

I commend Majority Leader FRIST for his patience in trying to bring both sides together to develop a reasonable compromise on this difficult issue. Certainly no other majority leader has been faced with such unprecedented tactics in blocking the Senate's ability to fulfill its constitutional duty to provide advice and consent. I know Senator FRIST will continue to do what he feels is right for this body and for our country.

If he decides he is confronted with no other choice but to proceed with the constitutional option, I will fully support him. This approach is consistent with Senate precedent and has been employed in the past by some of the best parliamentary minds in this Chamber.

Our goal is to restore the practice, the tradition of 214 years, a simple majority vote for a President's nominees to the Federal bench.

I yield the floor.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

#### TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 3, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3) to authorize funds for Federal aid highways, highway safety programs, and transit programs, and for other purposes.

Pending:

Inhofe amendment No. 567, to provide a complete substitute.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Madam President, this is the third day we have been on a bill we have been working on for 2½ years. It is the same bill essentially that was passed last year by a margin of 76 to 21. We are anxious to get people to come down to the floor for amendments. I don't know of anyone coming down at this time. But I encourage all Members on both sides of the aisle to come down and utilize this time so we can get the amendments behind us.

I understand the Senator from Illinois has some comments he wishes to make. I yield to him some of our time at this time.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Madam President, I thank the chairman of the committee. Let me say I share his sense of urgency about the underlying bill. This is a bipartisan bill, a bill Democrats and Republicans want to see passed, a bill to finance the building of roads and bridges and airports, to finance mass transit in what is critical infrastructure for America's economy. I do not

have an amendment to the bill, but if I did, I would offer it because I think those who have them should bring them to the floor so we can move and get it done before we take a recess next week. I urge my colleagues on the Democratic side to follow the admonition of the chairman.

What brings me to the floor was a statement made earlier by the Senator from Utah which made reference to me. Senator ORRIN HATCH and I are friends. We disagree on a lot of things.

We vote differently on a lot of issues and we debate furiously, but we get along fine. I think that is what life should be like and what the legislative process should be like. He made a reference earlier to this whole question of the nuclear option, to which I would like to return for a few moments.

First, what is the nuclear option? People who don't follow the Senate on a regular basis have to wonder are they using nuclear weapons on the floor of the Senate? What could it be? "Nuclear Option" was a phrase created by Republican Senator TRENT LOTT to describe a procedure that might be used to change the rules of the Senate. The reason Senator LOTT called it the nuclear option was because it is devastating in its impact to the tradition and rules of the Senate.

I will put it into context. The Senate was created to give the minority in the Senate, as well as in the United States, a voice. There are two Senators from every State, large and small. Two Senators from the smallest State have the same vote on the floor of the Senate as Senators from larger States, such as California, New York, Illinois, and Texas. That is the nature of the Senate. The rules of the Senate back that up. The rules of the Senate from the beginning said if any Senator stood up and objected, started a filibuster, the Senate would come to a stop. You think to yourself, how can you run a Senate if any Senator can stop the train? Well, it forces you, if you are going to move something forward in the Senate, to reach across the aisle to your colleagues, to compromise, to find bipartisanship, so that things move through in a regular way and in a bipartisan way. That is the nature of the filibuster.

Over the years, it has changed. You saw the movie "Mr. Smith Goes to Washington," when Jimmy Stewart stood at his desk, with his idealism and his youth, arguing for his cause until he collapsed on the floor. He was exercising a filibuster because he believed in it so intensely. We have said over the years that you can do that to any nominee, bill, or law on the floor of the Senate; but if a large number of Senators, an extraordinary number of Senators, say it is time for the filibuster to end, it would end. The vote today is 60 votes. So if I am perplexed by an amendment offered by one of my colleagues, and I stand up to debate it and decide I am going to hold the floor of the Senate as long as my voice and

body can hold out, I can do that, until such point as 60 colleagues, Democrats and Republicans, come together and say: Enough, we want to move to a vote. That is what it is all about.

So what has happened is the Republicans now control the House, Senate, and the White House. What they have said is they want to change the rules. They want to change the rules in the middle of the game because they don't like the fact that Democratic Senators have used the filibuster to stop 10 judicial nominees President Bush has sent to Congress, sent to the Senate.

Now, for the record, the President sent 215 nominees; 205 were approved and only 10 were not. Over 95 percent of the President's judicial nominees have gone through. We have the lowest vacancy rate on the Federal bench in modern memory. So we don't have outrageous vacancies that need to be filled quickly. We decided—those of us who voted for the filibusters—that these 10 nominees went way too far; their political views were inconsistent with the mainstream of America. They were not consistent with the feelings and values of families across the country on issues as diverse as the role of the Federal Government in protecting health and safety, which is an issue nominee Janice Rogers Brown takes a position on that is hard to believe. She has taken a position on a case—a famous case called the Lockner case—which would basically take away the power of the Federal Government to regulate areas of health and safety when it comes to consumers and the environment. It is a radical position.

And then another nominee, William Myers—my concern about him and the concern of many Senators is the fact that he has taken a radical position when it comes to our Nation's treasury and heritage, our natural and public lands. He has taken a position where he backs certain lobby groups, but there is one that we think is inconsistent with mainstream thinking in America. So there is an objection.

Other nominees have taken what we consider to be far-out positions that don't reflect the mainstream of America and we have objected, which is our right. Now the President says: Enough, I am tired of losing any nominee to the Senate. Don't we have 55 Republicans? Should we not get what we want?

He is not the first President who has felt that way. Thomas Jefferson felt that way. Thomas Jefferson, in the beginning of his second term, came to the Senate and said: I am sick and tired of the judges who have been appointed to the Supreme Court. I want to start impeaching them.

You know what Jefferson's party said? No, Mr. President, you are wrong. The Constitution is more important than your Presidential power. They said no to Thomas Jefferson.

Franklin Roosevelt did the same thing at the beginning of his second term. He was unhappy that his New Deal legislation was being rejected. He