judge for the Middle District of Louisiana; Elizabeth Erny Foote, of Louisiana, to be United States District Judge for the Western District of Louisiana.

The PRESIDING OFFICER. Under the previous order, there will be 20 minutes for debate concurrently on the nominations, which will be equally divided and controlled between the Senator from Vermont, Mr. LEAHY, and the Senator from Alabama, Mr. SESSIONS, or their designees.

The Senator from Vermont is recognized.

Mr. LEAHY. I thank the distinguished Presiding Officer. Today, the Senate is being allowed to confirm only a few more of the 28 judicial nominations that have been reported by the Senate Judiciary Committee over the past several months, but which have been stalled by the Republican leadership. We have yet to be allowed to consider nominations reported last November. In addition to the three nominations being considered today, there are another 17 judicial nominations available that were all reported unanimously by the Judiciary Committee. There is no excuse and no reason for these months of delay. The Senate Republican leadership refuses to enter into time agreements on these nominations. This stalling and obstruction is unprecedented.

The Senate is well behind the pace I set for President Bush's judicial nominees in 2001 and 2002. By this date in President Bush's Presidency, the Senate had confirmed 57 of his judicial nominees. Despite the fact that President Obama began sending us judicial nominations 2 months earlier than did President Bush, the Senate has to date only confirmed 28 of his Federal circuit and district court nominees. After today's 3 confirmations, the comparison will stand at 31 to 57, which is barely half of what we were able to achieve by this date in 2002. Another useful comparison is that in 2002, the second year of the Bush administration, we confirmed 72 Federal circuit and district judges. In this second year of the Obama administration, we confirmed 16 so far. In fact, our Senate Republicans have allowed so few nominees to be considered that in 1 hour today, the Senate is going to have three confirmations. That will increase our judicial confirmations for the year by almost 20 percent. Meanwhile, Federal judicial vacancies around the country hover around 100.

This is the second year of the Obama administration. Although vacancies have been at historic highs, Senate Republicans last year refused to move forward on judicial nominees. The Senate confirmed the fewest in 50 years. The Senate Republican leadership allowed only 12 Federal circuit and district court nominees to be considered and confirmed despite the availability of many more for final action. They have continued their obstruction throughout this year. Only 16 Federal circuit and district court nominees have been confirmed so far this year, although another 28 have been reported favorably by the Judiciary Committee.

About a week or so ago, three distinguished women were confirmed by virtually unanimous votes. These nominees were reported unanimously by the Senate Judiciary Committee back in March; all Democrats and Republicans voted for them. These three distinguished women put their lives on hold and were still held up for months before they were allowed to be confirmed.

To put these delays into historical perspective, consider this: In 1982, the second year of the Reagan administration, the Senate confirmed 47 judges. In 1990, the second year of the George H.W. Bush administration, the Senate confirmed 55 judges. In 1994, the second year of the Clinton administration, the Senate confirmed 99 judges. In 2002, the second year of the George W. Bush administration, the Senate confirmed 72 judges. The only year comparable to this year's record-setting low total of 16 was 1996, when the Republican Senate majority refused to consider President Clinton's judicial nominees and only 17 were confirmed all session.

Senate Democrats moved forward with judicial nominees whether the President was Democratic, as in 1994, or Republican, as in 1982, 1990, and 2002, and whether we were in the Senate majority, as we were in 1990, 1994, and 2002, or in the Senate minority as in 1982. Senate Republicans by contrast have shown an unwillingness to consider judicial nominees of Democratic Presidents. They did in 1996, 2009, and 2010.

Over the last recess, I sent a letter to Senator MCCONNELL and to the majority leader concerning these matters. In that letter, I urged, as I have since last December, the Senate to schedule votes on these nominations without further obstruction or delay. I called on the Republican leadership to work with the majority leader to schedule immediate votes on consensus nominations—many, like those finally being considered today, I expect will be confirmed unanimously—and consent to time agreements on those on which debate is requested. As I said in the letter, if there are judicial nominations that Republicans truly wish to filibuster—after arguing during the Bush administration that such action would be unconstitutional and wrong—then they should so indicate to allow the majority leader to seek cloture to end the filibuster.

The three nominees being considered today were all reported unanimously by the Judiciary Committee way back in March. They could have been confirmed, they should have been confirmed long before now.

They are supported by their home State Senators. I note that in all three cases, that means both a Democratic Senator and a Republican Senator.

Judge Tanya Walton Pratt has been nominated to serve as a Federal district court judge in the Southern District of Indiana. If confirmed, Judge Pratt will be the first African-American Federal judge in Indiana history. The Judiciary Committee reported her nomination favorably without dissent on March 4, more than 3 months ago. Judge Pratt is currently a Marion County Superior Court judge where she has served since 1997. The substantial majority of the ABA rated Judge Pratt ''well qualified'' to serve on the U.S. District Court Southern District of Indiana. She has 17 years of judicial experience and has the support of both home State Senators, Republican Senator LUGAR and Democratic Senator BAYH.

Brian Jackson's nomination to the U.S. District Court for the Middle District of Louisiana was reported by voice vote by the Judiciary Committee on March 18, nearly 3 months ago, and has the support of both home State Senators, Democratic Senator LANDRIEU and Republican Senator VITTER. The ABA Standing Committee on the Federal Judiciary unanimously rated Mr. Jackson well qualified to be a U.S. District Judge for the Middle District of Louisiana, its highest possible rating. If confirmed, Mr. Jackson will be the second African-American judge to serve on the district court in the Middle District of Louisiana.

The nomination of Elizabeth Erny Foote to a seat on the United States District Court for the Western District of Louisiana also has the support of Senator LANDRIEU and Senator VITTER. Ms. Foote has worked for the past 30 years in private practice at The Smith Foote Law Firm in Alexandria, LA, after clerking for Judge William Culpepper of the Louisiana Third Circuit Court of Appeals. When she began her legal practice in Alexandria, she was only the fourth woman ever to do so. Her nomination was reported favorably by the Judiciary Committee by voice vote with no dissent on March 18 and has been awaiting Senate action ever since.

I congratulate the three of them and predict all three will be confirmed.

Mr. President, I ask unanimous consent that I be able to use my remaining time as in morning business.

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

NOMINATION OF ELENA KAGAN

Mr. LEAHY. Mr. President, our Nation recently celebrated Memorial Day, honoring the sacrifice and the service of our brave men and women in uniform. Yesterday was Flag Day, and before too long we will celebrate the Fourth of July.

I wish to speak about Solicitor General Elena Kagan's nomination to the Supreme Court. I thought it might be good to set the record straight about some of the charges being leveled at President Obama's nominee to the Supreme Court, Solicitor General Elena Kagan. Those intent on opposing this nomination—just as they seem to undercut the President no matter what he does—have searched high and low to find a basis to oppose this intelligent and accomplished nominee.

I understand the partisanship, but I disagree with it. A Supreme Court nominee is there for all the country, not for one political party or the other, and most nominees will serve long after the Senators who voted for the nominee are gone.

I do not think it is good for the country to make it this partisan. After the American people elected President Obama, leaders of the Republicans urged massive resistance from the outset. They have talked about wanting him to fail and have done everything they could to undermine his efforts to rescue our economy from the worst downturn since the Great Depression, to reform health care for all Americans, to lower taxes for Americans making less than $250,000 a year and to reform Wall Street so that we never again suffer the kind of greed and profiteering that put our economy at risk.

When the Senator from Alabama became the ranking Republican on the Senate Judiciary Committee last year, he lamented the way nominees were treated. He said:

> What I found was that charges come flying in from right and left that are unsupported and false. It's very, very difficult for a nominee to push back. So I think we have a high responsibility to base any criticisms that we have on a fair and honest statement of the facts and that nominees should not be subjected to distortions of their record.

I agree with that statement and very much regret the distortion of Dean Elena Kagan's record as dean of the Harvard Law School. No one should have attacked her unfairly for following the law while seeking to honor Harvard's nondiscrimination policy. No one should be misrepresenting her views and smearing her character or questioning her commitment to our men and women in uniform. Yet that is what has been happening repeatedly since her nomination.

In fact, some of these same smears were considered last year in connection with her nomination to be Solicitor General. She received a bipartisan vote of approval then. I was hoping that would put it to rest. Instead, some continue to accuse her of an anti-military bias and violating the law. They say that she ''barred the U.S. military from coming on the Harvard Law School campus,'' that she ''kicked the military off Harvard's campus,'' that she ''disregard[ed] the law . . . in order to obstruct military recruitment during a time of war,'' that she was punishing and taking actions against our military men and women, that she condemned the U.S. military, that she acted in a way that was ''not lawful,'' and that she ''violated the law.'' That is incorrect. I would have thought, and certainly had hoped, that since the facts are known, these misstatements would not be repeated. Regrettably, this has not been the case.

The unfair attacks that have been leveled at this nominee are all the more reason for her to have a chance to respond. Anyone who has a sense of fairness would not be raising questions and contending they still have concerns while at the same time seeking to delay her an opportunity to respond. Those who have been all too willing to attack this nominee during the last four weeks, and who purport to know her thoughts and her heart, should not be seeking to delay her opportunity to set the record straight and defend her character and good name. Those who unfairly characterize her as anti-military and, in effect, anti-American and unpatriotic, owe her the opportunity to respond. And she will this month when we have our hearings.

Let's be clear on the facts. Dean Kagan did not ban the military from Harvard's campus. Harvard's students always had access to military recruiters. The facts are that military recruitment remained steady throughout Dean Kagan's tenure, it even increased during the brief time that the military was restricted from using Harvard's Office of Career Services, OCS. Unfortunately, these facts will not prevent some critics from claiming that she kicked military recruiters off campus when she did no such thing. This is not debatable.

What is debatable is the wisdom of the ''Don't Ask, Don't Tell'' policy. In my opinion, the ''Don't Ask Don't Tell'' policy forces good and capable people to choose between compromising their integrity and being barred from military service. At a time when we need a strong and skilled military more than ever, our existing policy

makes the Armed Forces less effective. As Admiral Mullen, Chairman of the Joint Chiefs of Staff, recently said, ''allowing gays and lesbians to serve openly would be the right thing to do.'' I agree. The current policy needlessly robs our Armed Services of the talents and commitment of countless people, and it should be changed. Every member of our military should be judged solely on his or her contribution to the mission, without regard to sexual orientation. Rejecting the discrimination that results from the ''Don't Ask Don't Tell'' policy is long overdue.

Does this statement here on the floor of the Senate make me anti-military? Of course not. Does Admiral Mullen's position on the policy make him anti-military? Of course not. He is a distinguished four-star admiral. Did Dean Kagan's comments on the policy render her anti-military? Not on your life. Anyone at all familiar with her record knows better. Veterans from Harvard Law School have come to her defense. They know and recall her support of them and their service to the country. They know of the dinners and meetings she held with veterans.

I am confident that a fair reading of her record will show she was supportive of our military, our veterans, and Harvard law students who wished to serve in the military. So let's stop the misstatements and the overheated rhetoric. Let's show her the respect she deserves.

In her speech at West Point 3 years ago, Dean Kagan spoke of being in awe of the courage and the dedication of those who were preparing for the military. She went on to speak directly to the issue, saying:

> I have been grieved in recent years to find your world and mine, the U.S. military and U.S. law schools at odds, indeed, facing each other in court on one issue. That issue is the military's ''don't ask, don't tell'' policy. Law schools, including mine, believe that employment opportunities should extend to all their students, regardless of their race or sex or sexual orientation. And I personally believe that the exclusion of gays and lesbians from the military is both unjust and unwise. I wish devoutly that these Americans could join this noblest of all professions and serve their country in this most important of all ways. But I would regret very much if anyone thought that the disagreement between American law schools and the U.S. military extended beyond this single issue. It does not. And I would regret still more if that disagreement created any broader chasm between law schools and the military. It must not because of what we, like all Americans, owe to you.

Hers were not the words of someone who is anti-military. There should be no place in America for discrimination. We ask our troops to protect freedom in places around the globe. It is time to protect the basic freedoms and equal rights at home.

I commend the House of Representatives for passing legislation just last month to end this discriminatory policy, and the Senate Armed Services Committee for doing so, as well. Congress is moving forward to adopt the policy of nondiscrimination that Harvard Law School had adopted and that Dean Kagan supported. I have long supported similar legislation in the Senate. I believe this is an important issue worthy of an up-or-down vote by the Senate. Regrettably, like so many steps forward in legislation to protect equality throughout our history, the repeal of this discriminatory policy will likely be filibustered by a recalcitrant minority.

I also find it ironic that those Republican Senators most critical of the nominee have filibustered and voted against funding for our troops and against services for our veterans. When the American people hear a Republican Senator criticizing Elena Kagan's respect and support for the military, they might ask whether that Senator filibustered the National Defense Authorization Act for fiscal year 2010. Led by the Republican leadership, more than 30 Republican Senators did. Even after their filibuster was defeated, most Republican Senators proceeded to vote against the bill and the authorities it provided our military. Likewise, when the Senate considered the consolidated appropriations bill to provide funding for veterans and military construction, again led by the Senate Republican leadership, more than 30 Republican Senators sought to filibuster and stall that funding. Even when their filibuster was broken, more than 30 Republican Senators voted against that bill to provide the necessary funding for services to our veterans.

Also obscured by the blinders worn by her critics are the following facts: Harvard Law School adopted its nondiscrimination policy in 1979, long before Elena Kagan ever attended Harvard Law School as a student let alone before she became an acting professor and ultimately its Dean. Like almost every other law school in America, Harvard requires employers to sign a statement that they do not discriminate. Only after an employer confirms its nondiscrimination employment policy and hiring practice can the employer use the logistical assistance of the Harvard Law School's Office of Career Services. This office merely facilitates recruitment by scheduling interviews and distributing student resumes to employers. It does not provide physical space on campus for employers to conduct interviews. In fact, private law firms typically conduct interviews off campus.

In 1994, Congress adopted the ''Don't Ask, Don't Tell'' policy as part of the National Defense Authorization Act. This law prohibited gays and lesbians from serving openly in our military. Two years later, in 1996, Congress passed the so-called ''Solomon Amendment'' as part of the National Defense Authorization Act. This statute allows Federal funds to be denied to universities that have ''a policy or practice'' that ''prohibits, or in effect prevents'' the military's access to students on campuses for purposes of military recruiting. In order to deny Federal funds under the Solomon amendment, the Secretary of Defense must determine that a university has such a policy or practice, ''transmit a notice [of such determination] . . . to Congress'' and ''publish in the Federal Register a notice of the determination and the effect of the determination on the eligibility of the [university] for contracts and grants.''

The Solomon amendment did not directly prohibit a law school from applying its nondiscrimination policy to military recruiters. It did not make such an action a crime. The Solomon amendment gave institutions a choice between satisfying the Secretary of Defense's requirements on military recruitment or risk foregoing certain Federal funds. Senator SESSIONS acknowledged this very point when he said last year, ''well, let me say, that amendment didn't order any university to admit anybody or to allow anybody to come on campus.'' In fact, it is not a criminal statute but an attempt to use the threat of a Federal funding cutoff as leverage.

In 1998, the Air Force determined that Harvard's alternative arrangement for military recruitment facilitated by the HLS Veterans association, in lieu of OCS, complied with the Solomon amendment. In 2002, under the Bush administration, the Air Force reversed course and enter into a new and contradictory determination that the arrangement no longer satisfied the Solomon amendment. It threatened Dean Robert Clark, a Republican and Dean Kagan's predecessor, with a cutoff of millions of dollars. In response, Dean Clark ''regrettably'' allowed military recruiters to use OCS while continuing to emphasize his strong opposition to ''Don't Ask, Don't Tell.''

In 2003, Solicitor General Kagan became the first woman to serve as dean of the Harvard Law School when she succeeded Dean Clark. For the first few years in this position she maintained the law school's nondiscrimination policy that all employers, with the sole exception of the military, had to follow to use the Office of Career Services. She continued to allow the military access to OCS, despite the fact that it could not sign a nondiscrimination statement. However, she also repeatedly voiced her opposition to the ''Don't Ask, Don't Tell'' policy, as Dean Clark had, calling it ''a moral injustice of the first order.''

Also in 2003, the Forum for Academic and Institutional Rights, Inc., FAIR, an association of law schools, began a lawsuit challenging the Solomon amendment and seeking a preliminary injunction enjoining its enforcement. On November 5, 2003, the district court denied the injunction and FAIR appealed to the court of appeals for the Third Circuit. On January 12, 2004, in her capacity as a law professor, Dean Kagan joined more than 50 other Harvard law professors to support an amicus brief backing FAIR's appeal to the

Third Circuit. Unlike FAIR, which argued that the Solomon amendment violated the first amendment, the brief she joined made the more modest argument that the Department of Defense had misinterpreted the law. The amicus brief argued: (1) that the Solomon amendment did not apply to generally applicable nondiscrimination policies, like Harvard's, that did not specifically target the military; and (2) it only required that schools give military recruiters ''entry'' and ''access,'' not necessarily equal access.

Noting the confusion surrounding the legal requirements of eligibility for Federal funding under the Solomon amendment, Congress amended the statute in October, 2004. The effect of those changes was not settled until the Supreme Court decided the case in 2006.

On November 29, 2004, the Third Circuit concluded, 2–1, in an opinion joined by Reagan appointee Judge Walter Stapleton, that the ''Solomon Amendment violates the First Amendment by impeding the law schools' rights of expressive association and by compelling them to assist in the expressive act of recruiting.'' The Third Circuit's opinion did not address the Harvard law professors' amicus brief.

From the beginning of her tenure until November 30, 2004, Dean Kagan had allowed the military to use OCS. Only after the Third Circuit concluded that the Solomon amendment was unconstitutional did Dean Kagan return to Harvard's prior policy of excluding the military from OCS. However, like her predecessors, Dean Kagan continued to allow military recruiters entry to the campus and facilitated interviews on campus through the HLS Veterans Association. This special arrangement was in place only for a few months in 2005.

In May 2005, the Supreme Court agreed to review the Third Circuit's decision. During that summer, while the government appeal was pending, the Pentagon informed Harvard University that its Federal funds were in jeopardy if it continued to restrict military recruiters from OCS services. The Pentagon never notified Congress nor published in the Federal Register that Harvard was not compliant with the Solomon amendment.

On September 20, 2005, Dean Kagan reinstated the military's exception from Harvard's nondiscrimination policy and again granted it access to OCS. Dean Kagan's decision to lift the military's restriction from OCS was long before the Supreme Court held oral argument on December 6, 2005, or decided the case.

The day after reinstating the military's use of OCS, Dean Kagan was one of 40 Harvard law professors to sign onto an amicus brief to the Supreme Court. As they did before the Third Circuit, the Harvard law professors argued that the Pentagon had misinterpreted the Solomon amendment and that properly read, the amendment ''rules out policies that target military recruiters for disfavored treatment, but it does not touch evenhanded anti-discrimination rules that incidentally affect the military.'' The Supreme Court rejected their argument. On March 6, 2006, the Supreme Court also reversed the Third Circuit and upheld the constitutionality of the Solomon amendment.

Let's be clear. She did not break the law. She did not violate the law. She did her best to follow the law, even a law that led to discriminatory consequences with which she strongly disagreed. She engaged in legal action and participated in a legal challenge to the interpretation and application of the law by the Bush administration and reversed an earlier interpretation by the Air Force. Yet this legal action is what some now claim amounted to illegal conduct. That is incorrect.

Recently there was an op-ed in the Washington Post by Walter Dellinger dated May 14, 2010, that discusses this issue. Mr. President, I ask unanimous consent that it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, May 14, 2010]

HOW I KNOW KAGAN ISN'T ANTI-MILITARY

(By Walter Dellinger)

The nomination of an anti-military leftist to the Supreme Court would make for a riveting story. But in the case of Elena Kagan, it's just not true.

When Kagan became dean of Harvard Law School in 2003, Harvard, like virtually every other law school, had a long-standing policy that the assistance of its placement office was available only to employers that would interview and consider hiring any student. Employers that insisted on ''pre-screening'' students for high grades or other criteria were not eligible for the school's placement assistance, nor were recruiters who declined to hire students on the basis of race, sex, religion or sexual orientation. The placement office, in other words, is there to serve the career aspirations of all students.

Under Kagan's predecessor at Harvard, the highly respected corporate scholar Robert C. Clark, military recruiters acknowledged that they were not able to comply with the school's generally applicable anti-discrimination policy and could not use the placement office's services. In 2002, the Bush administration asserted that a federal provision called the Solomon Amendment required the law school to grant military recruiters an exemption from its anti-discrimination policy. Faced with a threatened cutoff of federal funds to the whole university, Clark announced that the placement office would begin assisting military recruiters. When Kagan became dean in 2003, she continued this practice.

In November 2003, the U.S. Court of Appeals for the 3rd Circuit held that the Solomon Amendment was unconstitutional, which meant there was no longer an enforceable, federally mandated exception to the law school's anti-discrimination policy. Kagan announced that military recruiters were once again ineligible for assistance from the school's placement office. In the fall of 2004, after the Justice Department challenged the 3rd Circuit decision and the Supreme Court agreed to review the lower court's ruling, Kagan announced that the school would once again comply with the government's demand for placement-office support for military recruiters.

On the basis of this unremarkable application of an established anti-discrimination policy, Kagan has been accused of harboring an ''anti-military'' animus. Some critics have falsely equated Harvard's anti-discrimination policy with the anti-military and anti-ROTC policies favored by some campus leftists in the 1970s. Those policies, however, were categorically different: They were directed at the military. In contrast, the anti-discrimination policies applied before, during and after Kagan's tenure as dean were in no way intended to single out the military but were applied in an evenhanded way to all prospective employers.

It was also far from clear that Harvard even violated the Solomon Amendment. That law withheld federal funding from any school that has a policy of denying military recruiters access to the campus ''in a manner equal in quality and scope'' to other recruiters. Neither the text of the law nor its history (targeting anti-ROTC and anti-military rules) compelled the conclusion that the law was violated by an anti-discrimination policy applicable to all recruiters.

When some groups challenged the constitutionality of the Solomon Amendment, Kagan joined a majority of her faculty colleagues in a friend-of-the-court brief that I drafted as their counsel, urging the court to exercise judicial restraint and avoid ruling on the constitutional issue by simply holding that it was not clear that Congress intended to preclude the evenhanded application of anti-discrimination policies. There were no dissents from the chief justice's opinion dismissing this statutory argument. We knew that it would be a difficult sell for the court because the actual party to the case wanted to seek a constitutional ruling, a course we thought imprudent and unwise. As the oral argument showed, a number of justices thought the Harvard brief raised a very serious question. For today's debate, the key point about the brief that Kagan joined is that it urged a prudent course, arguing that ''sound principles of judicial restraint counsel that this Court should resolve the question of statutory coverage before turning, only if necessary, to constitutionality.''

No action Kagan took as dean remotely suggests anything but the greatest respect for the military. Even when the law school's anti-discrimination policy effectively precluded placement-office assistance to military recruiters, she permitted student veteran groups to use law-school premises to facilitate military recruitment of Harvard students. At no point were military recruiters ever barred from the campus or banned from recruiting Harvard law students. And military veterans who entered Harvard Law School when Kagan was dean have praised her efforts to ensure they were welcomed and respected for their service.

Separately, it is true that as dean, Kagan expressed strong personal opposition to the ''don't ask, don't tell'' restrictions on service by gays and lesbians in the military. But that is not an anti-military position. Rather, it is the position now shared by many senior military leaders and the commander in chief.

Mr. LEAHY. Finally, I find it ironic: Here is this very pro-military nominee who is being criticized as somehow being anti-military, being criticized by some of the same Republican Senators who have filibustered and voted against funding for our troops and against services for our veterans. I think most people see through that.

Mr. President, we are required to vote at what time?

The PRESIDING OFFICER. The Senate is voting at about 11:50 a.m. when all time is expired.

Mr. BAYH. Mr. President, I rise today to speak in favor of the nomination of Judge Tanya Walton Pratt. I joined together with Senator LUGAR to recommend Judge Walton Pratt because I know firsthand that she is a highly capable lawyer who understands the limited role of the Federal judiciary.

Before I speak to Judge Walton Pratt's qualifications, I would like to comment briefly on the state of the judicial confirmation process generally. In my view, this process has too often been consumed by ideological conflict and partisan acrimony. This is not, I believe, how the Framers intended us to exercise our responsibility to advise and consent.

During the last Congress, I was proud to work with Senator LUGAR to recommend Judge John Tinder as a bipartisan, consensus nominee for the Seventh Circuit Court of Appeals. Judge Tinder was nominated by President Bush and unanimously confirmed by the U.S. Senate by a vote of 93–0. It was my hope that Judge Tinder's confirmation would serve as an example of the benefits of nominating qualified, nonideological jurists to the Federal bench.

In selecting Tanya Walton Pratt, President Obama has demonstrated that he also appreciates the benefits of this approach. I was proud to once again join with Senator LUGAR to recommend her to the President, and I hope that going forward other Senators will adopt what I call the ''Hoosier approach'' of working across party lines to select consensus nominees.

I would also like to personally thank Senator LUGAR for his extraordinary leadership and for the consultative and cooperative approach he has taken to judicial nominations. During my time in Congress, it has been my great privilege to forge a close working relationship with Senator LUGAR across many issues. This has been especially true on the issue of nominations—when a judicial nominee from Indiana comes before the Senate, our colleagues can be confident that the name is being put forward with bipartisan support, regardless of which political party is in the White House or controls a majority in the U.S. Senate.

I should also note that Judge Walton Pratt is a historic nominee. If confirmed, she will be our State's first African-American Federal judge. While this day is long overdue, I hope that her confirmation will inspire Hoosier children of all backgrounds to pursue their dreams and show them that, in America, anything is possible if you study hard and play by the rules.

On the merits, Tanya Walton Pratt is an accomplished jurist who is well-qualified for a lifetime appointment to the Federal judiciary. She has extensive trial experience, having served as, a judge on the Marion Superior Court since 1997. For much of this time, she served in the criminal division, handling major felonies and presiding over dozens of jury trials per year. More recently, she has played a critical role in the probate division, presiding over adoption cases and placing children in loving homes.

During this time, Judge Walton Pratt has been recognized as a leader among Indiana jurists. She has served as chair of the Marion County Bar Association and on the executive committee of the Marion Superior Court System. Among other accolades, she has been honored as ''Outstanding Judge of the Year'' by the Indiana Coalition Against Sexual Assault.

Judge Walton Pratt has shown that she is deserving of the public trust. She has demonstrated the highest ethical standards and a firm commitment to applying our country's laws fairly and faithfully. She understands that the appropriate role for a judge is to interpret our laws, not to write them.

Tanya Walton Pratt is also a recognized leader in our community. She has also been honored with numerous awards including the Career Achievement Award from the Archdiocese of Indianapolis and the Key to the City of Muncie.

I can say with confidence that Tanya Walton Pratt is the embodiment of good judicial temperament, intellect, and evenhandedness. If confirmed, she will be a superb and historic addition to the Federal bench. I am pleased to give her my highest recommendation.

I urge my colleagues to join me—and Senator LUGAR—in supporting this extremely well-qualified and deserving nominee.

Ms. LANDRIEU. Mr. President, Brian Jackson and Elizabeth Erny Foote are outstanding candidates for judgeships in Louisiana's Middle and Western Districts. I was honored to recommend Brian Jackson and Beth Foote to the President last year.

These two well-qualified, noncontroversial nominees are sorely needed in the districts they have been nominated to serve, where courts are facing unacceptable backlogs and sitting judges are overwhelmed with unmanageable caseloads. Ms. Foote and Mr. Jackson have been eager for this body to let them get to work serving justice to the people of Louisiana since they were reported by the Judiciary Committee on March 18. I am relieved to see that their long journey toward confirmation is drawing to a close.

Brian Jackson is an exemplary public servant with a distinguished record as an attorney and prosecutor. He has extensive Federal experience, having worked for the Department of Justice for 16 years. From 1992 to 2002, he served as first assistant U.S. attorney and U.S. Attorney for the Middle District of Louisiana. As the first assistant U.S. attorney, he managed or litigated a variety of civil and criminal cases. Because of his leadership, he was selected in 2001 to be the interim U.S. attorney for the Middle District pending the confirmation of President Bush's nominee.

Prior to becoming an assistant U.S. attorney, he served as an associate deputy attorney general in Washington, DC. In this role, he was as a principal adviser to the Attorney General and Deputy Attorney General on civil rights and criminal justice policies. In 1992 he was honored as the recipient of the Attorney General's Award for Equal Employment Opportunity for his leadership in this area.

Since 2002, he has distinguished himself in private practice in the firm Liskow and Lewis, where he is a shareholder. He is currently chair of the firm's government investigations and white collar crime groups and he is on Liskow and Lewis' board of directors and is the immediate past chair of the firm's diversity committee.

In addition to this distinguished career in private practice, Brian has also been extremely active in public service. He has graciously served on the boards of several nonprofit organizations, including Catholic Charities of New Orleans, The Pro Bono Project, Teach for America for the South Louisiana Region, and The Metropolitan Crime Commission, for which he served as vice chair. Additionally, he has given back to the legal community by serving on the board of directors for the New Orleans Chapter of the Federal Bar Association.

Finally, Brian's impressive academic credentials have also prepared him to serve Louisiana's Middle District. He received his bachelor of science, Xavier University in 1982. He received his J.D. from the Southern University School of Law in 1985 where he served as editor-in-chief of the Southern University Law Review and his master's of law with concentration in international and comparative law from Georgetown University Law Center in 2000.

With these credentials, firm roots Louisiana's Middle District, and a long and impressive career in the U.S. Department of Justice, Brian Jackson is truly ready to hit the ground running as district court judge.

Elizabeth Erny Foote is an experienced attorney with 30 years of experience in Federal litigation. She is a partner in the Smith Foote Law firm in Alexandria, LA, where she primarily practices civil litigation. She has had extensive experience in Federal court throughout her career, having litigated in all three Federal Court Districts of Louisiana, in addition to the Fifth Circuit Court of Appeal.

In addition to this outstanding private practice, Beth has proven her dedication to the legal profession through her service to the Louisiana State Bar Association.

In addition to this outstanding private practice, Beth has proven her dedication to the legal profession through her service to the Louisiana State Bar Association, with which she has been actively involved since 1985

and is currently the immediate past president. In 1994, she became the first woman to serve as an officer in the Louisiana State Bar association when she was elected treasurer. The same year she received the President's Award for outstanding service.

Beth is truly a respected civic leader throughout Louisiana. In addition to her contributions to the legal field, she has demonstrated her commitment to justice and equality through a number of nonprofits and government initiatives. Her prestigious awards and honors include: the 2004 Alexandria Human Relations Commission Award for her efforts in promoting better understanding and quality of life in her community, the 2004 Louisiana Heroine Award presented by the Louisiana Association of Nonprofit Associations, the 2000 Central Louisiana Woman of the Century Award, and the 1996 Central Louisiana Women Business Owners' ''Business Owner Woman of Excellence'' Award.

Finally, Beth's impressive academic credentials have prepared her to serve Louisiana's Western District. She received a bachelor of arts from Louisiana State University in 1974, a master's of arts from Duke University in 1975, and a J.D. from Louisiana State University Law School in 1978. She has also been an adjunct professor at the Paul M. Hebert Law Center at LSU, teaching courses in appellate advocacy.

I believe Beth's principled commitment to the field of law, her impressive 30-year career as an attorney, her extensive Federal litigation experience, and her esteemed statewide reputation make her an excellent nominee for judge for Louisiana's Western District.

The time to confirm these two noncontroversial nominees is far overdue. I urge my colleagues to confirm these nominees without further delay so that they may begin the important work the people of Louisiana need them to do.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, I ask unanimous consent that all time be yielded back.

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

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

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Tanya Walton Pratt, of Indiana, to be United States District Judge for the Southern District of Indiana?

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from West Virginia (Mr. BYRD), and the Senator from Missouri (Mrs. MCCASKILL) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Florida (Mr. LEMIEUX) and the Senator from Kansas (Mr. ROBERTS).

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

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 185 Ex.]

YEAS—95

Akaka	Ensign	Menendez
Alexander	Enzi	Merkley
Barrasso	Feingold	Mikulski
Baucus	Feinstein	Murkowski
Bayh	Franken	Murray
Begich	Gillibrand	Nelson (NE)
Bennet	Graham	Nelson (FL)
Bennett	Grassley	Pryor
Bingaman	Gregg	Reed
Bond	Hagan	Reid
Brown (MA)	Harkin	Risch
Brown (OH)	Hatch	Rockefeller
Brownback	Hutchison	Sanders
Bunning	Inhofe	Schumer
Burr	Inouye	Sessions
Burris	Isakson	Shaheen
Cantwell	Johanns	Shelby
Cardin	Johnson	Snowe
Carper	Kaufman	Specter
Casey	Kerry	Stabenow
Chambliss	Klobuchar	Tester
Coburn	Kohl	Thune
Cochran	Kyl	Udall (CO)
Collins	Landrieu	Udall (NM)
Conrad	Lautenberg	Vitter
Corker	Leahy	Voinovich
Cornyn	Levin	Warner
Crapo	Lieberman	Webb
DeMint	Lincoln	Whitehouse
Dodd	Lugar	Wicker
Dorgan	McCain	Wyden
Durbin	McConnell	

NOT VOTING—5

Boxer	LeMieux	Roberts
Byrd	McCaskill	

The nomination was confirmed.

The PRESIDING OFFICER. The Senator from Nevada, the majority leader, is recognized.

TRIBUTE TO SENATOR DAN INOUYE

Mr. REID. Mr. President, there are not many lists on which Senator DAN INOUYE ranks second. He was Hawaii's first Congressman, and he now is the longest serving Senator from that great State. He is the first Japanese American to serve in the House and first Japanese American to serve in the Senate. He was the first chairman of the Senate Select Committee on Intelligence. He has cast more votes than any other Senator west of the Mississippi. We have all heard the stories about his bravery, both legislatively and on the fields of war where, because of his gallantry, he was awarded the Congressional Medal of Honor.

But there is one place where he comes in No. 2, though it is a remarkable accomplishment nonetheless. This past Friday, Senator INOUYE became the second longest serving U.S. Senator in this Nation's history, passing Senator Strom Thurmond of South Carolina. Every day since Hawaii has been a State, Senator INOUYE has proudly represented its citizens in Congress. Every day since January 3, 1963, 46½ years ago, Hawaiians have been proud to call DAN INOUYE their Senator. Every day I have had the privilege of knowing him and serving with him, I have been proud to call DAN INOUYE my friend.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, last October, the Senate had an opportunity to call attention to one of our colleagues who so rarely calls attention to himself when Senator DANIEL INOUYE became the third longest-serving Senator in U.S. history. This past Friday, Senator INOUYE reached an even loftier milestone when he surpassed Strom Thurmond to become the second-longest serving Senator in history. So we honor him for this remarkable feat of longevity.

Senator INOUYE's dedication to the people of Hawaii is legendary, and so is his story. He was only 17 when he heard the sirens over Honolulu and saw the gray planes overhead. But he was old enough to know that life would never be the same.

Sure enough, a few years later, he would be lying in a hospital bed at Percy Jones Army hospital recovering from wounds sustained in a grenade attack in the mountains of northern Italy. It was there that he first met his future colleague, Bob Dole, who evidently mentioned that after the war he planned to go to Congress.

As it turned out, Senator INOUYE beat him by a few years, and he has survived him here in the Senate by many more.

For his heroic actions in World War II, Senator INOUYE received our Nation's most prestigious award for military valor, and he has earned the admiration of all Americans. DAN INOUYE became a member of one of the most decorated U.S. military units in American history and one of its longest-serving, and finest, Senators. So, Senator, thank you for your service, and congratulations on another remarkable achievement.

(Applause, Senators rising.)

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, I rise to congratulate our senior Senator, my good friend and longtime colleague, Senator DAN INOUYE, on his impressive milestone.

On Friday, Senator INOUYE became the second-longest-serving Senator in the history of this storied institution.

DAN was sworn into the Senate in 1963, just a few years after Hawaii became a State. At the time, he was the first and only Japanese American to step foot in this room as a Member of this prestigious body. Today, he is the chairman of the Appropriations Committee. DAN INOUYE did not just break barriers, he shattered them.