childcare conference, and those two appropriations bills, military and legislative branch, if we are going to be able to get to those this week?

Mr. FRIST. Mr. President, all four issues are issues important to the Senate. Progress is being made on all of them. With regard to Morocco, we will need to check with the chairman and the ranking member to see what their intentions are, which I will do and get back with the assistant Democratic leader.

The conference report on the child credit, again I very much would like to see action on it over the course of the week. I know there was discussion over the last several days and over the weekend itself. I will be able to update him once people return to town in the course of the day.

On the appropriations bills, we will see what progress can be made before we leave. It would be nice to be able to make progress on those appropriations bills. We will need to aggressively consider all of these appropriations bills, either now or in September, and finish before we complete the session.

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

NOMINATION OF WILLIAM GERRY MYERS III TO BE A U.S. CIRCUIT JUDGE FOR THE NINTH CIRCUIT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the nomination of William Gerry Myers III to be a circuit judge.

The assistant legislative clerk read the nomination of William Gerry Myers III, of Idaho, to be U.S. Circuit Judge for the Ninth Circuit.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 5 p.m. shall be equally divided for debate only between the chairman and ranking member or their designees.

The Senator from Utah.

Mr. HATCH. Mr. President, I yield such time as he needs to the distinguished Senator from Idaho, and I will defer my remarks until after he finishes because he has a hearing scheduled in just a number of minutes, so we will turn to him first.

The ACTING PRESIDENT pro tempore. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I thank the chairman of the Judiciary Committee for yielding me time at this moment. At 2 I have a special Committee On Aging hearing to chair, so I do appreciate the accommodation.

Mr. President, today we are here to visit about, and I hope confirm, a good friend of mine, William G. Myers III, whom the President nominated for a judgeship to the Ninth Circuit Court of Appeals. I commend President Bush for nominating Bill Myers.

I would like to spend a few moments today talking about the reasons my colleagues should vote for Bill Myers and set aside the larger political issues surrounding judicial nominations. Bill Myers was nominated by the President on May 15 of 2003 not May 15 of 2004 so it has been well over a year since the President sent up the nomination of Bill Myers.

Bill is an extraordinary person, and I believe his nomination deserves our full and focused consideration.

He was reported out of the Judiciary Committee on April 1, 2004. Once confirmed, Bill will fill the vacancy of Judge Thomas Nelson, who became the senior judge of the Ninth Circuit.

At this juncture, I would like to remind my colleagues that this is a vacant seat on the Ninth Circuit, a vacant Idaho seat we are proposing to be filled. The caseload of the Ninth Circuit judges at this moment is one of the largest in the country—as some would suggest, even overpowering and not allowing reasonable and appropriate justice to go forward simply because this seat and others are not filled and the caseload is so substantial.

As my colleagues know, Federal law requires that every State within a circuit be represented by at least one judge. I believe the Senate is in danger of failing to fulfill this requirement if it prevents an up-or-down vote on Bill Myers because he will be the Idaho judge of the Ninth Circuit.

A few critics of this administration's natural resource policy would have you believe Bill should not be confirmed. They have bandied about previous wrongs, if you will, but all they have demonstrated is the certainty of what?

First, these critics desire to capture the judiciary by opposing nominees who do not display activist tendencies that might work to their own political advantage. In other words, if you aren't our politics and we can make an example of your politics, you are not fit to serve. We all know that judges shouldn't be involved in politics.

Second, these critics have done nothing more than confirm that Solicitor Myers is the chief legal officer at the Department of the Interior, which is controversial in every administration by the very nature of the mission and the responsibility of the Solicitor at the Department of Interior.

By enforcing political litmus tests against judicial nominees, some are suggesting that in order to be a nominee, you should have no experience in the law. Let me repeat that. Some are suggesting, some of my colleagues on the Judiciary Committee—and you will probably hear it on the Senate floor—that it is the experience of the nominee that is giving him the problem. So are we to assume, then, that nominees should have no experience? How can they be a wise and thoughtful judge within the law if they have not had that kind of experience both in the public and private sector?

Make no mistake, Bill Myers' opponents are for enforcing just this test. The substance of their test is this: If you have represented farmers, ranchers, miners, and, frankly, anyone else who advocates a balanced multiple-use policy on public and private lands in the West, the radical left environmental groups have decreed that you do not even merit a vote in the U.S. Senate. And the Democrats at this moment are playing that game: Sorry, Mr. Myers. You did your job down at Interior; you don't deserve to get a vote on the floor of the U.S. Senate in an up-or-down fashion. Senators should be ashamed to enforce such an edict from those liberal interest groups. The interest groups in this instance have grabbed the power of those on the other side. That is a tragedy.

Among their many factual misstatements, critics of this nomination confuse the appropriate roles of the lawyer or the judge by suggesting that because Bill Myers has been a strong advocate for his clients, he will continue to advocate for them from the bench. Of course, they offer nothing but bland or bald assertions in support of their logic.

Of course, we know that as men and women come to the bench, quite the opposite happens. They have a role in the private sector to represent their clients—that is their job—or in the public sector, in the case of Bill Myers, the Solicitor to represent his client, the Secretary of Interior. Is it to suggest that he will continue to do that as a judge? Quite the opposite. Let me tell you, that is the argument we will hear today on the floor of the Senate, and that is the argument being placed.

If their theory is correct, no practitioner who has ever represented committed clients in adversarial proceedings or political policy battles would be qualified to serve in the judiciary. Even so, any fears are allayed by a fair review of Bill's public service. His record as Solicitor shows balance and mainstream decisionmaking.

Let me give you a few examples: opposition to trespass by inholders in national parks of Alaska, impoundment of trespass livestock on Federal lands in Nevada, expansion of a national monument in New York, support for reinterment of Native-American remains, recognition of tribal boundary rights in New Mexico, record penalties for failure of a company to pay gas royalties, and support for settlement of tribal water rights claims.

I remind my colleagues that as Solicitor, Bill Myers was not a decisionmaker. He was the legal advisor to the Secretary of the Interior. In this role, as with all other roles in his life, Bill Myers has been an advocate for his clients.

I see no reason to believe Bill Myers would not continue to do this as a

judge. But in this situation, his client will be the law, and he will be the advocate of truth and justice. That is the responsibility of a judge. The law becomes the client. Exactly what we all want in a judge is just what I have stated.

In addition, leaders in the field of law, including Democratic leaders in the West, have written to the committee supporting Bill's qualification to be a circuit judge. Letters of support have been written by the following, and all letters can be found in the committee's hearing record: Congressman HENRY HYDE, Wyoming Supreme Court Justice Marilyn Kite, Idaho Democrat Senator Chuck Cuddy, Chairman Carol Dinkins for the ABA Committee on Federal Judiciary, former Democrat Governor Mike Sullivan of Wyoming, and former Democrat Governor Cecil Andrus of Idaho. In neither of these two Governors' cases can you suggest they were anti-environment. They stood for balanced use, they stood for environment, and they stood for protecting our public lands and providing reasonable and responsible management. Of course, that is why we are supporting Bill Myers, because that is how Bill Myers handled his position as Solicitor at the Department of the Interior.

Democratic State attorney generals of Oklahoma and Colorado are also in support of this nominee.

Is this the message we want to send to hard-working families of farmers and ranchers and miners in South Dakota, North Dakota, Montana, Nevada, Oregon, and other Western States? I hope not. I think just the opposite. I think any one Senator could review the Myers record and could go to those who now oppose him and simply say this: I have reviewed William Myers' record. I find his integrity is beyond reproach. His intellect shows he is a man who has served a variety of capacities and the law extremely well. He has a solid, well-balanced temperament that would serve him well if we put him on the bench. That is what they ought to be saying.

No, today they are winking and nodding and saying to their environmental friends, we gave you one. We gave you a vote. Instead of saying, we have reviewed the record of William Myers, he is the one who deserves the vote, they are saying to the special interest votes, we gave you a vote.

I hope my colleagues hear that. I hope they weigh that in their consideration of this nominee. That is not the way nominations ought to be handled in our committees or in the Senate. Tragically enough, that is exactly what is happening.

Let it be said that the President of the United States has nominated a quality person. That person is William Myers. He is before the Senate now for a seat on the Ninth Circuit. He deserves our full consideration and a vote, not a political pass by. I wholeheartedly recommend we consent to this nomination. The President has treated this post well with the selection and the nomination of William Myers.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Mr. President, the distinguished Senator from Idaho has made some very important points. That is, this is now eight judges who the Democrats have indicated they would filibuster in the Senate, including this very excellent candidate for the Federal bench, William G. Myers III. We have never had filibusters of judicial nominees in the history of this country, not one time before. No one in the past has been willing to violate the rules in such a fashion until this President was elected.

It began with Miguel Estrada who, of course, removed his name from consideration. After having sat there for better than 2 years, he decided he better get back to his law practice. It includes another seven, including Mr. Myers, who the Democrats have indicated they will filibuster—in other words, try to talk to death this nomination. Since they have been able to keep control of almost everybody in their caucus, needing only 41 votes against cloture—in other words, against ending the debate so a vote can be taken—they have subverted the rules and have caused what is going to be called a crisis unless we can find a way around it.

It is a crisis now because excellent nominees have been badly mistreated in the Senate by not even getting a vote up or down. Once a nominee is brought to the floor, that nominee deserves, under the advice and consent clause of the Constitution, article II, section 2, a vote up or down.

If my colleagues on the other side do not like people, they can do everything they can within the committee to try and block the nomination there. But once that nominee is brought to the Senate, that nominee, under the advice and consent clause, deserves a vote up or down. Mr. Myers is no exception. He deserves a vote up or down. He is an excellent nominee, one who would have that vote up or down if the Senate were acting responsibly.

I rise today in strong support for the confirmation of William G. Myers III who has been nominated to fulfill the Idaho vacancy on the Ninth Circuit Court of Appeals.

Let me emphasize, when current Circuit Judge Trott takes senior status at the end of this year, and if the Senate refuses to even vote on Mr. Myers' nomination, there would be no Idaho representative on the Ninth Circuit Court of Appeals.

Federal Law 28 United States Code section 44(c) requires each State within a circuit must have at least one active judge serving on that circuit. We have heard a lot of discussion over the past few months about how circuit court seats should not be switched from one State to another out of respect for home-State senators. I hope the Senators who have raised those valid concerns afford Senators CRAIG and CRAPO and the rest of us in the West the same respect they believe they themselves and their States deserve.

Again, this is not about Idaho having two or three or even one or two seats on the Ninth Circuit. It is about whether the Senate will refuse to even vote on filling Idaho's only active seat on the Ninth Circuit.

As I will discuss further, it is also about whether a qualified nominee can be blocked by a minority of Senators because he at one time or another represented ranchers, farmers, and miners in their efforts to make balanced use of public and private uses of public lands in the Western United States of America. These are among the greatest pioneers and greatest leaders of the intermountain West, these farmers, ranchers, and miners. These are good people. These are people who, like everyone else in our society, deserve representation. Many of them came to William G. Myers III for such representation. He represents them well, as he should, as an advocate. The fact that some on the other side of aisle do not agree with his advocacy is no reason to stop him from being the sole active Idaho judge on the Ninth Circuit Court of Appeals.

Bill Myers was nominated by President Bush in May of 2003, over a year ago, and his nomination was carefully examined, debated, and favorably reported out of the Judiciary Committee in early April. Democrats who opposed him in committee voted against him. That is their right. But they should not now delay all Senators the right to vote on this confirmation. Bill Myers deserves and is overdue for an up-or-down vote in the Senate.

I remind my colleagues that the Ninth Circuit is the most notoriously liberal Federal circuit in the United States. It is and has been for at least a decade quintessentially out of the mainstream of American jurisprudence. The infamous case in which this court held our Pledge of Allegiance is unconstitutional because it contains the word ''God'' is but one of many examples of its all too frequent perversions of Federal jurisprudence.

Fortunately, the Supreme Court unanimously reversed the Ninth Circuit in that case, one of 16 times in the 2003–2004 term alone the Court unanimously reversed or summarily vacated the Ninth Circuit Court of Appeals.

This past Supreme Court term, the Ninth Circuit was reversed or vacated 81 percent of the time. Even my liberal friend from New York, Senator SCHUMER, once noted the Ninth Circuit is ''way out of the mainstream on the left.''

As Senator FEINSTEIN noted in the 1996–1997 term, the Ninth Circuit was reversed 20 of 21 cases. While some circuits had similar reversal rates, no other circuit came close to the number of cases considered and reversed. The same has been true since then. The

Ninth Circuit has been reversed 86.5 percent of the time since 1998. That is a disgrace to the Federal bench. In 58 cases the Court didn't even need to hear argument, they simply vacated the Ninth Circuit summarily. In the 2003–2004 term, Ninth Circuit appeals accounted for about one-third of the Supreme Court's docket, suggesting that the Court feels the need to focus disproportionately intense scrutiny on decisions from that circuit.

As I noted, about two-thirds of the Ninth Circuit reversals this past term, 64 percent, to be exact, were unanimous. This is a court that is desperately in need of good, nonactivist judges who will be faithful to the Constitution.

There is no doubt in my mind or in the mind of anybody who knows him that Bill Myers would be such a judge. One would think the Senate would welcome the confirmation of an expert on public lands and natural resources law to a court that has enormous influence over how disputes over the uses of these resources are resolved. Western Senators know all too well that the Ninth Circuit is the 900-pound gorilla of public lands, natural resources, and environmental law. Its decisions have significant and often adverse impacts well beyond the borders of its jurisdiction.

Yet today, and tomorrow, I suppose, we will hear it is Bill Myers who is out of the mainstream and not fit to join the ranks of the Ninth Circuit judges who routinely ignore law and precedent to rule based on their own personal policy preferences, both on natural resources issues and in many other areas of the law, including, but not limited to, the constitutionality of the Pledge of Allegiance and the death penalty.

The prejudices against Bill Myers reflect today's poisoned confirmation process: Nominees who somehow offend any well-funded liberal interest group are subject to distortions and baseless personal attacks, which the media echo chamber dutifully resound as proof positive of unfitness for the Federal bench. And with Bill Myers and his record, the distortions continue, baseless as ever.

His record as the Interior Department's Solicitor, where he was doing his duty to represent the policy positions of the United States of America, has been attacked because the liberal environmentalists do not like those policies. He has been vilified for daring to represent farmers, ranchers, and miners while in private practice, as if ranchers, farmers, miners, and those who make economic uses of Western lands are less entitled to representation than the elite, liberal environmental groups that attempt to dictate Western land policy from Eastern cities, while they derisively refer to most of our Nation as a flyover country.

So what is at stake is this: Is a judicial nominee disqualified from service on the Federal bench solely because he or she has advocated, successfully and competently, for people or policies that liberal groups of various stripes dislike? If the answer from my Democratic colleagues is yes, then I do not want to hear one more word—not one—from any of them about how it is Republicans who are politicizing the judiciary.

There is no more blatant way for Senators to politicize and degrade the confirmation process than to reflexively disqualify nominees who have represented people and groups or advanced policies they do not like. Ask yourselves, is this vote on Bill Myers really about Bill Myers? If it is, you know and I know there is no reason on the merits to deny him an up-or-down vote. Or will this vote be a reflection of liberal disdain for policies favored by farmers, ranchers, miners, the Bush Interior Department, or anyone else who advocates balanced uses of Western lands?

If the latter is true, let me emphasize again for those who still do not get it, the Constitution did not and does not establish Federal courts as the policymaking branch of the Government. Federal judges should not make policy, though too often, especially on the Ninth Circuit, they do.

Policy debates ought to have no place in our consideration of a nominee's qualifications to serve as a Federal judge—unless we think he or she does not understand the proper role of Federal judges under our constitutional system.

Absent absurd and unfair distortions of his record, there is zero evidence that Bill Myers does not understand that proper role.

I would also like to remind my colleagues of some facts about Bill Myers that the liberal interest groups and the media have willfully ignored or deliberately misrepresented.

He has an exemplary record that includes service as a successful, committed advocate and public servant. As Solicitor for the Department of Interior, a position to which he was confirmed in 2001 without opposition, Mr. Myers supervised over 300 attorneys and 100 support staff in 19 different offices throughout the United States, and managed a $47 million annual budget. He has served as counsel here in the Senate to our former colleague Senator Al Simpson, and, as well, in the Department of Justice and the Department of Energy.

His confirmation is supported by Democrats, including former Wyoming Governor Mike Sullivan and former Idaho Governor Cecil Andrus, who also served President Carter as Secretary of the Interior, plus the Democratic attorneys general in both Colorado and Oklahoma, and Republicans alike. Five Western Governors, including the Governors of Hawaii, Montana, and Nevada, have written to the committee expressing their support and emphasizing ''the need for quality judges who will provide a balanced perspective to the Ninth Circuit's extraordinary caseload.''

I also want to respond to a blatant misrepresentation about Mr. Myers' record that was made by one of my colleagues who suggested, falsely, that Bill Myers ''thinks the Clean Air Act and the Endangered Species Act have harmed the environment.''

Well, as anyone who has bothered to read Mr. Myers' hearing testimony and written questions or even conducted a cursory review of his record would know, he thinks no such thing. In fact, I do not think he has ever said anything about the Clean Air Act at all.

Now in his responses to Senator FEINSTEIN's written questions, Mr. Myers affirmed that congressional intent in passing the Clean Water Act was to ''restore and maintain the chemical, physical and biological integrity of our Nation's waters,'' and that ''the health of our Nation's waters is often inextricably connected to the health of adjacent wetlands.'' This is an extreme conservative position? Only in the sense that Bill Myers failed to endorse the full policy platform of Greenpeace.

Similarly, regarding the Endangered Species Act, we all know there have been cases in which Government authorities have abused their power under this law to confiscate private property without compensation. Let me give you one example, the 2001 Ninth Circuit decision in the Arizona Cattle Growers case. Here, a unanimous appellate panel, composed of two judges appointed by President Clinton and one judge appointed by President Reagan, wrote the following:

> [T]he Fish and Wildlife Service acted in an arbitrary and capricious manner by issuing Incidental Take Statements imposing terms and conditions on land use permits, where there either was no evidence that the endangered species existed on the land or no evidence that a take would occur if the permit were issued. We also find that it was arbitrary and capricious for the Fish and Wildlife Service to issue terms and conditions so vague as to preclude compliance therewith.

So Bill Myers has been an advocate for farmers and ranchers who have challenged such abuses of this law, because their families' lives and fortunes depend on their ability to responsibly use land they own or lease. For such efforts, he is unfit for Federal judicial service? Give me a break.

Here is what Bill Myers has actually said about the Endangered Species Act. Contrast what he has said with what his opponents believe he thinks. He has said Federal agencies should not use it as a zoning tool on public lands.

Now, is that unreasonable? He argued in a brief on behalf of the American Farm Bureau and others that the Babbitt Interior Department regulations that defined the term ''harm'' in the Endangered Species Act in a way that essentially precluded any private landowners' use of property on which an endangered species might find habitat should be invalidated.

That sounds like a reasonable position to me. And I think it would be to anybody under similar circumstances.

Why, it might even be a reasonable position for some of my more liberal legal colleagues on the other side, if they bother to think about it.

Importantly, the Government had no intention of compensating affected landowners if these regulations rendered their land valueless, despite the Fifth Amendment's takings clause, and despite provisions in the Endangered Species Act itself that authorize the Government to compensate landowners in such situations.

So, again, are the positions taken by the American Farm Bureau and other farmers and ranchers extreme and unreasonable, disqualifying their lawyer from Federal judicial service? I think the obvious answer is no—unless every nominee to the Ninth Circuit must share the policy positions of the elitist and more radical environmental groups.

Let me make one related point. I will refer to a news report dated March 17, 2004, headlined: ''Grad Student Charged in SUV Arson.''

According to the article, a student with connections to the radical environmentalist group Earth Liberation Front firebombed and vandalized 125 vehicles at Los Angeles area car dealerships and private homes in August 2002. The words ''ELF'' and ''Fat Lazy Americans'' were spray-painted onto some of the vehicles.

ELF also took responsibility for a 2002 fire in San Diego that destroyed an apartment building and caused $50 million worth of damage. Just 2 weeks ago ELF is suspected of carrying out an attack in my home State of Utah at Brigham Young University.

When ELF extremists are arrested, they are represented by attorneys. Without in any way suggesting that anything Bill Myers has ever done or advocated approaches such actual extremism, are these attorneys presumptively disqualified from service on the Federal bench because of the criminal actions of their clients? Can we assume that they sympathize with the criminals' actions? In light of some Senate Democrats' apparently closed minds against a growing number of President Bush's nominees, perhaps we all need to think more carefully about how we answer such questions.

Some Senators apparently believe that nominees who do not think like they do, and will not advocate their pet causes while on the bench, deserve nothing more than to be filibustered—denied an up-or-down vote because they—a minority—know that a Senate majority stands ready to confirm these nominees.

Unlike those who are supporting such filibusters for purely ideological reasons, I do not believe that a nominee must share all of my favorite interest groups' policy views in order to deserve an up-or -down vote. And let me read what Bill Myers had to say on this at his hearing.

I would stand on my personal record that I cited a moment ago that I have spent my free time in serving national parks, such as picking cigarette butts out of fire pits. I have a great love for the national parks. That is where we recreate and that is where we go for sustenance, for spiritual refreshment, and that is a personally-held view. The larger view, though, and the one that is really important for this Committee is whether I would carry into a judicial position, if I were so lucky as to be confirmed, an ideology that would result in a bias against or for any litigant.

And I think it should be noted that every nominee, I suspect, that comes before you has both proponents and opponents, and some of those people may hope that once that person becomes a judge that they can either count on them to do the right thing or cower in fear that they will do the wrong thing.

I hope that both of those groups, the proponents and the opponents, are disappointed; that when a person takes on those robes, takes the oath of office, swears to uphold the Constitution, that that means that they will follow the law and the facts, wherever the law and the facts take them, without regard to personal opinion, public opinion, friends, or foes.

Ask yourselves, is this an ideological nominee? Out of the mainstream? As I said before, only in the eyes of the well-funded environmental extremist groups who cannot stand the idea of a Ninth Circuit judge who might not buy into all of their propaganda.

Finally, Bill Myers would fill an Idaho seat recently vacated by an Idaho judge. While no Federal judge should represent anyone or anything but Federal law, to the extent the Ninth Circuit currently represents anything other than embarrassment and summary reversals, it represents President Clinton, who appointed 14 of its active 26 judges four during election year 2000 alone. And let me note, for the benefit of those who now say it is too late in an election year to confirm judges, that Clinton nominee and current Ninth Circuit Judge Rawlinson was confirmed to his position on July 21, 2000, in the last year of the Clinton administration.

Bill Myers was a successful advocate for people and causes that deserve representation just as much as any environmental activist group, or any liberal's pet causes. As the Interior Department's solicitor, Mr. Myers defended balanced policy solutions to difficult questions of how our public lands and natural resources in the west should be managed. His confirmation will help balance a very out-of-balance Ninth Circuit, as well as ensuring that Idaho maintains its only seat on that court. I hope my colleagues will join me in voting to confirm this good man to the Ninth Circuit.

We have heard from the other side about the mythical ''Thurmond rule'' and all kinds of other suggestions that judges should not be confirmed from here on, this late in a Presidential election year. I remember way back when, cases where we confirmed judges, Democratic nominees, Carter nominees, even after President Reagan had won the election. In fact, one of them is sitting on the Supreme Court of the United States of America.

I remember when my colleagues came to me back in the year 1980 and asked if I would be willing to support then-Harvard law professor Stephen Breyer for the First Circuit Court of Appeals. I have to say there were some Republicans who didn't want that to happen. But he had been a wonderful chief of staff for Senator KENNEDY on the Judiciary Committee. He was honest, decent, honorable, kind, worked well with both sides. He had all of the qualifications. There was no question about intelligence and ability. I led the fight to make sure he was confirmed. That was later in that year. There have been other cases as well.

It is wrong to set any arbitrary limits on when during the year the Senate can confirm judges. If a person is not qualified, that is one thing. But everybody we have brought to the floor has not only been qualified, they have been among the best nominees of my 28 years in the Senate. Mr. Myers is one of them. He is knowledgeable. He has held high-level positions in our Government. He has served with distinction. He has served well. He is one of the brightest people. He would represent Idaho in the only active seat Idaho would have. He certainly understands all of the problems in the intermountain West, an area where the Ninth Circuit Court of Appeals could use his knowledge. He is one of the top public lands and natural resource lawyers in the country.

He is a person of inestimable ability, great charm, decency, honorable ways, and capacity. He is a person who would have great temperament on the court. In other words, he is a person we ought to confirm. We should not get into these Mickey Mouse filibusters that fly in the face of the advise and consent clause itself, and which basically have cost the dignity of the Senate to a large degree.

Mr. President, I suggest the absence of a quorum and I ask unanimous consent that the time be equally divided.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. REID. What is the matter now before the Senate?

The ACTING PRESIDENT pro tempore. We are in executive session for Calendar No. 603.

Mr. REID. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business.

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

(The remarks of Mr. REID are printed in today's RECORD under ''Morning Business.'')

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, I wish to speak on the William Myers' nomination to the Ninth Circuit Court of Appeals. He is a man of skill, a man with a proven record of public service, a man with a broad background in legal matters, a man perfectly suited to help improve the Ninth Circuit Court of Appeals, which has had an extraordinary number of problems in recent years.

William Myers has bipartisan support. He has had a distinguished legal career. Ranging from his service as a solicitor for the Department of Interior, the chief legal officer at the Department of Interior, to his extensive private practice at Holland & Hart, one of Idaho's most prestigious law firms, where he specialized in Federal litigation involving public lands and natural resource issues.

He served for close to 4 years on the staff of former Senator Alan Simpson as legislative counsel. Senator Simpson served for many years in the Senate. William Myers has also served as an assistant to the Attorney General in the U.S. Department of Justice and as Deputy General Counsel for Programs in the United States Department of Energy.

These are broad experiences, the kinds of experiences that will be most valuable to him as a Federal judge because many Federal cases involve relations and litigation affecting Federal agencies in matters of land, conservation, and energy. This is particularly true of the West.

He is qualified to serve. The American Bar Association, certainly not a conservative organization, has rated him qualified to serve, and he has won many plaudits from across party lines.

Cecil Andrus, former Idaho Democratic Governor, had this to say about Mr. Myers:

> He possesses the necessary personal integrity, judicial temperament, and legal experience, as well as the ability to act fairly on matters of law that will come before him on the court.

Mike Sullivan, former Democratic Governor of Wyoming and U.S. Ambassador under the Clinton administration, calls Mr. Myers a thoughtful, well-grounded attorney who has reflected by his career achievements a commitment to excellence. He would provide serious, responsible, and intellectual consideration to each matter before him as an appellate judge and would not be prone to extreme or ideological positions unattached to the legal precedence or the merits of a given matter.

That is a high compliment. I think it goes to the heart of what a judge is; that, yes, one can be active politically; yes, one can be a person who has public policy views about what America should do to make this a better country. But when the question is, when one comes on the bench, what is their philosophy about judging? How do they think about judging? What do they think the role of a judge should be? Do they think the role of a judge is to try to use the power of the robe, the power of the bench, to implement their political views?

Frankly, if people come up for a judgeship and have never been active in any way in public policy issues, I wonder if they are qualified. Surely, they ought to have some views about issues that come before this country and care about America and have spoken out on them. The question simply is, do they understand when they put on that robe they are not a politician. They are judicial officers required to interpret the laws of this country as best they can, to give plain meaning to the words of the statute and the Constitution and not to utilize that bench as a mechanism to impose their personal views on the people in their district or their circuit? Because, of course, Federal judges have lifetime appointments.

Some would think our Founding Fathers, if they made an error, it was when they gave one group of people, the third branch of our Government, unreviewable power. So we need judges who show personal restraint, and that is Judge Myers' judicial philosophy. Frankly, it could be utilized on the Ninth Circuit to a great degree.

Some have questioned his commitment to environmental issues, even called him anti-environment. His record indicates otherwise. In fact, he is most knowledgeable and skilled in these areas. He has been a leader in the American Bar Association's Section on Environmental Energy and Resources and has served as vice chairman of the ABA's Public Lands Committee.

Now, as my colleagues know, the ABA is certainly not a right-wing organization, but they have rated him qualified. They know him. He has been active in their issues in a professional and legal manner, not in a partisan way but on the American Bar Association committees.

He has done a number of things such as settling a big case on behalf of the Government against the Shell Oil Company for flaring and venting natural gas in the Gulf of Mexico. They had to pay $49 million as a result of that settlement. An environmental group sought Mr. Myers' aid to protect Atlantic salmon and 10 other species of native fish in a dispute over removing two dams on the Penobscot River.

At the end of the day, the Myers' settlement allowed a dramatic increase in raising the population of these fish and the environmental groups called the agreement ''the biggest restoration project north of the Everglades.''

He understands environmental issues. He understands legitimate concerns about the American environment, the need for us to make sure that the environment is protected and that the law is followed. I hope, however, he is not one who believes the environmental laws the Congress has passed, some of them somewhat complex, can be twisted around and utilized as a weapon to further a personal political environmental agenda. I do not believe that is his idea.

From what we have seen from some of our Federal judges, too often in the Ninth Circuit, that is how they have acted.

Some have expressed concern about this nominee being one who is from the West. He understands the Government lands issue. He has served on ABA committees and served in areas of the Government that have dealt with those issues. He is knowledgeable on environmental issues and other issues that are important to that region of the country in which he is called on to serve. Now, what is wrong with that?

I am sure we have Members of this body from Massachusetts out on Martha's Vineyard, and they would like to tell everyone that if someone is a member of the Cattleman's Association and a lawyer for them, that person cannot be trusted, they do not understand what life is about, they are not committed to the environment; you know, the cows eat grass, and it is not helpful, that kind of thing.

Mr. Meyers is a nominee who has a record of adhering to the law. I have no doubt he will be a fine judge, and he deserves to be confirmed.

I think it is important that we take a minute to say this: If we get a judge who is committed to the rule of law, committed to showing restraint, committed to the judicial philosophy that a judge ought to follow the law and not make it, where better should they be sent than the Ninth Circuit Court of Appeals?

I will share some thoughts about that circuit. Politically, let's just say that party affiliation should not affect a judge's ruling, but to those who say this man is conservative, he is a Republican, and he ought not be confirmed, let me point this out about the Ninth Circuit: Of the 26 active judges, 17 were appointed by Democratic Presidents. Only 9 are Republican appointees. A remarkable 14 of the 26 judges, 54 percent, over half were appointed by President Clinton alone. In the year 2000, a Presidential year, President Clinton appointed four judges to this court. The last year in office, he appointed and we confirmed four judges to this court.

Of course, it is the biggest circuit in America and having quite a bit of difficulty, frankly. It needs some help, and we need to see in what kind of bipartisan way we can work to improve this Ninth Circuit. We need some rule of law balance on this court. I believe that Mr. Meyers will provide that.

I will go on. The Ninth Circuit has established a pattern of issuing the most activist decisions in the country. On one day earlier this year, the U.S. Supreme Court reversed three decisions from the Ninth Circuit. The Supreme Court ended its 2003–2004 term having reversed the Ninth Circuit in 81 percent of the cases appealed from it.

As the Presiding Officer knows—and I see Senator CORNYN from Texas, who is a former attorney general and a member of the Texas Supreme Court, who would also know—the Supreme Court of the United States can only hear a small fraction of the cases that come from the entire United States. They can hear only a small fraction of the cases that are appealed from the Ninth Circuit, and they reversed them 81 percent of the time. That means hundreds and perhaps thousands of other litigants in California and the West did not have their cases heard by the Supreme Court. Perhaps they, too, would have been reversed had they been heard, but they are stuck with the Ninth Circuit as the final court that ever heard their case.

The Ninth Circuit has established a pattern of issuing the most activist decisions in the country. I will give some more examples.

During the last decade, in the last 10 years, the Ninth Circuit has reversed death sentences at an increasingly high rate.

The Supreme Court has affirmed the legality of the death penalty in America, and Congress and States like California and other States in the West have it, as does my home State. But they are being reversed at an increasingly high rate which moves it out of step with the other circuits in America. While all the other circuits uphold approximately 80 percent of death penalty convictions, the Ninth Circuit has gone the other way, reversing a majority of convictions in most years, and approximately 80 percent of the convictions over the last 3 years.

I served as a prosecutor for most of my professional career—almost 17 years. An 80-percent reversal by the Federal court, which is simply to review the State court's decisions to see if fundamental Federal principles have been violated, is a stunning statistic. So I say, if Myers has a little different view of these things, we need him in a hurry on the Ninth Circuit.

Most recently, in September of 2003, an 11-judge en banc Ninth Circuit panel ruled 8 to 3 that the U.S. Supreme Court's decision in Ring v. Arizona, which held that capital defendants have a constitutional right to a jury determination of the facts supporting their death sentences, applies retroactively to over 100 death row inmates who were sentenced by judges. Of the 11 panel judges—I want to point this out, how this circuit is made up—of the 11 judges on this panel, one was appointed by a Republican President.

Fortunately, the U.S. Supreme Court reversed the Ninth Circuit's decision, but such lack of balance on that court has produced the almost tiresomely predictable set of results. The balance I speak of is rule of law balance, not conservative versus liberal balance.

In 2001, the Ninth Circuit acted to invalidate an application of California's three-strikes law as a violation of the eighth amendment's protection against cruel and unusual punishment, a decision fortunately overturned by the U.S. Supreme Court.

It would be funny, if it were not so serious.

There is no doubt that the rather significant decline in criminal activity in America today is driven by tough sentences and things like California's ''three strikes and you are out'' laws which have sent repeat offenders off to jail for longer periods of time. It has saved the lives of hundreds, thousands of Californians who would have been murdered by some of these people, much less raped, assaulted, had their homes vandalized and burglarized, their automobiles stolen, and drugs sold in their neighborhoods. This law was struck down by the Ninth Circuit.

Fortunately, it was reversed by the Supreme Court. The Ninth Circuit opinion, of course, was authored by Clinton nominee Richard Paez, who came through here and was confirmed in this Senate several years ago. I opposed his confirmation.

The Ninth Circuit, then, after the Supreme Court reversed the decision, only implemented the reversal of through a divided panel. After the Supreme Court told them what to do, the panel still divided, with Judge Reinhardt, the epitome of judicial activism in America, upholding the defendant's sentence only under the Supreme Court ''compulsion,'' he said. And Judge Pregerson stated that ''in good conscience'' he could not follow the Supreme Court's decision.

This kind of contempt and disrespect for the U.S. Supreme Court is a matter of concern, of real concern. What is not a matter of concern is that Mr. Myers represented the Cattlemen's Association and understands land issues in the West. That is what we need on this court, some respect for law.

The Ninth Circuit reinstated in another case a claim by a prisoner who had been convicted of making terrorist threats and sentenced to 100 years to life. They ruled he had a constitutional right to artificially inseminate his wife from prison via overnight mail. The en banc Ninth Circuit reversed the decision over the dissents of four Clinton appointees, including Marsha Berzon and Richard Paez, who I voted against, but I voted not to filibuster, to bring them out so they could get an up-or-down vote in this body. My suspicions about their activist nature have been confirmed in case after case, unfortunately.

In 2002, the Ninth Circuit struck down Alaska's Megan's Law, a sex offender notification law. Both plaintiffs in the case had been convicted of sexual abuse of a minor. Judge Reinhardt's opinion was joined by Clinton nominee Sidney Thomas and Carter nominee Dorothy Nelson. The Supreme Court reversed their decision 6 to 3. Many of those cases have been reversed by the Supreme Court 9 to nothing.

The Ninth Circuit infamously declared the Pledge of Allegiance unconstitutional. The Ninth Circuit panel, including Stephen Reinhardt, ruled the Pledge of Allegiance unconstitutional because it contained the word ''God.'' The en banc court later refused to reconsider the ruling and the case thankfully was reversed earlier this summer on summary grounds by a unanimous Supreme Court.

The Ninth Circuit ruled that California State courts erred as a matter of State law when they found that a defendant, convicted of selling cocaine, had failed to present sufficient evidence to warrant a jury instruction on entrapment.

This is a Federal court sitting in review of an oversight of a State court ruling. They are State judges, by the way, who are sworn to uphold the Constitution and sworn to uphold the laws of the State of California. Judge Susan Graber, writing in dissent, faulted the majority for failing to adhere to the proper standard of review of State court decisions. She noted that:

> [t]he Supreme Court of the United States has just chastised this court, in the strongest possible terms, for substituting our judgment for that of a state court on matters of federal law. . . . We have even less justification for substituting our judgment for that of a state court on matters of its own state law.

I am pleased that one justice spoke up there.

There are quite a number of other cases I could mention. I will not go into them. Actually, there are quite a number of others.

I will say this. This judge has the ''qualified'' rating by the American Bar Association. He has had broad public experience. He has had private litigation experience with a good law firm in Idaho and in the West and back here in Washington. He knows what he is doing. He has bipartisan support, Democrats and Republicans. He is a person who is qualified and should take this position. But we have a small group who thinks these people in the South, they put judges up who want to turn back the clock. They believe we have nominees, if they come from the West and represent the Cattlemen's Association, that they do not believe in the Constitution, they don't believe in the environmental laws. It is a conceit of the elites. It is not correct. This judge is committed to following the law. He would be a wonderful addition to a circuit that is in serious trouble today and needs some reform and needs some judges with good skills, a commitment to the law, common sense, personal integrity, and a willingness to follow the Supreme Court rulings whether they agree with them.

I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Texas.

Mr. CORNYN. I will ask unanimous consent I be permitted to speak as in morning business.

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

(The remarks of Mr. CORNYN are printed in today's RECORD under ''Morning Business.'')

Mr. DEWINE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ENZI. 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. ENZI. Mr. President, I rise in support of the nomination of my good friend, William G. Myers III. I recommend him highly, and I believe the United States Senate should approve his nomination to serve as a judge on the Ninth Circuit Court of Appeals. He has earned that position by his dedication and a remarkable record of service to the country and to our legal system.

I am concerned we won't hear about his impressive record, however, I am afraid we are going to hear a lot of needlessly harsh rhetoric about Bill being a radical who has only represented extreme conservative interests during the course of his outstanding legal career. That isn't the truth, of course, but it does make for good soundbites and unfortunately, that is often what is promoted as the truth.

The truth is that Bill is not a radical extremist, nor does he have a political agenda that he is trying to pursue in agreeing to be nominated for the Ninth Circuit. A radical judge would be one who is intent on making extreme, sweeping changes in the political and social make up of the west. A radical judge is someone who stands out as being significantly different from the community he represents, who pursues his ideology regardless of its impact on those affected by his actions, and who doesn't care if his actions do not represent the interests of the people he serves.

No, Bill is not a radical for he is none of those things. In fact, he is quite the opposite. He is someone who has lived and worked with the people of the West. He knows them, respects them, and he understands the demands they face every day as they try to make a living. He knows their dreams and he shares their values. He is looking to serve on the bench to make life better for them and for all those in the West who will be affected by his decisions.

It is unfortunate that this is an election year. Any other year and we would see Bill for who and what he is. We would see him, not as a radical, but a typical Westerner who has a well established and outstanding reputation for his work representing the West.

Who else shall we appoint to the Ninth Circuit to truly represent the typical West? I believe it would be very safe to say that the Ninth Circuit Court is made up predominantly of judges who are sympathetic to radical agendas with very few if any of them representing the hardworking miners and ranchers who have for generations made up the backbone of the Western economy.

Of the 26 active judges on the Ninth Circuit Court, 17 were appointed by Democrat presidents. Only 9 judges are Republican appointees. A remarkable 14 of the 26 judges—54 percent of the court—were appointed by President Clinton. In 2000 alone—a presidential election year—President Clinton appointed four judges to the court.

The Ninth Circuit has established a pattern of issuing the most activist decisions in the country. In one day earlier this year, the U.S. Supreme Court reversed three decisions from the Ninth Circuit, and the Supreme Court ended its 2003–2004 term having reversed the Ninth Circuit in 81 percent of the cases appealed from it. Needless to say, that's not a good record. That means, in every five cases that were appealed, the Supreme Court ruled that these judges got it wrong 4 out of every 5 cases. Worse still, this was an improvement over their embarrassingly high reversal rate over the past several years—86.5 percent since 1998. This trend is likely to continue unless we help correct the situation by confirming good, honest judges who respect the Constitution and Federal law. Judges who will bring some balance to the Ninth Circuit equation.

Why do they call Bill a radical? If you examine his record, you will see that he represents and understands those under the jurisdiction of the Ninth Circuit Court—the average person in the West who relies more on common sense than complicated legal arguments to determine right from wrong. That ought to erase that label. But, for some reason, it doesn't. Could the placing of this label on this good, fair, honest, and decent individual be another ploy at politicizing this nomination for the sake of obstruction?

Most of the Judges on the Ninth Circuit Court come from the Circuit's most populated States, such as California. The other States that make up the Ninth Circuit, such as the State of Idaho, are allowed only one judge. Right now Idaho's seat is vacant. Will Idaho only be allowed representation on the court when it has a nominee from California?

We begin every session here in the Senate with the Pledge of Allegiance. We join together to say those special words. As we do, I know that my colleagues, on both sides of the aisle, say those words with a firm heartfelt commitment to this country and that they mean every word of pledging their allegiance to the flag and to this Nation. But I have to wonder if they haven't forgotten the meaning of all the words in the pledge when they take a hardline stance like this against a fully qualified nominee.

The last six words of the Pledge of Allegiance, ''with liberty and justice for all,'' mean that we do not preserve justice or liberty for a few people, or for most of the people, and leave a few, or even an individual, behind. It means we have justice for all, for everyone, and that we don't make exceptions because they come from a State that doesn't have as many people as California, or may not be as liberal as California.

In fact, this is one of the situations that the courts were created to protect—the rights of each individual. I think it is a little ironic that there are those here in the Senate that would be willing to withhold justice and rights from some people, in this case the average, hardworking people who make up the population within the Ninth Circuit just because those individuals don't share their political philosophy.

I hope we will do the right thing by Bill Myers.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

MORNING BUSINESS

Mr. ENZI. Mr. President, I ask unanimous consent that there now be a period of morning business for debate only, with Senators permitted to speak therein for up to 10 minutes each.

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

ENERGY POLICY

Mr. REID. Mr. President, this is a time when American families take their vacations. I can remember as a young man working in a service station in Las Vegas and Henderson. This was a busy time of the year. It was always interesting to see the cars loaded with kids going every place. Even today, these many years later, families still drive. This summer, although the price of gas is not quite as high as it was a few months ago, it is still near record levels in many parts of the country, including the State of Nevada. Every time a family stops for gasoline, it is a reminder that our country needs reliable sources of energy that are not subject to wild price swings.

Every time we see a scene from the Middle East on TV news—and that is