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Senate

The Senate met at 11:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

The PRESIDENT pro tempore. Our guest Chaplain is the Reverend Penelope Swithinbank of The Falls Church at Falls Church, VA.

PRAYER

The guest Chaplain offered the following prayer:

Let us pray.

O God, You are the Lord of grace and courage, of wisdom and truth. You give these good gifts to those who call on Your name and You promised to give in abundance when we ask.

We ask that You will give these gifts to the Senators today, that they may be free to think and speak only that which is right and true, without embittering or embarrassing others, that they may be united in knowing Your will and may understand the issues which face them. Give them courage to uphold what is right in Your sight, and integrity in all their words and motives. May their service be for the peace and welfare of all.

We ask these things in the name of Him who is both servant and Lord of all, Jesus Christ. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today we will resume executive session to consider Priscilla Owen to be a U.S. circuit judge for the Fifth Circuit. We have a lineup of speakers throughout the afternoon and likely into the evening. As I have stated previously, if Members want to debate the nomination, we will provide them with that opportunity for debate. We have spent about 26 hours over the course of 3 days on the Owen nomination. On Friday, we asked unanimous consent to have an additional 10 hours before the vote, but there was an objection. Because of that objection, we filed a cloture motion on the nomination, and that vote will occur tomorrow. I will be talking to the Democratic leader as to the exact timing of that cloture vote.

At 5:30 this evening, Senators should anticipate a vote on the motion to instruct the Sergeant at Arms to request the presence of Members. This procedural vote is to ensure that Senators are here for this important debate.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

ORDER OF PROCEDURE

Mr. REID. Mr. President, through the Chair to the distinguished Republican leader, does the leader have an indication of when you may be in a position to indicate how late we would go tonight?

Mr. FRIST. Mr. President, through the Chair, I expect, because of the large amount of interest, that we will stay here until everybody does have that opportunity to speak. We will have the cloture vote, and you and I can discuss shortly the timing. But likely we will do the cloture vote possibly late tomorrow morning. We do want to give people an opportunity. We have spent 26 hours over the course of 3 days, but in all likelihood it will be a very late night tonight.

Mr. REID. And we would continue dividing the time?

Mr. FRIST. I think for planning purposes, that has worked out well for the last 26 hours. If over the course of the morning and afternoon we jointly agree, we can continue that as late as necessary tonight or into the hours of the morning. As I mentioned, debate has been very orderly and very constructive. We will continue with that constructive debate over the course of today and tonight.

EXECUTIVE SESSION

NOMINATION OF PRISCILLA RICHMAN OWEN TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT—RESUMED

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session for consideration of Calendar No. 71, which the clerk will report.

The legislative clerk read the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

Mr. FRIST. Mr. President, over the last 3 days, for 26 hours, the Senate has debated a very simple, straightforward principle. Qualified judicial nominees, with the support of the majority of Senators, deserve a fair up-or-down vote on the Senate floor. A thorough debate is an important step in the judicial nominations process.

Debate should culminate with a decision, and a decision should be expressed through that up-or-down vote, confirm or reject, yes or no. The Constitution grants the Senate the power to confirm or reject the President's judicial nominees. In exercising this duty, the Senate traditionally has followed a careful and deliberative process with three key

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

components: first, we investigate; second, we debate; and third, we decide. We investigate by examining nominees in committee hearings and studying their backgrounds and qualifications. We debate by publicly discussing the nominees in committee and on the floor, and we decide through an up-or-down vote. Investigate, debate, decide—that is how the Senate and the judicial nominations process operated for 214 years.

But in 2003, the Senate stopped short of a decision. A minority of Senators began routinely blocking final votes on judicial nominations. As a result, the nominees have been left in limbo. Courthouses sit empty. Justice is delayed. Political rhetoric has escalated, and political civility has suffered. It is time once again to decide.

The moment draws closer when all 100 Senators must decide a basic question of principle—whether to restore the precedent of a fair up-or-down vote for judicial nominees on this floor or to enshrine a new tyranny of the minority into the Senate rules forever. I favor fairness and an up-or-down vote.

The individual nominee now before this body is Priscilla Owen. Justice Owen is a qualified, mainstream judicial nominee. She is a sitting member of the Texas Supreme Court who has received the highest possible rating by the American Bar Association. She has been reelected by 84 percent of the people in her home State. More than 4 years ago, the President nominated her to be a judge on the U.S. Court of Appeals for the Fifth Circuit. Since then the Senate has thoroughly and exhaustively investigated and debated her nomination. A brief look at the record tells the story.

The Judiciary Committee has held two hearings on her nomination lasting more than 9 hours. During the hearings, Justice Owen answered more than 400 questions from Senators on the committee. After the hearings, Justice Owen submitted 90 pages of responses to an additional 118 written questions. The Judiciary Committee has debated her an additional 5 hours before committee votes. Today marks the 20th day of Senate floor debate on Justice Owen's nomination. We have spent more floor time on Priscilla Owen than on all the sitting Supreme Court Justices combined.

Yes, Justice Owen has not received one single up-or-down vote on the Senate floor—not one. Four years of waiting, 9 hours of committee hearings, more than 500 questions answered, another 5 hours of committee debate, and 20 days of floor debate, but not 1 up-or-down vote to confirm or reject—not 1.

As majority leader, I have tried for 2 years to find a mutually agreeable solution that will resolve this issue without sacrificing the core principle of an up-or-down vote. I have offered to guarantee up to 100 hours of debate for every judicial nominee, far more than has ever been necessary for any nominee in the past. I have offered to guarantee that no nominee ever becomes unjustly stalled in the Judiciary Committee, as some colleagues have alleged has occurred in previous Congresses. Thus far these efforts have not been successful. I remain hopeful that the Senate will restore the tradition of fair up-or-down votes without the need for procedural or parliamentary tactics.

Tomorrow, Senators will have another opportunity to diffuse this controversy. A cloture motion is pending before the Senate. If cloture is invoked, it will bring debate to an orderly close. With cloture pending, 60 votes cast in the affirmative tomorrow would yield a fair up-or-down vote on Justice Owen. I look forward to the debate ahead. I look forward to hearing from my colleagues. And I look forward to a decision by all 100 Senators on the nomination of Justice Owen, a decision expressed through a vote, a vote to confirm or reject, a vote up or down.

The American people expect us to act and not just debate. They expect results and not just rhetoric. We may not—in fact, we will not—agree on every judicial nominee, but we can agree on the principle that qualified judicial nominees deserve an up-or-down vote. Tomorrow, we will vote, and all 100 Senators will decide—judicial obstruction or fair up-or-down votes.

I yield the floor.

The PRESIDENT pro tempore. The Democratic leader is recognized.

Mr. REID. Mr. President, I wish to respond briefly to the distinguished Republican leader's comments. Priscilla Owen has had numerous votes. She has had three that I am aware of on the Senate floor. Those votes dealt with whether we should stop debating her. The votes three times have said no.

The Senate reception area is a beautiful part of the Capitol. I can remember coming here in 1974 and Hubert Humphrey coming off the Senate floor. He had to sit down. He couldn't stand to talk to me. I remember the first time I had a conversation in that beautiful hall. I worked here 10 years before that as a policeman. Of course, I recognized the beauty of the building and of that beautiful room.

We have put out there what we refer to as a Hall of Fame of Senators. It is a place where you have photographs of Senators who were extra special Senators, people who the rest of the Senate, after that Senator left the Senate, determined was somebody who deserved to be in the Hall of Fame. One such man is Arthur Vandenberg. I wish I could have known him. He was a wonderful Senator, a very progressive, thoughtful man.

My distinguished colleague, the Senator from Michigan, Mr. LEVIN, read into the RECORD last week, May 20:

> What the present Senate rules mean: and for the sake of law and order, shall they be protected in the meaning until changed by the Senate itself in the fashion required by the rules?

He summarized this issue that is before the Senate today and did it about 60 years ago on an occasion similar to this. How prescient are his comments to the situation in which we find ourselves today.

Senator Vandenberg:

> . . . [T]he rules of the Senate as they exist at any given time and as they are clinched by precedents should not be changed substantively by the interpretive action of the Senate's Presiding Officer, even with the transient sanction of an equally transient Senate majority. The rules can be safely changed only by the direct and conscious action of the Senate itself, acting in the fashion prescribed by the rules. Otherwise, no rule in the Senate is worth the paper it is written on, and this so-called ''greatest deliberative body in the world'' is at the mercy of every change in parliamentary authority, which means the Republicans are in power today and the Democrats may be tomorrow, and a simple majority can change anything.

Mr. President, this is the way it should be. You should not be able to come in here and change willy-nilly a rule of the Senate. A rule of the Senate, you change by the rules. This so-called nuclear option has now been stood on its head, and they are now using what I refer to as the Orwellian language, saying that it is the ''constitutional option,'' and that, by all legal scholars, is foolishness.

I served in the Senate with Malcolm Wallop of Wyoming and Jim McClure of Idaho, westerners who are extremely conservative politically. But here is what they said, and they wrote this in the Wall Street Journal:

> . . . [I]t is naive to think that what is done to the judicial filibuster will not later be done to its legislative counterpart. . . . [E]ven if a Senator were that naive, he or she should take a broader look at Senate procedure. The very reasons being given for allowing a 51-vote majority to shut off debate on judges apply equally well—in fact, they apply more aptly—to the rest of the Executive Calendar, of which judicial nominations are only one part. That includes all executive branch nominations, even military promotions. Treaties, too, go on the Executive Calendar, and the arguments in favor of a 51-vote cloture on judicial nominations apply to those diplomatic agreements as well. It is little comfort that treaty ratification requires a two-thirds vote. Without the possibility of a filibuster, a future majority leader could bring up objectionable international committments with only an hour or two for debate, hardly enough time for opponents to inform the public and rally the citizenry against ratification.

What they are attempting to do in this instance is really too bad. It will change this body forever. We will be an extension of the House of Representatives, where a simple majority there can determine everything. Those of us who went to law school—and the Presiding Officer is a Harvard graduate. I went to George Washington. We know the precedent in the law is important. A precedent of the Senate is even more important. There will be a precedent set that will be here forever if the vote we take tomorrow prevails.

I feel there are Republicans of good will who are willing to be profiles in courage and step to this well tomorrow afternoon or evening and say we cannot do that. We believe that conservative Senators such as Malcolm Wallop

and Jim McClure are right. They believe—Malcolm Wallop and Jim McClure—that especially small Western States need protection. The reason we had the Great Compromise of 1787 was to allow the State of Rhode Island to have equal power in the Senate with New York. What is being attempted will take that away, change the Senate forever.

So I am convinced and hopeful and confident that there will be six courageous Republican Senators who will step down here and go against their leader, go against their President, as was done by Thomas Jefferson's Senate when he had a significant majority and tried to play with the courts; and when Franklin Roosevelt, with a tremendous majority—and no President has ever been more popular than he was when elected in 1936—tried to pack the courts. His Democratic Senators said no. Even the Vice President who served under President Roosevelt, James Garner, said no deal. The President called the Democratic leadership to the White House and said this is what we are going to do. He never conferred with them. And they, wanting to go along with what was the most popular President, probably, in many years—when they walked out, they said no, we are not going to do that. Democratic Senators made the difference. We need Republican Senators here to make the difference, stand and be counted when we vote. We only need six courageous people to stop the Senate from becoming an extension of the House of Representatives.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

Mrs. DOLE. Mr. President, before I speak to the important principles at stake in this debate, I want to take this opportunity to thank the Majority Leader for doing everything in his power to avoid the impasse we face today.

We have arrived at this moment in the Senate's history not because of a failure of effort, but because of a failure of cooperation.

Over the past two years, Senator FRIST and other members of the Republican leadership have made compromise an important objective.

We have repeatedly offered to extend the period of debate on the President's judicial nominees. Fifty hours, 100 hours, have been offered—even 200 hours of debate on some of these nominees—all in an effort to ensure that our Democrat colleagues have sufficient time to raise and explain their concerns. Without exception, these offers to provide more time have been rejected out-of-hand.

In May of 2003, Senator FRIST and then-Senator Miller of Georgia introduced compromise legislation that would allow the filing of successive cloture motions on judicial nominees, with each motion requiring fewer votes for passage, and ultimately a simple majority. When it came time to consider this sensible legislation in the Rules Committee, my Democrat colleagues boycotted the mark-up.

In April of 2004, the current Chairman of the Senate Judiciary Committee, Senator SPECTER, introduced legislation to help remove politics from the judicial confirmation process and ensure that nominees would be given a hearing, that they would be reported out of committee, and would receive a vote on the Senate floor. The Democrats reacted to this proposal with silence.

Senator FRIST has been in regular communication with Senator REID, and on March 17 of this year, he formally wrote to Senator REID expressing his hope that a compromise could be fashioned, and indicating that the constitutional option would only be exercised if there were no reasonable alternatives.

And, on April 28, Majority Leader formally reached out again to Senator REID, proposing to grant 100 hours of floor debate on each of the filibustered nominees—that's more than twice the time spent by the Senate debating any of the nominations of the current Supreme Court Justices. Senator FRIST also proposed to develop a process to ensure that nominees are not bottled up in the Judiciary Committee, a complaint often made by my Democrat colleagues. Once again, this sincere effort at compromise was immediately rebuffed.

So let the record be clear: The Majority Leader has pursued compromise with vigor, and he should be commended for doing so.

But, of course, when compromise fails, action must take its place. We are here today because there are important principles at stake . . . principles that are worth defending.

Does the President have the right to expect that his nominees to the Federal bench will be fully considered by the United States Senate? Does the Senate have a constitutional obligation to offer ''advice and consent'' on these nominations? And are judicial nominees entitled to an up-or-down vote on the Senate floor?

The answer, of course, to each of these questions is a resounding ''yes.''

For more than 214 years, judicial nominees with clear majority support have received an up-or-down vote on the Senate floor, with a majority vote leading to confirmation. Until just two years ago, a 60-vote supermajority was never the standard for confirmation to the Federal bench. Those are the facts.

By blocking not one, but ten, of President Bush's judicial nominees through the inappropriate use of the filibuster, my Democrat colleagues are doing nothing less than setting Senate tradition on its head. They are rewriting the rules of the game while abandoning the custom of self-restraint that has enabled the Senate to function so effectively in the past. And three of these nominees have now withdrawn their names from consideration.

To justify their actions, my colleagues on the other side of the aisle would have us believe that filibustering judicial nominees is just business as usual. They specifically cite the nominations of Abe Fortas, Marsha Berzon, and Richard Paez as examples of Republican-led obstruction efforts.

Justice Fortas, of course, lacked majority support when, in 1968, President Johnson withdrew his nomination to be Chief Justice of the Supreme Court. Today's filibuster victims, on the other hand, all have bipartisan, majority support . . . and are being permanently blocked despite this fact. Fortas' nomination was opposed not just by members of one party, as is the case today, but by Democrats and Republicans alike. And let's not forget: Justice Fortas' nomination was debated for just several days before President Johnson took action. Many of President Bush's nominees have been pending before the Senate not for days, but for years.

I am not sure what citing the Berzon and Paez nominations proves, since both individuals were given the courtesy of an up-or-down vote, and both were ultimately confirmed. They are now sitting judges. In fact, the Majority Leader at the time—TRENT LOTT—worked to end debate on both nominations, believing then, as we do now, that judicial nominees deserve a vote on the Senate floor.

So, what we are witnessing today is something wholly different: it is a highly organized obstruction campaign that is partisan in origin, unfair in its application, harmful to this institution, and unprecedented in our Nation's history.

Now, let's take a moment to examine the record of the individual whose nomination is before the Senate today. Justice Priscilla Owen has been called everything from an ''extremist'' to a ''far-right partisan'' to someone who is ''out of the mainstream.''

But the simple fact is that Justice Owen's record is that of a distinguished jurist who enjoys broad support and who understands that her role is to apply the law fairly and impartially.

Twice elected to the Texas Supreme Court after a long career as a litigator in a prominent Texas law firm, Justice Owen earned the highest score on the December 1977 Texas bar exam and ranked near the top of her class at the Baylor University School of Law. She has been endorsed by a bipartisan group of 15 past presidents of the Texas State bar. An advocate for providing pro bono legal services to the poor, Owen also received a unanimous ''well-qualified'' rating from the American Bar Association, the highest rating given by that organization—I add, the ''gold standard'' for our Democrat friends. And in her last election to the

Texas supreme court, Justice Owen earned a stunning 84% of the vote and was endorsed by every major newspaper in the Lone Star State.

Justice Owen received her vote in Texas and she deserves her vote on the floor of the United States Senate.

Mr. President, there is another important issue that must be raised beyond that of the rules and procedures of the Senate: It is the impact this episode in the Senate's history will have on the willingness of men and women of talent to serve their country by serving on the Federal bench.

Millions of Americans have watched as the good reputation of Justice Owen has been unfairly tarnished. As have the reputations of Justice Janice Rogers Brown, and Judge Terrence Boyle, Miguel Estrada, and the other nominees. Their lives and careers have been reduced to partisan—and wholly inaccurate—television sound bites with words like right-wing, radical, extremist.

For those of either party contemplating future service on the Federal bench, this spectacle of unfairness must be chilling—chilling—a glowing ''proceed with caution'' signal, suggesting that other career options should be pursued instead.

For the sake of the Federal courts in our country, we must do better. We can start by restoring the traditional standard for the confirmation of judicial nominees. Guaranteeing every nominee the opportunity of an up-or-down vote on the Senate floor will dramatically reduce the role of outside interest groups who see the filibuster as a way to exert pressure and score political points. It will force us to debate these nominees on the merits, with real arguments, not with politically convenient slogans and labels. And hopefully, it will help make an appointment to the Federal bench an attractive option for those young people out there who may be thinking about a career in service to the public.

I yield the floor.

The PRESIDENT pro tempore. Under the previous agreement, the time is now divided 1 hour on each side with the first hour under the control of the majority leader or his designee.

Does the Senator from Kentucky seek recognition?

Mr. BUNNING. Mr. President, I do.

The PRESIDENT pro tempore. The Senator is recognized.

Mr. BUNNING. Mr. President, what is the current business before the Senate?

The PRESIDENT pro tempore. The nomination of Priscilla Owen.

Mr. BUNNING. I thank the Chair.

Mr. President, it is important for Senators to understand what we are talking about here. We are talking about the nomination of Texas Supreme Court Justice Priscilla Owen to be a Federal circuit judge. We are talking about her qualifications and about fulfilling our constitutional responsibilities to give advice and consent. We are talking about whether each Senator will vote yes or no in an up-or-down vote on the nomination of Justice Owen. And soon we will be talking about the long-blocked nominations of California Supreme Court Justice Janice Rogers Brown, former Alabama Attorney General Bill Pryor, and others passed by the Judiciary Committee.

As the Presiding Officer said, the Senate's pending business is the nomination of Justice Priscilla Owen. Justice Owen has had a distinguished record as a judge who respects the rule of law. She understands that elected legislators write the law, not judges. As a judge, she has applied the law as it is written, not as she wished it were written.

The American Bar Association unanimously rated Justice Owen ''well qualified.'' Everyone here knows that the ABA is not exactly a conservative organization, so that rating speaks volumes. She has served on the Supreme Court of Texas for more than 10 years, where she has earned the respect and endorsements of Democratic justices and attorneys, and more impressively than that, in her most recent election, she received 84 percent of the vote. I cannot imagine getting 84 percent.

Just last week, I met with Justice Owen. I was impressed with her intelligence and honesty. I was impressed with her energy and determination to see this through. But most of all, I am satisfied that Justice Owen will interpret the law rather than try to write it, and I am convinced that she will stand up to any other judges on the Fifth Circuit Court of Appeals who try to rewrite the law from the bench.

Why has Justice Owen been denied an up-or-down vote? As best I can tell, it is because they crossed the radical left when she voted not to take away a mother's right to know that her teenage daughter wanted to have an abortion. Justice Owen did not write the Texas law requiring notification. The legislature did. She merely agreed with the two lower courts that the requirement of the exceptions in the law had not been met.

In the time when a teenage girl cannot get her ears pierced at the mall or take an aspirin at school without parental consent, it is not out of the mainstream to enforce a law requiring notice to a parent before that same teenager can get an abortion.

Another nominee we are discussing this week, California Supreme Court Justice Janice Rogers Brown, is also a nominee who will stand up to the activist judges on the Ninth Circuit Court. Justice Brown has been on the California Supreme Court for 9 years, and she received 76 percent of the vote in her last election, the most of any justice on that year's ballot.

Justice Brown has earned a reputation as a judge who respects the law and the California Legislature's decisions. She has consistently deferred to the legislature's judgment and not substituted her own political views. In other words, she knows the role of a judge is not to write the law but to apply the law.

Justice Brown has also earned the respect of her California colleagues. In recent years, she has been chosen by the court to write the majority opinions more times than any of her fellow justices. She has the endorsement of both the Republicans and Democratic judges, lawyers, and law professors in California.

Critics point to the statements that Justice Brown made about her policy views outside—outside, I say—of the courtroom. While some may not agree with her personal opinions on issues, outside the courtroom is the place where she should feel free to make her policy views known.

Some of her political views may conflict with the laws of the State of California, but Justice Brown has had no problem applying those laws to the cases before her. That is exactly what a judge is supposed to do—apply the law to the facts of the case regardless of whether the judge would have voted for that law if she or he had been in the legislature.

Mr. President, 5 years ago, a discussion like this about nominees would have been overlooked by most Members of this body. A few Senators would give a statement on the Senate floor in support of a nominee to a circuit court. A few more Senators would insert a statement into the RECORD. And then the Senate would confirm the nominee by a rollcall vote or even a voice vote. That was the ordinary course of business in this body for 214 years. But that is not the case anymore.

Ever since President Bush was elected, his nominees to the circuit court have been denied an up-or-down vote. During the 107th Congress, many of his nominees did not advance when the Senate was under Democratic control. During the 108th Congress, Democrats instituted the first partisan filibuster of judicial nominees, all of whom have majority support in this body.

We hear a lot from the other side about minority rights. No one on this side of the aisle wants to restrict the opposition's ability to speak their objections and vote against these nominees. I invite Senators who oppose these nominees to come to this floor and speak their objections. I encourage them to try to convince me why I should vote against these nominees.

Instead, this is about a minority of Senators trying to take for themselves a power that the Constitution gives only to the President of the United States. This is about a minority of Senators thwarting 214 years of Senate tradition. This is about the obligation and fairness of giving a nominee a vote. This is all about whether elections in this country mean anything.

We are currently engaged in a war against terrorism. We have helped the Iraqi people conduct peaceful democratic elections; also the people of Afghanistan. We have seen the power of the democratic process in the Ukraine,

and we have seen the strength of the voice of the people longing for freedom in Lebanon. Even Kuwait is taking steps to allow women to vote for the first time. How can we as a nation speak of the power of the people, the validity of the democratic process and the strength of the vote, if we let a minority in this body thwart the will of the democratically elected President and majority of this body?

Last fall, the American people spoke clearly. In the highest numbers in history, the American people went to the polls and voiced their opinion with their votes. The American people chose George W. Bush as their President, and the American people created a 55-vote majority for the Republicans in this Senate by electing 7 new Republican Senators. The message the American people sent is clear. They support President Bush and Republican policies and values more than what the other side of the aisle had to offer.

The Constitution gives the President, and only the President, the power to make nominations. It is up to him to pick a nominee. We in the Senate are only empowered to speak for or against and to vote for or against a nominee.

The nominees' records have been examined. Senators have come forth with their objections, and there is still time for objections to be spoken. We have offered to debate the nominations for as much time as the minority wants, to be followed by an up-or-down vote. But the time has come for us to set that vote. The President deserves to have that vote, the majority of the Senate deserves to have that vote, but particularly the nominees deserve to have that vote, and the American people deserve to have that vote. The American people deserve to see how their elected representatives vote on these nominations and to see what kind of judges their Senators support.

We have a crisis in the Federal judiciary. We have too many judges who act like they are in Congress, not on the bench. Those judges are imposing their values on the American people through their decisions. That is why we must confirm nominees like the ones before the Senate, to stand up to activist judges and uphold the law and the Constitution and not write new laws from the bench. Liberal special interests have taken over the Democratic Party and are fighting to stop these nominees, and therefore a minority of Senators is thwarting more than 200 years of Senate tradition to block votes on these nominees.

The other side has no other way to advance its ultraliberal agenda. They cannot pass their laws through this Congress or through State legislatures. They cannot even get elected by running on these issues. So they must turn to the courts, the last holdout of active liberal power to impose their agenda.

What is that agenda? It is unlimited abortion on demand, without even notice to the parents of a minor child or the father of that child. It is about allowing partial-birth abortions. That liberal agenda is about rewriting the definition of marriage. It is about stripping down the pledge of allegiance because it recognizes God. That agenda is about banishing the Ten Commandments from public buildings. That agenda is allowing pornographic photos and other things into our libraries and across the Internet.

That ultraliberal agenda does not sell in the heartland around the dinner table. It does not even sell here in the Congress. So the last great hope for the liberals is the judicial bench, and that is why they fight these judicial nominees who do not give in to their liberal, activist agenda. The only thing that can stop the rewriting of our Constitution and laws is judges who will stand up to that activism and fight for the rule of law. President Bush has nominated such individuals. Now the Senate must allow an up-or-down vote on those nominees.

There are other consequences to this debate as well. The confirmation process has become quite a burden on the nominees and their families. In the last Congress, one of the most qualified judicial nominees ever, Miguel Estrada, asked for his nomination to be withdrawn because of the strains on his personal life and family. Several more nominees asked not to be renominated in the 109th Congress because of those same burdens. There are also practical consequences for the American people who rely on a functioning court system.

Because of the vacant seats, our appeals courts are experiencing huge delays that are unfair to the parties and put added strain on sitting judges. Nowhere is that more pronounced than in the Sixth Circuit, which encompasses my State. One-quarter of the seats of that court sit empty because the nominees from one State, Michigan, are being denied an up-or-down vote. Those vacancies have a real effect on the lives of 30 million people who live in the Sixth Circuit. The people of Kentucky, Ohio, Tennessee, and Michigan, the people of the Sixth Circuit, are being denied justice in a timely manner.

This issue is far too important to leave unresolved any longer. We must move to a vote. The record is clear. The nominees before the Senate are qualified to serve on the Federal bench and deserve to be confirmed by the Senate. They have the proper understanding of the role of each branch of Government under our Constitution. They will stand up to those who wish to use the court as an unelected legislature. They deserve an up-or-down vote.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ALEXANDER). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I am going to speak on the judge issue that is before the Senate. I was wondering what the time constraints are.

The PRESIDING OFFICER. The time until 1 o'clock is controlled by the majority.

Mr. GRASSLEY. That means I can speak until 1 o'clock; is that right?

The PRESIDING OFFICER. The Senator is correct.

Mr. GRASSLEY. Mr. President, for several days now, the Senate has been debating two nominees for the Federal bench, Priscilla Owen and Janice Rogers Brown. I come to the floor to express my support for these two highly qualified women, and I also do it to urge my colleagues to support an up-or-down vote so that these folks know whether a majority of the Senate is consenting to their nomination by the President of the United States, in other words, confirm these two highly qualified judges.

One of the most important roles that we Senators have is the responsibility of advising and consenting to individuals that the President has nominated to fill positions on the three levels of the Federal judiciary. But this responsibility has been threatened by actions of Democratic leadership. Of course, that has brought us to this extended debate, over several days now, about the role of the Senate as expressed in the Constitution about the handling of Federal judges nominated by the President.

It seems to me the Constitution is very clear on the role of the Senate in this judicial confirmation process. Judicial nominees are chosen by the President with the advice and consent of this body. Until President Bush was elected, no one ever interpreted this requirement to mean anything but a simple majority vote of those present and voting in the Senate. For over 200 years, no judicial nomination, with a clear majority support in the Senate, had ever been denied an up-or-down vote on the Senate floor. This was the case regardless of whether a Republican or Democratic President was in office. This was the case, regardless of whether the Senate was controlled by Democrats or Republicans.

Recently, in the last Congress, the Democratic leadership decided it was going to change the ground rules. The Senate Democrats rejected a 200-year-old Senate tradition of giving judicial nominees an up-or-down vote. By doing this, the Democratic leadership has rejected the Constitution, rejected the traditions of the Senate, and it seems to me as a result of the last election, when approving judges was very much an issue to the American electorate, they are now rejecting the will of the American people.

The Democratic leadership targeted 16 of President Bush's 52 court of appeal nominees. They actually filibustered 10 and threatened to filibuster 6

more, a full 31 percent of President Bush's appellate court nominees being stymied. Because of this, President Bush has had the lowest percentage of his court nominees confirmed by any President in recent memory.

What is this debate all about? It is basically a debate about what the Constitution requires of the Senate. It is a debate about fairness to the individuals who do not have an opportunity to see whether a majority of the Senate supports them and approves their appointment.

And in the case of fairness to the individual nominees, they have been waiting for years to be confirmed. They have majority support in the Senate, but a minority of Senators is opposed to President Bush's appellate court nominees and, as a consequence, will not allow the Senate to give these individuals an up-or-down vote. The Democratic leadership will not allow the Senate to exercise its constitutional duty of advice and consent.

The Democratic leadership will not allow even this one Senator to exercise my constitutional responsibilities. In a sense, this Senator from Iowa and 99 others are being denied an opportunity to carry out their constitutional responsibility. That is simply not right. The Constitution demands an up-or-down vote. Fairness demands an up-or-down vote.

Some have claimed a rule change on this matter is a violation of Senators' free speech and minority rights. Let me make it very clear, we are not talking about changing rules in this process, we are talking about abiding by the practice of the Senate, until 2 years ago, over the 214-year history of the Senate. So no rule change, just doing what the Senate has always been doing, and no one has raised the issue before about a Senator's free speech and minority rights being violated. There is not anything out of the ordinary then about a majority wanting to exercise its right to keep Senate procedures the same as they have always been.

For example, we were faced with problems in 1977, 1979, 1980, and 1987, problems that were visualized by the Senate majority leader at that time as stopping the Senate from doing what is constitutionally necessary for the Senate to do. In those years, Senator BYRD led a Democratic Senate majority in setting precedents to restrict minority rights. The Republicans, who were the minority party, did not respond by threatening the shutdown of the Senate or the stalling of legislation.

On the other hand, the actions of the Senate Democrats now are an unprecedented obstruction, plain and simple. The Democratic leadership is not interested in additional debate on the nominees. This is not about minorities wanting to exercise speech and debate on the nomination as long as they might want. The Republican majority leader has offered the Democrats time and again as much time as they want for debate. Yet the Democratic leader indicated in so many words that the Democrats would not agree to any time agreement.

The Democratic leadership has taken the position that it will not even allow an up-or-down vote on these nominees. The minority leader has indicated there is no time long enough for Democrats to debate these nominations.

I clearly understand the importance of filibusters and would not want to see them done away with completely. However, it is also important to make a distinction between filibustering legislation and filibustering judicial nominations. The interests of the minority party are protected in the Senate. It is the only segment of our Government where minority points of view are protected. It has served a very good purpose over 200 years bringing about compromise. Filibusters are meant to allow insurance that the minority has a voice in crafting legislation.

When working on a bill, it is possible to make changes in compromises to legislative language until you get the 60 votes needed under Senate rules to bring debate to a close.

In the tradition of the filibuster on legislation, unlimited debate ensures that compromise can take place, protecting some of the desires of the minority. That minority might not be a partisan minority; that minority could be a bipartisan minority that wants to make sure certain changes are made in legislation.

Judicial nominees, however, are very different than legislation. An individual such as Judge Brown or Judge Owen cannot be compromised some way so the filibuster, the way it is used in legislation, can be used to bring about compromise of an individual because you cannot redraft a person like you can redraft legislation to get over a filibuster, to get to finality so a majority can rule. In a sense, the minority is saying it is possible to use the filibuster to cut off the left arm of one of these nominees and put on a new arm so they are compromised to get to finality. That is ridiculous. It just does not work.

But it also illustrates the rationale behind a filibuster applicable to legislation, not applicable to an individual.

For judicial nominations, it is the Senate's responsibility to determine whether nominees are qualified for a position they are nominated to, and to say so through an up-or-down vote. Let a majority of the Senate decide if they are qualified.

Throughout our Nation's history, it has only taken a majority of Senators to determine a nominee's qualification for the judge position they are appointed to. It seems to me after a 214-year history, that is history worth continuing.

The reality about the Democratic leadership's filibuster is that the minority wants to block filling appellate court judgeships by requiring 60 votes to proceed to the nomination. But no other President has been required to get 60 votes for his judicial nominees. No other judicial nominee needed to pass the 60-vote hurdle of a supermajority.

Many Federal judges on the bench today would have never made it, not with that sort of requirement. In fact, all Senators here got elected by a simple majority, 50 percent of the vote. If we had requirements for supermajority rule for Senators to be elected, a lot of Senators who are my colleagues might not be here today. Why are Senators now wanting to approve judges only if they get a 60-percent vote? The reality is no other Senate majority has been excluded from judicial confirmation process in 214 years. We need to restore tradition and the law of judicial process. We need to give these nominees the up-or-down vote the Constitution requires. We need to stop a systematic denial of our advice and consent responsibilities which have been shuttered by the use of the filibuster.

I have been a Member of the Senate since 1981. Before I got to the Senate I served in the other body since 1974. I love the Senate. I have worked hard to be a very productive Senator. I want to do what is best for the Senate, for my constituents, and for my country. That is not different than the other 99 Senators most of the time. That is what we were all elected to do. The Republican majority leader is also trying to do what he thinks is the best thing for this country by moving to reestablish the over 200-year Senate tradition by giving judicial nominees the up-or-down vote.

This is not going to destroy the Senate. It is in the tradition of the Senate and it is within the tradition of the Constitution. The 214-year history of this Senate speaks louder than just the last 2 years, but the last 2 years will trump the first 214 years if we do not take action to keep the advice and consent confirmation process within the tradition of the Senate.

It is just plain hogwash to say that moving to make sure the rule is to give judicial nominees an up-or-down vote will hurt our ability to reestablish fairness in the judicial nominating process. It is not going to hurt minority rights. It establishes what we call regular order as it has been for 214 years. It will be fair both to Republicans and Democrats alike. All the majority leader wants to do is to have a chance to vote these nominees up or down. If these individuals do not have 51 votes, they will be rejected and should be rejected. But if these individuals do have 51 votes, then they should be confirmed. That is according to the Constitution.

If a Senator disapproves of any one of these individuals, vote against the nomination. I have done that in the past. But do not deprive the people the right to support a nominee through their elected Senator.

Some claim many judicial nominees were filibustered by Republicans, particularly when President Clinton was in office. That isn't accurate and that is a nice way for me to say it. Very few people either inside or outside this Chamber have been as involved in the issue of judicial nominations and the use of the filibuster as I have. As a long-time chairman of the Judiciary Subcommittee on the Federal Courts, I have a unique perspective on the debate and the use of filibusters.

First, when the Democrats were in a majority in the Senate under President Reagan—and this goes back to my starting in the Senate in 1981—they blocked 30 of President Reagan's nominees and 58 of President Bush Senior's nominees. They did that in the Judiciary Committee.

Now, that is not equivalent to a filibuster. I do not want to mislead anybody. Then, in the last few years of President Clinton's administration, many Republicans became disillusioned with the number of nominees the administration had sent to the Senate, and we felt our own Republican leadership was allowing out-of-the-mainstream nominees to be confirmed. This all came to a head with the nominations of Ninth Circuit Judges Paez and Berzon. Now, understand these people are serving as judges now. They were nominated to that position by President Clinton.

Going back to this time of Judges Paez and Berzon, at that time we had a Democratic President and a Republican-controlled Senate. There was serious talk of filibustering these nominees. I have heard some Democrats and ill-informed pundits try to make the case that Paez and Berzon were filibustered. Well, they were not.

The reality is, the Republican leadership, including the chairman of the Judiciary Committee at the time, argued that there had never been a filibuster of an appellate court nominee. The Republican leadership argued Republicans should not cross that Rubicon and set the precedent because then it would be used against Republicans in the future when we had a Republican administration. So it was decided at that time there would not be a filibuster and we would not set that precedent. There would be a cloture vote, yes, but everyone knew that cloture vote would prevail and the nominee would be confirmed by a majority vote.

So the Members who wanted to filibuster decided to go along with the leadership's wise counsel even though these Members never trusted that the Democratic leadership would follow our example. I voted for cloture. I voted to get over 60 votes so we could move on with what we knew should have been done by the Senate. But I want you to know that I voted against these two nominees, Judges Paez and Berzon. And I was not alone. Other Republican Senators did the same thing. But in the end, unfortunately, those Members were right not to trust Democratic leadership because Democratic leadership has now crossed the filibuster Rubicon.

We are not only being denied the ability to perform our constitutional duty in the judicial selection process, the move to filibuster is upsetting the checks and balances and the separation of powers principle our Nation is founded upon. The Democrats are the ones who are upsetting the checks and balances. They want to grind the judicial process to a halt for appellate court nominees so they can fill the bench with individuals who have been rubberstamped by leftwing extreme groups.

Let me say something about the nominees, then, because these are the folks whom we are debating, these are the folks whose professional future, personal future is at stake by what we do here of allowing 51 votes when they will be approved or 60 votes when they will not be approved.

Priscilla Owen and Janice Rogers Brown are both highly qualified individuals, with exceptional legal abilities. They are talented women, respected women, true pioneers. But they have been drawn into the web of the far leftwing special interest groups. These women have been called outside the mainstream by their opponents. They have been called unworthy for the Federal bench.

They have been labeled, among other things, as ''activist,'' ''anticivil rights,'' and ''anticonsumer.'' These claims are not true. And the claims charged against other of President Bush's judicial nominees are just as false. All these outrageous claims have consequences.

The travesty is Priscilla Owen and Janice Rogers Brown have been waiting for years to be confirmed. The travesty is other worthy nominees such as Miguel Estrada got tired of putting up with the antics of the Senate, a Senate untraditional of its first 214-year history, and just said: I am not going to fight it anymore. So Miguel Estrada withdrew his nomination. The travesty is that a nominee like Judge Pickering is trashed. The travesty is that the good name of a nominee like William Pryor is dragged through the mud.

Ripping to shreds the reputation of these individuals with unfounded allegations is unacceptable. This tactic sends a clear message to good people who want to serve their country that they will have to endure outlandish and baseless attacks on their record and character if they ever want to be a Federal judge. The Democrats are doing this because they are using a far left litmus test to satisfy their leftwing—their leftwing that is out of the mainstream—special groups. So when the Democratic leadership says these nominees are outside the mainstream, they are basically saying these individuals have not been approved by their allies, the far left special interest groups.

But judicial nominees should not be subject to a litmus test. They should not be subject to an ideology litmus test. A nominee should not be opposed, as Priscilla Owen and Janice Rogers Brown are being opposed right now, because they will strictly follow the law, be constitutionalists, rather than legislating from the bench some leftwing agenda.

Moreover, history has proven the wisdom of having the President place judges with the support of the majority, not a supermajority, in the Senate. That process ensures balance on the courts between judges placed on the bench by Republican Presidents and those placed on the bench by Democratic Presidents.

The current obstruction led by Senate Democratic leaders threatens that balance. Priscilla Owen and Janice Rogers Brown deserve an up-or-down vote. It is high time to make sure all judges receive fair up-or-down votes on the Senate floor, up-or-down votes for judicial nominees of both Republican and Democratic Presidents alike in the tradition of the Senate for 214 years, until 2 years ago.

In my town meetings across Iowa, I hear from people all the time, Why aren't the judges being confirmed? If we do not take care of this issue this week, I am going to hear it in my 22 town meetings across northwest Iowa next week when we are not in session. I think most people understand the process is being politicized to the point that good men and women are being demonized and their records distorted at an unprecedented level.

I hear from Iowans all the time that they want to see these nominees treated in a fair manner, and they want to see an up-or-down vote. The Democratic leadership likes to say the Republicans are the ones who are changing the rules. But that is not true. The Democrats are the ones who have engaged in extreme behavior and tactics, pulling out all the stops to defeat well-qualified nominees who would have majority support in the Senate if they were given an up-or-down vote. They are the ones who have distorted the rules to the point that the Senate is being denied its ability to fulfill its constitutional responsibility. And if Senator FRIST has to do it, what he is doing is leaving the rules practiced exactly the way they were for 214 years.

Filibustering judicial nominees may be touted as standing firm on principle. On the contrary, what it boils down to is an obstruction of justice. Let's do the American people a favor. Let's stop the theatrics and get back to the people's business. All the rallies and political spin doctoring are not clearing any court dockets, and they are not impressing the American public either.

Let's debate the nominees and give our advice and consent. It is a simple ''yea'' or ''nay,'' when called to the altar to vote. Filibustering a nominee into oblivion is misguided warfare and the wrong way for a minority party to leverage influence in the Senate. Threatening to grind legislative activity to a standstill if they do not get

their way is like being a bully on the school yard playground. Let's do our jobs.

Nothing is nuclear about asking the full Senate to take an up-or-down vote on judicial nominees. It is the way the Senate has operated for 214 years. The reality here is the Democrats are the ones who are turning Senate tradition on its head by installing a filibuster against the President's judicial nominees.

The Senate has a choice. We can live up to our constitutional duties to advise and consent to President Bush's judicial nominees or we can surrender our constitutional duty to the leftwing special interest groups who apparently control the Democratic Party. This Senator chooses to follow the Constitution.

We need to return to a respectable and fair process. We need to return to the law and the Constitution. We need to return to the Senate's longstanding tradition. We need an up-or-down vote for these judicial nominees.

In case there are some people sincerely led to believe that somehow appointing certain people with a strict constitutionalism to the courts is something to worry about, I would simply ask them to look at how history works in bringing balance to our judiciary throughout the history of our country. Think in terms of 8 years of a Republican President appointing maybe people who are strict constitutionalists to the judgeships—and not all of them are; but just say that they might all be—then you have 8 years of a Democratic president with people of an opposite point of view being appointed to the judgeships. That brings balance.

But also think in terms of how it is difficult to predict down the road 25 years how judges are going to rule. Think of two of the foremost liberal people on the Supreme Court, Justice Souter and Justice Stevens. Who do you think appointed these most liberal members to the Supreme Court? Republican Presidents did. And then balance that with the two other most liberal members on the Supreme Court, Breyer and Ginsburg. Who appointed them? A Democratic President. You could make an argument that Republican Presidents have brought more balance to the Supreme Court than Democratic Presidents have.

Then the other thing is, look at somewhere you thought they were going to be predictable where they would end up, and you have Justice Kennedy and you have Justice O'Connor, who were supposed to be very strict constructionists when they were appointed to the Supreme Court, but they go back and forth between the conservative wing of the Court and the liberal wing of the Court.

So whatever worries the Democratic Senators of today, I wish they would take a look at history. Time answers a lot of these problems. Elections answer a lot of these problems. And we have a great constitutional system that has worked for so long over such a long period of time that in the final analysis everything is going to work out OK.

I yield the floor.

The PRESIDING OFFICER (Mr. ROBERTS). The Senator from California.

Mrs. FEINSTEIN. Mr. President, I come to the floor to make a plea to my colleagues and my friends on both sides of the aisle. I have spoken on this issue twice. But within 24 hours, the time will come when the Senate may well be changed. Right now is the time to let political pressures cool, to step back from the brink and to reflect on the long-term consequences rather than the short-term gain. The time has come to walk away from a decision that will turn our governmental system on its head.

The reason this is called the nuclear option is not necessarily what it would do to the body but what it does to our ability to control the rules of the body. Because for the first time in history, a rule will be changed or, as we on this side of the aisle say, broken, by a majority vote, 51 votes, a majority of the Senate, when in fact rule changes require a two-thirds majority vote. There is virtually no rule that I know of in this body that can be changed with 51 votes.

I understand that it is going to be done without consultation of the Parliamentarian. My understanding is that he would say it is not within the Senate rules or precedent to change this rule with only 51 votes. Nonetheless, it is going to be done.

When taken to its logical conclusion, a majority vote in favor of the nuclear option will fundamentally alter our democracy, not only by breaking the rules as I just described but by altering the fundamental balance between this body and the other House and, most particularly, the role that Senators have had representing their constituents for over 200 years.

I recognize we may not agree on the qualifications of the nominees before us. I recognize many of my friends on the other side of the aisle feel very strongly about confirming these candidates to the court. But in the end, regardless of who is right and who is wrong, changing the Senate's rules, throwing out precedent, will profoundly harm this body, the comity we enjoy, the moderation that has defined the Senate, the bipartisanship that is essential, and the balance of power that is needed to maintain any form of a democratic government, particularly this one.

This nuclear option changes the deliberative nature of this body because it, in effect, ipso facto changes the Senate into the House of Representatives so that the Senate will work its will by majority. That has never necessarily been the case before. We all know the Senate is like a huge bicycle wheel. When one of the 100 spokes is out of line, it stops the wheel. So everybody respects that and pulls back from the brink because of it because we know if we are the one that puts on the hold or stops the wheel from turning, that we also can feel that happen to us with our legislation and our bills.

Former Republican Senator Warren Rudman, whom I greatly respect—he represented New Hampshire from 1980 to 1993—was quoted in the press this weekend. Let me share with you what he said:

> I will lament this vote if it succeeds. People tend to look at the history of the Senate and how it functions, and my bottom line is that the Founding Fathers wanted a true balance of power and this would shift the balance of power to the White House. My sense is, thinking back on it, that I don't think you could have gotten 51 votes on this sort of thing in the past. . . I would have clearly voted against it.

That was Warren Rudman this past weekend.

I urge my colleagues on the other side of the aisle to stand up against the political tidal wave pushing this agenda and let the passions of the moment cool. The debate last week was overwhelmed with fiery rhetoric and political posturing. One Republican compared Democrats to Adolf Hitler. Another Senator insinuated that Democratic opposition is based on a nominee's religious faith. Others twisted the history of judicial nominations beyond recognition. And to be fair, some Senators on our side of the aisle also employed fiery language.

Just listening to this debate, we can see what will happen if the majority goes forward on this path. The Senate will most certainly face a loss of civility, a loss of respect for differences. Political message will overwhelm substantive policy, and political potshots will drive our debates rather than the best interests of the American people. Playing to the base rather than playing out the real-life consequences of our acts will rule the day. Regardless of each of our opinions on whether each nominee before the Senate should be appointed to the appellate courts, the aftermath of the nuclear option will not serve the American people well.

On two prior occasions, I have come to the floor to talk about the importance of checks and balances, the intentions of our Founding Fathers, the structure of the Constitution, and the inherent benefits of conflict and compromise. Our forefathers knew, as do our modern counterparts, that essential to a true democracy is the need for a balance of power because who is in the minority has, and will, constantly change. Democrats held the House majority for over 50 years, and now Republicans have been in the majority for over a decade. Democrats held the White House for 8 years. Now Republicans will have occupied the White House for 8 years. The swing back and forth between the majority and the minority applies not just to political parties but to populations and ideas as well. Populations change and the political pendulum swings, but what moderates those swings and the tidal wave

of power is the role and influence of the minority.

While it is true many of us on this side of the aisle were frustrated when Republicans used their rights and the Senate rules to block Clinton's judges and our legislative agenda, we aired our frustration. At that time, I urged my colleagues to allow a vote. However, I did not advocate breaking the rules with 51 votes and employing the nuclear option as a way to force Republicans to their knees. The role of moderation has worked and has been an important balance in our country.

As my colleague, Senator LIEBERMAN, said last week:

> In a Senate that is increasingly partisan and polarized and, therefore, unproductive, the institutional requirement for 60 votes is one of the last best hopes for bipartisanship and moderation.

For example, President Clinton understood the strong feelings of our Republican colleagues on judges, and he went to extensive efforts to consult Republicans on judges that would be nominated. In describing these efforts, Senator HATCH wrote in his book that he ''had several opportunities to talk privately with President Clinton about a variety of issues, especially judicial nominations.''

Senator HATCH described how when the first Supreme Court vacancy arose in 1993, ''it was not a surprise when the President called to talk about the appointment and what he was thinking of doing.'' He went on to describe that the President was thinking of nominating someone who would require a ''tough political battle.'' Senator HATCH recalled that he advised President Clinton to consider other candidates and suggested then-DC Circuit Judge Ruth Bader Ginsburg, as well as then-First Circuit Judge Stephen Breyer.

So there was a defined, informal consultation that showed the power and authority of the Republican chairman of the Judiciary Committee, who actually submitted to the President—at that time Bill Clinton—the names of Ruth Bader Ginsburg and Stephen Breyer for appointment to the Supreme Court. However, today there is not really active consultation by this administration in most cases. Instead, there appears to be a kind of disregard for the opinions of all Democratic Senators, even home State Senators. I know my colleagues from Michigan have been extremely frustrated in their efforts to find a solution to the stalemate over the Sixth Circuit.

I am also concerned that if the nuclear option moves forward, there will no longer really be a need for the Judiciary Committee. I ask my colleagues to think about this. If the President is to be given unlimited power to appoint whomever he chooses, there will be no need for hearings, there will be no need for an examination of a nominee's record. Any dissent or concerns will fall on deaf ears, so long as there are at least 50 Senators willing to confirm the President's choices for the Federal bench.

Checks and balances are not new. Our country's 200-year tradition of working through our differences is not new. The need for consultation is not new. The important role of the Judiciary Committee—and I have served as a member for 12 years now—in examining a nominee's qualifications, is not new. What is new is the majority party's decision that if you win an election, you should have absolute power.

Earlier this week, the Senator from Pennsylvania, Mr. SANTORUM, stated:

> I guess elections do not matter. I guess who people vote for for President is of no concern to the minority in the Senate. . . If someone happens to be reported out and a majority defeats, fine, majority rules.

It is this very sentiment that concerns me and many others because this logic ignores that the Democratic Senators won their elections, too, and that while President Bush did win the election, those who did not vote for him still maintain their rights to have their voices represented in Government. Our country is not an autocracy. It is a democracy, where the minority enjoys an active role, particularly in the Senate.

Protecting the minority and ensuring it is not overrun by a strong majority is central to the need for an independent judiciary. In fact, this is a basic lesson taught in elementary civics in schools across the country. One teacher's notes found on the Internet as a model for civic teachers states:

Purpose/Rationale/Goals of the day's lesson:

> Students should understand that majority rule does not take precedence over minority rights. The lesson should promote thought, understanding, and acceptance that unpopular ideas are protected under the United States Constitution. Students should also understand that it is the independent judiciary that protects these rights.

So it is a basic lesson we all learn in school from a very early age. Federal judges are meant to be independent. That is one of the reasons why the nuclear option is so dangerous—because it completely quells the arguments, the views, and the votes of the minority and, therefore, eases the way for absolute power to prevail with absolutely partisan appointments. There is nothing the minority can do to stop that.

I have quoted John Adams before on the specific need for an independent judiciary.

He stated in a pamphlet called ''Thoughts on Government,'' which was distributed in 1776, the following:

> The judicial power ought to be distinct from both the legislative and the executive, and independent upon both, so that it may be a check upon both, as both should be checked upon.

Today, I also want to quote from Alexander Hamilton, who, in the Federalist Papers, No. 78, published in 1788, wrote:

> As liberty can have nothing to fear from the judiciary alone, it has everything to fear from its union with either the [executive or legislative] departments.

These statements by Adams and Hamilton clearly set forth the intent of our forefathers that the judiciary should be and must be independent. The Senate was meant to play an active role in the selection process, and the judiciary was not solely to be determined by the executive branch.

As a matter of fact, I pointed out earlier on that in the early days of the Constitutional Convention, it was proposed that the Senate solely determine who would sit on the federal bench, and then that was changed to give the President a role in the nomination of judges confirmed by the President.

I have also spoken about the history of judicial nominations under the Clinton administration. As I have explained in great detail, during the previous administration, Republicans used the practice of blue slips, or an anonymous hold, to allow a single Senator, not 41, to prevent a nomination from receiving a hearing, a markup, a cloture vote, or an up-or-down vote. This demonstrates that Senate rules have been used throughout our history by both parties to implement a strong Senate role and minority rights, even the right of one Senator to block a nominee. As has been illustrated by my colleagues on the other side of the aisle, both parties have bemoaned the impact of procedural delays on confirming judges.

However, President Clinton's nominees were pocket filibustered by as little as one Senator in secret and, therefore, provided no information about why their nomination was being blocked, let alone an opportunity to address any concerns or criticisms about their record—no up-or-down vote, no cloture vote, no vote in the Judiciary Committee, nothing. There were 23 circuit court nominees handled this way—filibustered by as few as 1 person, 1 Senator—and 38 district court nominees were filibustered by as little as 1 Senator.

In addition, unlike what some have argued, this practice was implemented throughout the Clinton administration when Republicans controlled the Senate, not just in the last years or months.

The question I have posed to this body twice now—and I do it a third time—is whether the public interest is better served by 41 Senators taking an openly declared position, publicly debating an individual's past speeches, temperament, opinions, or a filibuster of 1 or 2 Senators in secret when one does not know why or who? I think the answer is pretty clear.

This weekend, I read the press coverage on the nuclear option with great interest. I was heartened to realize that Democrats are not the only ones who are concerned with the idea of drowning out minority views and turning the Senate into the House.

The New York Times editorialized:

> The Republican attack is deeply misguided. There is a centuries-old Senate tradition that a minority can use a filibuster to block legislation or nominees. The Congressional Research Service has declared that

the nuclear option would require that ''one or more of the Senate's precedents be overturned or interpreted otherwise than in the past.'' The American people strongly oppose the nuclear option, according to recent polls, because they see it for what it is: rewriting the rules to trample the minority.

That is the New York Times.

The Associated Press reported on a new poll that asked about judges and the Senate's role. The results found that 78 percent of those polled stated that the Senate should ''take an assertive role in examining each nominee.'' And a Time poll said 59 percent of Americans believe Republicans should not be able to eliminate the filibuster. Whereas, in sharp contrast, a poll released last Thursday by NBC News/Wall Street Journal found that only 33 percent of those surveyed approve of the job being done by the Congress. This is a monumental number. I submit that as partisanship and the polarization of this body increases, the poll numbers will continue to decrease because that is not what the American people want us to do.

In addition, there were more reports of former Republican Senators who are also concerned about the impact of a nuclear option. Former Senator Clifford Hansen, a Wyoming Republican who served from 1967 to 1978, was quoted as stating:

Being a Republican, we were the minority party, and I suspect there are some similarities between our situation then and those that the Democrats find themselves in today. I am sure that it would have concerned me if there were limits on the filibuster. When I was in the Senate, the Democrats were in control, and we made a lot of friends with the Democratic Party, and I realized then that if I were going to get anything done, I had to reach out and establish some real friendships with members on the other side.

That is what this Democrat has tried to do over the past few years as well.

The Los Angeles Times wrote:

If a showdown over President Bush's nominees goes forward as planned next week, it would mark one more significant step in the Senate's transformation from a clubby bastion of bipartisanship into a free-wheeling political arena as raucous as the House of Representatives.

And The Economist wrote:

Amid all this uncertainty, the filibuster debate has almost certainly harmed one institution: the Senate. It was deliberately designed by the Founding Fathers to be the deliberative branch of the American Government. Senators who sit for 6 years rather than the 2 years of the populist House, have long prided themselves on their independence. The politics of partisanship has now arrived in the upper Chamber with a vengeance. The Senate has long stood as a barrier to government activism on either side.

As all these accounts acknowledge, the nuclear option will turn the Senate into a body that could have its rules broken at any time—and this is significant—not by 60 votes but by a majority of Senators unhappy with any position taken by the minority. It begins with judicial nominations. Next will be executive appointments, and then it will be legislation. If this is allowed to happen, if the Republican leadership insists on forcing the nuclear option, the Senate becomes the House of Representatives, where the majority rules supreme and the party in power can dominate and control the agenda with absolute power.

This country is based on a balance between majority rule and minority rights. I believe it is important to reflect on what our country is facing while this debate is moving forward.

We had another sharply divided election, where the President was elected by a slight margin. The differences in American beliefs have been highlighted through heated debate over the budget, Social Security, the war in Iraq, increased tax cuts, funding for education, health care, and law enforcement. At times, the level of disagreement can seem overwhelming. Yet, with all this tension, the majority party is attempting to implement a strategy to completely silence the minority. It is no longer acceptable to have differences. The defining theme now seems to be ''my way or the highway.''

Last week, I said, when 1 party rules all 3 branches, that party rules supreme, but tomorrow, if the nuclear option proceeds, the Republican party will be saying that supreme rule is not enough; total domination is what is required. The nuclear option is the majority's strategy to completely eliminate the ability of the minority to have any voice, any influence, any input. When might makes right, someone is always trampled. Instead, I believe we should be ruled by the philosophy that right makes might.

Thomas Jefferson consistently advocated for our country based on the free flow of ideas and open debate. And maybe up to this point we have taken for granted that a government of the people must be based on reason, on choice, and on open debate. But before our Nation was founded, modern governments were based on authoritarian domination. The people, in general, were considered little more than cattle to be governed and controlled by those possessing wealth, property, education, and power. The Founding Fathers introduced the revolutionary idea that government could rest on the reasoned choice of the people themselves.

In a free society, with a government based on reason, it is inevitable that there will be strong disagreements about important issues. But a government of the people requires difference of opinion in order to discover truth.

As I said at the beginning of this statement, I am deeply troubled that legitimate disagreements over a nominee's qualifications to be elevated to a lifetime appointment have been turned into a strategy to unravel our constitutional checks and balances.

Unfortunately, while the Department of Defense authorization bill sat on the calendar for the past week, we have wasted time on a clear stalemate. There are many urgent problems the Senate needs to be focused on and Americans want us to focus on: the war in Iraq, protecting our homeland, addressing the high cost of prescription drugs, alleviating rising gas prices, ensuring our Social Security system is stable and working, and reducing the Federal deficit. I am fairly certain we will not all agree on the best means to address these issues.

I very much regret what we are in today. To give you just a small example—and I think the Presiding Officer knows this—I sit on three committees. These three committees, for markups of critical bills, are meeting simultaneously. They are Intelligence, marking up the Patriot Act; Judiciary, marking up the asbestos bill; and the Energy Committee, marking up the Energy bill at the same time. This is not the way to do the people's business—constrained by time limits artificially imposed because of this present situation.

I very much agree with the sentiment expressed by my colleague, Senator SPECTER, when he said:

If [during the cold war] the United States and the Soviet Union could avoid nuclear confrontation . . . so should the United States Senate.

I hope Republicans will choose to honor the tradition of our democracy and walk away from this confrontation. I know if the shoe were on the other foot, I would not advocate breaking Senate rules and precedent.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The distinguished Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, I rise today in opposition to the nomination of Texas Supreme Court Justice Priscilla Owen to the U.S. Court of Appeals for the Fifth Circuit. After being rejected by the Senate Judiciary Committee in 2002, and after being renominated and successfully filibustered by the full Senate in the 108th Congress, Justice Owen has been nominated yet again to the U.S. Court of Appeals for the Fifth Circuit.

In my opinion, Justice Owen has not demonstrated an appropriate judicial temperament for a lifetime appointment to the Federal bench. More importantly, her own colleagues on the conservative Texas State Supreme Court have described her dissents as ''nothing more than inflammatory rhetoric.'' In another case, the majority stated that Justice Owen's dissenting opinion, ''. . . not only disregards the procedural limitations in the statute but takes a position even more extreme.'' However, I will not dwell too long on Justice Owen's record. It speaks for itself, and as I mentioned earlier, we have given much time and thought to this nomination. Much has already been said in opposition to her nomination. Instead, I will spend some time on the majority's plan in this Chamber to subvert the minority's right to extended debate.

I have spent the past few weeks listening to the debate over seven nominees who were not confirmed in the 108th Congress and have been renominated to the Federal bench by President Bush. We are nearing the end of a debate that may forever change the very nature of how this great institution operates: by a delicate balance of the majority's ability to set the agenda and the protection of the minority's rights. One thing is clear to me, this discussion about the minority's right to extended debate is not getting us any closer to enacting much-needed legislation to assist our constituents.

Outside of Washington, DC, on a day-to-day basis our constituents face many challenges: escalating health care costs, record high gas prices, and mounting debt that will be handed down to our children and grandchildren. Despite these day-to-day challenges, the majority party continues to put seven judicial nominations at the top of its agenda.

Let it be clear to those following this debate. This discussion is over the fact that the Senate has passed only 95 percent of President Bush's nominees, not 100 percent. I take my responsibilities as a Senator very seriously. I am to provide the President with my advice and consent regarding the individuals he nominates for a lifetime position to the Federal judiciary. Let me say that again: a lifetime position on the Federal judiciary. Many have asked why the Democrats are so vigorously defending the rights of the minority in this case? Why do we need to preserve the tradition of extended debate with regard to judicial nominations?

The reason why we are taking a stand against these nominees is because once they gain the Senate's advice and consent, nominees are free to decide thousands of key cases that affect millions of Americans on a day-to-day basis. If there are any objections we may have to a judicial nominee's lifetime appointment to the Federal judiciary, this is the time for each Senator to voice that opposition. Unlike legislation, which may be amended and refined over time, judges on the Federal bench sit for a lifetime appointment with little recourse for correction or change. The only chance we as Senators have to voice our positions on their appointments is now.

From civil rights to personal privacy, from environmental protections to a corporation's financial matters; these nominees will affect public policy for decades to come. In fact, I dare say that we would be remiss in our Constitutional duties if we did not object to those nominees with whom we find unfit for a lifetime appointment to the Federal bench. It troubles me that the Senate has focused so much in the past few weeks discussing the fact that we have not acted on 7 of 218 of the President's nominees to the Federal judiciary.

We are talking about seven individuals, seven individuals who have jobs, while 1.2 million people are without jobs since President Bush took office, seven individuals who most likely have health insurance, while 45 million Americans do not have health insurance. We should be talking about jobs and access to health care. We should be focusing on the need to increase funding to ensure that veterans, especially those returning from the global war on terror, have access to quality health care and benefits. We should be looking at energy legislation that will address the vital energy needs of our Nation. In short, we should be doing what the American people sent us to Washington to do; to govern, not engage in an effort to ensure that this President has a 100 percent success rate for his judicial nominations.

If we want to start talking about legislation that is important to us as individual Senators, we could be talking about Federal recognition for Hawaii's indigenous peoples, Native Hawaiians, an issue of extreme importance to my constituents in Hawaii. We could be talking about ending mutual fund abuses for investors or promoting financial and economic literacy for our youth and adults alike. We could be talking about how to fund the promises we extended when we passed the No Child Left Behind Act which has been severely underfunded since its enactment.

Instead, over these past few weeks out of 218 judicial nominations approved we focus on the seven that Democrats have opposed. Despite confirming 208 nominations for a lifetime appointment on the Federal bench, there are those in this body who seek to subvert the rights of the minority for the sole purpose of ensuring that instead of a 95-percent success rate, the President has a 100-percent success rate with respect to his judicial nominations. This action will serve to deny me my ability to truly provide my advice and consent on individuals nominated to serve in the judiciary that our predecessors have preserved. It is sad that we have come to this point. During my tenure in the Senate, we have been able to work in a bipartisan manner to achieve our goals.

Some of my colleagues from the other side of the aisle argue that this is the first time a filibuster has been used for a judicial nominee. Republicans have openly filibustered a number of nominees on the floor of the Senate, five of whom were circuit court nominees. As we have heard multiple times during this debate, during President Clinton's two terms, close to 60 of his nominees were held in the Senate Committee on the Judiciary and never brought to the Senate floor, never given the same up-or-down vote Republicans today say every Republican nominated judge deserves.

My colleagues on the other side of the aisle say they have never engaged in efforts to block a judicial nomination. I want to share with my colleagues a situation I encountered during the 104th and 105th Congresses. An individual from Hawaii was nominated to serve on the U.S. District Court, District of Hawaii. This was a nominee strongly supported by both Senators from Hawaii. This nominee had a hearing before the Senate Judiciary Committee and was reported favorably. However, this is where the process stopped for a period of 2½ years.

A colleague from another State placed a hold on this nominee for over 30 months before allowing us to confirm this nomination. In effect, a Senator from a State thousands of miles from Hawaii blocked a district court nominee that the senior Senator from Hawaii and I supported. This colleague is a former Attorney General of the United States and happens to be a good friend of mine. I found this situation to be so unusual, that a colleague from another State would place a hold on a district court nominee from my State when both Hawaii Senators strongly supported the nomination. I raise this issue to dispute the notion that this is the first time a nomination has been blocked, after the Senate Judiciary Committee favorably reported the nomination to the Senate for consideration.

I could also speak about the nomination of Justice James Duffy to the U.S. Court of Appeals for the Ninth Circuit. A fine nominee, described by his peers as the ''best of the best,'' he had strong support from Senator INOUYE and me to fill Hawaii's slot on the Ninth Circuit. Yet, Justice Duffy never received a hearing in the Senate, which had a Republican majority at the time. He went 791 days without a hearing, Mr. President. I should mention that Hawaii now benefits from James Duffy's service on the Hawaii State Supreme Court, who was appointed with bipartisan support.

Justice Duffy is one of the well-qualified and talented men and women nominated during the Clinton administration, individuals with bipartisan and home-State support, whose nominations were never acted on by the Senate. My colleagues on the other side of the aisle refused to hold hearings for nominees they did not agree with, effectively blocking the Senate's consideration of President Clinton's nominees. Let's look at the substance and not the rhetoric.

The last person I will mention is Richard Clifton, who is now serving on the U.S. Court of Appeals for the Ninth Circuit. Mr. Clifton was nominated after President Bush withdrew Justice Duffy's nomination. Richard Clifton served as the Hawaii State Republican Party Counsel. While I do not necessarily agree with all of his views, I supported his nomination, because I have confidence in his ability to appropriately apply the law. He was confirmed within a year of his nomination.

Since President Bush took office, we have been working in a bipartisan manner with our colleagues on the other side of the aisle to fill the vacancies on

the Federal judiciary, creating the lowest vacancy rate in 13 years. According to the Administrative Office of the United States Courts, there are 45 vacancies on the Federal bench. This is a decrease in total vacancies from 97 when this President first took office. Let's return to urgent legislation which will truly help our constituents—jobs, access to health care, education, the minimum wage, and helping the poor.

In a Senate where the divide between the majority and minority is held by a handful of votes, and that division reflects the viewpoint of the American body politic at-large, it is imperative that we work together to resolve the many issues that are important to our constituents. When it comes to judicial nominations, the confirmation of 208 judges clearly shows that we in the minority are doing what we can to work with the majority in upholding our constitutional obligation to provide advice and consent to the President on judicial nominations. I can only hope we achieve a success rate of 95 percent in enacting legislation addressing funding for education, access to health care, increases to the minimum wage, benefits and services for our veterans, business and economic development, and financial literacy to enable individuals and families to make sound decisions in their lives.

Mr. President, I ask unanimous consent that the remainder of my time be provided to the Senator from New York.

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

Mr. SCHUMER. Mr. President, how much time do I have until the time of the Senator from South Dakota begins?

The PRESIDING OFFICER. There has been no time allocated among Senators. There is a total time of 17 minutes 3 seconds and counting.

Mr. SCHUMER. I ask that I be yielded 2 minutes so that the remaining 15 minutes be provided to the Senator from South Dakota.

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

Mr. SCHUMER. Mr. President, I thank my colleague from Hawaii for his kind remarks and for his graciousness in yielding. I just want to make a point that we have not heard enough. It is these numbers: 2,703 to 1. This is the number of times Republican Senators have voted for court of appeals nominees either by direct vote or cloture versus the number of times they voted against them—2,703 yes, 1 no. The one ''no'' vote was TRENT LOTT who voted against Mr. Gregory to the Fourth Circuit who Jesse Helms would never allow to go on the bench. So when we are talking about up-or-down votes, we are really not. We do not have any diversity of opinion on the other side. Nominees who are way off the deep end, every member of the other side votes for them. So there is no great deliberation here. In fact, what 2,703 to 1 means is a rubberstamp.

The reason we are standing for what we believe in is very simple. There should be some input. But when it comes to the other side, the White House says, This is the nominee, and everyone votes for that nominee no matter how extreme.

If there were 40 or 50 or 60 negative votes compared to, say, 2,600, you might say up-or-down votes might mean something. But they do not because, unfortunately, for every single nominee on every single cloture vote, the Members on the other side just do whatever the President wants and vote for whoever the President sends us. That is not deliberation. In my judgment, that is not what the cries for an up-or-down vote call for. They call for honest deliberation. I will have more to say about that later.

I yield the floor.

The PRESIDING OFFICER. The time of the Senator has expired.

The distinguished Senator from South Dakota is recognized.

Mr. JOHNSON. Mr. President, I thank my colleague from New York for his excellent point.

Mr. President, tomorrow we may be casting a historic vote in this Chamber. It has to do with a fundamental decision that we, as Senators, must make as to the very nature of government in our democracy, as to the fundamental values of this body, the Senate. We must choose between whether we will remain with the 200-year-old parliamentary rules of this body, which assure that at least there will be some modicum of bipartisanship on virtually all issues of import, or whether, in unprecedented fashion, we will wind up stripping away that fundamental rule, that 60-vote rule, the filibuster rule which for over 200 years has brought both parties together whether they liked it or not. We must choose whether we should discard that and, in effect, create an environment where it is very clear that the Senate, as has happened all too often to our colleagues in the House, will collapse into a spirit of partisan vituperation that will undo efforts at bringing the parties together, will undo our efforts to build bridges between Republicans and Democrats, and will push governance in this body to the far extremes, far outside the political centrism that is the genius of the American people.

In my State of South Dakota, we have a heavy party registration on the side of the Republican Party. I respect that. I am proud of the support over the years that a great many South Dakotans have cast for me. But whether they are Republicans or Democrats, I think the overwhelming view across my State is one of common sense. It recognizes that neither one of the political parties has all the answers, that both parties have their share of bad ideas, and that governance from the far left or the far right is equally unacceptable. Wisdom in America, more often than not, is found in the political center. That is what the filibuster rule, that is what the filibuster margin has forced upon the Senate and is what makes the Senate unique, different from the House of Representatives.

I served 10 years in the House. It was an honor to serve there. But I know the nature of the rules there and what happens. One party can run roughshod over the other. All too often, bipartisanship is viewed by the current leadership on the House side with contempt. The thought that there ought to be governance from the center, and bipartisanship, is viewed by some in the other party as ''girly-man'' politics, unworthy of their radical agenda. It is here in the Senate that the Founders, 200 years ago, understood that this body's orientation would be to take the longer view. This body was to be the more deliberative body. This body would not march lockstep to any ideological drummer.

More than any other factor in the Senate, what has enforced that different character on the Senate, a character which has served the American people so well, has been the 60-vote margin rule. Both parties know that in order to make much of anything happen here, they must reach across the aisle. Not a lot. It doesn't require a huge number of members of the opposing political party, but it requires some. That has had a wonderful beneficial consequence for the wisdom of legislation in America, and certainly for the selection of judges.

There is no judicial crisis. We all know. One doesn't have to be a cynic to understand that the judicial crisis, if you will, is a fabricated political vehicle. President Bush has had 208 of his judges approved by broad, bipartisan margins. Essentially each and every one of them was a conservative Republican judge. That is the President's prerogative. The Senate has not reacted negatively to that.

Put this in contrast with what we saw only a few years ago during the Clinton administration. President Bush has had all of his nominees receive hearings. All of his nominees, who were so chosen, received a vote up or down—a 60-vote margin vote but a vote nonetheless. Every Senator has been required to stand up and be counted and reflect back to his or her constituencies where they stood on that judge.

In the case of President Clinton, however, over 60 of his nominees received no hearing or no vote. Where was the clamor then? Where was the cry of unfairness then? I think, to Senator REID's great good credit, as well as Senator LEAHY, we have agreed that what was done to President Clinton should never be done to President Bush. That was unfair from either political angle. In fact, all of President Bush's nominees should get hearings. If their nomination stands, they should be voted on, publicly, on the record. That is exactly what has happened.

But now there are some who suggest that 208 to 10 is unsatisfactory and, for that reason, they are going to upend

these historic rules of the Senate. They are going to discard the Senate as the one body of the two that forces bipartisanship and political centrism.

Senator REID deserves great credit for his efforts to try to reach some compromise with the majority leader. Unfortunately, those effort have—to this point, in any event—been futile. One can only come to the conclusion that the majority leadership has reached such an impasse because of a certain amount of pandering to the radical right that now no compromise of any kind is acceptable. So here we stand with the very likely, very clear possibility that the fundamental checks and balances of American government—the requirement that there be moderation, the requirement that we govern from the center and not from the far left or far right—is about to be discarded.

Let no one believe that this has to do only with judges. The political tactic here once used is then available. The precedent is available for all issues, whether they have to do with education, environment, health care, the budget, war—all of these issues will henceforth be susceptible to a partisan party-line vote from one side of the political spectrum or the other. That is a tragic change after 200-some years of the Senate being the body of deliberation, being the body of political moderation.

We ought to be dealing, rather than with this issue, with the core issues that my constituents—and I think all Americans—care about. We have great undone business relative to the deficit, relative to job creation, relative to trying to make sure all Americans have access to affordable health care. We have changes that are needed in our educational system, both under No Child Left Behind as well as reauthorization of the Higher Education Act. We have a transportation bill. We have an energy bill before us. Yet here we are, arguing about a parliamentary step which—while many people will view as ''inside baseball,'' as something of no great consequence, this issue, this vote we will take soon—is of monumental consequence to the nature of the institution that will be deciding all these other matters in the years to come.

I wish there were no need for any of us to be rising on this occasion for such an extraordinary, such a potentially tragic step that this body may be taking. The Founders of our country understood, over 200 years ago, that the House of Representatives would be the hot house, the people's House. It would be immediately responsive to whatever wind is blowing through Washington. Their rules, which give virtually no rights to the minority, and their 2-year terms, assure the nature of that House.

But the Founders also understood that Senators representing entire States would be more moderate in their outlook, and the 6-year terms would give them a longer view of what is right or not in legislation pending before us. Within the rules of the Senate, the filibuster rule, the 60-vote margin rule, has served America well. It has pushed the political debate to a commonsense point—common sense being a value that my constituents would tell me is all too rare in Washington, DC, but which does occur as often as it does in no small measure because of the filibuster rule and its insistence, grabbing both political parties by the collars, pushing them together, and saying, You must work together or otherwise neither of you will have your way.

This is an effort to radicalize the Senate, to radicalize government in America in a way that many Americans will never understand. They will never recognize how this could have happened.

It is my hope as we come down to these final hours that my colleagues on both sides of the aisle will pause and take a long view of the role of this institution, of the importance of centrism, cooperation, of bipartisanship and all that means, if we truly are to reflect the values and priorities of the American people here in the Senate. If we allow this institution to veer off sharply to either ideological end of the spectrum, we will have done a horrible disservice to the American people, to future generations of Americans, and, frankly, to the world. This issue is that fundamental. It goes to the very nature of governance in America.

It is my hope all our colleagues will rise to stand as statesmen at a time when political pressures are great for what is right and will cast a loud vote to be counted by the American people on behalf of what is right rather than what is politically convenient at this particular time in our history. It is my hope that in these intervening hours we will have a significant number of people who will understand what is at stake and, in fact, uphold the values and priorities of the American people by retaining the parliamentary rules of this body that have prevailed for well over 200 years, will understand there is no judicial crisis, will understand when it comes to giving lifetime appointments to the bench it would be very easy for President Bush to have 100 percent of his judges approved simply by nominating judges who can be approved by 60 Members of this body. That is a modest request. That is the kind of consultative role the Founders envisioned under their constitutional provision of advice and consent.

The goal was not to create a lockstep ideological opportunity. The goal was for both parties to work together and in good faith evaluate the qualities of people who will serve our judiciary for lifetime appointments. It is my hope we will not abuse that opportunity and that we will cast that vote to preserve that orientation, preserve the very values of the Senate.

Mr. President, I yield my time.

The PRESIDING OFFICER (Mr. BURR). The majority controls the next 60 minutes.

The Senator from Kansas.

Mr. ROBERTS. Mr. President, our former Senate majority leader, Howard Baker, reportedly tells the story about his late father-in-law, Senator Everett Dirksen, who admonished him to occasionally allow himself the luxury of an unexpressed thought. After listening to the current debate on judicial nominations, there is a temptation to say, after all is said and done, pretty much all that can be said has been said.

I rise today because I do have something to say. What I want to talk about is of very crucial importance not only with regard to the judicial nominations but, perhaps more important, how we are meeting our obligations in the Senate—or better put, how we are not meeting them.

This weekend, an elderly gentleman spotted my Senator's car tag on my car in a parking lot. He wandered up to me and asked: Are you a Senator?

And I responded: Yes, sir, I am.

Well, he has some rather succinct advice for all of us who ask for and gain the public trust.

He said: You know, you fellows up there ought to get busy and quit talking past one another.

I think probably no matter the issue, most would agree he was right.

I am concerned, and so are a lot of other people—people who care, people who have given much to this country and whose advice we should be taking. One of those people is Dr. David Abshire who is president of the Center for the Study of the Presidency and whose credentials for public service are well-known and admired. Dr. Abshire recently authored a treatise, ''The Grace and Power of Civility'' and the necessity for renewed commitment and tolerance. He quoted John Witherspoon and Samuel Cooper during the days of our Founding Fathers and highlighted what they called ''the consonance of faith and reason,'' if we are to cross the bridge of united purpose.

We are not doing what our Founding Fathers did so well. As a matter of fact, we are in pretty sad shape with the shape we are in. Across the bridge? Well, today, the bridge is washed out. We can't swim. And the judges are simply on the other side.

I am going to paraphrase from Dr. Abshire. Today, as our Nation and the world confront new and great perils, there are paralyzing forces of incivility and intolerance that threaten our country. Divisions in Congress also reflect the divisions in the country. The so-called wedge issues seem and appear endless. These challenges, if allowed to divide the Nation, might well deny the next generation the prosperity and civic culture that we have inherited.

It was Benjamin Franklin who stated that Congress should be a mirror image of the American people. In the sense that there are divisions in the country, the sad fact is, as evidenced by this debate, we seemingly cannot transcend

these divisions. We keep talking past one another, saying the same things, but basically being in disagreement.

Dr. Abshire quoted the poet William Yeats, who said this, a dire prediction:

Things fall apart; the center cannot hold;
Mere anarchy is loosed upon the world,
The blood—dimmed tide is loosed, and
Everywhere the ceremony of innocence is drowned;
The best lack all convictions, while the worst are
full of passionate intensity.
Surely some revelation is at hand.

My colleagues, on this issue and so many others, we seem to be locked into an era of partisanship that echoes a mindset of absolutism that can close off dialogue and also mutual respect.

In that vein, let me take up the matter of judicial nominations, obviously, the issue at hand that currently has us tied up in partisan knots.

First, I understand the opposition on the part of my colleagues to many of the President's nominations. I understand some of my colleagues do not support certain nominees. Their opposition is well within their rights and their belief that they are reflecting the will of their constituents.

I have a very simple solution. If you believe that your constituency does not approve of certain nominees, then simply vote against them. I have done that, but I have never denied any Member of this body the right to an up-or-down vote, knowing full well that 214-year tradition of the Senate ensures that a majority vote would confirm or deny a confirmation. Contrary to the great majority of statements made by some of my friends across the aisle, the practice of filibustering judicial nominations is not steeped in Senate history or precedent.

This is a brandnew application, quite frankly, of an obstruction tool that the minority has suddenly seized, collapsed to their breast. We are seeing the reinterpretation of history and the claiming of precedent when there is none. Again, the minority is asking the American people to ignore the obvious tradition of a simple majority vote for judicial nominations that has been honored in the Senate for 214 years.

Serving in public office for over 25 years in both the House and Senate, I am familiar with the broader points of our Constitution. What I gather from all the lather from my friends across the aisle is that President Bush should just stop nominating these ''out of the mainstream judges,'' for approval.

In fact, the President should consult with the minority party to find a judicial nominee that is more appropriate and more mainstream or more in line with their thinking.

By this logic, the minority party—not the elected majority, the minority party—would have the determining role in choosing who is acceptable and who is not. Yet article II, Section 2 of the Constitution states that the President ''shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors and other Public Ministers and Counsels, Judges of the Supreme Court, and all other Officers of the United States whose appointments are not herein otherwise provided for and which shall be established by law.''

Here's the rub: The power to choose nominations is not vested in the Senate's advice and consent role. The Senate's constitutional responsibility is to ratify or to reject.

Let's talk about this new higher standard that was put into place only 2 years ago and advocated so eloquently today by my friends across the aisle. Since 2003, two short years ago, 60 votes have been the new minority criteria forced upon the Senate in order to confirm judicial nominations. The Framers of the Constitution identified seven circumstances in which a supermajority vote is warranted by one or both chambers of commerce. Here are some examples: Impeachment—we have done that; overriding a Presidential veto—haven't done that for a while; amending the Constitution—and there are quite a few bills in the hopper that would do that.

However, Senate approval of judicial nominations is not among the seven instances identified by the Constitution. Here is the heart of the matter. We do not propose to change anything. We propose to return to the tradition that governed the Senate for 214 years and an up-or-down majority vote on pending nominations.

Then there is the charge that somehow restoring Senate precedent is reactionary. I have heard a lot of people compare the Senate to the House. I served in both bodies. Intuitively then, blocking judicial nominations is, therefore, a hallowed and sacred tradition of the Senate Chamber. But history does not support that assumption. In fact, for over 200 years, judicial nominations required a simple majority vote. And again, a simple fact that I seldom read or hear within the national media, paragraph after paragraph after paragraph about the majority trying to change the rules, we are just trying to go back to the rules that were in evidence prior to the last 2 years.

This new 2003 standard through the unprecedented use of the judicial filibuster is the result of the minority not making the case against the nominees as demanded by special issue interest group ideology. Why? They are not able to convince the majority of Senators that these nominees are radical and wrong. It has been pointed out that during this debate, for 58 percent of the last 50 Congresses—well over half, almost 60 percent—the same party did control the Senate, the House, and the White House. Now, in all that time, the minority, whether it was the Democrat or the Republican Party, never, ever resorted to this systematic filibustering of judicial nominations.

So if the contention is that returning to a simple majority standard for judicial nominations would abridge minority rights, my question is, then why in the last 100 years has that bridge never been built until 2003?

Our official Senate majority leader, Bob Dole, summed it up when he said:

When I was the leader in the Senate, a judicial filibuster was not part of my procedural playbook. Asking a Senator to filibuster a judicial nomination was considered an abrogation of some 200 years of Senate tradition.

And there is the related issue that has been talked about in the Senate. Unfortunately, the disease of obstruction infected other aspects of our work in the Senate last week. Obviously, the fever will not break until high noon tomorrow. Senate business and the committee hearings and the markup of legislation are in early morning slow-motion. In the afternoon, they come to a grinding halt.

For those not familiar with the Senate business, for business to be conducted off and on the Senate floor, it takes only one Senator, or in this case the minority leadership, to call a halt to the Senate conducting business off of the floor.

I am chairman of the Intelligence Committee. We get hotspot briefings every week, two or three times a week. We are marking up the PATRIOT Act. I asked why this practice was initiated so early; why last week, at a time when our Nation is fighting the global war on terror. I found that obstruction rather appalling. The answer was pretty simple: We wanted to send you a message. That message, as I interpreted it, was whoa, stop the Senate, let me get off until we get our way—something akin to a toddler throwing a temper tantrum in the middle of a grocery store with much of the same rhetoric and name calling.

What is the real problem? Let's fully understand where the real controversy lies. Too many in the Senate and too many pundits have been masking the real issue, in this Senator's opinion. It is not about preserving great Senate traditions such as minority rights. It is not about lengthy debate and cooling passions of the day. That is an oxymoron in regard to the Judiciary Committee. It is not about doing away with the filibuster. By the way, it is not about Jimmy Stewart and ''Mr. Smith Goes to Washington.'' That was a classic movie, but it is the wrong plot unless we are talking about other Jimmy Stewart movies. The movies ''Vertigo'' and the ''Supreme Court'' come to mind. Or perhaps the minority is hoping they can have the Glenn Miller Band play ''Pennsylvania 65000'' within Pennsylvania 1600 in 2008.

And it is not about unqualified or unacceptable judicial nominees. It is about a brandnew 2-year-old procedure that will deny—is denying—a majority of Senators their right and constitutional duty to vote on judicial nominees. In my view, we are riding into a box canyon here, where incivility and partisanship and absolutism and further division await. There is going to

be a lot of milling around. We do not have to go there. Let us restore the 214-year-old precedent of an up-or-down majority vote and see if we cannot reach accord and ride to a higher—a higher—common ground.

I yield back.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, we turn on the television these days and get bombarded with advertisements saying: ''Write your Senator.'' ''Call your Senator and preserve the filibuster.'' ''Get ahold of your Senator and make sure this tool that provides rights and protections of the minority gets preserved.''

I have been associated with the Senate now since I was a 19-year-old intern sitting in the family gallery in the 1950s, falling in love with the debate that was going on, on the Senate floor. I must say there were usually more Senators here in the 1950s than there are now, but I understand, with television, the Senators stay in their offices and watch, and I am happy to accept that. But I understand the traditions of this body have great roots in history that many times get ignored. That is, these roots get ignored by people writing columns and stories today.

I want to go on record very firmly as being on the same side as those people who are buying the ads saying: ''Preserve the filibuster.'' I have watched the filibuster be used to help shape legislation. I watched the filibuster be used as a tool of compromise. I think the filibuster is a very worthwhile thing to hang on to in order to preserve the rights of the minority.

Now, that position of saying ''let's save the filibuster'' has not always been popular. If you go back 10 years ago, when a proposal was made on the Senate floor to abolish the filibuster, the New York Times editorialized in favor of that position. The New York Times told us

. . . the filibuster has become the tool of the sore loser.

The Times was anxious to have the whole thing wiped away. There were only 19 Senators who voted to abolish the filibuster, 9 of whom are still serving today. The rest of us all voted to preserve the filibuster. So I am on record as saying: We must preserve the filibuster. I value it. I believe it has a place in the Senate. However, I also believe we have the right to shape the filibuster, to focus the filibuster, to reform the filibuster, so it can be used in a more effective way.

There are those now who, when they say ''save the filibuster,'' mean ''save the filibuster the way we like it,'' not ''save the filibuster in its historic form, because its historic form has changed over the years.

The first point, as far as history is concerned, is this: The filibuster did not come into existence with the Constitution. I had a phone call over the weekend from a very dear friend who said: This is a constitutional issue that goes back all the way to the Founding Fathers. However, the filibuster, Rule XXII, came into the Senate history in 1917. That is a long time after the Founding Fathers. And it has been changed several times since that time, some times by formal Senate rule. It was changed in 1949. It was changed again in 1959. And it was changed again in 1975. So for those who run the ads saying ''save the filibuster,'' maybe the first question is, which filibuster do you have in mind that you want us to save?

But there is another aspect of the filibuster. I turn again to the New York Times. It is amazing how much they have changed their minds in the intervening 10 years. After the New York Times said the filibuster was a tool of the sore loser, now in this debate they decide that

. . . the filibuster [is] a time-honored Senate procedure . . .

They editorialize: ''Keep it just the way it is.'' Well, I want to talk a little bit about time-honored Senate procedures, and particularly time-honored Senate procedures with respect to the filibuster. It is a time-honored Senate procedure that the filibuster can be changed by majority vote. There are a number of Senators who have served here and are still serving here who, at least at one time in their careers, agreed with that.

Senator KENNEDY had this to say in 1975, when there was a debate on what kind of filibuster we could have and what the time-honored Senate procedures would say about the filibuster. Senator KENNEDY said:

A majority may adopt the rules in the first place. It is preposterous to assert they may deny future majorities the right to change them.

Senator KENNEDY was enunciating a time-honored Senate procedure that said a majority had the right to change the rules. This was in 1975.

Senator Mondale served in 1975. Senator Mondale had this to say about what was done in 1975. For those who are talking about time-honored Senate procedures, this was the Senate procedure 30 years ago. And for 30 years it has stood the test of time. Senator Mondale said:

. . . the President of the Senate . . . and the membership of the Senate . . . have both clearly, unequivocally, and unmistakably accepted and upheld the proposition that the U.S. Senate may . . . establish its rules by majority vote, uninhibited by rules adopted by previous Congresses.

Somehow this happened. Senator Mondale said it happened ''clearly, unequivocally, and unmistakably,'' and the place did not blow up. There were no threats to shut everything down, to object to every unanimous consent request, to cause a ''nuclear bomb'' to go off in this Chamber if this policy were to happen. This is a time-honored Senate procedure and it happened with both the membership of the Senate and the President of the Senate in 1975, according to Senator Mondale.

I picked Senator Mondale because in 1976 he was elected Vice President, which meant he became the Presiding Officer of the Senate. And something happened while he was the Presiding Officer of the Senate in this same time-honored Senate procedure.

The majority leader at the time was Senator BYRD of West Virginia. And he has described what happened while Vice President Mondale was presiding over this body. Here is what Senator BYRD had to say in 1995, as a bit of historic information for the rest of us who may not have been present back in the time when Mr. Mondale was the Vice President.

Senator BYRD explained:

I have seen filibusters. I have helped to break them. There are few Senators in this body who were here when I broke the filibuster on the natural gas bill. . . . I asked Mr. Mondale, the Vice President, to go please sit in the chair; I wanted to make some points of order and create some new precedents that would break these filibusters.

Interesting choice of words, because that is what we are talking about here under the name ''nuclear option,'' making a point of order and setting a new precedent. Senator BYRD, the majority leader, asked Vice President Mondale to ''please sit in the chair,'' to be there when Senator BYRD made ''some points of order'' and created ''some new precedents'' to ''break these filibusters.'' He goes on to describe what happened:

And the filibuster was broken—back, neck, legs, and arms. It went away in 12 hours.

So I know something about filibusters. I helped to set a great many of the precedents that are in the books here.

A time-honored Senate procedure.

Senator BYRD did it again. Going ahead to 1980, Senator BYRD led 54 Senators, all but one of whom were Democrats, in overturning the Chair and eliminating all debate on motions to proceed to nominations. The point here is an important one. He did not abolish the filibuster. He did not say: Get rid of the filibuster. He did not abide by the advice of the New York Times that said it was a tool of sore losers. But he helped shape it. He helped focus it. He said the filibuster should not be quite as broad as it may have been in the past. And using the time-honored Senate procedure of making a point of order, and getting the Senate to vote, he helped shape it, and the Senate Democrats set this precedent before the Senate had even begun to debate the motion, so that the filibuster that used to apply to motions to proceed to nominations no longer does.

And how was the rule changed? It was changed by a time-honored Senate procedure.

Now, there is one other time-honored Senate procedure that Senator LEAHY has spoken of. This goes to a floor statement Senator LEAHY made in 1997, as he was talking about nominations for the Federal bench. Senator LEAHY,

who at the time was the ranking minority member of the Judiciary Committee—he went on later to become the chairman—said:

I cannot recall a judicial nomination being successfully filibustered.

I find that interesting because many of our Democratic friends are now saying: ''Oh, filibusters of judicial nominations are normal. They have happened before.'' Well, at least in 1997, Senator LEAHY said:

I cannot recall a judicial nomination being successfully filibustered. I do recall earlier this year when the Republican chairman of the Judiciary Committee and I noted how improper it would be to filibuster a judicial nomination.

I have the same recollection. I remember in our conference when the issue of filibustering some of President Clinton's judges came up, it was the Republican chairman of the Judiciary Committee, my senior colleague, Senator HATCH, who stood before the conference and said: ''Do not do it. It would be improper to filibuster a judicial nominee. Having judicial nominees get a vote is a time-honored Senate precedent.'' Senator LOTT was the majority leader. He took the floor, after Senator HATCH had spoken, and said: ''Senator HATCH is right.'' We should not cross the line and start to filibuster judicial nominations because the Senate tradition has said no.

So that is where we are now. The Senate tradition has been changed. The Members of the minority have exercised their right, which has always been on the books, to change the precedent which had held for so long that even Senator LEAHY could not recall an exception to it. What we are talking about doing now is using the time-honored Senate procedure of changing the rule by majority vote to see to it that the prior precedent remains—or, rather, returns because it was broken in the 108th Congress.

So I value the filibuster. I am in favor of the filibuster. But I think the filibuster has been and still can be shaped and changed so it is more focused than simply an across-the-board procedure.

I want to close by putting something of a human face on this whole issue because we are talking about this filibuster of judicial nominees almost as if the judicial nominees were not people, almost as if the judicial nominees were spectators in this activity. They are not spectators. They are seeing their reputations smeared. They are seeing their history attacked. It is time we spent a little time thinking about them.

I know the nomination on the floor is Priscilla Owen, but over the weekend I had called to my attention an article that appeared in the Sacramento Bee by one Ginger Rutland that I would like to close with. It is entitled: ''Worrying about the right things.'' Ginger Rutland identifies herself as ''a journalist of generally liberal leanings,'' and she talks about the nomination of Janice Rogers Brown.

Both Ms. Rutland and Ms. Brown live in California. Ms. Rutland says:

I've been trying to get a fix on Brown since President Bush nominated her for the influential U.S. Circuit Court of Appeals for the District of Columbia.

It talks about the experience. And then she makes this comment:

Championed by conservatives, Brown terrifies my liberal friends. They worry she will end up on the U.S. Supreme Court. I don't. I find myself rooting for Brown. I hope she survives the storm and eventually becomes the first black woman on the nation's highest court. I want her there because I believe she worries about the things that most worry me about our justice system: bigotry, unequal treatment and laws and police practices that discriminate against people who are black and brown and weak and poor.

She was born and raised poor, a sharecropper's daughter in segregated Alabama. She was a single mother for a time, raising a black child, a male child. I don't think you can raise a black man in this country without being sensitive to the issues of discrimination and police harassment.

She goes on in the article. I ask unanimous consent that the entire article be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. BENNETT. She concludes with this comment:

I don't pretend to know how Brown will rule on other important issues likely to reach the Federal courts. I only know that I want judges on those courts who will defend the rights of the poor and the disenfranchised in our country.

She believes Janice Rogers Brown is one of those jurists.

I am not sure whether she is right or wrong. But I do know Janice Rogers Brown deserves the opportunity to have her nomination voted on. And if one use of the filibuster has been to prevent Priscilla Owen and Janice Rogers Brown and others like them from getting this vote, a time-honored procedure of the Senate can be used with equal justification to see to it that the filibuster gets tweaked a little bit to make sure we go back to the practice that existed here for decades.

For that reason, I will support the motion of the majority leader if it becomes necessary to make sure that we have an opportunity to a vote on Priscilla Owen. I hope as a result of this debate, our friends on the Democratic side of the aisle will step back a little from their position of saying no to a vote on Priscilla Owen and allow us to have a vote. If they do, they are acting in accordance with the history of the Senate for past decades, the history of the Senate going back so far that even PATRICK LEAHY cannot remember an exception to it. If they do and we have an up-or-down vote on Priscilla Owen, it may well be that all of this talk about changing the rules will go away.

The outcome lies in their hands. If they allow us to vote on Priscilla Owen, we will not have the lack of civility, the shutting down of the Senate, the collapse of Government, all of the other things that have been predicted. If, on the other hand, they say no, we will not allow this woman who has been unanimously rated as well qualified by the American Bar Association to even get a vote, then we will see the majority leader follow the practice, follow the precedent, follow the example set by Senator BYRD, the example endorsed by Senator KENNEDY, endorsed by Senator Mondale, and use the time-honored Senate procedure to change the rule by majority vote. If the majority leader so moves, I will support it.

EXHIBIT 1

[May 8, 2005]

GINGER RUTLAND: WORRYING ABOUT THE RIGHT THINGS

(By Ginger Rutland)

I know Janice Rogers Brown, and she knows me, but we're not friends. The associate justice of the California Supreme Court has never been to my house, and I've never been to hers. Ours is a wary relationship, one that befits a journalist of generally liberal leanings and a public official with a hard-right reputation fiercely targeted by the left.

I've been trying to get a fix on Brown since President Bush nominated her for the influential U.S. Circuit Court of Appeals for the District of Columbia. She won't talk to the press. Friends, associates, even a former teacher, say the same things about her: She's ''brilliant,'' ''hardworking,'' ''stoic'' and ''kind.''

Her opponents on the left tell me she's a fundamentalist Christian who will bring her religious values into the courtroom. But I've never been frightened by people of faith. Brown is Church of Christ. So is my mother-in-law, a good, gentle woman and lifelong Democrat who voted for John Kerry for president and opposed the war in Iraq because, as she told me when it started, ''I've never understood how killin' other folks' children ever solved anything.''

I'm almost embarrassed to admit it, but desperate for deeper insight, I visited Brown's church last Sunday, the Cordova Church of Christ. The judge wasn't there, but her mother, Doris Holland, was. She was polite but understandably guarded. She told me that as a young girl Brown liked to read and had an imaginary friend; that was about it.

The congregation is integrated and friendly. Church members know Brown and her husband, jazz musician Dewey Parker, and like them. The church itself is conservative, allowing no instrumental music in its services, no robes, no bishops or hierarchy of any kind. The religious right may have taken up Brown's cause in Congress, but the sermon at Cordova that day contained no political content.

Championed by conservatives, Brown terrifies my liberal friends. They worry she will end up on the U.S. Supreme Court. I don't.

I find myself rooting for Brown. I hope she survives the storm and eventually becomes the first black woman on the nation's highest court.

I want her there because I believe she worries about the things that most worry me about our justice system: bigotry, unequal treatment and laws and police practices that discriminate against people who are black and brown and weak and poor.

She was born and raised poor, a sharecropper's daughter in segregated Alabama. She was a single mother for a time, raising a black child, a male child. I don't think you can raise a black man in this country without being sensitive to the issues of discrimination and police harassment.

And yes I know. People said that Clarence Thomas would be sensitive to those issues, too, and he's been a disappointment.

But in Brown's case, I have something more concrete on which to base my hopes—her passionate dissent in People v. Conrad Richard McKay.

The case outlines a single, unremarkable instance of police harassment, the kind of petty tyranny that plays out on the streets of big cities and small towns across America every day.

In 1999 a Los Angeles sheriff's deputy stopped Conrad Richard McKay for riding his bicycle in the wrong direction on a residential street, a minor traffic infraction. The deputy asked McKay for a driver's license. McKay had none. Instead, he provided his name, address and date of birth.

The officer arrested him for failing to have a driver's license. Then he searched him, finding a baggie of what turned out to be methamphetamine in his left sock. McKay was charged with illegal drug possession, convicted and sentenced to 32 months in prison.

He appealed, arguing that the arrest and the search were unreasonable, a violation of his Fourth Amendment rights to be protected from unreasonable searches. The officer searched him, he said, because he didn't have a driver's license, a document he was not required to carry to ride a bicycle.

Six members of the California Supreme Court rejected that argument, ruling that McKay's arrest was within the officer's discretion and therefore constitutional.

Brown was the lone dissenter. What she wrote should give pause to all my friends who dismiss her as an arch conservative bent on rolling back constitutional rights. In the circumstances surrounding McKay's arrest, the only black judge on the state's high court saw an obvious and grave injustice that her fellow jurists did not.

''Mr. McKay was sentenced to a prison term for the trivial public offense of riding a bicycle the wrong way on a residential street,'' Brown wrote.

''Anecdotal evidence and empirical studies confirm that what most people suspect and what many people of color know from experience is a reality: There is an undeniable correlation between law enforcement stop-and-search practices and the racial characteristics of the driver. . . . The practice is so prevalent, it has a name: 'Driving while Black.' ''

After a scholarly discussion on the origin of the Fourth Amendment and an exhaustive review of the case law on unlawful searches, Brown used plain words to get to the heart of what really bothered her about what happened to Conrad McKay on that Los Angeles street. It's what bothers me, too.

''I do not know McKay's ethnic background. One thing I would bet on: He was not riding his bike a few doors down from his home in Bel Air, or Brentwood, or Rancho Palos Verdes—places where no resident would be arrested for riding the 'wrong way' on a bicycle whether he had his driver's license or not. Well . . . it would not get anyone arrested unless he looked like he did not belong in the neighborhood. That is the problem. And it matters. . . . If we are committed to a rule of law that applies equally to 'minorities as well as majorities, to the poor as well as the rich,' we cannot countenance standards that permit and encourage discriminatory enforcement.''

In her dissent, Brown even lashed out at the U.S. Supreme Court and—pay close attention, my liberal friends—criticized an opinion written by its most conservative member, Justice Antonin Scalia, for allowing police to use traffic stops to obliterate the expectation of privacy the Fourth Amendment bestows.

''Due to the widespread violation of minor traffic laws, an officer's discretion is still as wide as the driving population is large,'' she wrote. In her view, court decisions have freed police to search beyond reason not just drivers of cars but ''those who walk, bicycle, rollerblade, skateboard or propel a scooter.''

She reserved special scorn for judges who permit police to discriminate while advising the targets of discrimination to sue to challenge their oppressors. ''Such a suggestion overlooks the fact that most victims . . . will barely have enough money to pay the traffic citation, much less be able to afford an attorney. . . . To dismiss people who have suffered real constitutional harms with remedies that are illusory or nonexistent allows courts to be complacent about bigotry while claiming compassion for its victims,'' she wrote.

''Judges go along with questionable police conduct, proclaiming that their hands are tied. If our hands really are tied, it behooves us to gnaw through the ropes.''

With that last pronouncement, Brown confirms what many of her enemies have said—that she's an ''activist judge.'' Judges who ''gnaw through ropes'' to protect people being hassled by cops represent the kind of judicial activism I can support.

Liberals prefer to overlook Brown's strong dissent in McKay. Conservatives mention it only in passing, as if embarrassed that one of their own might have qualms about law enforcement bias or a creeping police state.

I don't pretend to know how Brown will rule on other important issues likely to reach the federal courts. I only know that I want judges on those Courts who will defend the rights of the poor and the disenfranchised in our country against the rich and the powerful when the rich and the powerful are wrong. I want someone who will defend people like Conrad McKay.

Mr. BENNETT. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mrs. HUTCHISON. Mr. President, I rise to talk about Priscilla Owen, a woman who serves on the Texas Supreme Court, a woman of the highest moral character, and a woman whose confirmation has been held up by the Senate for over 4 years—Justice Owen was first nominated on May 9, 2001, by President Bush. Her nomination has actually been voted on four times by the Senate: May 1, 2003, a cloture vote, she won 52 votes; May 8, 2003, she won 52 votes; July 29, 2003, she won 53 votes; November 14, 2003, she won 53 votes.

If one looks back on a 200-year Senate tradition, the Constitution's requirement for simple majority votes on judicial nominations—as well as the specific instances where the Constitution does, in fact, specify super-majority votes, one would presume that Priscilla Owen would be sitting on the Fifth Circuit Court of Appeals and the majority in the Senate would not have to be restoring precedent. My goodness, why isn't she sitting on the Fifth Circuit Court of Appeals bench?

Priscilla Owen is not sitting on the Fifth Circuit Court of Appeals, even though she received a majority of the votes in the Senate four times, because a new standard is now being required, a new standard of 60 votes. Did we have a constitutional amendment that would require 60 votes? No. Did we have a new rule that required 60 votes? No. We just have the use of a filibuster by the minority in the Senate in the last session of Congress—the first time in the history of our country when a majority of the Senate has been thwarted by the minority on Federal judicial appointments.

There have, from time to time, been filibusters when the person did not have 51 votes in the Senate; never when a majority of the Senate voted to support that nominee. Yet that is exactly what has happened to Priscilla Owen.

There has been a change in the balance of power that was envisioned in the Constitution without a constitutional amendment. Last Friday on the Senate floor, some Democratic Members of the Senate actually said: We should have a 60-vote requirement for Federal judges to be confirmed by the Senate. That is worthy of discussion. It is worthy for us to have that debate. But the debate should be in the context of a constitutional amendment—going through the process our Founding Fathers said would be required for a constitutional amendment. Let's put it to a test. Let's determine if that is the right thing and do it the right way. But that is not what is happening here today.

In fact, it is significant that we look at the historical comparison of the first term of a Presidency and the confirmation of appeals court nominees. President George W. Bush has the lowest percentage of confirmations of any President in the history of the United States. President Clinton had 77 percent of his appellate court nominees confirmed. President George H.W. Bush had 79 percent. President Reagan had 87 percent. President Carter had 93 percent. President Ford had 73 percent. President Nixon had 93 percent. President Johnson had 95 percent. President Kennedy had 81 percent. President Eisenhower had 88 percent. President Truman had 91 percent. But President Bush today has 69 percent, the lowest of any President in the history of our country. Almost 30 percent of his circuit court nominees were filibustered and let die by the Senate.

The balance of power is delicate—founded in a Constitution that is not easily changed. It is important that those who are sworn to uphold the Constitution, not tread on it without going through the proper procedures of a constitutional amendment. Thwarting the majority by requiring 60 votes on qualified judicial nominees, as the minority did last session, undermines the delicate balance of power.

I hope the Senate will come to its senses. There has been a lot written lately about the Senate, about the process in the Senate being broken. Last week, I talked to a well-known

journalist to discuss his views of what is happening in Washington. I asked him a number of questions, but the most difficult was the one that he posed to me: What in the world is the Senate thinking about in the confirmation process? Don't you realize that this is impeding the President's ability to recruit quality people for Government service?

Mr. President, my colleagues on the Democratic side of the aisle are correct. We are heading for a crisis, but it is not a crisis over minority rights. No one on our side of the aisle has even suggested that minority rights should be overrun. The filibuster will remain intact. What we are trying to do is get the constitutional process for confirmation of Federal judges back to what has been the tradition in the Senate and what the Constitution envisioned, and that is a 51-vote majority.

Never, until the last session of Congress, was the majority will thwarted in Federal judge nominees and circuit court most particularly. So the crisis is not over the Senate process; the crisis is how group influence is turning the Senate into a permanent political battleground. It is unseemly, it is wrong, and it is going to harm the quality of our judiciary because we are going to start seeing nominees who are not the best and the brightest, who don't have clear opinions, and who are not well-published and renown constitutional experts.

I think it was pretty well brought out in an article in the Washington Post yesterday, titled ''The Wreck of the U.S. Senate.'' It quoted John Breaux, our former Democratic colleague. He said:

> Today, unfortunately, outside groups, public relations firms, and the political consultants who are dedicated to one thing, a perpetual campaign to make one party a winner and the other a loser, has snatched the political process.

Some years ago, we started on a road downward toward a low common denominator, and I think we are continuing that descent. In the article, I think it mentioned that the point of embarkation for this descent was the nomination process of John Tower, a former Senator who had an incredible record on national defense, who was perhaps the most knowledgeable Senator in the Senate on that subject, who was turned down for his Secretary of Defense with innuendo, things that were totally untrue being said about him. Many of my colleagues who are in this body today say it was unconscionable what was done to Senator John Tower.

Mr. President, I am sorry to say I think it has happened again and again. I look at Priscilla Owen, who is one of the best and brightest, who is a judge with judicial temperament, who has shown her brilliance from the days she graduated from Baylor Law School cum laude, top of her class, Baylor Law Review, to making the highest score on the Texas bar exam the year she took it. The distortions of this fine judge's record have been incredible. She has been meticulous in following the law, in not trying to make law but interpret the law; and I am really concerned that if someone like Priscilla Owen, who is a judge who has the backing of 15 former State bar Presidents—probably most of the ones who are still alive—Republicans and Democrats, the support of 3 Democrats with whom she served on the Supreme Court, as well as every Republican, the support of the Attorney General of the United States, with whom she served, who actually sought her out for appointment because he was so impressed with her judicial standards. If someone like that has to take ''brick baths'' for 4 years, how are we going to recruit the very top legal minds in our country, people who have shown themselves time and time again to be excellent at what they do? How are we going to recruit them to submit themselves to this kind of process?

The National Abortion Rights Action League was reported by columnist Bob Novak to have hired an opposition research team not just for Priscilla Owen—and they have certainly been active against her—but to look at the records of 30 sitting judges, including Judge Edith Jones from Houston, and why would they be doing that? Why would the National Abortion Rights Action League start looking at sitting judges in our country today to try to find some way to harm them or distort their records? Why would they do that? Interestingly, it looks as if the people chosen to be investigated are people who might be potential appointees to the United States Supreme Court.

Mr. President, we are in a downward spiral in this country. Prior to holding federally-elected office, I remember watching the Senate debate over Clarence Thomas. I thought the Senate did an excellent job of debating Clarence Thomas, bringing out the major points. But the hearings on Justice Thomas' nomination were brutal. They were brutal. They were personal. It was something which I am sure was very difficult for him to overcome. I don't think we have to be personal to make points. I don't think we have to distort records. I don't think we should employ innuendo in looking at nominees for our Federal bench.

I think the Senate needs to take a very hard look at the processes we are using, at the outside influences and the motivations of these groups. When I turn on my television in Washington, I see ads for and against Priscilla Owen. Priscilla has been silent for four years, unwilling to lash out at her opponents and too respectful of Senate procedure to defend herself against empty criticisms. But I am glad she has been defended. I visited with her last week when she was here, and there is a personal toll on the people in this process. She will be a fine judge, but was she prepared for the four years of ''brick baths'' to which she could not respond? You know, she had several very nice opportunities to do something else in these four years, but she is such a fine person, with such a strong backbone, that she did not want to withdraw her name from consideration so it could be used in the Presidential election. She didn't want to leave President Bush vulnerable to an attack that her nomination was a mistake and that there was something hidden in her record. She is proud of her record, and she knows President Bush is proud of his appointment of her. She has nothing—nothing—upon which she can base any kind of decision to leave this nomination process. She is sticking with President Bush because he made a good decision, and he is sticking with her.

But these judges are not people who have put themselves in the arena in the same way that partisan politicians do. I don't think she was prepared to be attacked on a weekly or monthly basis and have her record distorted when she submitted herself for this important nomination. She was rated unanimously by the American Bar Association committee that gives its recommendations on judges to the Judiciary Committee as ''well qualified,'' the highest rating that can be given by the ABA. It was unanimous. Yet, this fine person has been raked over the coals, has had misrepresentations and distortions made about her. I recently spoke about Priscilla Owen, the person—I shared what kind of person she is. I talked about her service as a Sunday school teacher and that she lost her father when she was 10 months old. I talked about what a lovely person she is.

One of my colleagues came to the floor and said, yes, she is a lovely person, but that is not enough; we should not be talking about whether she is lovely or not. Well, I wanted people to see that in addition to a stellar record, an even-handed disposition, a great legal mind, and impeccable integrity, Priscilla Owen is also a lovely person. An honest person who has even gone against the prevailing view of the Republican Party in Texas by suggesting we not elect Supreme Court justices in Texas. She has actually written on that subject, saying we should not taint the judiciary with partisan politics. So, I want the record to reflect that she is a lovely person—but also a person of principle, of strength, and of profound wisdom. She is as excellent a nominee, with as excellent a record as we have ever seen come before the United States Senate.

Mr. President, I think the Senate, as a body, should think about how we treat the people who come to submit themselves for public service. Many of them do so because they believe this is their calling and they do so with every good intention, including taking large salary cuts. Priscilla Owen chose to take a huge salary cut to run for the Supreme Court of Texas instead of continuing as a partner in a major law firm in Texas.

She has shown in every way that she is qualified for this position, and I hope we will give her what she deserves after four years of waiting, and that is an up-or-down vote. When we do, she will be confirmed and she will be one of the finest judges sitting on the Federal circuit court of appeals today.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired. The next hour will be controlled by the minority.

The senior Senator from West Virginia.

Mr. BYRD. Mr. President, how much time do I have?

The PRESIDING OFFICER. The minority controls the next 60 minutes.

Mr. BYRD. Mr. President, I rise today to speak sadly. I have been a Member of Congress—now I am in my 53rd year. Two other members have served longer than I. Only 11,752 men and women have served in the Congress of the United States since the Republic began in 1789. That is 217 years. Those two Members were the late Senator Carl Hayden of Arizona, who was chairman of the Appropriations Committee when I came to this body, and Representative Jamie Whitten of Mississippi, who was a member of the House Appropriations Committee, a man with whom I served. So only two others have served longer in the Congress, meaning the House of Representatives or the Senate or both—only two.

I say to Senators and you, Mr. President, can you imagine my feelings as I stand now to speak in this Senate, which tomorrow—24 to 36 to 48 hours from now—may be changed from what it was when it began, when it first met in April of 1789 and from what it was when I came here to the Senate now going on 47 years ago.

I can see Everett Dirksen as he stood at that desk. He was the then-minority leader. Lyndon B. Johnson of Texas was the majority leader. Yes, I can see Norris Cotton. I can see George Aiken. I can see Jack Javits. I can see Margaret Chase Smith of Maine, the only woman in the Senate at that time, as she sat on the front row of the Republican side of the aisle. I can see others, yes.

How would they have voted? How would they have voted on this question which will confront us tomorrow? How would they have voted? I have no doubt as to how they would have voted. I have no doubt as to how they would vote were they here tomorrow. And so my heart is sad that we would even come to a moment such as this. Sad, sad, sad, sad it is.

I rise today to make a request of my fellow Senators. In so doing, I reach out to all Senators on both sides of the aisle, respectful of the institution of the Senate and of the opinions of all Senators, respectful of the institution of the Presidency as well. I ask each Senator to pause for a moment and reflect seriously on the role of the Senate as it has existed now for 217 years, and on the role that it will play in the future if the so-called nuclear option or the so-called constitutional option—one in the same—is invoked.

I implore Senators to step back—step back, step back, step back—from the precipice. Step back away from the cameras and the commentators and contemplate the circumstances in which we find ourselves. Things are not right, and the American people know that things are not right. The political discourse in our country has become so distorted, so unpleasant, so strident, so unbelievable, it is no wonder, then, that people are turning to a place of serenity, a place that they trust to seek the truth. They are turning to their religious faith in a time of ever-quickening contradictory messages transmitted by e-mail, by BlackBerrys, by Palm Pilots, answering machines, Tivo, voice mail, satellite TV, cell phones, Fox News, and so many other media outlets. America is suffering sensory overload.

We hear a lot of talk, but we do not know what to make of it. So some are turning to a place of quiet, a secure place, a place where they can find peace. They are turning to their faith, their religious faith.

Our Nation seems to be at a crossroads. People are seeking answers to legitimate questions about the future of our country, the future of our judiciary, and what role religions play in public lives. But it is difficult to find the quiet time to contemplate or to build a consensus in response to these profound questions when the venues for serious discussion of these issues often amount to little more than ''shoutfests,'' ''hardball,'' and ''Crossfire.''

Mr. President, what is next, ''Slash and Burn'' ''Your faith or mine?'' Perhaps because so few traditional channels of communication even now in the Senate provide a venue for thoughtful discussion, Americans are seeking answers to political and legal questions not in Congress or in the courts but through a higher power, through their religious faith.

In fact, it is the reaction of some to recent court decisions that has fueled the drive by a sincere minority, perhaps, in this country, the drive, where it might be a majority in this country, the drive toward the pillars of faith.

Many American citizens since the early religious people are angered and alienated by a belief that their views are not respected in the political process. They are deeply frustrated, and I am in sympathy with such feelings. I do not agree with many of the decisions that have come from the courts concerning prayer in school or concerning prohibitions on the display of religious items in public places.

For example, concerning freedom of religion, the establishment clause of the first amendment to the Constitution states:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .

In my humble opinion, too many have not given equal weight to both of these clauses but have focused only on the first clause which prohibits the establishment of religion, with too little attention and at the expense of the second clause, which protects the right of Americans to worship as they please. I have always believed that this country was founded by men and women of strong faith whose intent was never to suppress religion but to ensure that our Government favors no single religion over another. This is reflected in Thomas Jefferson's insistence on religious liberty in the founding of our Republic. In his Virginia Act for Establishing Religion Freedom, Jefferson wrote that no man shall be compelled to frequent or support any religious worship or shall otherwise suffer on account of his religious opinion or belief, but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and that shall in no wise diminish, enlarge, or affect their civil capacities.

In 1962, the U.S. Supreme Court decided a case called Engel v. Vitale. In that case, a group of politically appointed State officials drafted a prayer to be recited every day in the New York public schools, but the Supreme Court struck down the law, holding that the practice violated the establishment clause of the U.S. Constitution. While I strongly support voluntary prayer in schools, I can understand how the Supreme Court refused to require schoolchildren to recite a prayer that was drafted by government bureaucrats to be force-fed to every child. That decision rested on a principle that makes a lot of sense to me—namely, that government itself may not seek either to discourage or to promote religion.

In response to a question about the role of religion in society, President Bush recently stated that he believes religion is a personal matter—and it is a personal matter. It is a personal matter, something that must be revered but not imposed by the Government. The Federal Government must not prevent us from praying, but it should not tell us how to pray, either. That is a personal matter. That is a personal decision.

On May 5, our National Day of Prayer, the President reminded us that this special day was an annual event established in 1952 by an act of Congress. Yet, as said, it is part of a broader tradition that reaches back to the beginnings of America. So the President reminded us that from the landing of the Pilgrims at Plymouth Rock to the launch of the American Revolution, the men and women who founded this Nation in freedom relied on prayer to protect and to preserve it. And, of course, the President was right.

Thus, we can all understand the outrage of many good people of faith who decry the nature of our popular culture with its overt emphasis on sex, violence, profanity, and materialism.

They have every reason to seek some sort of remedy, but these frustrations, great as they are, must not be allowed to destroy crucial institutional mechanisms in the Senate that have protected minority rights for over 200 years and, when necessary, must be available to curtail the power of a power-hungry Executive. Yet this is the outcome sought by those who propose to attack the filibuster.

At such times as these, the character of the leaders of this country is sorely tested. Our best leaders search for ways to avert such crises, not ways to accelerate the plunge toward the brink. Overheated partisan rhetoric is always available, of course, but the majority of Americans want a healthy two-party system built on mutual respect, and they want leaders who know how to work together. In fact, Americans admire most leaders who seek to do right, even when doing so does not prove politically advantageous in the short term.

The so-called nuclear option has been around for a long time. It didn't require a genius to figure that one out. Any cabbagehead who fell off of a turnip truck could have done that. That is easy to figure out. It has been around since the cloture rule was adopted in 1917—yes. I call it the turnip truck option, not the nuclear option, not the constitutional option. I call it the turnip truck option. It could have been talked about and suggested by someone who fell off a turnip truck and got up and dusted himself off and got back on the truck and fell off the turnip truck again—so turnip truck No. 2. Let it be that.

The nuclear option, as I say, has been around for a long time, but previous leaders of the Senate and previous Presidents, previous White Houses, did not seek to foist this turnip truck option upon the Senate and upon the right of the American people to have freedom of speech on the part of their representatives in the Senate.

So the nuclear option—yes, it has been around for a long time. Nobody wanted to resort to such a suicidal weapon. But until today, wisdom and cooler heads prevailed. In 1841, for example, a Democratic minority tried to block a bank bill supported by Henry Clay. Clay threatened to change the Senate's rules to allow the majority—have you heard that before?—to allow the majority to stop debate, just like our current majority leader. I say this respectfully. But Thomas Hart Benton angrily rebuked his colleague, Henry Clay, accusing Clay of trying to stifle the Senate's right to unlimited debate.

There is no need to tamper with the Senate's right of extended debate. It has been around for a long time. In 1806, the Senate left it out of the Senate's rules. In the 1806 version of the Senate's rules, ''the previous question,'' as it now is still being used in the House, ''the previous question'' was left out, left behind. It had only been used a few times prior to 1806. It was in the 1789 rules of the Senate, yes. It was in the rules of the Continental Congress, ''the previous question.'' It is in the rules of the British Parliament, yes. But the Senate, in 1806, decided, on the basis and upon the advisement of the Vice President of the United States, Aaron Burr, to discard it.

The text of the actual cloture rule, rule XXII, was not adopted by the Senate until 1917, the year in which I was born. Today, rule XXII allows the Senate to end a debate with 60 votes, what we call invoking cloture. I offered that resolution, to provide for a supermajority of 60 votes to invoke cloture. I believe it was 1975. That was a resolution which I introduced. So that is what we have today. But from 1919 to 1962, the Senate voted on cloture petitions only 27 times and invoked cloture only 5 times.

Political invective and efforts to divide America along religious lines may distract the electorate for the moment, but if, heaven forbid, there should be a true crisis or calamity in our country, the American people will stand shoulder to shoulder to support our country. Why can't we, then, their Senators, their leaders, find the courage to come together and solve this problem?

Nearly 4 years ago, our Nation was attacked by al-Qaida. In a Herculean effort, we came together to help the good people of New York and the patriotic citizens who worked at the Pentagon. Why can't we find some of that spirit today in the Senate? The time-honored role of the Senate as protector of minority views is at risk, and those who are in the majority today may be in the minority tomorrow. Don't forget that—the worm turns.

Our country has serious problems. Baby boomers are facing retirement with sorely diminished savings, savings hard to accrue in the face of exploding prices for gasoline, prescription drugs, housing, fuel, medicine and shelter—not frivolous purchases, all essential to survival. Alarmingly, all are becoming less affordable, even for affluent Americans. But beyond them, what is happening to America's poor today? Has anybody noticed? Has anybody noticed?

The point is that the current uproar over the filibuster serves only to underscore the mounting number of real problems—real problems—not being addressed by this Government of ours. Over 45 million persons in our country, some 15 percent of our population, cannot afford health insurance. Is your father included? Is your mother included in that number? Is your grandfather included? Is your grandmother included in that number?

Our veterans lack adequate medical care after they have risked life and limb for all of us. Our education system produces 8th graders ranked 19 out of 38 countries in the world in mathematics and 12th graders ranked 19 out of 21 countries in both math and science. Poverty in these United States is rising, with 34 million people or 12.4 percent of the population living below the poverty level. Think of it. Our infant mortality rate is the second highest of the major industrialized countries of the world.

Yet we debate and we seek solutions to none—none—none of these critical problems. Instead, what do we focus on? We focus all energy—we sweat, we perspire, we weaken ourselves, we focus all energy on the frenzy over whether to confirm seven previously considered nominees who were not confirmed by the Senate in the 108th Congress. Doesn't that seem kind of odd? Isn't that kind of odd? That seems a bit irrational, doesn't it, I say. Hear me. Maybe it sounds crazy. If I wanted to go crazy, I would do it in Washington because nobody would take notice, at least, so said Irvin S. Cobb. Would anyone apply such thinking to their own lives? My colleagues, would you insist on resubmitting the same lottery ticket if you knew it was not a winner?

Unfortunately, many Americans seek as an anecdote to their frustrations with our current system a confrontation—yes, we have to have it—a confrontation over these seven nominees and the preposterous solution of permanently crippling freedom of speech and debate and the right of a minority to dissent in the Senate.

I ask the Senate, please, I ask the Senate majority leader, please, I ask the Senator minority leader, please, I ask the White House.

I noticed the other day, I believe last Thursday, in the Washington Post—I will bring it with me tomorrow—I noticed that the White House did not want to compromise on this matter. The White House did not want to compromise. Here we have the executive branch talking to the legislative branch, two of the three branches, two of the three equal coordinate branches of Government, talking through the newspapers that it does not want to compromise.

I ask the Senate to take a moment today to reflect on the potentially disastrous consequences that could flow from invoking the so-called nuclear option. Anger will erupt. It may not be the next day or immediately. One may not see these things come about immediately, but in time they will come. They will come, they will come, they will come. Anger will erupt in the Chamber and it will be difficult to address real problems.

I implore, I beseech, I importune, I beg the Senate to consider how posterity will review such a significant occurrence, destroying 217 years of checks and balances established so carefully by the Founding Fathers 219 years ago. Will the light of posterity shine favorably on the shattering of Senate precedent solely to confirm these seven nominees, nominees whose names have been before the Senate for consideration in the previous administration? Won't this maneuver be viewed for what it really is, a misguided attempt to strong-arm the Senate for a political purpose driven by

anger and raw ambition and lust for power? Will that be remembered as a profile in courage?

What has happened to the quality of leadership in this country that will allow us even to consider provoking a constitutional crisis of such magnitude?

I tell you, I am deeply, deeply troubled. I am almost sick about it, the frustration that I have had over thinking about this, this awful thing that is about to happen, unless we draw back.

Have we lost our ability to look toward the larger good? Even a child is known by his doings, whether his work be pure and whether it be right. That is according to Proverbs, 20th chapter, 11th verse.

I ask the Senate to come together and to work toward a compromise. Yes, the Washington Post last Thursday said the White House doesn't want a compromise. But I beg the Senate, I beg those on the other side of the aisle and those on my side of the aisle to reach a compromise, work toward a compromise.

What the current majority seeks to employ against the minority today can be turned against the majority tomorrow.

John Adams once said:

> Even mankind will, in time, discover that unbridled majorities are as tyrannical and cruel as unlimited despots.

Does not history prove as much? I ask the Senate to seek a compromise. Where is the gentle art of compromise? Edmund Burke once stated:

> All government, indeed every human benefit and enjoyment, every virtue and every prudent act, is founded on compromise and barter.

Let the Senate step away from this abyss and see the wisdom of coming together to preserve the checks and balances. May we stop and draw back and remember that we are all Americans before we permanently damage this institution, the Senate of the United States, and in doing so, permanently damage the Constitution as we permanently damage this institution, the Senate of the United States, and the country we love.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, how much time remains on the minority?

The PRESIDING OFFICER. The minority controls 23 additional minutes.

Mr. BIDEN. Mr. President, my friends and colleagues, I have not been here as long as Senator BYRD, and no one fully understands the Senate as well as Senator BYRD, but I have been here for over three decades. This is the single most significant vote any one of us will cast in my 32 years in the Senate. I suspect the Senator would agree with that.

We should make no mistake. This nuclear option is ultimately an example of the arrogance of power. It is a fundamental power grab by the majority party, propelled by its extreme right and designed to change the reading of the Constitution, particularly as it relates to individual rights and property rights. It is nothing more or nothing less. Let me take a few moments to explain that.

Folks who want to see this change want to eliminate one of the procedural mechanisms designed for the express purpose of guaranteeing individual rights, and they also have a consequence, and would undermine the protections of a minority point of view in the heat of majority excess. We have been through these periods before in American history but never, to the best of my knowledge, has any party been so bold as to fundamentally attempt to change the structure of this body.

Why else would the majority party attempt one of the most fundamental changes in the 216-year history of this Senate on the grounds that they are being denied ten of 218 Federal judges, three of whom have stepped down? What shortsightedness, and what a price history will exact on those who support this radical move.

It is important we state frankly, if for no other reason than the historical record, why this is being done. The extreme right of the Republican Party is attempting to hijack the Federal courts by emasculating the courts' independence and changing one of the unique foundations of the Senate; that is, the requirement for the protection of the right of individual Senators to guarantee the independence of the Federal Judiciary.

This is being done in the name of fairness? Quite frankly, it is the ultimate act of unfairness to alter the unique responsibility of the Senate and to do so by breaking the very rules of the Senate.

Mark my words, what is at stake here is not the politics of 2005, but the Federal Judiciary in the country in the year 2025. This is the single most significant vote, as I said earlier, that I will have cast in my 32 years in the Senate. The extreme Republican right has made Federal appellate Judge Douglas Ginsburg's ''Constitution in Exile'' framework their top priority.

It is their purpose to reshape the Federal courts so as to guarantee a reading of the Constitution consistent with Judge Ginsburg's radical views of the fifth amendment's taking clause, the nondelegation doctrine, the 11th amendment, and the 10th amendment. I suspect some listening to me and some of the press will think I am exaggerating. I respectfully suggest they read Judge Ginsburg's ideas about the ''Constitution in Exile.'' Read it and understand what is at work here.

If anyone doubts what I am saying, I suggest you ask yourself the rhetorical question, Why, for the first time since 1789, is the Republican-controlled Senate attempting to change the rule of unlimited debate, eliminate it, as it relates to Federal judges for the circuit court or the Supreme Court?

If you doubt what I said, please read what Judge Ginsburg has written and listen to what Michael Greve of the American Enterprise Institute has said:

> I think what is really needed here is a fundamental intellectual assault on the entire New Deal edifice. We want to withdraw judicial support for the entire modern welfare state.

Read: Social Security, workmen's comp. Read: National Labor Relations Board. Read: FDA. Read: What all the byproduct of that shift in constitutional philosophy that took place in the 1930s meant.

We are going to hear more about what I characterize as radical view—maybe it is unfair to say radical—a fundamental view and what, at the least, must be characterized as a stark departure from current constitutional jurisprudence. Click on to American Enterprise Institute Web site www.aei.org. Read what they say. Read what the purpose is. It is not about seeking a conservative court or placing conservative Justices on the bench. The courts are already conservative.

Seven of the nine Supreme Court Justices appointed by Republican Presidents Nixon, Ford, Reagan, and Bush 1—seven of nine. Ten of 13 Federal circuit courts of appeal dominated by Republican appointees, appointed by Presidents Nixon, Ford, Reagan, Bush 1, and Bush 2; 58 percent of the circuit court judges appointed by Presidents Nixon, Ford, Reagan, Bush 1, or Bush 2. No, my friends and colleagues, this is not about building a conservative court. We already have a conservative court. This is about guaranteeing a Supreme Court made up of men and women such as those who sat on the Court in 1910 and 1920. Those who believe, as Justice Janice Rogers Brown of California does, that the Constitution has been in exile since the New Deal.

My friends and colleagues, the nuclear option is not an isolated instance. It is part of a broader plan to pack the court with fundamentalist judges and to cower existing conservative judges to toe the extreme party line.

You all heard what TOM DELAY said after the Federal courts refused to bend to the whip of the radical right in the Schiavo case. Mr. DELAY declared: ''The time will come for men responsible for this to answer for their behavior.''

Even current conservative Supreme Court Justices are looking over their shoulder, with one extremist recalling the despicable slogan of Joseph Stalin—and I am not making this up—in reference to a Reagan Republican appointee, Justice Kennedy, when he said: ''No man, no problem''—absent his presence, we have no problem.

Let me remind you, as I said, Justice Kennedy was appointed by President Reagan.

Have they never heard of the independence of the judiciary—as fundamental a part of our constitutional

system of checks and balances as there is today; which is literally the envy of the entire world, and the fear of the extremist part of the world? An independent judiciary is their greatest fear.

Why are radicals focusing on the court? Well, first of all, it is their time to be in absolute political control. It is like, why did Willy Sutton rob banks? He said: Because that is where the money is. Why try it now—for the first time in history—to eliminate extended debate? Well, because they control every lever of the Federal Government. That is the very reason why we have the filibuster rule. So when one party, when one interest controls all levers of Government, one man or one woman can stand on the floor of the Senate and resist, if need be, the passions of the moment.

But there is a second reason why they are focusing on the courts. That is because they have been unable to get their agenda passed through the legislative bodies. Think about it. With all the talk about how they represent the majority of the American people, none of their agenda has passed as it relates to the fifth amendment, as it relates to zoning laws, as it relates to the ability of Federal agencies, such as the Food and Drug Administration, the Environmental Protection Agency, to do their jobs.

Read what they write when they write about the nondelegation doctrine. That simply means, we in the Congress, as they read the Constitution, cannot delegate to the Environmental Protection Agency the authority to set limits on how much of a percentage of carcinogens can be admitted into the air or admitted into the water. They insist that we, the Senate, have to vote on every one of those rules, that we, the Senate and the House, with the ability of the President to veto, would have to vote on any and all drugs that are approved or not approved.

If you think I am exaggerating, look at these Web sites. These are not a bunch of wackos. These are a bunch of very bright, very smart, very well-educated intellectuals who see these Federal restraints as a restraint upon competition, a restraint upon growth, a restraint upon the powerful.

The American people see what is going on. They are too smart, and they are too practical. They might not know the meaning of the nondelegation doctrine, they might not know the clause of the fifth amendment relating to property, they may not know the meaning of the tenth and eleventh amendments as interpreted by Judge Ginsburg and others, but they know that the strength of our country lies in common sense and our common pragmatism, which is antithetical to the poisons of the extremes on either side.

The American people will soon learn that Justice Janice Rogers Brown—one of the nominees who we are not allowing to be confirmed, one of the ostensible reasons for this nuclear option being employed—has decried the Supreme Court's ''socialist revolution of 1937.'' Read Social Security. Read what they write and listen to what they say. The very year that a 5-to-4 Court upheld the constitutionality of Social Security against a strong challenge—1937—Social Security almost failed by one vote.

It was challenged in the Supreme Court as being confiscatory. People argued then that a Government has no right to demand that everyone pay into the system, no right to demand that every employer pay into the system. Some of you may agree with that. It is a legitimate argument, but one rejected by the Supreme Court in 1937, that Justice Brown refers to as the ''socialist revolution of 1937.''

If it had not been for some of the things they had already done, nobody would believe what I am saying here. These guys mean what they say. The American people are going to soon learn that one of the leaders of the constitutional exile school, the group that wants to reinstate the Constitution as it existed in 1920, said of another filibustered judge, William Pryor that ''Pryor is the key to this puzzle. There's nobody like him. I think he's sensational. He gets almost all of it.''

That is the reason why I oppose him. He gets all of it. And you are about to get all of it if they prevail. We will not have to debate about Social Security on this floor.

So the radical right makes its power play now when they control all political centers of power, however temporary. The radical push through the nuclear option and then pack the courts with unimpeded judges who, by current estimations, will serve an average of 25 years. The right is focused on packing the courts because their agenda is so radical that they are unwilling to come directly to you, the American people, and tell you what they intend.

Without the filibuster, President Bush will send over more and more judges of this nature, with perhaps three or four Supreme Court nominations. And there will be nothing—nothing—that any moderate Republican friends and I will be able to do about it.

Judges who will influence the rights of average Americans: The ability to sue your HMO that denies you your rights; the ability to keep strip clubs out of your neighborhood—because they make zoning laws unconstitutional—without you paying to keep the person from building; the ability to protect the land your kids play on, the water they drink, the air they breathe, and the privacy of your family in your own home.

Remember, many of my colleagues say there is no such thing as a right to privacy in any iteration under the Constitution of the United States of America. Fortunately, we have had a majority of judges who disagreed with that over the past 70 years. But hang on, folks. The fight over judges, at bottom, is not about abortion and not about God, it is about giving greater power to the already powerful. The fight is about maintaining our civil rights protections, about workplace safety and worker protections, about effective oversight of financial markets, and protecting against insider trading. It is about Social Security. What is really at stake in this debate is, point blank, the shape of our constitutional system for the next generation.

The nuclear option is a twofer. It excises, friends, our courts and, at the same time, emasculates the Senate. Put simply, the nuclear option would transform the Senate from the so-called cooling saucer our Founding Fathers talked about to cool the passions of the day to a pure majoritarian body like a Parliament. We have heard a lot in recent weeks about the rights of the majority and obstructionism. But the Senate is not meant to be a place of pure majoritarianism.

Is majority rule what you really want? Do my Republican colleagues really want majority rule in this Senate? Let me remind you, 44 of us Democrats represent 161 million people. One hundred sixty-one million Americans voted for these 44 Democrats. Do you know how many Americans voted for the 55 of you? One hundred thirty-one million. If this were about pure majorities, my party represents more people in America than the Republican Party does. But that is not what it is about. Wyoming, the home State of the Vice President, the President of this body, gets one Senator for every 246,000 citizens; California, gets one Senator for 17 million Americans. More Americans voted for Vice President Gore than they did Governor Bush. By majoritarian logic, Vice President Gore won the election.

Republicans control the Senate, and they have decided they are going to change the rule. At its core, the filibuster is not about stopping a nominee or a bill, it is about compromise and moderation. That is why the Founders put unlimited debate in. When you have to—and I have never conducted a filibuster—but if I did, the purpose would be that you have to deal with me as one Senator. It does not mean I get my way. It means you may have to compromise. You may have to see my side of the argument. That is what it is about, engendering compromise and moderation.

Ladies and gentlemen, the nuclear option extinguishes the power of Independents and moderates in this Senate. That is it. They are done. Moderates are important only if you need to get 60 votes to satisfy cloture. They are much less important if you need only 50 votes. I understand the frustration of our Republican colleagues. I have been here 32 years, most of the time in the majority. Whenever you are in the majority, it is frustrating to see the other side block a bill or a nominee you support. I have walked in your shoes, and I get it.

I get it so much that what brought me to the Senate was the fight for civil

rights. My State, to its great shame, was segregated by law, was a slave State. I came here to fight it. But even I understood, with all the passion I felt as a 29-year-old kid running for the Senate, the purpose—the purpose—of extended debate. Getting rid of the filibuster has long-term consequences. If there is one thing I have learned in my years here, once you change the rules and surrender the Senate's institutional power, you never get it back. And we are about to break the rules to change the rules.

I do not want to hear about ''fair play'' from my friends. Under our rules, you are required to get 2/3 of the votes to change the rules. Watch what happens when the majority leader stands up and says to the Vice President—if we go forward with this—he calls the question. One of us, I expect our leader, on the Democratic side will stand up and say: Parliamentary inquiry, Mr. President. Is this parliamentarily appropriate? In every other case since I have been here, for 32 years, the Presiding Officer leans down to the Parliamentarian and says: What is the rule, Mr. Parliamentarian? The Parliamentarian turns and tells them.

Hold your breath, Parliamentarian. He is not going to look to you because he knows what you would say. He would say: This is not parliamentarily appropriate. You cannot change the Senate rules by a pure majority vote.

So if any of you think I am exaggerating, watch on television, watch when this happens, and watch the Vice President ignore—he is not required to look to an unelected officer, but that has been the practice for 218 years. He will not look down and say: What is the ruling? He will make the ruling, which is a lie, a lie about the rule.

Isn't what is really going on here that the majority does not want to hear what others have to say, even if it is the truth? Senator Moynihan, my good friend who I served with for years, said: You are entitled to your own opinion but not your own facts.

The nuclear option abandons America's sense of fair play. It is the one thing this country stands for: Not tilting the playing field on the side of those who control and own the field.

I say to my friends on the Republican side: You may own the field right now, but you won't own it forever. I pray God when the Democrats take back control, we don't make the kind of naked power grab you are doing. But I am afraid you will teach my new colleagues the wrong lessons.

We are the only Senate in the Senate as temporary custodians of the Senate. The Senate will go on. Mark my words, history will judge this Republican majority harshly, if it makes this catastrophic move.

Mr. President, I ask unanimous consent that the full text of my statement as written be printed in the RECORD.

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

THE FIGHT FOR OUR FUTURE: THE COURTS, THE UNITED STATES SENATE, AND THE AMERICAN PEOPLE

INTRODUCTION

Make no mistake, my friends and colleagues, the ''nuclear option'' is the ultimate example of the arrogance of power. It is a fundamental power grab by the Republican Party propelled by its extreme right and designed to change the reading of the Constitution, particularly as it relates to individual rights and property rights

Nothing more, nothing less.

It is the elimination of one of the procedural mechanisms designed for the express purpose of guaranteeing individual rights and the protections of a minority point of view in the heat of majority excess.

Why else would the majority party attempt such a fundamental change in the 216 year history of this Senate on the grounds that they are being denied seven of 218 federal judges?

What shortsightedness and what a price history will exact on those who support this radical move.

Mr. President, we should state frankly, if for no other reason than an historical record, why this is being done. The extreme right of the Republican Party is attempting to hijack the federal courts by emasculating the courts' independence and changing one of the unique foundations of the United States Senate—the requirement for the protection of the right of individual Senators to guarantee the independence of the federal judiciary.

This is being done in the name of fairness. But it is the ultimate act of unfairness to alter the unique responsibility of the United States Senate and to do so by breaking the very rules of the United States Senate.

Mark my words. What is at stake here is not the politics of 2005, but the federal judiciary and the United States Senate of 2025.

This is the single most significant vote that will be cast in my 32-year tenure in the United States Senate.

THE FUTURE OF OUR COURTS

The extreme Republican Right has made Judge Douglas Ginsberg's ''Constitution in Exile'' framework their top priority. It is their extreme purpose to reshape the federal courts so as to guarantee a reading of the Constitution consistent with Judge Ginsberg's radical views of the 5th Amendment Takings Clause, the non-delegation doctrine, the 11th Amendment, and the 10th Amendment.

If you doubt what I say then ask yourself the following rhetorical question: Why for the first time since 1789 is the Republican controlled United States Senate attempting to do this?

If you doubt what I say, please read what Judge Ginsberg has written. And listen to what Michael Greve, of the American Enterprise Institute has said: ''what is really needed here is a fundamental intellectual assault on the entire New Deal edifice. We want to withdraw judicial support for the entire modern welfare state.''

If you want to hear more about what I am characterizing as the radical view and what must certainly be characterized as a stark departure from current constitutional law, click on the American Enterprise Institute's website www.aei.org.

This is not about seeking a conservative court and placing conservative judges on the bench.

The courts are already conservative: 7 of 9 current Supreme Court Justices, appointed by Republican Presidents Nixon, Ford, Reagan, Bush I; 10 of 13 federal circuit courts dominated by Republican appointees, appointed by Presidents Nixon, Ford, Reagan, Bush I, and Bush II; and 58 percent of all circuit court judges, appointed by Presidents Nixon, Ford, Reagan, Bush I and Bush II.

No, friends and colleagues, this is not about building conservative courts. We already have them. This is about a Supreme Court made up of men and women like those who sat on the Court in 1910, 1920.

My friends and colleagues, the nuclear option is not an isolated instance. It's part of a broader plan to pack the courts with fundamentalist judges and to cower existing conservative judges to toe the party line.

You all heard what Tom DeLay said after the federal courts refused to bend to the whip of the Radical Right in the Schiavo Case. DeLay declared:

The time will come for the men responsible for this to answer for their behavior.

Even current conservative Supreme Court Justices are looking over their shoulders. One extremist has referred to Justice Kennedy by recalling a despicable slogan attributed to Joseph Stalin. When Stalin encountered a problem with an individual, he would simply say ''no man, no problem.'' The extreme right is adapting Stalin's adage in their efforts to remove sitting judges: ''no judge, no problem.''

And let me remind you, Kennedy was appointed by President Reagan.

Have these people never heard of the independence of the judiciary—as fundamental a part our constitutional system of checks and balances as there is; the envy of the world; the system that emerging democracies are clamoring to copy?

You must ask yourself why the fundamentalist Republican right is focusing so clearly on the federal courts? I'll tell you why.

Because they are unable to seek their agenda through the political branches of our government.

That's why they are trying to move their agenda by fundamentally changing the courts.

I believe that the American people already intuitively know what's going on; they're too smart; they're too practical. The strength of our country lies in our common sense and our pragmatism, which is antithetical to the ideological purity of the fundamentalist Republican Right.

The American people will soon learn that Janice Rogers Brown has decried the Supreme Court's ''socialist revolution of 1937,'' the very year that a 5–4 Court upheld the constitutionality of Social Security against strong challenges.

The American people will soon learn that one of the leaders of the ''Constitution in Exile'' school—the group that wants to reinstate the Constitution as it existed in the 1920s—said that another of the filibustered judges—William Pryor—was ''key to this puzzle; there's nobody like him. I think he's sensational. He gets almost all of it.''

These are judges who will serve on the federal circuit courts of appeal for a quarter of a century. And no general election of Congress and the President will be able to change it.

And you may ask yourself why the focus on the circuit courts? I'll tell you why.

Today, it is more than four times as difficult to get an opportunity to argue your appeal before the Supreme Court as it was 20 years ago. Today, the Supreme Court reviews less than two tenths of one percent of the caseload of the appeals courts.

Without the filibuster, President Bush will be able to put on the bench judges who would reinstitute the ''Constitution in Exile.'' I suggest that it is these judges who are the ones who should be exiled.

And if the actuarial tables comply there is the possibility that President Bush will possibly nominate as many as 3–4 Supreme Court Justices—and there will be little that

my moderate Republican friends and I will be able to do about it.

The consequences for average Americans will be significant. They will include the ability to sue when HMOs deny you your rights; the ability to keep strip clubs out of your family's neighborhood; the ability to protect from environmental degradation the land your kids play on, the purity of the water they drink, the cleanliness of the air they breathe; and the ability to preserve the privacy that you and your family expect the Constitution to provide.

The fight over judges, at bottom, is not about abortion and about God; it is about giving greater power to the already powerful.

THE FUTURE OF THE SENATE

The exercise of the nuclear option also has another fundamental impact on the government—it will transform the Congress from a bifurcated legislature where political parties were never intended to rule supreme into a quasi-parliamentary system where a single party will dominate.

There would have been no Constitution were it not for the Connecticut Compromise—that is the compromise that guaranteed states two U.S. Senators regardless of the state's population.

The Connecticut Compromise was also done expressly to guarantee the right of the small states, as well as less powerful interests, as well as individuals, to be protected from temporary passion and excesses of the moment—whether borne out of a demagogic appeal or the overwhelming supremacy of a political party.

The guarantee of unlimited debate in the United States Senate assured not that the minority would be able to get its way but that the minority would be able to generate a compromise that would keep them from being emasculated. And this included ensuring the independence of the federal judiciary.

We have heard a lot in recent weeks about the rights of the majority. But the Senate was not meant to be a place of pure majoritarianism. Is majority rule what this is about? Do my Republican colleagues really want majority rule?

We 44 Democrats represent 161 million people in the Senate; the 55 Republicans only 131 million. By majoritarian logic, the Democrats would be in the majority in the Senate.

Wyoming, the home state of the President of this Body, gets 1 Senator for every 246,891 citizens. By that measure, California is entitled to 137 U.S. Senators.

More Americans voted for Vice President Gore in 2000 than for George W. Bush. By majoritarian logic, Gore won that election.

But Republicans control the Senate, California only gets 2 Senators, and Vice President Gore lost the 2000 election for the same reason—under our constitutional system, a majority doesn't always get what it wants; that's the system the Founders created.

At its core, the filibuster is not about stopping a nominee or a bill, it's about compromise and moderation.

The nuclear option extinguishes the power of independents and moderates in the Senate. That's it, they're done. Moderates are important if you need to get to 60 votes to satisfy cloture; they are much less so if you only need 50 votes.

Let's set the historical record straight. Never has the Senate provided for a certainty that 51 votes could put someone on the bench or pass legislation.

The facts are these. There was no ability to limit debate until 1917. And then the explicit decision was made to limit debate on legislation if 2/3 of the Senators present and accounted for supported cloture. Even then, the Senate rejected a similar limitation on executive nominations, including nominees to the federal bench. It wasn't until 1949 that the new cloture rule also applied to nominations.

The question at present is, will the Senate actually aid and abet in the erosion of its Article I power by conceding to another branch greater influence over who ends up on our courts? As Senator Stennis once said to me in the face of a particularly audacious claim by President Nixon: ''Are we the President's men or the Senate's?''

My friends on the other side of the aisle like to focus on the text of the Constitution. Tell me: Where does it state that it is necessary for each bill or each nominee that comes before us to receive a simple majority vote? Where does it state that the President should always get his first choice to fill a vacancy?

FUNDAMENTAL FAIRNESS—PLAYING BY THE RULES

The nuclear option makes a mockery of the Senate rules. You'll notice that when the nuclear option is triggered, the Presiding Officer will refuse to seek the advice of the Parliamentarian, his own expert. He won't ask because he doesn't want to hear the answer.

Isn't that what's really going on here? The majority doesn't want to hear what others have to say, even if it's the truth. Well, as Senator Moynihan used to say, ''You're entitled to your own opinions, but not your own facts.''

The nuclear option abandons our American sense of fair play. If there is one thing this country stands for it's fair play—not tilting the playing field in favor of one side or the other, not changing the rules unilaterally.

We play by the rules, and win or lose by the rules. That is a quintessentially American trait, and it is eviscerated by the ''nuclear option.''

CONCLUSION

The Senate stands at the precipice of a truly historic mistake. We are about to act on a matter that will influence our country's history for the foreseeable future.

We are only the Senate's temporary custodians—our careers in the Senate will one day end—but the Senate will go on. Over the course of the next hours and days, we must be Senators first, and Republicans and Democrats second.

We must think of the rights and liberties of the American people, not just for today but for the rest of our lives.

Again, ask yourself why is this extreme change being put forward over 7 out of 218 federal judges?

As I said earlier, history will judge this Republican Majority harshly if it succeeds in changing the way the Founders intended the Senate to behave, emasculating it into a parliament governed by a single party's ideology and unable to be thrown out be a vote of no-confidence.

Mr. BIDEN. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. 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. HATCH. Mr. President, over the last several days we have debated some of the most important issues that most of the Members will ever face. Should the same powerful tool, such as the filibuster, that we have long used in the legislative process be part of the confirmation process to defeat a President's judicial nominees? That is a big question. Can the Senate's role of advice and consent regarding judicial nominations be exercised equally by either the majority or minority of Senators? The answer to each of these questions is no.

America's Founders designed the Senate without the ability to filibuster anything at all. The filibuster became available later but was restricted to the legislative process which we control. It was not part of the appointment process which the President controls. Allowing a minority of Senators to capture this body's role of advice and consent will allow that minority to hijack the President's power to appoint judges. I admit that we have control of the Executive Calendar, but the President has rights in that calendar, too. We cannot hijack the President's power to appoint judges. Doing so distorts the balance the Constitution establishes and mandates. That situation should not stand.

I urge my friends, Senators from the minority, to abandon their destructive course and return to the tradition we followed for more than two centuries. The Senate, acting through a majority, checks the President's power to appoint by voting on whether to consent to those appointments. You will notice it is the Senate—not the minority—who does that check. Any Senator may vote against any nominee for any reason, but we must vote. We followed that tradition for more than 200 years, and we should recommit ourselves to it now.

If the minority insists on distorting the Constitution's balance and rejecting Senate tradition, then I believe the Senate must firmly reestablish that tradition by exercising our constitutional authority to determine our own rules and procedures. If the minority will not exercise the same self-restraint this body exercised for the last two centuries, then I believe the Senate must vote to return formally to our tradition. It is surely not a sign of our political culture that we have to enforce by majority vote what we once offered by principle and self-restraint. But the Constitution's balance is too important to allow a minority to erode our principles and past practices.

The problem and the solution each have their own frame of reference drawn from the Constitution. The frame of reference for evaluating these judicial filibusters is the separation of powers into three branches. The frame of reference for the solution to this judicial filibuster crisis is the Constitution's grant of authority for us, the Senate, to determine how we want to conduct Senate business.

Let me first address the judicial filibuster crisis through the lens, the frame of reference, of the separation of powers. In Federalist No. 47, James Madison wrote of the separation of powers that ''no political truth is certainly of greater intrinsic value or

stamped with the authority of more enlightened patrons of liberty.'' Two points are particularly important here. First, the separation of powers is exclusive. The powers assigned to one branch are denied to the others.

Like our Federal charter, each State constitution also divides the legislative, executive, and judicial branches into separate branches. More than two-thirds of them, however, go even further and make the exclusive nature of separation explicit. They affirmatively prohibit each branch from exercising the powers assigned to the others. The separation of powers is that important.

While each branch may not exercise the powers given to the others, we can check the powers given to the others. A check on another branch's power is a safeguard. It is not a separate coequal power. It is neither separate from nor as significant as the power being checked. Nomination and appointment of judges is described in article II which outlines the President's power. Not a word is found in article I which describes our powers.

The second point about the separation of powers is equally important. Just as the powers belong to the branches, checks and balances are exercised by the branches. The President, to whom the Constitution gives executive power, can check Congress's legislative power through the veto that he has a right to exercise. He cannot delegate it to someone else in the executive branch. Similarly, the Constitution assigns the role of advice and consent to the Senate, not just to the minority, to the Senate.

The question raised by the current filibuster campaign, however, is this: What is the Senate, the minority or the majority? I do not want to get too technical, but these are basic civics principles that apply to legislative bodies everywhere that you can find in most high school textbooks. We must have what we call a quorum, a minimum number of Senators present to be open for business. Senate rule VI defines a quorum as a ''majority of Senators duly chosen and sworn.'' Today that means 51 Senators. Unless the Constitution that created this body says otherwise, when a majority of those Senators acts, it is the Senate itself that acts.

This is no different from the Supreme Court. When a majority of its members votes the same way, we say it is the Court that has decided the case.

Only the Senate itself can exercise its constitutional role of advice and consent on the President's judicial nominations. That is, only a majority of Senators can exercise that role. I make this point so strongly because the minority is claiming the right to exercise this body's role of advice and consent strictly by the minority.

Last Thursday, the Senator from Massachusetts, Mr. KERRY, on the Senate floor, charged that ''the Republican leadership is determined to deny the minority the right to hold the executive responsible for lifetime appointments to the judiciary.''

He was not the first to make this argument. We have heard for a long time now from many Senators who support these filibusters that the Senate rejects a nomination not when the majority has voted it down but when the minority has prevented a final confirmation vote, even though there is a bipartisan majority for the nominee. I should say in this case nominees.

The minority does not check the President's power. The Senate itself does. And that means a majority of Senators checks the President's power. When the minority has prevented a confirmation vote, the minority has prevented the Senate from exercising its role of advice and consent altogether. I do not speak primarily of the majority or minority party. I speak of the numerical majority that is required in order for the Senate to act at all. The vast majority of judicial nominations are confirmed either by unanimous consent or by overwhelming margins on rollcall votes. The number of truly controversial, hotly contested judicial nominations is small. Still at least 18 Members of this body have voted against a judicial nomination of their own party.

If the case against some of these nominees is so strong—and we have heard a great hue and cry about how some of them are out of some sort of mainstream—then Senators may do so again. But the prospect of being on the losing side of a small number of confirmation votes does not justify turning these fundamental principles of separation of powers inside out. It does not justify the minority hijacking the Senate's role of advice and consent so it can hijack the President's power to appoint judges.

Yet that is indeed what these filibusters are attempting to do. Defeating a vote to end debate can serve a laudable, temporary purpose of ensuring full and vigorous debate. That full and vigorous debate can help the Senate make a more informed confirmation decision. But these recent unprecedented, leader-led filibusters defeat all votes to end debate for the purpose of preventing confirmation of these nominations altogether. Doing so turns the separation of powers on its head.

Mr. President, the frame of reference, the organizing principle for evaluating these judicial filibusters, is the separation of powers. I think the case is compelling that the judicial filibuster campaign underway today, by which the minority tries to commandeer the Senate's role of advice and consent so they can wrongly attempt to trump the President's constitutional authority to appoint judges, violates that principle and cannot be allowed to continue.

If the minority will not relent and return to the tradition by which the Senate, through a majority, exercises its role of advice and consent, then I believe the majority must act to restore that tradition. The frame of reference for solving this judicial filibuster crisis is the Senate's constitutional authority to determine our own rules and procedures.

Just as the Constitution establishes a system of self-government for the Nation, it establishes a system of self-government for the Senate. Subject always to the Constitution itself, we choose for ourselves how we want to do business. It may not always be nice, neat, and orderly, but it is up to us to decide. One of the cliches that the judicial filibuster proponents dreamed up is the cry that any solution to this crisis would require ''breaking the rules to change the rules.'' Presumably, that catchy little phrase refers to the fact that invoking cloture on an amendment to the text of our written rules requires not just 60 votes but two-thirds of the Senators present and voting. This argument is, I suppose, intended to make people think our written rules are the only guide for how the Senate operates.

Most of our citizens may not know one way or the other. Nobody can fault them for not being schooled in the peculiar art of Senate procedure. But my fellow Senators certainly know the answer.

Every Senator in this body knows that the Standing Rules of the Senate are only one of several things that guide how we do business. The solution to the judicial filibuster crisis which the majority leader, Dr. FRIST, will pursue will neither break the rules nor change the rules. The Standing Rules of the Senate will read the same next week as they did last week. Instead, the solution we will utilize is a parliamentary ruling by the Presiding Officer, something that is at least as important as our written rules for the way we conduct our day-to-day business.

When a Senator asks the question of procedure or raises a point of order, the Presiding Officer's answer to that question, or his ruling on that point of order, becomes a precedent for the Senate. These parliamentary precedents guide what we do as much as our written rules. Let me stress something very important at this point. The Constitution gives the role of advice and consent to a majority, not to a minority.

Similarly, the Constitution gives the authority to decide how the Senate does business to the Senate, not to the Presiding Officer.

There are no monarchs or dictators in America, or in the United States Senate. Should the Presiding Officer rule that the Senate may proceed to vote on judicial nominations after sufficient debate, that will become a parliamentary precedent guiding this body only after a majority of Senators votes to make it so.

As I have discussed before in the Senate, this mechanism might better be called the Byrd option because, when he was majority leader, the distinguished Senator from West Virginia, Mr. BYRD, repeatedly used it to change how the Senate does business.

The Senator from West Virginia knows that I have the greatest respect for him. I heard him on the Senate floor again this afternoon. But as I will

describe in the next few minutes, I believe my friend from West Virginia doth protest too much.

In 1977, for example, then-Majority Leader BYRD used this mechanism to eliminate what was called the postcloture filibuster. If the Senate voted to invoke cloture on a bill, rule XXII imposed a 1-hour debate limit on each Senator. Senators could get around that limit, however, by introducing and debating amendments. Rule XXII allowed this practice, but the majority leader opposed it—BYRD. He made a point of order against it, the Presiding Officer ruled in his favor, and a simple majority of Senators voted to back up the ruling.

Nearly two decades later, the Senator from West Virginia reflected on how he used the Byrd option in 1977. Let me refer to the chart. He described it this way:

I have seen filibusters. I have helped to break them. There are few Senators in this body who were here in 1977 when I broke the filibuster on the natural gas bill.

I was here, by the way. To continue:

I asked Mr. Mondale, the Vice President, to go please sit in the chair; I wanted to make some points of order and create some new precedents that would break these filibusters And the filibuster was broken—back, neck, legs, and arms. . . . So I know something about filibusters. I helped to set a great many of the precedents that are in the books here.

So don't say we are trying to change the rules. We are following the Byrd rule that was set four times as he was majority leader. He changed Senate procedures without changing Senate rules.

The Senator from West Virginia did it again in 1979. Rule XVI explicitly states that the Senate itself must decide whether amendments to appropriations bills are germane. Then-Majority Leader BYRD made a point of order that the Presiding Officer may decide that question instead. The Presiding Officer ruled in his favor and a majority of Senators voted to affirm the ruling. Once again, a parliamentary ruling changed Senate procedures without changing Senate rules.

It happened again in 1980. As we have discussed, rule XXII requires 60 votes to invoke cloture, or end debate, on any matter pending before the Senate. This includes bills or nominations, but it also includes motions to proceed to those bills or nominations.

Then-Majority Leader BYRD wanted the Senate to confirm an individual nomination. He made a single motion to go into executive session to consider a nomination, a step that is not debatable under our rules, and to proceed to an individual nomination, a step that was debatable.

This time, the point of order came from a Republican Senator, arguing that this procedural two-step was improper. The Presiding Officer agreed, ruling against what Majority Leader BYRD was trying to do. He still prevailed when a majority of Senators voted to overturn the Presiding Officer's ruling. Doing so eliminated the filibuster on a motion to proceed to a specific nomination.

Mr. President, this chart shows that seven Democratic Senators serving in this body today voted to eliminate those nomination-related filibusters. They proved not only that the Byrd option is legitimate, but also that it can be used to limit debate. I leave it to these Senators to explain how they could vote to eliminate nomination-related filibusters in 1980 but support nomination filibusters today.

This 1980 example is particularly relevant because it utilized a parliamentary ruling to eliminate a nomination-related filibuster—not a filibuster of the nomination itself but a filibuster on the motion to proceed to the nomination. That is, of course, a distinction without a difference. Either one keeps a nomination from final approval.

Mr. President, still other examples exist, but I will not go into more detail. Suffice it to say that using parliamentary rulings to change Senate procedures without changing Senate rules is a well-established method for the Senate to govern itself. Should the majority leader, Senator FRIST, utilize it, he will be on solid ground. He will simply be relying upon the precedent that his predecessor, Senator BYRD, helped put on the books.

If the majority leader does utilize the Byrd option, nobody will be able to suggest, let alone charge, he is doing so precipitously. He has been patient, methodical, and even cautious when it comes to this important matter. Far from the image of trigger-happy warriors being used in some interest ads out there, the majority leader will utilize the Byrd option only after trying every conceivable alternative first, and he has done so.

The minority has had every opportunity to do what it says it wants to do; namely, debate these nominations. The nominees being filibustered, for example, include Texas Supreme Court Justice Priscilla Owen, nominated 1,474 days ago to a judicial position that has been vacant for more than 8 years—more than 8 years and considered a judicial emergency.

Justice Owen received a unanimous ''well-qualified'' rating from the American Bar Association, the highest rating they give, which our Democratic colleagues once called the gold standard for evaluating nominees. Let me repeat that. She was rated unanimously as ''well-qualified'' by the American Bar Association, which is not a conservative organization, and some are calling her ''out of the mainstream.'' Give me a break.

Justice Owen was at the top of her law school class. She had the highest score on the Texas bar exam in 1977. She is supported by 15 past presidents of the Texas Bar Association, both Democrats and Republicans, and was endorsed for reelection by virtually every major newspaper in the State of Texas. Out of the mainstream? My gosh, she defines the mainstream.

I mention Justice Owen as an example, though her opponents use the same tactics against nominee after nominee. They claim that Justice Owen is what they call an extremist, or outside of the mainstream, most often by tallying up winners and losers in her judicial decisions. They say she rules too often on this side in criminal cases, too often on that side in civil cases, not enough for this or that political interest.

Whether Justice Owen is controversial, whether anybody considers her inside or outside of some kind of mainstream, these may be reasons to vote against her confirmation, not to refuse to vote at all. By the way, we have Senators on the Judiciary Committee—Democratic Senators—who believe that any business ought to be automatically found against, even if they are right under the law, that anybody who may be an unfortunate person ought to be found for even though they are wrong in the law.

That is not the way the law works. They criticize Justice Owen because, even though she has upheld the weak and the oppressed in many decisions in the Texas Supreme Court, she has upheld the law sometimes to the lament of those who think the weak and oppressed should win no matter what the law says. That is all you can ask of a judge.

The Judiciary Committee has more than once approved her nomination, and she deserves a vote in the Senate. But rather than give her a fair vote, those fearing they will lose are blocking it with a filibuster.

On April 8, 2003, Senator BENNETT, my colleague from Utah, asked the then-assistant minority leader, Senator REID, how much time the Democrats would require to debate the nomination fully. This is what he said:

There is not a number of hours in the universe that would be sufficient [to debate this nominee].

They did not want to debate Justice Owen, they wanted to defeat her. Debate was not a means to the end of exercising advice and consent. It was an end in itself to prevent exercising advice and consent. The majority leader has made offer after offer after offer of more and more time, hoping that the tradition of full debate with an up-or-down vote would prevail. That hope is fading, as Democrats have rejected every single offer.

Finally, last month, the minority leader admitted that ''this has never been about the length of the debate.'' That is what the minority leader said. It has never been about the length of the debate. That was said April 28, 2005.

Unanimous consent is the most common way we structure how we consider bills and nominations. Because the Democrats rejected that course, Majority Leader FRIST was forced to turn in March 2003 from seeking unanimous consent to the more formal procedure of motions to invoke cloture. During the 108th Congress, we took 20 cloture votes on 10 different appeals court

nominations. More than 50, but fewer than 60, Senators supported every one of these motions.

In other words, there was bipartisan support for a vote up or down for each of those nominees. That was enough to confirm but not enough to end debate under the filibuster rules, misapplied here. The circle was complete, and the minority's strategy of using the filibuster to prevent confirmation of majority-supported judicial nominations was in full swing. Still the majority leader held off, resisting the growing calls to implement a deliberate solution to this unprecedented, unfair, and, frankly, outrageous filibuster blockade.

The election returns provided more evidence that the American people oppose using the filibuster to prevent fair up-or-down votes on judicial nominations. But hope that the voice of those we serve would change how we serve them was soon shattered. The minority made it clear that they would continue their filibuster campaign.

The minority can say this is a narrow effort focused on a few appeals court nominees. It is not. This is about the entire judicial confirmation process. It is about rigging that process so the minority can do what only the majority may legitimately do in our system of Government: determine how the Senate exercises its role of advice and consent.

It is the Constitution, not the party line or interest group pressure, not focus groups or interest group ad campaigns, that should guide us here. I have been told, for example, and I hope it is not true, that my friend from Nevada, the minority leader, may appear in a television ad created and paid for by the Alliance for Justice, one of the rabid leftwing groups involved in this obstruction campaign. I hope he will not do that. I think that would be regrettable. They are part of the problem here. They have virtually been against anybody for the circuit courts of appeal and many of the former nominees for the Supreme Court of the United States of America.

The Constitution assigns the nomination and appointment of judges to the President, not to the Senate. The Senate checks that power by deciding whether to consent to appointment of the President's nominees. We exercise this role by voting on confirmation. As such, filibusters designed to prevent confirmation of majority-supported judicial nominations undermine the separation of powers.

The Constitution helps us both evaluate the problem and highlight the solution. The Constitution gives the Senate authority to determine how we will do our business. That includes not only our written rules but also parliamentary precedents that change procedures without changing those rules.

Our Democratic colleagues have had literally dozens of opportunities to return to our confirmation tradition of up-or-down votes for judicial nominations reaching the Senate floor. They have chosen the path of confrontation rather than that of cooperation. They exercised the true nuclear option by blowing up two centuries of tradition. If the majority leader utilizes the Byrd option, it will truly be as a last resort, and it will be a constitutional means of solving an unconstitutional problem.

I go back in time because I was here when Senator BYRD was the minority leader. He had a tremendous majority of Democrats on the floor. When Ronald Reagan was President, he never once used the filibuster to stop Ronald Reagan's nominees, even though some of those nominations gave him and other Democrats tremendous angst. He utilized the power to vote against them. Whether he is right or wrong is almost irrelevant here. The fact is that he did what 214 years of Senate tradition required: he allowed those nominees to go ahead and have a vote. And, after all, that is what we need to do here.

What is wrong with giving these circuit courts of appeal nominees who have bipartisan support and the support of the American Bar Association simple up-or-down votes? If you do not agree with them, you have the right and power to vote against them, and that is the proper way to handle it. Let's not throw 214 years of tradition down the drain and, of course, let's not blow up the Senate if we do not get our way.

Mr. President, I notice the distinguished Senator from Montana is here. I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, I thank my good friend from Utah. He laid out in pretty logical form what is at stake.

I have come to the Senate floor today to talk on an issue about which I seldom speak on this floor. I come to lend my voice maybe to break this impasse in which we find ourselves.

The Senate has dwelt and droned for endless hours with at times very inflammatory language of which some of us and folks in America, the viewing public, have no doubt become very weary.

I just got off an airplane from Montana. When I walked off that plane, I said it is time to act so we can move on to the business of addressing the issues that are pressing the times. We have run out of time and options, and now we must decide, and the hour is now.

I cannot remember a time when I read more history of the Senate than on this occasion or in this situation. Some have made statements that this has never happened before in our history. That is wrong because there have been some contentious times facing each and every Congress since our beginning, and Draconian actions were taken to deal with the issues of the dangerous times, times of great peril. We survived them, and we will survive this one also. That is the greatness of this country and the Senate because I think at times we underestimate our own abilities.

It just seems to me that in the Senate, we cannot allow a small minority to radically alter longstanding traditions just because it does not like a President or maybe his or her judicial nominees.

During the 108th Congress, the other side used the filibuster to block up-or-down votes on 10 nominations to the Federal appeals courts. All of these judicial nominees had bipartisan majority support. The Senate would have confirmed them had they been permitted a vote. And never in the history of this country has a judicial nominee with clear majority support been denied confirmation due to a filibuster.

Further, nearly one-third of President Bush's nominations to the courts of appeal were denied up-or-down votes. The Democrats used or threatened to use the filibuster. In that respect, President Bush now has the lowest appeals court confirmation rate for the first 4 years of any modern Presidency.

Has each judicial nomination been blocked due to improper qualifications? Everybody on this floor has talked about that, and the answer is no. Rather, each nomination has been blocked by a partisan few who are willing to change Senate tradition and custom of advice and consent imposing a 60-vote requirement on each nomination.

Every one of the judicial nominees being blocked by filibuster is of the highest academic and intellectual quality, and each represents a broad cross-section of American society.

More importantly, all these nominees have demonstrated that they respect the rule of law. They are committed to interpreting and applying the law as it relates to the Constitution of the United States of America. Those folks who want to say this is a constitutional amendment, go to article II, section 2, and read what it says.

The American people should know that for more than 200 years, the rule for confirming judges has been fair on an up-or-down vote. In the heart of every American I know, there is a common sense of fairness. These good people being nominated by President Bush are, at the very least, entitled to receive a vote. Whether you disagree or agree with the particular person being nominated for a judgeship, it is incumbent on this legislative body to provide full and fair open debate on the nomination and to then allow proper democratic procedures to take place.

We have heard words such as ''rubberstamp.'' I do not think you could say that. Were minority leaders such as Howard Baker and Everett Dirksen and majority leaders such as ROBERT C. BYRD and Bob Dole rubberstamp Senators? I do not think so. I have heard the talk of the radical right. I wonder if there is a radical left also that grabs the ears of some folks.

Let there be no doubt about this issue—it is as clear as a Montana

morning. It is obstructionism that has caused this crisis that looms over us today.

During the 108th Congress, 10 judicial nominations were either filibustered or threatened the use of filibuster, and 6 other nominations along with it. All of these nominations were supported by Senators of both parties and opposed only by a partisan minority. In fact, Judge Owen has received four votes in the Senate, and she carried the vote each time. Yet she is not on the Fifth Circuit Court of Appeals.

Look at William Myers. The President nominated the former Solicitor of the Interior Department for the Ninth Circuit. Mr. Myers, a distinguished attorney, is a nationally recognized expert in the area of natural resources and land use law. However, despite his long service as National Park Service volunteer and a lifetime of respect and enjoyment of the outdoors, the other side held his previous clients' positions against him and accused him of being hostile to the environment, therefore blocking his nomination and taking away the Senate's responsibility to give him a vote.

We have all heard about Priscilla Owen of Texas. She has already been voted on four times in this body and carried the vote every time. Janice Rogers Brown, a California Supreme Court justice, was nominated to the DC Circuit. The first African American to serve on the California high court, Justice Brown received public support of 76 percent of California voters.

I think I heard my good friend from Delaware say they have 2 Senators from California, and they each represent over 17 million people. She represented the whole State and got 76 percent. Yet she was denied a vote on this floor.

William Pryor, Judge Pryor, has been serving with distinction on the Eleventh Circuit since the President gave him a recess appointment in February of 2004. Previously, he served 6 years as an Alabama attorney general. Although he repeatedly demonstrated his ability to follow the law, he has been blocked by the Democrats' filibuster because he has ''deeply held'' beliefs, taking away the Senate's responsibility to vote for him.

One of the country's rising stars in the judicial world, Miguel Estrada, could be described as the finest, the best, and the brightest among his peers. This Honduran immigrant who went to Harvard Law School and clerked for the Supreme Court was debated on this Senate floor for more hours than any other judicial nomination in Senate history. After cloture votes repeatedly failed, he asked the President to withdraw his name from consideration, thereby allowing the other side to prevent the DC Circuit from having a very talented jurist to interpret and apply the law, again taking away our responsibility to vote for him.

What are we doing here? Are we dumbing down the judiciary when the best and the brightest have offered themselves to serve after they were nominated by this President?

Now we are faced with finding a solution to this so-called crisis. They have already admitted that the filibuster is not about the qualification of the judges. They just do not want these judges. They just do not want judges appointed to the court by President Bush. So if we allow this to continue, it will be acquiescing to the partisan minority's unilateral change in the Senate practices for the last 200 years, a 60-vote requirement to confirm judges when only a simple majority up-or-down vote has been the standard of practice in this Senate for a long time, and is also alluded to in the Constitution of the United States.

I would say the Constitution trumps any rule that we may make, that we put in place here for our rules of procedures and conduct. I think the Constitution trumps them. Now we find ourselves in this crisis. No more time. Now is the time to vote.

The Senate has demonstrated in the past that it need not stand by and allow a minority to redefine the traditions, rules, practices and procedures of the Senate.

The Constitution gives the Senate the power to set its own rules, procedures, and practices, and the Supreme Court has affirmed the continuous power of a majority of members to do so.

The exercise of a Senate majority's constitutional power to define Senate practices and procedures has come to be known as the ''constitutional option.''

The constitutional option can be exercised in several different ways, such as by creating precedents to effectuate the amendment of Senate Standing Rules or by creating precedents that address abuses of Senate customs by a minority of Senators. Regardless of the variant, the purpose of the constitutional option is the same—to reform Senate practices in the face of unforeseen abuses.

An exercise of the constitutional option under the current circumstances would return the Senate to the historic and constitutional confirmation standard of a simple majority for all judicial nominations.

Employing the constitutional option here would have no effect on the legislative filibuster because virtually every Senator would oppose such an elimination. Instead, the constitutional option's sole purpose would be the restoration of longstanding constitutional standards for advice and consent.

For more than 200 years, the rule for confirming judges has been a fair, up-or-down vote.

For over 200 years, the Senate has honored both the minority's right to debate and the full Senate's right to vote on judicial nominees. No other minority leader in American history has claimed that the right to debate equals the right to prevent the full Senate from exercising its constitutional duty to advise and consent.

For over 200 years, Senators did not filibuster judicial nominees. Was the Senate just a rubber stamp for its first 200 years? Did every Senate before the 108th Congress fail to carry out its constitutional duty to advise and consent? The answer is a resounding ''no.''

Further, for 70 percent of the twentieth century, the same party controlled both the White House and the Senate, yet Minority Leaders on both sides of the aisle did not filibuster the President's judicial nominees.

The choice is not between being a rubber stamp or filibustering a judicial nominee. For over 200 years, Senators agreed that the proper way to oppose a judicial nominee is to vote ''no.'' They went to the floor and explained why they opposed the nominee. They tried to persuade their colleagues. They tried to persuade the American people. Then, they voted no. They did not filibuster or threaten to shut down the U.S. Senate.

Until now, every judicial nominee with support from a majority of Senators was confirmed. The majority-vote standard was used consistently throughout the 18th, 19th and 20th centuries—for every administration until President George W. Bush's judicial nominations were subjected to a 60-vote standard.

These good people, being nominated by President Bush, are at the very least entitled to receive a vote.

Whether you agree or disagree with the particular person being nominated for a judgeship, it is incumbent on this great legislative body to provide full, fair and open debate on the nomination and to then allow the proper democratic procedures to take place.

The Senate has demonstrated in the past that it need not stand by and allow a minority to redefine the traditions, rules, practices and procedures of the Senate.

The Constitution gives the Senate the power to set its own rules, procedures, and practices, and the Supreme Court has affirmed the continuous power of a majority of members to do so.

Because of this partisan minority, because of this obstructionism and because of the partisan minority's continued actions to take away the Senate's duty and responsibility to vote on the nominations before this great body, we face a crisis that has only 2 remedies:

Either the partisan minority allow the Senate to fulfill its duty and responsibility to vote on President Bush's judicial nominations by not continuously invoking the filibuster.

Or, the Senate must invoke the necessary and requisite constitutional option to prevent the tyranny of the minority and the radically altering of longstanding traditions of the United States Senate.

Accordingly, I rise today to strongly urge my colleagues to stop the obstructionism and to allow President Bush's

judicial nominations receive a fair, up-or-down vote and, therefore, to allow this great legislative body to carry out its constitutional duty of advice and consent—a responsibility that we, as Senators, have been duly elected to uphold by the American people.

There is a little housekeeping we might do before my good friend, the Senator from Wisconsin, chooses to speak. I thank the Senator for that.

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

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

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, in accordance with 22 U.S.C. 1928a–1928b, as amended, appoints the following Senator as Acting Vice Chairman to the NATO Parliamentary Assembly for the spring meeting in Ljubjana, Slovenia, May 2005: the Honorable PATRICK LEAHY of Vermont.

WELCOMING HIS EXCELLENCY HAMID KARZAI, THE PRESIDENT OF AFGHANISTAN

Mr. BURNS. I ask unanimous consent the Senate now proceed to consideration of S. Res. 152, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 152) welcoming His Excellency Hamid Karzai, the President of Afghanistan, and expressing support for a strong enduring strategic partnership between the United States and Afghanistan.

There being no objection, the Senate proceeded to consider the resolution.

Mr. BURNS. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 152) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follow:

S. RES. 152

Whereas Afghanistan has suffered the ravages of war, foreign occupation, and oppression;

Whereas following the terrorist attacks of September 11, 2001, the United States launched Operation Enduring Freedom, which helped to establish an environment in which the people of Afghanistan are building the foundations for a democratic government;

Whereas, on January 4, 2004, the Constitutional Loya Jirga of Afghanistan adopted a constitution that provides for equal rights for full participation of women, mandates full compliance with international norms for human and civil rights, establishes procedures for free and fair elections, creates a system of checks and balances between the executive, legislative, and judicial branches, encourages a free market economy and private enterprise, and obligates the state to prevent terrorist activity and the production and trafficking of narcotics;

Whereas, on October 9, 2004, approximately 8,400,000 Afghans, including nearly 3,500,000 women, voted in Afghanistan's first direct Presidential election at the national level, demonstrating commitment to democracy, courage in the face of threats of violence, and a deep sense of civic responsibility;

Whereas, on December 7, 2004, Hamid Karzai took the oath of office as the first democratically elected President in the history of Afghanistan;

Whereas nationwide parliamentary elections are planned in Afghanistan for September 2005, further demonstrating the Afghan people's will to live in a democratic state, and the commitment of the Government of Afghanistan to democratic norms;

Whereas the Government of Afghanistan is committed to halting the cultivation and trafficking of narcotics and has pursued, in cooperation with the United States and its allies, a wide range of counter-narcotics initiatives;

Whereas the United States and the international community are working to assist Afghanistan's counter-narcotics campaign by supporting programs to provide alternative livelihoods for farmers, sustainable economic development, and capable Afghan security forces; and

Whereas, on March 17, 2005, Secretary of State Condoleezza Rice said of Afghanistan ''this country was once a source of terrorism; it is now a steadfast fighter against terrorism. There could be no better story than the story of Afghanistan in the last several years and there can be no better story than the story of American and Afghan friendship. It is a story of cooperation and friendship that will continue. We have a long-term commitment to this country'': Now, therefore, be it

Resolved, That the Senate—

(1) welcomes, as an honored guest and valued friend of the United States, President Hamid Karzai on the occasion of his visit to the United States as the first democratically elected President of Afghanistan scheduled for May 21 through 25, 2005;

(2) supports a democratic, stable, and prosperous Afghanistan as essential to the security of the United States; and

(3) supports a strong and enduring strategic partnership between the United States and Afghanistan as a primary objective of both countries to advance their shared vision of peace, freedom, security and broad-based economic development in Afghanistan, the broader South Asia region, and throughout the world.

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM REAUTHORIZATION ACT OF 2005

Mr. President, I ask unanimous consent the Senate now proceed to immediate consideration of Calendar No. 56, S. 188.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 188) to amend the Immigration and Nationality Act to authorize appropriations for fiscal years 2005 through 2011 to carry out the State Criminal Alien Assistance Program.

There being no objection, the Senate proceeded to consider the bill.

Mr. BURNS. I ask unanimous consent the Feinstein amendment at the desk be agreed to, the bill as amended be read a third time and passed, and the motion to reconsider be laid upon the table.

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

The amendment (No. 763) was agreed to, as follows:

(Purpose: To require that certain funds are used for correctional purposes)

At the end add the following new section:

SEC. 3. LIMITATION ON USE OF FUNDS.

Section 241(i)(6) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(6)) is amended to read as follows:

''(6) Amounts appropriated pursuant to the authorization of appropriations in paragraph (5) that are distributed to a State or political subdivision of a State, including a municipality, may be used only for correctional purposes.''.

The bill (S. 188), as amended, was read the third time and passed, as follows:

S. 188

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''State Criminal Alien Assistance Program Reauthorization Act of 2005''.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 2005 THROUGH 2011.

Section 241(i)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(5)) is amended by striking ''appropriated'' and all that follows through the period and inserting the following: ''appropriated to carry out this subsection—

''(A) such sums as may be necessary for fiscal year 2005;

''(B) $750,000,000 for fiscal year 2006;

''(C) $850,000,000 for fiscal year 2007; and

''(D) $950,000,000 for each of the fiscal years 2008 through 2011.''.

SEC. 3. LIMITATION ON USE OF FUNDS.

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''(6) Amounts appropriated pursuant to the authorization of appropriations in paragraph (5) that are distributed to a State or political subdivision of a State, including a municipality, may be used only for correctional purposes.''.

ORDER OF PROCEDURE

Mr. BURNS. I ask unanimous consent that the majority leader be recognized at 5:30 p.m. today; provided further that from 6 to 7 this evening be under the control of the majority leader or his designee, that from 7 to 8 p.m. be under the Democratic control, with time continuing to rotate in that fashion until 9 a.m.

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

Mr. BURNS. I yield the floor.

The PRESIDING OFFICER. The Chair will note the minority now controls 41 minutes.

The Senator from Wisconsin.

NOMINATION OF PRISCILLA RICHMAN OWEN TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT—Continued

Mr. KOHL. Mr. President, as passions rise higher and higher here in the Senate, I come to the floor today to urge that cooler heads prevail; to urge that the majority not take the fateful step they are contemplating; to urge that we step back from the cliff we are approaching, before it is too late.

We have all heard the arguments for and against a rule change that has been dubbed ''the nuclear option.'' I will not reiterate those arguments here. But as someone who came to the Senate to get things done for real people, I have some experience trying to reach compromise on difficult issues. The heart of compromise is well known: one side cannot have all that they want. Yet the essence of the so called ''nuclear option'' is just that—one side wins, one party wins, one majority wins full power over who will sit on the Federal bench. The other side—the other party, the minority—is left powerless, silenced by a new rule that strips the minority of all power over judges. We all know that such an outcome is the opposite of moderation, the opposite of compromise, the opposite of bipartisanship. In short, the opposite of how to get things done in a way that encourages participation on both sides of the aisle.

There is no need to go down this troubled partisan path on judicial nominations and my own State of Wisconsin has shown us a smoother road for more than a quarter century. In all those years, Wisconsin has used a bipartisan nominating commission to force all sides to act in bipartisan cooperation when selecting judges. During the administrations of Democrats and Republicans, and during the tenure of Republican as well as Democratic Senators, we have used the Commission and succeeded in selecting well-qualified nominees who have been easily confirmed by the Senate in every case. Using this process, both political parties have been represented—the minority does not get to choose the nominee, but they can affect the choice and have their views count.

If we move forward with the proposed rule change—a change designed to bring about one-party rule whenever the Senate considers judges—we will silence a minority of the Senate and a majority of Americans. You see, the Democratic Senators in this body were elected by a majority of Americans. How will a majority of Americans speak up about judges who will sit in their districts, on the Seventh Circuit, on the Supreme Court, making decisions about their lives for generations to come if this rule change is made?

People all across our country—whether in the majority or the minority—deserve better. They deserve to have some say over who will sit in judgment over them. And they deserve more than that, they deserve a Senate that is working to solve the challenges they face every day, challenges like the skyrocketing cost of health care which leaves too many without coverage and even more struggling to pay for the coverage they have, challenges like factories closing and jobs that pay too little to support a family, challenges like the need to save for retirement in an age of disappearing pensions and job insecurity. These are among the problems we should be dealing with today.

So for the sake of those who need healthcare, for the sake of those working for too little, for the sake of those nearing retirement with fear and worry, I urge my colleagues to stop. Stop and listen. I hope you will hear what I hear, Americans asking for what they have always asked of the Senate—that it be a place where debate continues, passions cool, and compromise prevails for the good of all.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senator will note the business at hand is the Priscilla Owen nomination, and the minority controls the time until 5:30.

Mr. LEAHY. I thank the distinguished Presiding Officer. I will take some of my time.

Mr. President, I 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 the order for the quorum call be rescinded.

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

Mr. LEAHY. Mr. President, the Senate is on a path toward a divisive and actually unnecessary showdown. I have been here long enough to know that if the vote on the Republican leader's nuclear option were by a secret ballot it would fail overwhelmingly. There are too many Senators who will tell you privately that on a secret ballot they would never vote for it. We know this because, as these Senators know, it is harmful to this institution and it is wrong for this country—wrong in terms of protecting the rights of the American people, wrong in terms of undercutting our fundamental system of checks and balances, wrong in terms of defending the independence of and public support for an independent Federal judiciary. But especially it is wrong in unilaterally destroying minority protections in the Senate in order to promote one-party rule, something this Senate has never known and has never wanted.

I have served in the Senate for almost 31 years. During that time, several times the Democrats were in charge of the Senate—in the majority. Several times the Republicans were. The hallmark of every leader, Republican or Democratic, was that the special minority protections of the Senate would remain. No matter who was in the majority, they believed they had as their obligation protecting the rights of the minority because that is what the Senate is all about. Every Senate majority leader took as his trust to make sure that when he left, the Senate had at least the strengths it had when he took over.

Today, Democratic Senators alone will not be able to rescue the Senate and our system of checks and balances from the breaking of the Senate rules the Republican leadership seem so insistent on demanding. It will take at least six Republicans standing up for fairness and for checks and balances. I know a number of Senators on the other side of the aisle know in their hearts that this nuclear option is the wrong way to go.

Senators on both sides of the aisle have called for the vote on the nuclear option to be one of principle rather than one of party loyalty, and for this to be a vote of conscience. I agree. To ensure that it is, I urge both the Republican leader from Tennessee and the Democratic leader from Nevada—both of whom are my friends—to announce publicly, today, in advance of the momentous vote that awaits us at the end of this debate, that every Senator should search his or her heart, his or her conscience, and vote accordingly.

I call on both the Democratic and Republican leaders to announce that there will be no retribution or punishment visited upon any Senator for his or her vote.

I remember in the aftermath of another vote, one I called at that time a profile in courage, when our friend, the senior Senator from Oregon, Mark Hatfield, cast the deciding vote against a proposed constitutional amendment. Ten years ago some of the newer Republican Senators at the time reportedly wanted to strip him of the chairmanship of the Appropriations Committee. The press at the time provided counsel to those newer Senators, some having recently arrived from the other Chamber, and who were accustomed to the way the Republican Party in that body operates, where everything is all or nothing.

At the time, some of those Members urged that Senator Hatfield be penalized for his vote of conscience, a vote they did not like. They thought conscience should be set aside, he should have toed the party line. I remember the unfair pressures brought to bear on Senator Hatfield. I do not want to see that befall other Senators, Republican or Democrat, whichever way they choose to vote on the nuclear option.

The Senate has its own carefully calibrated role in our system of Government. The Senate was not intended to function like the House. The Great Compromise of the Constitutional Convention more than 200 years ago was to create in the Senate a different legislative body from the House of Representatives. Those fundamental differences

include equal representation for each State in accordance with article I, section 3. Thus, Vermont has equal numbers of Senators to New York or Idaho or California. The Founders intended this as a vital check. Representation in the Senate is not a function of population or based on the size of a State or its wealth.

Another key difference is the right to debate in the Senate. The filibuster is quintessentially a Senate practice. James Madison wrote in Federalist No. 63 that the Senate was intended to provide ''interference of some temperate and respectable body of citizens'' against ''illicit advantage'' and the ''artful misrepresentations of interested men.'' It was designed and intended as a check, a balancing device, as a mechanism to promote consensus and to forge compromise.

The House of Representatives has a different and equally crucial function in our system. I respect the House and its traditions just as I respect and honor the Senate tradition. It is the Senate and only the Senate that has a special role in our legislative system to protect the rights of a minority from the divisive or intemperate acts of a headstrong majority.

As the Republican leader agreed in debate with Senator BYRD last week, there is no language in the Constitution that creates a right to a vote or a nomination or a bill. If there were such a right, if there were a right in the Constitution to require a vote, then Republicans violated that more than 60 times by 60 times refusing to have a vote on President Clinton's judicial nominees, by 60 pocket filibusters of Clinton judicial nominations and about 200 other executive nominations.

According to the Congressional Research Service, more than 500 judicial nominations for circuit and district court did not receive final Senate votes between 1945 and 2004. That is more than 500. It amounts to 18 percent of all overall nominations. By contrast, this President has seen more than 95 percent of his judicial nominations confirmed, 208 to date.

What the Republican leadership is seeking to do is to change the Senate rules in accordance with them but by breaking them. It is wrong that the Senators who refused to have votes on more than 60 of President Clinton's judicial nominees, and hundreds of his executive branch nominees, have only one Republican agenda now—to contend the votes and nominations are constitutionally required.

The Constitution hasn't changed from the time of the Clinton Presidency to Bush's Presidency, nor have the Senate rules been changed. That is why I like to keep the Senate autonomous and secure in a ''nuclear free'' zone.

The partisan power play now underway by Republicans will undermine the checks and balances established by the Founders of the Constitution. It is a giant leap toward one-party rule with an unfettered executive controlling all three branches of the Federal Government. It not only would demean the Senate and destroy the comity on which it depends, but it would undermine the strong, independent Federal judiciary protecting rights of liberties of all Americans against the overreaching of political branches.

It is saying, no matter whether you are Republican or Democrat or Independent in this country, only Republicans need apply because they will control the executive branch, the House of Representatives, the Senate, and now the independent Federal judiciary. That is what it comes down to. There will be no checks and balances on who goes on a Federal bench for a lifetime job, lifetime position. There will be no checks and balance. It will be, if you are a Republican, you can be on the Federal bench and help shape it; otherwise, forget about it.

This is not a country of one-party rule. I hope this country is never one of one-party rule. No democracy law exists if it is there by one-party rule.

Our Senate Parliamentarian, who is nonpartisan, our Congressional Research Service, which is there to serve both Republicans and Democrats, have said the so-called nuclear option would go against Senate precedent. In other words, to change the rule, you would have to break the rule. In other words, to say we are going to talk about how judges should judge, we will break our own laws to do it. What an example to a great and good country like ours. What an example to say we are somehow above the law.

What it is saying to the American people, you 280 million Americans, you follow the law, but 100 Senators are better than that. We don't have to follow the law. We stand above the law. In fact, if we don't like the law, we will break the law and make a new one.

Do our friends on the other side of the aisle want to so blatantly break the rules for short-term political gain? Do they desire to turn the Senate into a place where the parliamentary equivalent of brute force is whatever can be rammed through by partisan ramrodding and arm twisting?

We are not playing king of the hill. We are protecting the Constitution. We are protecting the best checks and balance of our Nation, the Senate, and we are doing it so we can remove the checks and balance of the Federal judiciary. What enormous stakes.

That is why I say if this were a secret ballot, the nuclear option would never pass. There are too many Senators who state privately in the cloakrooms, the dining room, and the Senate gym, they know this is wrong but they have to follow party discipline.

We did not come to this crossroad overnight. No Democratic Senator wanted to filibuster. Not one of us came to those votes easily. We hope we are never forced by an overaggressive executive and compliant majority into another filibuster over a judicial nomination. Filibusters, like the confrontation the Senate is being forced into over the last several days, are the direct result of a deliberate attack by the current administration and its supporters in the Senate against not only the traditions of the Senate but the rules: We are willing to break the rules that serve our purpose for the moment.

The nuclear option is the grand culmination of their efforts. It is intended to clear the way for this President to appoint a more extreme and more divisive choice—not only in the circuit courts of appeals but should a vacancy arise on the Supreme Court. That is not how the Senate has worked or should work.

I have been here with six Presidents. It has been the threat of a filibuster that has encouraged a President to moderate his choice and work with Senators on both sides of the aisle, both Republican and Democratic Senators. Of the six Presidents I have served with, five of them actually looked at the advice and consent clause and worked with Senators from both parties for both advice and consent of the judges. But this has been politicized and the Senate Republicans have systematically eliminated every other traditional protection for the minority. Now their target is a Senate filibuster, the only route that is left to allow a significant Senate minority to be heard.

Under pressure from the White House over the last 2 years prior to this year, the former Republican chairman of the Judiciary Committee led Senate Republicans in breaking the longstanding precedent and Senate tradition with respect to handling lifetime appointments to the Federal bench. Senate Republicans have had one set of practices to delay and defeat 61 of a Democratic President's moderate, qualified judge nominations. But then they suddenly switch gears and switch the rules to rubberstamp a Republican President's choices to lifetime judicial positions, including many who were very controversial.

The list of broken rules and precedents is long, including in the way the home State Senators were treated, the way hearings were scheduled, in the way the committee questionnaire was unilaterally altered, to the way the Judiciary Committee historic protection of the minority by committee rule IV was repeatedly violated. In the last Congress they destroyed virtually every custom and courtesy used throughout history to enforce cooperation and civility in the confirmation process.

For years, Democratic Senators have been warning that the deterioration of Senate rules and practices, if done away with, would also do away with the protection of minority rights.

So that is where we are. I have been proud to serve here both in the majority and the minority. I remember all the times when I was here as a member of the majority party, it was constantly drummed into us at our party

caucuses, at party meetings, we have to maintain the Senate rules to protect the rights of the then minority, the Republicans.

It is amazing to me the Senate, the place that is supposed to be the conscience of our Nation, would allow a President, any President, to convince them to turn their back on precedent, on history, but also on their own rules.

We have always been a check and balance on Presidents. Now we have Senators who will tell you, quietly outside the Chamber, they are frustrated by taking orders from the White House and yet will not stand up and say no, we don't work for the White House. We are not appointed by the White House. We are elected by the people of our State. We swear on the oath to protect the Constitution. We are not protecting it when we break our own rules. We are not protecting the people of this country when we throw away the ability to have checks and balances. This is a serious mistake, and we will rue this day.

So at this ninth hour, I say to Senators: Vote your conscience. As I said earlier, if this was a secret ballot, the nuclear option would never pass. But vote your conscience. And again, I would urge both the Republican leader and the Democratic leader to announce on the floor of the Senate that nobody will be punished if they vote their conscience because, after all, why would anybody want to serve, why would anybody want to be 1 of 100 to represent 280 million Americans? Why would you want to serve in the Senate if you felt you could not vote your conscience? I will vote mine on this issue. I will vote to protect the rights of the minority—all minorities throughout this country. I will vote to uphold the law. I will vote to uphold the rules of the Senate. And I will vote to uphold that which causes us to have a check and balance where instead of rushing off the cliff following one person on either the right or the left, we seek the compromises that are best for this country.

I see the distinguished Senator from New York on the floor. I am perfectly willing to yield the remainder of my time to her.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Mr. President, I thank my friend from Vermont who has been a stalwart defender of the Constitution his entire public life. And as a member of the Judiciary Committee, as chair and ranking member, and all of his activities on behalf of this issue, he has demonstrated the highest level of leadership.

Mr. President, I started my day today in Newburg, NY, at the military headquarters of GEN George Washington. Many of the most important battles of the Revolutionary War were fought in New York, up and down the Hudson River Valley, the Champlain Valley, the Mohawk Valley, down into New York City, out on Long Island. Today, we were announcing legislation that I had sponsored here in the Senate with my friend and colleague, the senior Senator from Virginia, Mr. WARNER, to commemorate the Revolutionary War.

We were reminded at this event today of something called the Newburg Conspiracy. What was that? That was an effort by a small group of people to persuade George Washington to begin to assume the mantle of absolute power, to, in effect, become more like a king than what had been envisioned for this new Republic, a President and a system of government with checks and balances.

In one of his greatest speeches, then General Washington repudiated the Newburg Conspiracy and memorably said that we should all stand against any effort to consolidate power. We must stand for our Republic. And that Republic, which is unique in human history, has this unusual system of checks and balances that pit different parts of the Government against one another that, from the very beginning, recognized the importance of minority rights because, after all, that is what the Senate is, a guarantor of minority rights.

I represent 19 million people. Yet my vote is no more important than the Presiding Officer's or any of my other colleagues who may represent States with far fewer citizens because we have always understood that majority rule too easily can become abusive, that those in the majority and particularly those who lead that majority always believe that what they want is right by definition. It is what they fight for. It is what they care about. But we have understood, thanks to the genius of our Founders—great leaders such as George Washington—that human nature being what it is, we have to restrain ourselves, not only in the conduct of our day-to-day relations with one another but in the conduct of our government.

So we have created this rather cumbersome process of government. Sometimes people in a parliamentary system look at it and say: What is this about? You have a House of Representatives where you have majority rule, and then you have this Senate over here where people can slow things down, where they can debate, where they have something called the filibuster. It seems as if it is a little less than efficient.

Well, that is right. It is, and deliberately designed to be so, with the acute psychological understanding that every single one of us needs to be checked in the exercise of power, that despite what we may believe about our intentions and our views, not one of us has access to the absolute truth about any issue confronting us. So one of the ways we have protected the special quality of the Senate over all of these years is through unlimited debate, through the creation of rules that would make it possible for a minority to be heard, and more than that, create a supermajority for certain actions that the Constitution entrusts to the Senate, and, in particularly, the appointment of judges for lifetime tenure.

Now, why would you have a supermajority for judges? Again, I think it shows the genius of our Founders in their understanding of human nature. This is a position of such great importance, such overwhelming power and authority, that anyone who comes before this body should be able to obtain the support of 60 of our fellow Senators. It has worked well.

There have been people going back in American history, and not just back to the beginning but back just a few years into the Clinton administration, who I believe should have been confirmed as judges. The Senate decided not to. The President has sent us his nominees, and we have confirmed more than 95 percent of them. I voted against a number of them, but the vast majority were acceptable to more than 60 Members of this body.

What is happening now with this assault on the idea of the Senate, on the creation of this unique deliberative body that serves as a check and a balance to Presidential power, to the passions of the House, which has exercised the opportunity to create consensus with respect to judicial nominees, is that we have a President who is not satisfied with the way every other President has executed his authority when it comes to judicial nominees.

Many Presidents have not liked what the Senate has done to their judicial nominees. We can go back to Thomas Jefferson. Thomas Jefferson, one of our greatest Presidents, was really upset because John Adams appointed people Thomas Jefferson did not think should be on the Federal bench. He did not agree with their philosophy. He had personal problems with some of them and the relationships between them. So he tried to undue what his predecessor had done. And the Senate, recognizing what General Washington had understood back during the Revolutionary War, what the writers of the Constitution had understood in Philadelphia, said: No. Wait a minute, Mr. President. We are not substituting one king for another. We are trying something entirely different. You may get a little frustrated, but Presidential authority is not absolute, so we are going to expect you to abide by the rules.

Every President has faced these frustrations. Franklin Roosevelt, at the height of his power, with an overwhelmingly Democratic Congress, faced all kinds of setbacks from the judiciary, and he wanted to change them. He wanted to pack the courts, and the Democrats in the Senate, who put the Senate first, who put the Constitution first, said: No. Wait a minute. We admire you. You are saving our country. You are doing great things. But, no, we cannot let you go this far.

Well, today, we are here because another President is frustrated. He has gotten 95 percent of his judges. He

wants 100 percent. I can understand that. That is the way a lot of people get when they have power. They want it all. If you are against him, then he thinks you are against everything he stands for as opposed to having legitimate disagreements.

So this President has come to the majority in the Senate and basically said: Change the rules. Do it the way I want it done. And I guess there were not very many voices on the other side of the aisle that acted the way previous generations of Senators have acted and said: Mr. President, we are with you. We support you. But that is a bridge too far. We cannot go there. You have to restrain yourself, Mr. President. We have confirmed 95 percent of your nominees. And if you cannot get 60 votes for a nominee, maybe you should think about who you are sending to us to be confirmed because for a lifetime appointment, 60 votes, bringing together a consensus of Senators from all regions of the country, who look at the same record and draw the same conclusion, means that perhaps that nominee should not be on the Federal bench.

But, no, apparently that is not the advice that has been given to the President. Instead, it looks as though we are about to have a showdown where the Senate is being asked to turn itself inside out, to ignore the precedent, to ignore the way our system has worked—the delicate balance we have obtained that has kept this constitutional system going—for immediate gratification of the present President.

When I was standing on the banks of the Hudson River this morning, looking at General Washington's headquarters, thinking about the sacrifice that he and so many others made, many giving the ultimate sacrifice of their life, for this Republic—if we can keep it, as Benjamin Franklin said—I felt as though I was in a parallel universe because I knew I was going to be getting on an airplane and coming back to Washington. And I knew the Republican majority was intent upon this showdown. I knew the President had chimed in today and said he wants up-or-down votes on his nominees. And I just had to hope that maybe between now and the time we have this vote there would be enough Senators who will say: Mr. President, no. We are sorry, we cannot go there. We are going to remember our Founders. We are going to remember what made this country great. We are going to maintain the integrity of the U.S. Senate.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I understand we have 1 minute left.

The PRESIDING OFFICER. The Senator has 1 minute 40 seconds, to be exact.

Mr. LEAHY. I thank the distinguished Presiding Officer, and I thank the Senator from New York for her comments.

Mr. President, I would simply reiterate what I said before. If the vote on the nuclear option was cast in secret, from everything I have been told by my fellow Senators, it would go down to crashing defeat. As Senators know, we have to break the rules to change the rules.

Again, I would just urge that both leaders, both the Republican and Democratic leaders, make it clear to their Members that nobody is going to be punished for a vote on conscience. I hope Senators will stand up and be a profile in courage, vote their conscience, and vote the right way.

Mr. President, the hour of 5:30 has arrived, so I yield the floor.

QUORUM CALL

Mr. President, I see the Republican leader is not on the floor yet, so I will suggest the absence of a quorum to accommodate him. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll and the following Senators entered the Chamber and answered to their names:

[Quorum No. 3 Ex.]

Baucus	Frist	Nelson, Nebraska
Bingaman	Gregg	Pryor
Burr	Inouye	Reid
Cantwell	Kennedy	Salazar
Cochran	Leahy	Schumer
Cornyn	Lincoln	Stabenow
Dayton	Lott	
Durbin	Murkowski	

The PRESIDING OFFICER. A quorum is not present.

Mr. FRIST. Mr. President, I move to instruct the Sergeant at Arms to request the presence of absent Senators, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion of the Senator from Tennessee. The yeas and nays were ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Mississippi (Mr. COCHRAN), the Senator from New Hampshire (Mr. GREGG), the Senator from Texas (Mr. CORNYN), the Senator from Mississippi (Mr. LOTT), and the Senator from Alaska (Ms. MURKOWSKI).

Further, if present and voting, the Senator from Texas (Mr. CORNYN) would have voted: ''yea.''

Mr. DURBIN. I announce that the Senator from Minnesota (Mr. DAYTON), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Arkansas (Mrs. LINCOLN), are necessarily absent.

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

The result was announced—yeas 90, nays 1, as follows:

[Rollcall Vote No. 126 Ex.]

YEAS—90

Akaka	Dole	McConnell
Alexander	Domenici	Mikulski
Allard	Dorgan	Murray
Baucus	Durbin	Nelson (FL)
Bayh	Ensign	Nelson (NE)
Bennett	Enzi	Obama
Biden	Feingold	Pryor
Bingaman	Feinstein	Reed
Bond	Frist	Reid
Boxer	Graham	Roberts
Brownback	Grassley	Rockefeller
Bunning	Hagel	Salazar
Burns	Harkin	Santorum
Burr	Hatch	Sarbanes
Byrd	Hutchison	Schumer
Cantwell	Inhofe	Sessions
Carper	Isakson	Shelby
Chafee	Jeffords	Smith
Chambliss	Johnson	Snowe
Clinton	Kerry	Specter
Coburn	Kohl	Stabenow
Coleman	Kyl	Stevens
Collins	Landrieu	Sununu
Conrad	Lautenberg	Talent
Corzine	Leahy	Thomas
Craig	Levin	Thune
Crapo	Lieberman	Vitter
DeMint	Lugar	Voinovich
DeWine	Martinez	Warner
Dodd	McCain	Wyden

NAYS—1

Allen

NOT VOTING—9

Cochran	Gregg	Lincoln
Cornyn	Inouye	Lott
Dayton	Kennedy	Murkowski

The motion was agreed to.

The PRESIDING OFFICER. A quorum is present.

The majority leader.

Mr. FRIST. Mr. President, for the information of our colleagues, we will be voting around noon tomorrow on the cloture motion with respect to Priscilla Owen. We will be in session through the night, and time is roughly equally divided.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, the Senate, at 6:04 p.m., recessed subject to the call of the Chair and reassembled at 6:13 p.m., when called to order by the Presiding Officer (Mr. THUNE).

NOMINATION OF PRISCILLA RICHMAN OWEN TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT—Continued

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the previous order, with respect to the division of time, be modified to extend until 10 a.m.

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

Mr. MCCONNELL. I ask the Chair, what is the pending business?

The PRESIDING OFFICER. The pending business is the nomination of Judge Priscilla Owen to be U.S. circuit court judge.

Mr. MCCONNELL. Mr. President, our colleagues complained that by affording any President's nominees a simple up-or-down vote, we are trying to stifle the right to debate, while I think it is worth noting that we have devoted 20 days—20 days—to the Owen nomination. So this is not about curtailing debating rights. This is about using the filibuster to kill nominations with which the minority disagrees so 41 Senators can dictate to the President whom he can nominate to the courts of appeal and to the Supreme Court.

If there is any doubt about this, I remind our colleagues that last year the distinguished minority leader said:

There is not enough time in the universe—

''Not enough time in the universe'' for the Senate to allow an up-or-down vote on the Owen nomination. So we should stop pretending this debate is simply about preserving debating prerogatives. It is clearly about killing nominations.

Our debate is about restoring the practice honored for 214 years in the Senate of having up-or-down votes on judicial nominees. Never before has a minority of Senators obstructed a judicial nominee who enjoyed clear majority support.

Our friends on the other side of the aisle recite a list of nominees on whom there were cloture votes, but the problem with their assertion that these nominees were filibustered is that the name of each of these nominees is now preceded by the title ''judge,'' meaning, of course, they were confirmed.

So what my Democratic colleagues did last Congress is, indeed, unprecedented. Even with controversial nominees, the leaders of both parties historically have worked together to afford them the courtesy of an up-or-down vote.

When he was minority leader, Senator BYRD worked with majority leader Howard Baker to afford nominees an up-or-down vote, even when they did not have a supermajority, nominees such as J. Harvey Wilkinson, Alex Kozinski, Sidney Fitzwater, and Daniel Manion.

As Senator BYRD knows, it is not easy being the majority or minority leader. He, Senator BYRD, could have filibustered every one of those nominations but he did not. Instead, he chose to exercise principled and restrained leadership of the Democratic caucus when he was minority leader. I would like to compliment Senator BYRD for that decision.

Affording controversial judicial nominees the dignity of an up-or-down vote did not stop, however, with Senator BYRD. It was true as recently as 2000, when Senator LOTT worked to stop Senators on our side of the aisle, the Republican side, who sought to filibuster the Paez and Berzon nominations. But, in 2001, as the New York Times has reported, our Democratic colleagues decided to change the Senate's ground rules, a media report they have yet to deny.

Just 2 years later, after they had lost control of the Senate, our Democratic colleagues began to filibuster qualified judicial nominees who enjoyed clear majority support here in the Senate. They did so on a repeated partisan and systematic basis. After 214 years of precedent, in a span of a mere 16 months, they filibustered 10 circuit court nominees—totally without precedence. Many of these nominees would fill vacancies that the administrative offices of the courts have designated as judicial emergencies, including several to the long-suffering Sixth Circuit Court of Appeals, in which my State is located. As a result, President Bush has the lowest percentage of circuit court nominees confirmed in modern history, a paltry 69 percent.

The Senate, as we all know, works not just through the application of its written rules but through the shared observance of well-settled traditions and practices. There are a lot of things one can do to gum up the works here in the Senate, a lot of things you could do. But what typically happens is we exercise self-restraint, and we do not engage in that kind of behavior because invoking certain obstructionist tactics would upset the Senate's unwritten rules. Filibustering judicial nominees with majority support falls in that category. Let me repeat, it could have always been done. For 214 years, we could have done it, but we did not. We could have, but we did not.

By filibustering 10 qualified judicial nominees in only 16 months, our Democratic colleagues have broken this unwritten rule. This is not the first time a minority of Senators has upset a Senate tradition or practice, and the current Senate majority intends to do what the majority in the Senate has often done—use its constitutional authority under article I, section 5, to reform Senate procedure by a simple majority vote.

Despite the incredulous protestations of our Democratic colleagues, the Senate has repeatedly adjusted its rules as circumstances dictate. The first Senate adopted its rules by majority vote, rules, I might add, which specifically provided a means to end debate instantly by simple majority vote. That was the first Senate way back at the beginning of our country. That was Senate rule VIII, the ability to move the previous question and end debate.

Two decades later, early in the 1800s, the possibility of a filibuster arose through inadvertence—the Senate's failure to renew Senate rule VIII in 1806 on the grounds that the Senate had hardly ever needed to use it in the first place.

In 1917, the Senate adopted its first restraint on filibuster, its first cloture rule—that is, a means for stopping debate—after Senator Thomas Walsh, a Democrat from Montana, forced the Senate to consider invoking its authority on article I, section 5, to simply change Senate procedure. Specifically, in response to concerns that Germany was to begin unrestricted submarine warfare against American shipping, President Wilson sought to arm merchant ships so they could defend themselves. The legislation became known as the armed ship bill.

However, 11 Senators who wanted to avoid American involvement in the First World War filibustered the bill. Think about this. In 1917, there was no cloture rule at all. The Senate functioned entirely by unanimous consent. So how did the Senate overcome the determined opposition of 11 isolationist Senators who refused to give consent to President Wilson to arm ships? How did they do it?

Senator Walsh made clear the Senate would exercise its constitutional authority under article I, section 5, to reform its practices by simple majority vote. A past Senate could not, he concluded, take away the right of a future Senate to govern itself by passing rules that tied the hands of a new Senate. He said:

A majority may adopt the rules in the first place. It is preposterous to assert that they may deny future majorities the right to change them.

What he said makes elementary good sense. Because Walsh made clear he was prepared to end debate by majority vote, both political parties arranged to have an up-or-down vote on a formal cloture rule. Senator Clinton Anderson, a Democrat from New Mexico, noted years later that ''Walsh won without firing a shot.'' And Senator Paul Douglas, a Democrat from Illinois, observed also years later that consent was given in 1917 because a minority of obstructing Senators had Senator Walsh's proposal ''hanging over their heads.''

I know that the Senate's 1970 cloture rule did not pertain to a President's nominations, nor did any Senators, during the debate on the adoption of the 1917 cloture rule, discuss its possible application to nominations. This was not because Senators wanted to preserve the right to filibuster nominees. Rather, Senators did not discuss applying the cloture rule to nominations because the notion of filibustering nominations was alien to them. It never occurred to anybody that that would be done.

In the middle of the 20th century, Senators of both parties, on a nearly biennial basis, invoked article I, section 5 constitutional rulemaking authority. Their efforts were born out of frustration of the repeated filibustering of civil rights legislation to protect black Americans. A minority of Senators had filibustered legislation to protect black voters at the end of the 19th century. They had filibustered antilynching bills in 1922, 1935, and 1938; antipoll tax bills in 1942, 1944 and 1946; and antirace discrimination bills.

In 1959, Majority Leader Lyndon Johnson agreed to reduce the number required for cloture to two-thirds of Senators who were present and voting because he was faced with a possibility

that a majority would exercise its constitutional authority to reform Senate procedure. He knew the constitutional option was possible.

Additionally, the Senate had voted four times for the proposition that the majority has the authority to change Senate procedures. For example, in 1969, Senators were again trying to reduce the standard for cloture—that is, the rule to cut off debate—from 67 down to 60. To shut off debate on this proposed rule change, Democratic Senator Frank Church from Idaho secured a ruling from the Presiding Officer, Democratic Vice President and former Senator Hubert Humphrey, that a majority could shut off debate, irrespective of the much higher cloture requirement under the standing rules. A majority of Senators then voted to invoke cloture by a vote of 51 to 47 in accord with the ruling of Vice President Humphrey. This was the first time the Senate voted in favor of a simple majority procedure to end debate.

The Senate reversed Vice President Humphrey's ruling on appeal. But as Senator KENNEDY later noted:

This subsequent vote only cemented the principle that a simple majority could determine the Senate's rules.

Senator KENNEDY said:

Although [Vice President Humphrey's] ruling may have been reversed, the reversal was accomplished by a majority of the Senate. In other words, majority rule prevailed on the issue of the Senate's power to change its rules.

Senator KENNEDY made this observation in 1975, when reformers were still trying to reduce the level for cloture from 67 down to 60. Reformers had been thwarted in their effort to lower this standard for several years.

In 1975, once again, Senate Democrats asserted the constitutional authority of the majority to determine Senate procedure in order to ensure an up-or-down vote. The Senate eventually adopted a three-fifths cloture rule—that is, 60 votes to cut off debate—but only after the Senate had voted on three separate occasions in favor of the principle that a simple majority could end debate. They had voted on three separate occasions that a simple majority could end debate, after which it was a compromise establishing the level at 60.

The chief proponent of this principle was former Democratic Senator Walter Mondale and four current Democratic Senators voted in favor of it: Senator BIDEN, Senator LEAHY, Senator KENNEDY, and Senator INOUYE. Indeed, Senator KENNEDY was an especially forceful adherent to the constitutional authority of the Senate majority to govern—a mere majority. He asked:

By what logic can the Senate of 1917 or 1949 bind the Senate of 1975?

That was Senator KENNEDY. He then echoed Senator Walsh's observation from almost 60 years earlier:

A majority may adopt the Rules in the first place. It is preposterous to assert that they may deny to later majorities the right to change them.

Finally, referring to unanimous consent constraints that faced the Senate in 1917, Senator KENNEDY made an astute observation as to why a majority of the Senate had to have rulemaking authority. Senator KENNEDY said:

Surely no one would claim that a rule adopted by one Senate, prohibiting changes in the rules except by unanimous consent, could be binding on future Senates. If not, then why should one Senate be able to bind future Senates to a rule that such change can be made only by a two-thirds vote?

Recently, the authority to which I have been referring has been called the ''constitutional option,'' or the pejorative term, ''nuclear option.'' But while the authority of the majority to determine Senate procedures has long been recognized, most often in Senate history by our colleagues on the other side of the aisle—incidentally, it was the senior Senator from West Virginia who employed this constitutional authority most recently, most effectively, and most frequently.

Senator BYRD employed the constitutional option four times in the late 1970s and 1980s. The context varied but three common elements were present each time: First, there was a change in Senate procedure through a point of order rather than through a textual change to Senate rules; second, the change was achieved through a simple majority vote; third, the change in procedure curtailed the options of Senators, including their ability to mount different types of filibusters or otherwise pursue minority rights.

The first time Senator BYRD employed the constitutional option was in 1977 to eliminate postcloture filibuster by amendment. Senate rule XXII provides once cloture is invoked, each Member is limited to 1 hour of debate, and it prohibits dilatory and nongermane amendments. But because Democratic Senators Howard Metzenbaum of Ohio and James Abourezk of South Dakota opposed deregulating natural gas prices, they used existing Senate procedures to delay passage of a bill that would have done so after cloture had been invoked. They stalled debate by repeatedly offering amendments without debating them, thereabout delaying the postcloture clock.

If points of order were made against the amendments, they simply appealed the ruling of the Chair which was debatable, and if there were a motion to table the appeal then there would have to be rollcall votes. Neither of these options would consume any postcloture time.

After 13 days of filibustering by amendment, the Senate had suffered through 121 rollcall votes and endured 34 live quorums with no end in sight.

Under then existing precedent, the Presiding Officer had to wait for a Senator to make a point of order before ruling an amendment out of order. By creating a precedent, Senator BYRD changed that procedure. He enlisted the aid of Vice President Walter Mondale as Presiding Officer and made a point of order that the Presiding Officer now had to take the initiative to rule amendments out of order that the Chair deemed dilatory. Vice President Mondale sustained Senator BYRD's new point of order. Senator Abourezk appealed, but his appeal was tabled by majority vote. The use of this constitutional option set a new precedent. It allowed the Presiding Officer to rule amendments out of order to crush postcloture filibusters.

With this new precedent in hand, Senator BYRD began calling up amendments, and Vice President Mondale began ruling them out of order. With Vice President Mondale's help, Senator BYRD disposed of 33 amendments, making short work of the Metzenbaum-Abourezk filibuster.

Years later, Senator BYRD discussed how he created new precedent to break this filibuster. This is what Senator BYRD said years later about what he did.

I have seen filibusters. I have helped to break them.

There are a few Senators in this body who were here when I broke the filibuster on the natural gas bill. . . .I asked Mr. Mondale, the Vice President, to go please sit in the chair; I wanted to make some points of order and create some new precedents that would break these filibusters.

And the filibuster was broken—back, neck, legs, and arms. It went away in 12 hours.

So I know something about filibusters. I helped to set a great many of the precedents that are in the books here.

That is Senator BYRD on his effort—one of his efforts—involving the use of the constitutional option.

Although Senator BYRD acted within his rights, his actions were certainly controversial. His Democrat colleague, Senator Abourezk, complained that Senator BYRD had changed the entire rules of the Senate during the heat of the debate on a majority vote. And according to Senator BYRD's own history of the Senate, the book that he wrote that we all admire so greatly, he and Vice President Mondale were severely criticized for the extraordinary actions taken to break the postcloture filibusters.

Some might argue that in 1977 Senator BYRD was not subscribing to the constitutional option. However, the procedure he employed, making a point of order, securing a ruling from the Chair, and tabling the appeal by a simple majority vote, is the same procedure the current Senate majority may use. Moreover, 15 months later, Senator BYRD expressly embraced the Senate majority's rulemaking authority.

Back in January of 1979, Majority Leader Byrd proposed a Senate rule to greatly reform debate procedure. His proposed rules change might have been filibustered, so he reserved the right to use the constitutional option. Here is what he said.

I base this resolution on Article I, Section 5 of the Constitution. There is no higher law, insofar as our government is concerned, than the Constitution.

The Senate rules are subordinate to the Constitution of the United States. The Constitution in Article I, section 5, says that each House shall determine the rules of its proceedings. . . . This Congress is not obliged to be bound by the dead hand of the past. . . .

Senator BYRD did not come to his conclusion lightly. In fact, in 1975 he had argued against the constitutional option but faced with a filibuster in 1979 he said he had simply changed his mind. This is what he had to say:

I have not always taken that position but I take it today in light of recent bitter experience. . . . So, I say to Senators again that the time has come to change the rules. I want to change them in an orderly fashion. I want a time agreement.

But, barring that, if I have to be forced into a corner to try for majority vote I will do it because I am going to do my duty as I see my duty, whether I win or lose. . . . If we can only change an abominable rule by majority vote, that is in the interests of the Senate and in the interests of the Nation that the majority must work its will. And it will work its will.

Senator BYRD did not have to use the constitutional option in early 1979 because the Senate relented under the looming threat and agreed to consider his proposed rule change through regular order.

As another example, in 1980, Senator BYRD created a new precedent that is the most applicable to the current dispute in the Senate. This use of the constitutional option eliminated the possibility that one could filibuster a motion to proceed to a nomination. We are on a nomination now on the Executive Calendar. The reason it was not possible to filibuster a motion to proceed to that nomination, we can thank Senator BYRD in 1980 when he exercised the constitutional option to simply get rid of the ability to filibuster a motion to proceed to an item on the Executive Calendar.

Before March of 1980, reaching a nomination required two separate motions, a nondebatable motion to proceed to executive session, which could not be filibustered and which would put the Senate on its first treaty on the calendar; and a second debatable motion to proceed to a particular nominee which could be filibustered.

Senator BYRD changed this precedent by conflating these two motions, one of which was debatable, into one nondebatable motion. Specifically, he made a motion to go directly into executive session to consider the first nominee on the calendar. Senator Jesse Helms made a point of order that this was improper under Senate precedent; a Senator could not use a nondebatable motion to specify the business he wanted to conduct on the Executive Calendar. The Presiding Officer sustained Senator Helms's point of order under Senate rules and precedence.

In a party-line vote, Senator BYRD overturned the ruling on appeal. And because of this change in precedent, it effectively is no longer possible to filibuster the motion to proceed to a nominee.

So where are we? There are other examples where our distinguished colleague used the Senate's authority to reform its procedures by a simple majority vote. We on this side of the aisle may have to employ the same procedure in order to restore the practice of affording judicial nominees an up-or-down vote. We did not cavalierly decide to use the constitutional option. Like Senator BYRD in 1979, we arrived at this point after ''recent bitter experience,'' to quote Senator BYRD, and only after numerous attempts to resolve this problem through other means had failed.

Here is all we have done in recent times to restore up-or-down vote for judges: We have offered generous unanimous consent requests. We have had weeks of debate. In fact, we spent 20 days on the current nominee. The majority leader offered the Frist-Miller rule compromise. All of these were rejected. The Specter protocols, which would guarantee that nominations were not bottled up in committee, was offered by the majority leader. That was rejected; Negotiations with the new leader, Senator REID, hoping to change the practice from the previous leadership in the previous Congress, that was rejected; the Frist Fairness Rule compromise, all of these were rejected.

Now, unfortunately, none of these efforts have, at least as of this moment, borne any fruit.

Our Democrat colleagues seem intent on changing the ground rules, as the New York Times laid it out in 2002. They want to change the ground rules as they did in the previous Congress in how we treat judicial nominations.

We are intent on going back to the way the Senate operated quite comfortably for 214 years. There were occasional filibusters but cloture was filed and on every occasion where the nominee enjoyed majority support in the Senate cloture was invoked. We will have an opportunity to do that in the morning with cloture on Priscilla Owen. Colleagues on both sides of the aisle who want to diffuse this controversy have a way to do it in the morning, and that is to do what we did for 214 years. If there was a controversial nominee, cloture was filed, cloture was invoked, and that controversial nominee got an up-or-down vote.

Mr. GRASSLEY. Mr. President, will the Senator yield for a question?

Mr. MCCONNELL. I am happy to yield.

Mr. GRASSLEY. One of the things that the public at large can get confused about is that we are going to eliminate the use of the filibuster entirely. I have seen some of the ''527'' commercials advising constituents to get hold of their Congressman because minority rights are going to be trampled.

I, obviously, find that ludicrous. I know this debate is not about changing anything dealing with legislation. It is just maintaining the system we have had in the Senate on judges for 214 years. I wonder if the Senator would clear up that we are talking just about judicial nominees, and not even all judicial nominees, and nothing to change the filibuster on legislation.

Mr. MCCONNELL. I say to my friend from Iowa, if the majority leader does have to exercise the constitutional option and ask us to support it, it will be narrowly crafted to effect only circuit court appointments and the Supreme Court, which are, after all, the only areas where there has been a problem.

I further say to my friend from Iowa, in the years I have been in the Senate, the only time anyone has tried to get rid of the entire filibuster was back in 1995 when such a measure was offered by the other side of the aisle.

Interestingly enough, the principal beneficiaries of getting rid of the filibuster in January of 1995 would have been our party because we had just come back to power in the Senate, yet not a single Republican, not one, voted to get rid of the filibuster. Nineteen Democrats did, two of whom, Senator KENNEDY and Senator KERRY, are still in the Senate and now arguing, I guess, the exact opposite of their vote a mere 10 years ago.

Mr. GRASSLEY. So when we just came back into the majority, after the 1994 election, there was an effort by Democrats to eliminate the filibuster?

Mr. MCCONNELL. Entirely.

Mr. GRASSLEY. For everything, including legislation.

Mr. MCCONNELL. Right.

Mr. GRASSLEY. We were the new majority.

Mr. MCCONNELL. Right.

Mr. GRASSLEY. And we would have benefited very much from that. It would have given us an opportunity to get anything done that we could get 51 votes for doing, with no impediment, and we voted against that?

Mr. MCCONNELL. Unanimously. And interestingly enough, it was the first vote cast by our now-Senate majority leader, Senator FRIST, here in the Senate. The very first vote he cast, along with the rest of us on this side of the aisle, was to keep the filibuster.

Mr. GRASSLEY. So I think that ought to make it clear we are just talking about the unprecedented use of the filibuster within the last 2 years. We are not talking about changing anything in regard to filibusters on legislation because we understand that is where you can work compromises. You cannot really work compromises when it comes to an individual—is it either up or down. But you can change words, you can change paragraphs, you can rewrite an entire bill to get to 60, to get to finality, on any piece of legislation.

Mr. MCCONNELL. My friend from Iowa is entirely correct. The filibuster would be preserved for all legislative items, preserved for executive branch nominations, not for the judiciary. It would be preserved even for district court judges, where Senators have historically played a special role in either

selecting or blocking district judges. All of that would be preserved. If we have to exercise the constitutional option tomorrow, it will be narrowly crafted to deal only with future Supreme Court appointments and circuit court appointments, which is where we believe the aberrational behavior has been occurring in the past and may occur in the future.

Mr. GRASSLEY. And maintain the practice of the Senate as it has been for 214 years prior to 2 years ago.

Mr. MCCONNELL. That is precisely the point. My friend from Iowa is entirely correct.

Mr. GRASSLEY. I thank the Senator.

Mr. HATCH. Will the assistant majority leader yield for a question?

Mr. MCCONNELL. Yes.

Mr. HATCH. Just to make it clear, there are two calendars in the Senate. One is the legislative calendar and the other is the Executive Calendar; is that correct?

Mr. MCCONNELL. That is correct.

Mr. HATCH. The legislative calendar is the main calendar for the Senate, and it is solely the Senate's; is that correct?

Mr. MCCONNELL. That is correct.

Mr. HATCH. But the Executive Calendar involves nominations through the nomination power granted by the Constitution to the President of the United States, and the Senate has the power to advise and consent on that nomination power, is that right, to exercise that power?

Mr. MCCONNELL. That is entirely correct.

Mr. HATCH. What we are talking about here is strictly the Executive Calendar, ending the inappropriate filibusters on the Executive Calendar and certainly not ending them on the legislative calendar?

Mr. MCCONNELL. My friend from Utah is entirely correct.

Mr. HATCH. Well, our Democratic friends argue—just to change the subject a little bit here—they argue we have to institute the judicial filibuster to maintain the principle of checks and balances as provided in the Constitution. But unless my recollection of events is different, this contention does not fit with the historical record.

Isn't it the case that the same party has often been in the White House and in the majority in the Senate, such as today, but in the past, while the same party has controlled the White House and been a majority in the Senate, neither party, Democrats or Republicans, over the years, has filibustered judicial nominations until this President's term?

Mr. MCCONNELL. My friend is entirely correct. The temptation may have been there. I would say to my friend from Utah, the temptation may have been there.

Mr. HATCH. Right.

Mr. MCCONNELL. During the 20th century, the same party controlled the executive branch and the Senate 70 percent of the time. Seventy percent of the time, in the 20th century, the same party had the White House and a majority in the Senate. So I am sure—by the way, that aggrieved minority in the Senate, for most of the time, was our party, the Republican Party.

Mr. HATCH. You got that right.

Mr. MCCONNELL. We are hoping for a better century in the 21st century. But it was mostly our party. So there had to have been temptation, from time to time, and frustration, on the part of the minority. Seventy percent of the time, in the 20th century, they could have employed this tactic that was used in the last Congress but did not.

Senator BYRD led the minority during a good portion of the Reagan administration. Actually, during all of the Reagan administration, 6 years in the minority, 2 years in the majority, Senator BYRD could have done that at any point. He did not do it, to his credit. To his credit, he did not yield to the temptation.

As I often say, there are plenty of things we could do around here, but we do not do it because it is not good to do it, even though it is arguably permissible. So when our friends on the other side of the aisle say the filibuster has been around since 1806, they are right. It is just that we did not exercise the option because we thought it was irresponsible.

Mr. HATCH. Not quite right because the filibuster rule did not come into effect until 1917.

Mr. MCCONNELL. No. The ability to stop the filibuster did not come about until 1917. The ability to filibuster came about in 1806.

Mr. HATCH. Well, Senators had the right to speak, and they could speak.

Mr. MCCONNELL. Absolutely.

Mr. HATCH. So in a sense it was not even known as a filibuster at that time. Nevertheless, they had the right to speak.

To follow up on what you just said, we heard repeatedly from liberal interest groups that we must maintain the filibuster to maintain ''checks and balances.'' My understanding of the Constitution's checks and balances is that they were designed to enable one branch of Government to restrain another branch of Government. Are there really any constitutional checks that empower a minority within one of those branches to prevent the other branch from functioning properly?

Mr. MCCONNELL. Well, my friend from Utah is again entirely correct. The term ''checks and balances'' has actually nothing to do with what happened to circuit court appointments during the previous Congress. The term ''checks and balances'' means institutional checks against each other, the Congress versus the President, the judiciary versus both—the balance of power among the branches of Government. It has nothing whatsoever to do with the process to which the Senate has been subjected in the last few years. It is simply a term that is inapplicable to the dilemma in which we find ourselves now.

Mr. HATCH. One last point. The 13 illustrations that the Democrats on the other side have given that they have said are filibusters, if I recall it correctly, 12 of those 13 are now sitting on the Federal bench, as you have said; is that correct?

Mr. MCCONNELL. I say to my friend from Utah, as far as I can determine, for every judge who enjoyed majority support, upon which there was subsequently a filibuster, cloture was invoked, and all of those individuals now enjoy the title ''judge.''

Mr. HATCH. In other words, they are sitting on benches today?

Mr. MCCONNELL. Because they ultimately got an up-or-down vote. I would say to my friend from Utah, we will have an opportunity tomorrow, in the late morning, to handle the Priscilla Owen nomination the way our party, at your suggestion and Senator LOTT's suggestion, toward the end of the Clinton years, handled the Berzon and Paez nominations. They had controversy about them, just as this nomination has controversy about it.

How did we deal with controversy? We invoked cloture. And I remember you and Senator LOTT saying, to substantial grief from some, that these judge candidates had gotten out of committee, and they were entitled to an up-or-down vote on the floor. Senator LOTT joined Senator Daschle and filed cloture on both of those nominations, not for the purpose of defeating them but for the purpose of advancing them. They both got an up-or-down vote. They both are now called judge.

Mr. HATCH. So the cloture votes in those instances were floor management devices to get to a vote so we could vote those nominations to the bench?

Mr. MCCONNELL. For the purpose of advancing the nominations, not defeating them.

Mr. HATCH. So they were hardly filibusters in that sense?

Mr. MCCONNELL. They were not. They were situations which do occur, from time to time, where a nominee has some objection. And around here, if anybody objects, it could conceivably end up in a cloture vote.

Mr. HATCH. And spend a lot of time on the Senate floor.

Mr. MCCONNELL. Yes. It does not mean the nomination is on the way to nowhere. It could mean the nomination is on the way to somewhere because you invoke cloture and then you get an up-or-down vote. And I remember you, as chairman of the Judiciary Committee, advocating that step, even though we all ended up, many of us, voting against those nominations once we got to the up-or-down vote.

Mr. HATCH. Advocating the step that we should invoke cloture and give these people a vote up or down?

Mr. MCCONNELL. Precisely.

Mr. HATCH. One last thing. As to the 13, 12 of them are sitting on the bench.

The 13th that they mentioned was the Fortas nomination. In that case, there was the question of whether there was or was not a filibuster. But let's give them the benefit of the doubt and say there was a filibuster, since there are those who do say there was, although the leader of the fight, Senator Griffin, at the time said they were not filibustering, that they wanted 2 more days of debate, and they were capable and they had the votes to win up or down—

Mr. MCCONNELL. He withdrew, didn't he?

Mr. HATCH. He did. But what happened was there was one cloture vote, and it was not invoked. But even if you consider it a filibuster, the fact is, it was not a leader-led filibuster. It was a nomination that was filibustered—if it was a filibuster—almost equally by Democrats and Republicans.

Mr. MCCONNELL. And isn't it also true, I ask my friend from Utah, that it was apparent that Justice Fortas did not enjoy majority support in the Senate and would have been defeated?

Mr. HATCH. That is right.

Mr. MCCONNELL. Had he not withdrawn his nomination.

Mr. HATCH. The important thing here is it was a bipartisan filibuster against a nominee by both parties, and in these particular cases, these are leader-led partisan filibusters led by the other party.

Mr. MCCONNELL. I thank my colleague.

Mr. SESSIONS. Mr. President, will the Senator yield?

Mr. MCCONNELL. I am happy to yield.

Mr. SESSIONS. I hope Senator HATCH will remain because he has been, much of the first years of my career in the Senate, chairman of the Senate Judiciary Committee. I think it is important to drive home what you have been discussing. I think it is so important.

First, I will say to the distinguished assistant majority leader how much I appreciate his comprehensive history of debate in the Senate. I think it is invaluable for everyone here. But I remember the Berzon and Paez nominations. Both of those were nominees to the Ninth Circuit. Judge Paez, a magistrate judge, declared that he was an activist himself, as I recall, and even said that if legislation does not act, judges have a right to act. And the Supreme Court had reversed the Ninth Circuit 28 out of 29 times one year and consistently reversed them more than any other circuit in America. And here we had an ACLU counsel, in Marsha Berzon, and Paez being nominated.

There was a lot of controversy over that. We had a big fuss over that. We had an objection. I voted for 95 percent of President Clinton's nominees, but I did not vote for these two. I remember we had a conference.

I will ask the assistant majority leader—we were having House Members saying: Why don't you guys filibuster? People out in the streets were saying: Don't let them put these activist judges on the bench. We had our colleagues saying it. I did not know what to do. I was new to the Senate. Do you remember that conference when we had the majority in the Senate, and President Clinton was of the other party and we were not in minority like the Democrats are today—we had the majority—and Senator HATCH explained to us the history of filibusters, why we never used them against judges, and urged us not to filibuster those Clinton nominees?

Mr. MCCONNELL. I remember it well. I would say, our colleague from Utah got a little grief for that from a number of members on our side of the aisle who were desperately looking for some way to sink those nominations. And he said: Don't do it. Don't do it. You will live to regret it. And thanks to his good advice, we never took the Senate to the level—never descended to the level that the Senate has been in the previous Congress.

Mr. SESSIONS. Let me ask this, with the presence of the distinguished former chairman of the Judiciary Committee in the Chamber. At that very moment when it was to the Republican interests to initiate a filibuster, if we chose to do so, at that moment, when he was, on principle, opposing it, the very Members of the opposite party, leading Senators on that side—Senator LEAHY and Senator KENNEDY and Senator FEINSTEIN and Senator BOXER—were making speeches saying how bad the filibuster was and how it should not be done.

Mr. MCCONNELL. I would say to my friend that is why we have been quoting them so much in all of our speeches on this side of the aisle. You could just change the names, and they could have been giving our speeches as recently as 1998, 1999, and even 2000.

Mr. SESSIONS. I could not agree more. A half-dozen years ago, the people who are leading the filibuster were the very ones objecting to it. But Senator HATCH and the Republicans, isn't it fair to say, have been consistent?

Mr. MCCONNELL. Absolutely. Let's just be fair here. I would say to both of my colleagues, without getting into the details of any particular nomination, that I think the Democrats have arguably a legitimate complaint—it has a patina of legitimacy—when they argue that we simply did in committee what they are doing on the floor.

The PRESIDING OFFICER. The time controlled by the majority has now expired.

Mr. MCCONNELL. Mr. President, I ask unanimous consent for an additional 5 minutes.

Mr. LAUTENBERG. I didn't hear that.

Mr. MCCONNELL. I ask unanimous consent for 5 more minutes.

Mr. LAUTENBERG. No objection.

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

Mr. MCCONNELL. They argue that we simply did in committee what they are doing on the floor, and that there is not a dime's worth of difference between holding up a nominee in committee and holding up a nominee on the floor. I think there are some distinctions to be made.

It is not entirely the same thing, but granting that that might have some legitimacy, the majority leader offered these Specter protocols with which the former chairman of the Judiciary Committee is intimately familiar, which would have guaranteed some kind of procedure to extricate those nominations from committee and bring them out to the floor and give them an up-or-down vote. We are in the majority, and we volunteered to give up the ability to routinely kill nominations in committee. Yet they turned that down, too.

Mr. HATCH. Will the Senator yield on that point?

Mr. MCCONNELL. I yield for a question.

Mr. HATCH. The fact is, there have always been holdovers at the end of every administration. There were 54 holdovers at the end of the Bush 1 administration, and he was only there 4 years. We didn't cry and moan and groan and threaten to blow up the Senate over that. We recognized it was part of the process.

I have to say with regard to the holdovers that were there at the end of the Clinton administration, there were some which they could have gotten through, but there were like 18 that were withdrawn. Ten withdrew their names. Some were not put up again between the two administrations. There is no question that I tried to do the very best I could to give President Clinton every possible edge.

But this has always been the case. It isn't just this time. It happened with Democrats in control of the Senate and Republicans in control of the White House. I think that point needs to be made. I have heard a lot of moaning and groaning. I know my colleagues know I did everything in my power to accommodate them and help them.

Mr. MCCONNELL. I believe that is entirely correct. The only point I was seeking to make was if that criticism had any validity whatsoever—and the former chairman has pointed out that it has very little legitimacy—the distinguished majority leader offered to make that essentially impossible, and yet that was rejected as well.

Mr. SESSIONS. Will the Senator yield for one more question?

Mr. MCCONNELL. Yes.

Mr. SESSIONS. Isn't it true that Trent Lott, the Republican majority leader, sought cloture to give Berzon and Paez an up-or-down vote, and those of us who opposed Berzon and Paez, as the Senator from Kentucky did, voted for cloture to give them an up-or-down vote and then voted against them when they came up for the up-or-down vote?

Mr. MCCONNELL. The Senator is entirely correct. That is the way I voted. I believe that is the way he voted. That is the way the Senate ought to operate.

That is a good model for how we ought to behave tomorrow. We will have a cloture vote on Justice Priscilla Owen. If the Senate wants to operate the way it used to, we will invoke cloture on Justice Owen and then give her the up-or-down vote which she richly deserves.

I yield the floor.

Mr. FRIST. Mr. President, more than 2 years ago, this Senate first took a cloture vote to end a filibuster on the nomination of Miguel Estrada for a seat on the DC Circuit Court of Appeals. Mr. Estrada epitomizes the American dream. An immigrant from Honduras, who arrived in America speaking no English, he graduated from Harvard Law School and became one of America's most distinguished lawyers. Mr. Estrada worked for Solicitors General under both President Bill Clinton and President George W. Bush. He argued 15 cases before the Supreme Court. The American Bar Association gave him its highest recommendation, and Miguel Estrada's confirmation by a bipartisan majority of the full Senate was assured.

But the confirmation vote never came. Instead, Mr. Estrada's nomination was filibustered. Each time we sought a consent agreement to limit debate, the Democratic leadership objected. We asked over and over for a simple up or down vote. If you oppose the nominee, we stressed, then vote against him, but give him a vote. But the partisan minority refused. In open session, they remarked that no amount of debate time would be sufficient and that they would not permit the Senate to vote.

After 13 days of debate, with no end in sight, I filed a cloture motion. Every Republican and a handful of Democrats voted for cloture, bringing us to 55 affirmative votes, 5 short of the 60 we needed. Shortly thereafter, we tried again. We got the same 55 votes. And then we tried five more times, never budging a single vote. It was crystal clear that the object of the filibuster was not to illuminate Mr. Estrada's record but to deny him an up or down vote. Debate was not the objective. Obstruction was the objective. Finally, to the shame of the Senate and the harm of the American people, Mr. Estrada asked President Bush to withdraw his nomination.

Before the last Congress, the record number of cloture votes on a judicial nomination was two, and no nomination with clear majority support ever died by filibuster. The Estrada case rewrote that tradition, and for the worse. On Miguel Estrada, seven cloture votes were taken, to no avail. He was a nominee who plainly could have been confirmed, but he was denied an up or down vote. Miguel Estrada's nomination died by filibuster.

And Mr. Estrada's case was just the beginning. After him, came the nomination of Priscilla Owen, a Justice on the Texas Supreme Court. Four cloture votes did not bring an end to the debate and we again were told on the record that no amount of debate would be enough and a confirmation vote simply would not be allowed. Thereafter, eight additional nominees were filibustered and Democrats threatened filibusters on six more. Something had radically changed in the way the Senate deals with nominations. Two hundred years of Senate custom lay shattered, with grave implications for our constitutional system of checks and balances.

As the filibusters began to mushroom, Democratic Senator Zell Miller and I introduced a cloture reform resolution. Our proposal would have permitted an end to nominations filibusters after reasonable and substantial debate. The Rules Committee held a hearing on our resolution and reported it with an affirmative recommendation. But the proposal languished on the Senate Calendar, facing a certain filibuster from Senators opposed to cloture reform. Quite simply, those who undertook to filibuster these nominees wanted no impediments put in their way.

When Congress convened this January, I was urged to move immediately for a change in Senate procedure so that these unprecedented filibusters could not be repeated. But I decided on a more measured and less confrontational course. Rather than move immediately to change procedure, I promoted dialogue at the leadership and committee level to seek a solution to this problem. Rather than act on the record of the last Congress, I hoped that the passage of a clearly won election and presence of new Democratic leadership would result in a sense of fairness being restored.

Sadly, these hopes were not fulfilled. More filibusters have been promised, not only against seven nominees President Bush has resubmitted but also against other nominees not yet sent up. A renewal of filibusters against persons denied an up or down vote in the last Congress is a grave problem and would be reason enough for reform. Threatening filibusters against new nominees compounds the wrong and is further reason for reform.

For many decades, two great Senate traditions existed side by side. These were a general respect for the filibuster and a consensus that nominations brought to the floor would receive an up-or-down vote. Filibusters have been periodically conducted on legislation, sometimes successfully and sometimes ended by cloture. However, filibusters have not impeded the Senate's advice and consent role on nominations. In the exceedingly rare cases they were attempted, cloture was always invoked with bipartisan support and the filibusters ceased.

But in the last Congress, judicial filibusters became instruments of partisan politics. Organized and promoted by the Democratic leadership, these filibusters proved resilient to cloture. And that was the difference between these filibusters and the handful of judicial filibusters conducted in the past. For example, to close debate on President Clinton's nominees, Marsha Berzon and Richard Paez, the Republican leader, Senator LOTT, took the initiative to file for cloture. Because he acted to conclude the debate, both Berzon and Paez sit on the bench today.

Due to the current filibusters, two great Senate traditions that used to coexist now collide. If matters are left in this posture, either the power of advice and consent will yield to the filibuster or the filibuster will yield to advice and consent.

Until these judicial filibusters were launched, the Senate observed the principle that filibusters would not impede the exercise of constitutional confirmation powers and that a majority of Senators could vote to confirm or reject a nominee brought to the floor. The unparalleled filibusters undermine that tradition, denying nominees the courtesy of an up or down vote. They represent an effort by a Senate minority to obstruct the duty of the full Senate to advise and consent. The current minority claims it has no choice but to filibuster, because Republicans control the White House and Senate. But the minority's conclusion defies history.

For 70 of the 100 years of the last century, the same party controlled the Presidency and the Senate, but the minority party leadership exercised restraint and refused to filibuster judicial nominees. The past half century amply illustrates this point. During the Kennedy and Johnson administrations, Democrats controlled the Senate, but the Republican Minority Leaders Everett Dirksen did not filibuster judicial nominees. While President Carter was in office, Democrats controlled the Senate, but Republican Leader Howard Baker did not filibuster judicial nominees. For President Reagan's first 6 years, Republicans controlled the Senate, but Democratic Leader ROBERT BYRD did not filibuster judicial nominees. In President Clinton's first 2 years, Democrats had the Senate but Republican Leader Bob Dole did not filibuster judicial nominees. During all those years, all those Congresses, and all those Presidencies, nominees brought to the floor got an up-or-down vote.

Each of those Senate minorities could have done what this minority has done, using the same rationale. But none of them did. To the great detriment of the Senate and to the constitutional principle of checks and balances, such self-restraint has vanished.

Democrats argue that by curbing judicial filibusters, we would turn the Senate into a rubberstamp. But for more than two centuries, those filibusters did not exist. Shall we conclude that for 200 years the Senate was a rubberstamp and only now has awakened to its responsibilities? What of those minority leaders who did not filibuster? Were they also rubberstamps? Was Dirksen? Was Baker? Was BYRD? Was Dole? Can the minority be right

that only through the filibuster may the Senate's advice and consent check be vindicated? This is a novel conclusion and it stains the reputation of the great Senators that have preceded us.

To make their case against curbs on judicial filibusters, Democrats try to reach into history. In so doing, they cite the 1968 nomination of Abe Fortas to be Chief Justice of the U.S. Supreme Court, and Franklin Roosevelt's court-packing plan of 1937. But use of these examples is an overreach and draws false comparisons.

In 1968, Abe Fortas was serving on the Supreme Court as an Associate Justice. Three years earlier, he had been confirmed by the Senate by voice vote, following a unanimous affirmative recommendation from the Judiciary Committee. Then Chief Justice Earl Warren announced his retirement, effective on the appointment of his successor. President Lyndon Johnson proposed to elevate Fortas to succeed Warren.

The noncontroversial nominee of 1965 became the highly controversial nominee of 1968. Justice Fortas was caught in a political perfect storm. Some Senators raised questions of ethics. Others complained about cronyism. Yet others were concerned about Warren Court decisions. And still others thought that with the election looming weeks away, a new President should fill the Warren vacancy. But this political perfect storm was thoroughly bipartisan in nature, and reflected concerns from certain Republicans as well as numerous southern and northern Democrats.

Senator Mike Mansfield brought the Fortas nomination to the Senate floor late on September 24, 1968. After only 2 full days of debate, Mansfield filed a cloture motion. Almost a third of the 26 Senators who signed the cloture motion were Republicans, including the Republican whip. The vote on cloture was 45 yeas and 43 nays, well short of the two-thirds then needed to close debate. Nearly a third of Republicans supported cloture, including the Republican whip. Nearly a third of Democrats opposed it, including the Democratic whip. Of the 43 negative votes on cloture, 24 were Republican and 19 were Democratic.

Opponents of cloture claimed that debate had been too short in order to develop the full case against the Fortas nomination. In contrast to the Miguel Estrada and Priscilla Owen filibusters, no one claimed that debate would go on endlessly and that no amount of time would be sufficient. Indeed, those who opposed cloture denied there was a filibuster at all.

So, Mr. President, the Fortas case is not analogous to the judicial filibusters we now confront. Support for and opposition to Fortas was broadly bipartisan, a fact that stands in stark contrast to the partisan filibusters that began in the last Congress as an instrument of party policy. At most, it was opposition to one man, and was not an effort to leverage judicial appointments through the threat of a filibuster-veto. The Fortas opposition came together in one aberrational moment. Nothing like it happened in the previous 180 years and nothing like it happened for the next 35 years. Absolutely, it did not represent a sustained effort by a minority party to shatter Senate confirmation traditions and exercise a filibuster-veto destructive of checks and balances. No comparison can be made between that single aberrational moment and the pattern of judicial filibusters we now confront.

Democrats also contend that if we move against the judicial filibusters, we will follow in the footsteps of Franklin Roosevelt's attempt to pack the Supreme Court. But this is a scare tactic and it, too, is a comparison without basis.

Frustrated by the Supreme Court's ruling unconstitutional several New Deal measures, President Roosevelt sought legislation to pack the court by appointing a new Justice for every sitting Justice over the age of 70. In a fireside chat, he compared the three branches of government to a three horse team pulling a plow. Unless all three horses pulled in the same direction, the plow could not move. To synchronize all the horses, Roosevelt proposed to pack the court.

Roosevelt's effort was a direct assault on the independence of the judiciary and plainly undermined the principles of separation of powers and checks and balances. He failed in a Senate with 76 Members of his own party. But no good analogy can be drawn between what he attempted and our effort to end judicial filibusters.

Unlike Roosevelt, Republicans are not trying to undermine the separation of powers. And unlike Roosevelt, Republicans are not trying to destabilize checks and balances, but to restore them.

Mr. President, that the judicial filibusters undermine a longstanding Senate tradition is evident. But traditions are not laudable merely because they are old. This tradition is important because it underpins a vital constitutional principle that the President shall nominate, subject to the advice and consent of the Senate. When filibusters are used to block a vote, the advice and consent of the Senate is not possible.

A cloture vote to end a filibuster is not advice and consent within the Constitution's meaning. Notwithstanding the minority's claim, nominees denied a confirmation vote due to filibuster have not been ''rejected.'' Instead, what has been rejected is the constitutional right of all Senators to vote up or down on the nominees.

To require a cloture threshold of 60 votes for confirmation disturbs checks and balances between the Executive and the Senate and creates a strong potential for tyranny by the minority. A minority may hold hostage the nomination process, threatening to undermine judicial independence by filibustering any appointment that does not meet particular ideological or litmus tests.

This is not a theoretical problem. Look what has happened already. Asserting claims that nominees from the last Congress were ''rejected,'' Democrats have urged President Bush to withdraw the nominations he has submitted anew. If he does not, they will ensure the nominees are denied a confirmation vote. It is but a tiny step from there to claim that any nominee must first secure minority clearance, or else be filibustered. And at that point, the nominating power effectively passes to the Senate minority. If Senate traditions are not restored, this audacious and unprecedented assertion of minority power is coming next, and Presidents will be subject to it from now on.

The Constitution provides that a duly elected Executive shall nominate, subject to advice and consent by a majority of the Senate. Implicit in that structure is that the President and the Senate shall be politically accountable to the American people, and that accountability will be a sufficient check on the decisions made by each of them. That was the system by which we Americans addressed nominations for more than two centuries, until the last Congress. If we allow recent precedents to harden and give the minority a filibuster-veto in the confirmation process, that system and the checks and balances it serves, will be permanently destroyed.

Trying to legitimize their judicial filibusters, Democrats have taken to the floor to extol the virtue of filibusters generally. And as to legislative filibusters, I agree with them. But judicial filibusters are not cut from the same cloth as legislative filibusters and must not receive similar treatment. So, I concur with the sentiments Senator Mansfield expressed during the Fortas debate:

> In the past, the Senate has discussed, debated and sometimes agonized, but it has always voted on the merits. No Senator or group of Senators has ever usurped that constitutional prerogative. That unbroken tradition, in my opinion, merely reflects on the part of the Senate the distinction heretofore recognized between its constitutional responsibility to confirm or reject a nominee and its role in the enactment of new and far-reaching legislative proposals.

Mr. President, history demonstrates that filibusters have almost exclusively been applied against the Senate's own constitutional prerogative to initiate legislation, and not against nominations. The Frist-Miller cloture reform proposal from the last Congress dealt with nominations only, not legislation and not treaties. We addressed solely what was broken. Over many decades, numerous cloture reforms have been proposed. But ours was the only one to apply strictly to nominations. We left legislative filibusters alone.

Contrary to what Democrats would have you believe, no Republican seeks

to end legislative filibusters. The Democrats are creating a myth. These are the facts: my first Senate vote was to defeat a 1995 rules change proposal to curtail filibusters of every kind. Introduced by Democrats, it received 19 votes, all from Democrats. In 1995, we had a new Republican majority. We would have been the prime beneficiaries of the rules change, but we supported minority rights to filibuster on legislation. Some of the Senators who most vigorously promote judicial filibusters and condemn us for trying to restore Senate traditions, were among those voting for the 1995 change. And here is the irony: had the 1995 change been adopted, the judicial filibusters would be impossible.

Some who oppose filibuster reform do so because they fear that curbing judicial filibusters will necessarily lead to ending the right to filibuster legislation. But history strongly suggests this slippery slope argument is groundless. In 1980, under the leadership of Senator BYRD and on a partisan vote, Senate Democrats engineered creation of a precedent to bar debate on a motion to proceed to a nomination. Before then, the potential existed for extended debate on the motion to proceed to a nomination and again on the nomination itself. Indeed, debate on the Fortas nomination occurred on the motion to proceed. The 1980 precedent rendered such debate impossible.

Simple logic would dictate that a parallel precedent would be established next, to bar debate on motions to proceed to legislation. But that logic was not followed. The Byrd precedent of 1980 has stood for 25 years and no move has ever been made to extend it to legislation. Why not? I suggest there are two reasons. First, the Senate has recognized substantial distinctions between procedures applicable to Executive matters—nominations and treaties—and those applicable to legislation. Second, within the Senate there is no discernible political sentiment to curtail the right to debate a motion to proceed to legislation.

Given those substantial procedural distinctions and the absence of such political sentiment, the spillover from the 1980 Byrd precedent has been nil.

There is a further reason why I do not believe curbing judicial filibusters implicates legislation. For 22 years, between 1953 and 1975, floor fights over the cloture rule were a biennial ritual. Finally, in 1975, the rule was amended to require 60 votes before cloture could be invoked. A bipartisan consensus gathered around the new cloture threshold and, at least as to legislation, this consensus has held fast. That is the principal cause why the 1995 effort by certain Democrats to liberalize the cloture rule got only 19 votes. Indeed, both the Republican and Democratic leadership opposed it.

The 30-year bipartisan consensus on cloture has unraveled on judges, where filibusters are new, but it remains intact on legislation, where filibusters are traditional. While no one can be sure what procedural changes a future majority may propose, this consensus is so broad and longstanding that predictions of a move against the legislative filibuster lack basis.

Finally, Mr. President, I will repeat what I have said in a series of public statements both on this floor and to the press: the Republican majority will oppose any effort to restrict filibusters on legislation.

All this, Mr. President, brings us to the question of how to address the problem of judicial filibusters. What might reform look like and how might the Senate adopt it?

A good place to start is with first principles. In the case of judicial nominations, I believe the foundational principle is that if a majority of Senators wishes to exercise its right to advise and consent to a nomination, it must be able to do so.

To that end, I have offered a Fairness Rule, which takes account of complaints set forth by both parties. My proposal addresses the question of holding nominations in committee, so that nominations can move to the floor for a conformation vote. By this step, the Senate would respond specifically to concerns Democrats have voiced about the treatment of Clinton nominees. So, if a majority of Senators wishes to advise and consent, committee inaction would not block it. Thereafter, a majority can bring a nomination to the floor. After 100 hours of debate, equally divided, the Senate can vote up or down on the nominee. This step responds specifically to concerns Republicans have had about filibusters of Bush nominees.

The Fairness Rule is the product of listening to the often rancorous arguments expressed by Democrats and Republicans. It would reform the confirmation process fairly and completely, and well serve this and future Senates and this and future Presidents.

The cycle of blame and finger-pointing must halt. We must stop nursing grievances and start addressing problems. Thus far, the Fairness Rule has received an unwelcoming response. I urge the minority to reconsider. I urge them to join hands with us in dissipating bitter partisanship by considering this proposal.

For some time, the issue of judicial filibusters has captured considerable attention in the Senate. Both parties have had substantial opportunities to think about reform, so we can initiate consideration of it through the committee process and should be able to move ahead with alacrity.

But to act on reform by this method, we must have a unanimous consent agreement that allows time for debate, a chance for amendment, and the certainty of a final vote. An agreement can provide for robust, principled, and lengthy discussion. Without an agreement, any reform we bring to the floor is subject to being filibustered itself.

So, I ask the minority for an agreement to move matters forward. It represents an opportunity, much desired by Senators on both sides of the aisle, to avoid a confrontation on judges. But if the answer is obstruction, then we are faced with having to initiate exercise of the Senate's constitutional option—best understood as reliance on the power the Constitution gives the Senate to govern its own proceedings.

The Senate is an evolving institution. Its rules and processes are not a straitjacket. Over time, adjustments have occurred in Senate procedure to reflect changes in Senate behavior. Tactics no longer limited by self-restraint became constrained by rules and precedents. This Senate, equal to the first Senate, has the constitutional right to determine how it wishes to conduct its business.

Self-governance involves writing rules or establishing precedents, and the Constitution fully grants to the Senate the power to do either.

Democrats contend that if the constitutional option is used to restore checks and balances, Republicans would be veering into unchartered waters. But history is rich with examples of how Senate rules and precedents have changed in response to changing conditions. And quite often, it was the credible threat or actual use of the constitutional option that caused these changes to be made.

The cloture rule itself was created in 1917, under pressure from Montana Democrat Thomas Walsh. Fed up with obstruction and with the prospect that any effort to amend Senate rules would be filibustered, Walsh proposed exercising the constitutional option. Old Senate rules would not operate while the Senate considered new rules, including a cloture procedure. Meanwhile, general parliamentary law would govern—affording the Senate a way to break the rules change filibuster. Faced with that pressure, and with an appropriate parliamentary tool at hand, the Senate adopted its first cloture rule.

As the issue of civil rights gripped the Senate in the 1950s, a bipartisan group of Senate liberals, led by New Mexico Democrat Clinton Anderson, proposed using the constitutional option to liberalize a cloture process, because filibusters had either doomed or weakened civil rights legislation. Anderson's support grew throughout the decade. By 1959, it was apparent he might command a majority, which forced Senator Lyndon Johnson into a compromise by which the cloture threshold was relaxed. But for the credible threat the constitutional option would be exercised, the rules change would not have happened.

In 1975, Minnesota Democrat Walter Mondale and Kansas Republican Jim Pearson pressed for cloture reform through the constitutional option. Majority Leader Mike Mansfield, who earlier in his career had supported this tactic, offered three separate points of order against it. Three times, those points of order were tabled. With a majority of Senators squarely on record

supporting the constitutional option, the Majority Whip, Senator BYRD, offered a successful leadership compromise to lower the cloture threshold. But for the constitutional option, the change would not have happened.

In 1979, Majority Leader BYRD sought to make a variety of rules reforms, principally with regard to cloture. Introducing a rules change resolution, he beseeched Republicans for a time agreement to consider it. But he also expressly warned that, if an agreement were not forthcoming, he would use the constitutional option to change the rules. Minority Republicans did not threaten to shut the Senate down. Instead, they gave him an agreement, from which followed a lengthy and spirited debate. In the end, the cloture rule was amended—a change that happened under pressure from the constitutional option.

From this history, one must conclude that the threat or use of the constitutional option was a critical factor in the creation and development of the Senate cloture rule.

The constitutional option is also exercised every time the Senate creates a precedent. Four examples will illustrate the point. I have spoken already of Senator BYRD's 1980 precedent to bar debate on motions to proceed to nominations. In 1977, 1979, and 1987 he led a Senate majority to establish precedents that restricted minority rights and tactics in use at the time. We do not have to pass judgment on the purposes or value of any of these moves to note the following: three of these cases were decided on a party-line or near party-line vote. Moreover, every time Senator BYRD commanded a majority to make these precedents, minority rights were limited.

We have been publicly threatened that if we act to end judicial filibusters, Democrats will fundamentally shut the Senate down. To follow their logic, if we expect to get the public's business done, we must tolerate upending Senate traditions and constitutional checks and balances.

I would strongly prefer that matters not come to that. It would be far better for the Senate to have a vigorous and elevated debate about reforming the entire confirmation process, followed by a vote. I am ready for that debate and willing to schedule the floor time necessary to make it happen.

Mr. President, I introduced the Frist-Miller cloture reform proposal nearly 2 years ago, on May 9, 2003. The problem of judicial filibusters had just taken root. At the time, I said that I was acting with regret but determination. Regret, because no one who loves the Senate can but regret the need to alter its procedures, even if to restore old traditions. Determination, because I was determined that the changes judicial filibusters had wrought in the Senate could not become standard operating procedure in this Chamber.

Since then, the Senate majority has exercised self-restraint, hoping for a bipartisan understanding that would make procedural changes unnecessary. But if an extended hand is rebuffed, we cannot take rejection for an answer.

Much is at stake in resolving the issue of judicial filibusters. Senator Mansfield spoke to this issue during the Fortas debate in 1968. His words are instructive now:

> I reiterate we have a constitutional obligation to consent or not to consent to this nomination. We may evade that obligation but we cannot deny it. As for any post, the question which must be faced is simply: Is the man qualified for the appointed position? That is the only question. It cannot be hedged, hemmed or hawed. There is one question: shall we consent to this Presidential appointment? A Senator or group of Senators may frustrate the Senate indefinitely in the exercise of its constitutional obligation with respect to this question. In so doing, they presume great personal privilege at the expense of the responsibilities of the Senate as a whole, and at the expense of the constitutional structure of the Federal government.

Mr. President, exercising the constitutional option to restore Senate traditions would be an act of last resort. It would be undertaken only if every reasonable step to otherwise resolve this impasse is exhausted. At stake are the twin principles of separation of powers as well as checks and balances bedrock foundations for the Constitution itself. And at stake is our duty as Senators of advice and consent, to confirm a President's nominee or reject her, but at long last to give her a vote.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, the debate bounces back and forth, and we hear the complaints about the change in the system, one that has been in existence for some 200 years. It was formally adopted in the early part of the 20th century.

I see the fact that the traditions and rules of the Senate are, frankly, in deep jeopardy. The current majority leader is threatening to annihilate over 200 years of tradition in this Senate by getting rid of our right to extended debate. The Senate that will be here as a result of this nuclear option will be a dreary, bitter, far more partisan landscape, even though it obviously prevents us from operating with any kind of consensus. It will only serve to make politics in Washington much more difficult.

One has to wonder, what happened to the claims that were made so frequently, particularly in the election year 2000, when then-candidate Bush, now President, talked about being a uniter, not a divider? It has been constantly referenced. ''I want to unite the American people, not divide them.''

With this abuse of power, the majority is about to further divide our Nation with the precision of a sledgehammer.

I want the American people to understand what is going to happen on the floor of the Senate if things go as planned. Vice President CHENEY, whom we rarely see in this Chamber, is going to come here for the specific purpose of breaking existing rules for the operation of the Senate. He is going to sit in the Presiding Officer's chair and do something that, frankly, I don't remember in my more than 20 years in the Senate. He could intentionally misstate, if what we hear is what we are going to get, the rules of the Senate.

Think about the irony. Vice President CHENEY gets to help nominate Federal judges. Then when the Senate objects to the administration's choices, he is going to come over here and break our rules to let his judges through. Talk about abuse of power. The Founding Fathers would shudder at the thought of this scenario. It runs counter to the entire philosophy of our Constitution. Our Constitution created a system that they thought would make it impossible for a President to abuse his powers.

Tomorrow, we are going to see what amounts to a coup d'etat, a takeover right here in the Senate. The Senate, just like society at large, has rules. We make laws here and we brag about the fact that this is a country of laws. We make laws here and expect Americans to follow them. But now the majority leader wants the Senate to make it easier for the Republican Senators to change the rules when you don't like the way the game is going. What kind of an example does that set for the country? Some may ask if we don't follow our own rules, why should the average American follow the rules that we make here?

If the majority leader wants to change the rules, there is a legal way to do it. A controversial Senate rule change is supposed to go through the Rules Committee. Once it reaches the full Senate for consideration, it needs 67 votes to go into effect. But rather than follow the rules, Vice President CHENEY will break the rules from his position as the Presiding Officer and change the rules by fiat. In other words, we will see an attempt to overthrow the Senate as we know it.

Hopefully, some courageous Senators will step forward, vote their conscience, and put a stop to this once and for all. There are several people who disagree with their leader on the Republican side, and they have expressed their unwillingness to go through with this muscular takeover of the Senate.

It is unbefitting the body. President Bush and the majority leader want to get rid of the filibuster because it is the only thing standing between them and absolute control of our Government and our Nation. They think the Senate should be a rubberstamp for the President. That is not what our Founders intended. It is an abuse of power, and it is wrong, whether a Republican or a Democrat lives in the White House.

I say to the American people: Please, get past the process debate here. Let's not forget how important our Federal judges are. They make decisions about

what rights we have under our Constitution. They make decisions about whether our education and environmental laws will be enforced. They make decisions about whether we continue to have health care as we know it. And sometimes, let us not forget, they may even step in to decide a Presidential election.

The Constitution says the Senate must advise and consent before a President's judicial nominations are allowed to take the bench. It doesn't say advise and relent. It doesn't say consent first and then advise. As Democratic leader HARRY REID recently said: George Bush was elected President, not king.

The Founding Fathers, Washington, Jefferson, and Madison, did not want a king. And that is why the Constitution created the Senate as a check on the President's power. With terrible ideas like Social Security privatization coming from the President these days, the American people are thankful that we are here to stop it.

President Bush once famously said:

If this were a dictatorship, it'd be a heck of a lot easier, just so long as I'm the dictator.

I am hopeful that President Bush was kidding when he said that. But the President's allies don't seem to be. They want the Senate to simply approve every Bush nominee regardless of the record.

We have confirmed 208 of President Bush's nominees. But there are several we objected to because we believed they were too extreme. They voiced their opinions. This was not based on hearsay. It was based on things they said. They are too extreme to sit on the Federal bench.

The Republican side of the aisle calls this the tyranny of the minority. But in the Senate, who is the minority and who is the majority? When you do the math on the current Senate, you will find that the majority is actually in the minority. The minority is the majority. Here is what I mean: Majority or minority. Current Senate: Republican caucus, 55 Senators, they represent 144,765,000 Americans. The Democratic caucus has less Senators, 45 as opposed to 55, and they represent some 148,336,000 Americans. So where is the minority here?

In this chart each Senator is allotted one-half of his or her State's population, just to explain how we get there. What you find is that the minority in this body, the Democratic caucus, represents 3.5 million more people than does the majority. That is exactly why the Founding Fathers wanted to protect minority rights in the Senate because a minority of Senators may actually represent a majority of the people.

How do you discard that and say: Well, we are the majority? You don't own the place. It is supposed to be a consensus government, particularly in the Senate.

I make one last appeal to the majority leader: Don't take this destructive action.

I want the American people to understand one thing: The big fight here is because the people who will get these positions have lifetime tenure. That means they could be here 20, 30, or 40 years.

I have faith in the courage of my colleagues across the aisle. I hope they are going to put loyalty to their country ahead of loyalty to a political party.

I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. BAYH. Mr. President, I compliment my colleague from New Jersey for his eloquence and for his insight on the important role the filibuster has always played in building consensus in our society.

It is unfortunate that we are here. It is unfortunate for this institution. It is unfortunate for the Members of this body. It is unfortunate for our country and for the political process that governs us all.

Mr. President, let there be no illusions. There will be no winners here. All will lose. The victors, in their momentary triumph, will find that victory is ephemeral. The losers will nurture their resentments until the tables one day turn, as they inevitably will, and the recrimination cycle will begin anew.

This sorry episode proves how divorced from the reality of most America Washington and the elites that too often govern here have become. At a time when Americans need action on health care, the economy, deficit, national security, and at a time when challenges form around us that threaten to shape the future, we are obsessing about the rules of the Senate and a small handful of judges. At times like this, I feel more like an ambassador to a foreign nation than a representative of my home.

This episode feeds the cynicism and apathy that have plagued the American people for too long. It brings this institution and the process that has brought us here into disrepute and low esteem. No wonder so few of our citizens take the time to exercise even the most elementary act of citizenship—the act of going to the polls to vote.

Very briefly, let me say what this is all about, but let me begin by saying what it is most definitely not about. This is not about the precedents and history of this body. It has been interesting to sit silently and observe colleagues on both sides of the aisle make appeals to precedent and history, and both do so with equal passion. History will not provide an answer to this situation that confronts us. It is not about whether nominees get an up-or-down vote. In fact, it is about the threshold for confirmation that nominees should be held to, a simple majority or something more. It is not about whether the chief executive will have his way the vast majority of the time. This President has seen 96 percent, or more, of his nominees confirmed by this Senate, which is a high percentage by any reckoning. This debate is not about whether or not there are ideological or partisan tests being applied to nominees. I would assume that the 200-some nominees sent to us by this President are, for the most part, members of his party, that most share his ideology, and yet more than 200 have been confirmed. There are no litmus tests here.

Mr. President, this is really about the value we, as a people, place upon consensus in a diverse society. It is about the reason that the separation of powers and the balance of powers were created by the Founders of this Republic in the first place. And it is ultimately about whether we recall our own history and the understanding of human nature itself, the occasional passions and excesses and deals of the moment that lead us to places that threaten consensus and the very social fabric of this Republic. It is about the value we place upon restraint in such moments.

Is it unreasonable to ask more than a simple majority be required for confirmation to lifetime appointments to the courts of appeal or the Supreme Court of the United States, who will render justice and interpret the most fundamental, basic framing documents of this Nation? Should something more than a bare majority be required for lifetime appointments to positions of this importance and magnitude? I believe it should.

Should we be concerned about a lack of consensus on such appointees who will be called upon to rule upon some of the most profound decisions which inevitably touch upon the political process itself? I think my colleague, Senator LAUTENBERG, mentioned the decision in Gore v. Bush. And if a sizable minority of the American people come to conclude that individuals who are rendering these verdicts are unduly ideological or perhaps unduly partisan themselves, will this not undermine the respect for law and the political process itself and ultimately undermine our system of governance that brought us here? I fear it might. Essentially, aren't these concerns—respect for the rule of law, respect for the independence of the judiciary, the importance of building consensus, and the need in times of crisis to lay aside the passions of the moment and understand the importance of restraint on the part of the majority—aren't these concerns more fundamentally important to the welfare of this Republic than four or five individuals and the identities of those who will fill these vacancies? The answer to that must be, unequivocally, yes.

There are deeper concerns than even these, Mr. President. The real concerns that I have with regard to this debate have to do with the coarsening of America's politics. In the 6½ years I have been honored to serve in this body, there have been just two moments of true unity, when partisanship and rancor and acrimony were placed

aside. First was in the immediate aftermath of the first impeachment of a President since 1868 and the feeling that perhaps we had gone too far. The second was in the immediate aftermath of 9/11, when our country had literally been attacked and there was a palpable understanding that we were first not Republicans or Democrats, but first and foremost Americans. It is time for us to recapture that spirit once again.

Today, all too often, we live in a time of constant campaigns and politicking, an atmosphere of win at any cost, an aura of ideological extremism, which makes principled compromise a vice, not a virtue. Today, all too often, it is the political equivalent of social Darwinism, the survival of the fittest, a world in which the strong do as they will and the weak suffer what they must. America deserves better than that.

I would like to say to you, Mr. President, and to all my colleagues, that you, too, have suffered at our hands. Occasionally, we have gone too far. Occasionally, we have behaved in ways that are injudicious. I think particularly about the President's own brother, who was brought to the brink of personal bankruptcy because he was pursued in an investigation by the Congress, not because he had plundered his savings and loan, but because he happened to be the President's brother. Each of us is to blame, Mr. President. More importantly, each of us has a responsibility for taking us to the better place that the American people have a right to deserve.

There is a need for unity in this land once again. We need to remember the words of a great civil rights leader who once said: We may have come to these shores on different ships, but we are all in the same boat now.

We need to remember the truth that too many in public life don't want us to understand; that, in fact, we have more in common than we do that divides us. We are children of the same God, citizens of the same Nation, one country indivisible, with a common heritage forged in a common bond and a common destiny. It is about time we started behaving that way. We need to remember the words of Robert Kennedy, who was in my home State the day Martin Luther King was assassinated. Indianapolis was the only major city that escaped the violence of that day, most attributed by Kennedy's presence in our city. He went into Indianapolis in front of an audience that was mostly minority citizens. He went up on a truck bed and said: I am afraid I have some bad news. Martin Luther King was killed today. A gasp went up from the audience. He said: For those of you who are tempted to lash out in anger and violence, I can only say that I too had a relative who was killed. He too was killed by a white man. Kennedy went on to say that what America needs today in these desperate times is not more hatred, or more anger, or more divisiveness; what America needs today is more unity, more compassion, and more love for one another.

That was true in 1968; it is true today. The time has come for the sons and daughters of Lincoln and the heirs of Jefferson and Jackson to no longer wage war upon each other, but instead to take up again our struggles against the ancient enemies of man—ignorance, poverty, and disease. That is what has brought us here. That is why we serve.

Mr. President, we need to rediscover the deeper sense of patriotism that has always made this Nation such a great place, not as Democrats or Independents, not as residents of the South, or the East, or the West, not as liberals or conservatives, or those who have no ideological compass, but as one Nation, understanding the threats that face us, determined to lead our country forward to better times.

So I will cast my vote against changing the rules of this Senate for all of the reasons I have mentioned in my brief remarks and those that have been mentioned by speakers before me. But more than that, I will cast my vote in the profound belief that this is a rare opportunity to put the acrimony aside, put us on a better path toward more reconciliation, more understanding and cooperation for the greater good. And if in so doing, I and those of similar mind can drain even a single drop of blood or venom from the blood that has coarsed through the body of this politic for too long, we will have done our duty to this Senate and to the Republic that sent us here, and that is reward enough for me.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, first, I commend my colleague for his wise words. I thank Senator BAYH. This morning I had the occasion to meet with members of the press and the public at the Old State House in Providence, RI, the seat of Rhode Island Government for many years in the early days of this country. In fact, in 1790, George Washington and Thomas Jefferson enjoyed a banquet in that building to celebrate the Constitution of the United States—that careful balancing of majority power and minority rights.

Unfortunately, these days in Washington, we are on the verge of upsetting that balance, of using majority power to undermine minority rights. In doing so, we are stilling the voices of millions of Americans—the millions of Americans that we represent—and not just geographically represent—the poor, the disabled, those who fight vigorously for environmental quality—all of those individuals will see their voices diminished and perhaps extinguished if we choose this nuclear option.

The Senate was created to protect the minority. It was also clearly envisioned to serve as a check on Presidential power, particularly on the power to appoint judges. Indeed, it was in the very last days of the Constitutional Convention in 1787 that the Founding Fathers decided to move the power to appoint Federal judges from the control exclusively of the Senate to that of a process of a Presidential nominee with the advice and consent of the Senate.

Indeed, in those last days, there was a shift of power, but not a surrender of power. This Senate still has an extraordinary responsibility to review, to carefully scrutinize the records of those individuals who would serve for a lifetime on our Federal courts.

It is very important that the American people, when they come before the bar of Federal justice, stand before a judge of the United States, feel and know that that individual has passed a very high test, that that individual is not a Republican judge or a Democratic judge, not an ideologue of the right or left, but they received broad-based support in the Senate, and they stand not for party, but for law and the United States of America.

We are in danger of upsetting that balance, of putting on the court people who are committed to an ideological plan. We are seeing people who are being presented to us who will, I think, undermine that sense of confidence that the American people must have in the judges they face in the courts of this land.

Indeed, it is also ironic that today as we discuss this issue of eviscerating minority rights in the United States Senate, we hear our leaders talk about the necessity—the absolute necessity—of protecting the minority in Iraq. If you listen to the President, Secretary of State Rice, and others, they talk about how essential it is to ensure that there are real procedural protections for the Sunni minority in Iraq. In fact, what they are trying to do in Iraq they are trying to undo in America by stripping away those procedural protections that give the minority a real voice in our Government.

In a recent National Review article by John Cullinan, a former senior policy adviser to the U.S. Catholic Bishops, he said it very well. He posed a question in this way:

> Will Iraq's overwhelming Shiite majority accept structural restraints in the form of guaranteed protections for others? Or does the majority see its demographic predominance as a mandate to exercise a monopoly of political power?

This, in a very telling phrase, sums it up:

> Does a 60-percent majority translate into 100 percent of the political pie?

The question we will answer today, tomorrow, and this week: Does the 55-vote majority in the Senate translate to 100 percent of the political pie when it comes to naming Federal judges? Just as it is wrong in Iraq, I believe it is wrong here because without minority protections, without the ability of the minority to exercise their rights, to raise their voice, this process is

doomed to a very difficult and, I think, disastrous end.

We have today measures before us that threaten the filibuster, and I believe this is not the end of the story if this nuclear option prevails because I think the pressure by the interest groups that are pushing this issue—the far right who are demanding that this nuclear option be exercised—will not be satisfied by simply naming judges because that is just part of what we do. They will see in the days ahead, if this nuclear option succeeds, opportunities to strike out our ability to stop legislative proposals, to stop other Executive nominees. They will be unsatisfied and unhappy that in the course of debate and deliberation here, we are not willing to accept their most extreme views about social policy, about economic policy, about the world at large. The pressure that is building today will be brought to bear on other matters.

So this is a very decisive moment and a very decisive step. I hope we can avoid stepping over it into the abyss. I hope we can maintain the protections that have persisted in this Chamber in one form or another for 214 years. The rules give Senators many opportunities to express themselves. It is not just the cloture vote. There are procedures to call committee hearings, to call up nominees that have been appointed, that also give Senators an opportunity to express themselves.

I need not remind many people here that at least 60 of President Clinton's judicial nominees never received an up-or-down vote, and it is ironic, to say the least, that many who participated in that process now claim a constitutional right for an up-or-down vote on a Federal nominee to the bench.

In fact, according to the Congressional Research Service, since 1945, approximately 18 percent of judicial nominees have not received a final vote. By that measure, President Bush has done remarkably well by his nominees—218 nominees, 208 confirmations, a remarkable record, which shows not obstruction but cooperation; which shows that this Senate, acting together, with at least 60 votes, but still exercising its responsibility to carefully screen judges has made decisions that by a vast majority favor the President's nominees. That is not a record of obstruction, that is a record of responsibility.

Again, at the heart of this is not simply the interplay of Senators and politics. At the end of the day, we have to be able to demonstrate to the American public that if they stand before a Federal judge, they will be judged on the law; they will be judged by men and women with judicial temperament, who understand not only the law and precedent, but understand they have been given a responsibility to do justice, to demonstrate fairness.

If we adopt this new procedure and are able to ram through politically, ideologically motivated judges, that confidence in the fairness of federal judges might be fatally shaken and that would do damage to this country of immense magnitude.

The procedure that is being proposed is not a straightforward attempt to change the rules of the Senate because that also requires a supermajority. No, this is a parliamentary ploy, an end run around the rules of the Senate, a circumvention, and a circumvention that will do violence to the process here and, again, I think create a terrible example for the American public.

We have difficult choices before us. There are those who suggest that it is somehow unconstitutional not to provide an up-or-down vote. Where were they when the 60 judges nominated by President Clinton were denied an up-or-down vote? No, the rules of the Senate prevailed at that time, as they should prevail at this time because the Constitution clearly states that each House may determine the rules of its proceedings. And we have done that in a myriad of ways and will continue to do that. The right to unlimited debate in this Senate is one of the rights that has been protected by rules that have been in force for many years.

We are involved in a debate that has huge consequences for the country and for the Senate. I believe this institution must remain a place where even an individual Senator can stand up and speak in such a way and at such length that he not only arouses the conscience of the country, but, indeed, he or she may be able to deflect the country away from a dangerous path.

In the 1930s, President Roosevelt also had problems with the court system, he thought. He decided he would pack the courts. He would propose the expansion of the U.S. Supreme Court. Even though it was supported by the majority leader at that time, it was brought to this floor, and a small band of Senators stood up and spoke and convinced the public of the wrongness of that path and saved this country and saved President Roosevelt from a grave mistake.

Today, once again, we are debating the future of our judicial system, and I believe without the filibuster, we will make grave mistakes about who goes on our courts and what will be the makeup of those courts.

It might be that I have a particular fondness for the ability to represent those who are not numerous. I come from the smallest State, geographically, in the country, Rhode Island. We have two Senators, and we have two Members of the U.S. House of Representatives. But myself and my colleague, Senator CHAFEE, can stand up and speak and have the force of any of the larger States in this country. That is an essential part of our Federal system, an essential part of the Constitution that provided this wise balance between majority power and minority rights.

We are in danger of seeing that power—I believe arrogantly displayed—potentially undercutting the rights of one Senator or two Senators or eight Senators to stand up, to speak truth to power, to challenge the views, to awaken the conscience of the country, to prevent the accumulation of so much power that we slowly and perhaps imperceptibly slide to a position where there is no effective challenge, and that would do great harm to this constitutional balance.

Mr. President, this is a serious debate—a very serious debate. It is one in which I hope cooler heads prevail. It is one in which I hope we all step back and recognize that what we do will affect this institution and this country for a long time. I hope that we will refrain from invoking this nuclear option, that we recognize the traditions of the Senate not out of nostalgia but because they have served us well, and will continue to serve us well. They will ensure that we can speak not just as an exercise in rhetoric, but to have real effect in this body, the greatest deliberative assembly the world has ever known.

Mr. President, with that, I yield the floor to my colleague from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, President Harry Truman once said that the only thing new in the world is the history that you do not know. And so it is today with those who think this effort to amend the rules by breaking them, the nuclear option, is something new under the Sun.

This is not the first time that it has been tried. Sadly, there have been a few other efforts to amend the rules by fiat, but, and this is the crucial point, the Senate has never done it.

Whenever an effort was made to change the rule by fiat, it has been rejected by this body. There are procedures for amending the Senate's rules, and the Senate has always insisted that they be followed. In previous cases, the majority of Senators has stood up for that principle, often over the wishes of their own party's leader. It is my hope there will be a majority of such Senators tomorrow.

I entered some of that history in the CONGRESSIONAL RECORD last week, and I will not repeat it all now. One incident stands out and bears repeating, and after doing so, I will add a second chapter to that incident.

In 1949, Vice President Alben Barkley ruled that cloture applied to a motion to proceed to consideration of a bill. In other words, that rule XXII, which allows for the cutoff of debate, applied to a motion to proceed to consideration of a bill. The ruling was contrary to Senate precedent and against the advice of the Senate Parliamentarian and was made despite the fact that rule XXII, as it then existed, clearly provided only that the pending matter was subject to cloture.

The Senate rejected Vice President Barkley's ruling by a vote of 46 to 41. Significantly, 23 Democratic Senators, nearly half of the Democrats voting,

opposed the ruling by the Vice President of their own party. Later, the Senate, using the process provided by Senate rules, by a vote of 63 to 23, adopted a change in rule XXII to include a motion to proceed.

After that rule change, changed according to the procedures for amending rules, a supermajority could end a debate on the motion to proceed to a bill, for instance, as well as ending debate on the bill itself.

Last week, I quoted the words of one of the giants of Senate history, Senator Arthur Vandenberg of Michigan about that debate. This is what Senator Vandenberg said:

I continue to believe that the rules of the Senate are as important to equity and order in the Senate as is the Constitution to the life of the Republic, and that those rules should never be changed except by the Senate itself, in the direct fashion prescribed by the rules themselves.

Senator Vandenberg continued:

One of the immutable truths in Washington's Farewell Address, which cannot be altered even by changing events in a changing world, is the following sentence: ''The Constitution which at any time exists, until changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all.''

[T]he father of his country said to us, by analogy, ''the rules of the Senate which at any time exist until changed by an explicit and authentic act of the whole Senate are sacredly obligatory upon all.''

Senator Vandenberg continued:

When a substantive change is made in the rules by sustaining a ruling by the Presiding Officer of the Senate—and that is what I contend is being undertaken here—it does not mean that the rules are permanently changed. It simply means, that regardless of precedent or traditional practice, the rules, hereafter, mean whatever the Presiding Officer of the Senate, plus a simple majority of Senators voting at the time, want the rules to mean. We fit the rules to the occasion, instead of fitting the occasion to the rules. Therefore, in the final analysis, under such circumstances, there are no rules except the transient, unregulated wishes of a majority of whatever quorum is temporarily in control of the Senate.

And Senator Vandenberg added:

That, Mr. President, is not my idea of the greatest deliberative body in the world. . . . No matter how important [the pending issue's] immediate incidence may seem today, the integrity of the Senate's rules is our paramount concern, today, tomorrow, and so long as this great institution lives.

Senator Vandenberg continued:

This is a solemn decision—reaching far beyond the immediate consequence—and it involves just one consideration. What do the present Senate rules mean; and for the sake of law and order, shall they be protected in that meaning until changed by the Senate itself in the fashion required by the rules?

Senator Vandenberg eloquently summarized what is at the root of the nuclear option:

. . . [T]he rules of the Senate as they exist at any given time and as they are clinched by precedents should not be changed substantively by the interpretive action of the Senate's Presiding Officer, even with the transient sanction of an equally transient Senate majority. The rules can be safely changed only by the direct and conscious action of the Senate itself, acting in the fashion prescribed by the rules. Otherwise, no rule in the Senate is worth the paper that it is written on, and this so-called ''greatest deliberative body in the world'' is at the mercy of every change in parliamentary authority.

Mr. President, tonight, I do more than underscore the foresightful words of Senator Vandenberg, which are all the more significant because, as he made clear, he agreed that the Senate's cloture rule needed to be changed in the fashion proposed but not by using the illegitimate process proposed of amending our rules by fiat of a Presiding Officer.

There was even more to it—and it is again directly relevant to the proceeding that is pending. The year was 1948, 1 year before the Barkley ruling which I just described. Senator Vandenberg was President pro tempore of the Senate and was presented with a motion to end debate on a motion to proceed to consideration of an antipoll tax bill.

Senator Vandenberg ruled, as Presiding Officer, that the then-language of rule XXII, providing a procedure for terminating debate for ''measures before the Senate'' did not apply to cutting off debate on the motion to proceed to a measure, even though he thought that it should on the merits. So he ruled against what he believed in on the merits because of his deep belief in the integrity of the rules of the Senate. And in making that ruling, again while serving as the Presiding Officer, this is what Senator Vandenberg said.

The President pro tempore [that's him] finds it necessary . . . before announcing his decision, to state again that he is not passing on the merits of the poll-tax issue nor is he passing on the desirability of a much stronger cloture rule in determining this point of order. The President pro tempore is not entitled to consult his own predilections or his own convictions in the use of this authority. He must act in his capacity as an officer of the Senate, under oath to enforce its rules as he finds them to exist, whether he likes them or not. Of all the precedents necessary to preserve, this is the most important of them all. Otherwise, the preservation of any minority rights for any minority at any time would become impossible.

Senator Vandenberg continued:

The President pro tempore is a sworn agent of the law as he finds the law to be. Only the Senate has the right to change the law. The President pro tempore feels that he is entitled particularly to underscore this axiom in the present instance because the present circumstances themselves bring it to such bold and sharp relief.

He further stated, again referring to himself:

In his capacity as a Senator, the President pro tempore favors the passage of this antipoll-tax measure. He has similarly voted on numerous previous occasions. In his capacity as President pro tempore believes that the rules of the Senate should permit cloture upon the pending motion to take up the antipoll-tax measure, but in his capacity as President pro tempore, the senior Senator from Michigan is bound to recognize what he believes to be the clear mandate of the Senate rules and the Senate precedents; namely that no such authority presently exists.

So, again, Senator Vandenberg says that he believes the rules of the Senate should be changed to permit cloture on the pending motion to take up the antipoll-tax measure, but he is bound to recognize those rules. He cannot rule against what the rules clearly provide.

Senator Vandenberg then went on to say:

If the Senate wishes to cure this impotence it has the authority, the power, and the means to do so. The President pro tempore of the Senate does not have the authority, the power, or the means to do so except as he arbitrarily takes the law into his own hands. This he declines to do in violation of his oath. If he did so, he would feel that the what might be deemed temporary advantage by some could become a precedent which ultimately, in subsequent practice, would rightly be condemned by all.

I want to emphasize Senator Vandenberg's point for our colleagues. In the view of that great Senator, it would have been a violation of his oath of office to change the Senate rules by fiat; to rule, as Presiding Officer, contrary to the words of the Senate rules, even though he personally agreed with the proposition that the rule needed to be changed. Senator Vandenberg's ruling was a doubly difficult one because it left the Senate with no means of cutting off debate on the motion to proceed to a measure. The Senate then voted to change the rule a year or so later, with Senator Vandenberg's support, to allow for cutting off debate on the motion to proceed.

Senator Vandenberg's words and his example are highly relevant to us today. The majority leader's tactic to have the Presiding Officer by decree, by fiat amend our rules by exercising the so-called nuclear option is wrong. It has always been wrong. And the Senate has rejected it in the past.

I want to simply read that one last line of Senator Vandenberg one more time:

In his capacity as a Senator, the President pro tempore [Senator Vandenberg] favors the passage of the anti-poll-tax measure [before him].

He has voted for it on similar occasions, he said.

In his capacity as President pro tempore [he] believes the rules of the Senate should permit cloture on the pending motion to take up the . . . measure. But . . .

and this is the ''but'' which everybody in this Chamber should think about—

in his capacity as President pro tempore the senior Senator from Michigan is bound to recognize what he believes to be the clear mandate of the Senate rules and the Senate precedents; namely that no such authority presently exists.

For him to rule as President pro tempore against the clear meaning of rule XXII and our rules would be to take the law, the rules, into his own hands. Senator Vandenberg was not about to do that.

Rule XXII is clear. It takes 60 votes to end debate on any measure, motion, or other matter pending before the Senate. It does not make an exception for nomination of judges. The nuclear option is not an interpretation of rule XXII. It runs head long into the words of rule XXII and our rules. We in this body are the custodians of a great legacy. The unique Senate legacy can be lost if we start down the road of amending our rules by fiat of a Presiding Officer. We are going to be judged by future generations for what we do here this week. Arthur Vandenberg has been judged by history as well. If you want to know what the verdict of history is relative to Arthur Vandenberg, look up when we leave this Chamber at Arthur Vandenberg's portrait in the Senate reception room alongside of just six other giants for more than 215 years of Senate history.

As the present-day custodians of the great Senate tradition, we should uphold that tradition by rejecting an attempt to change the rules by arbitrary decree of the Presiding Officer instead of by the process in our rules for changing our rules. We must reject that attempt to rule by fiat instead of by duly adopted rules of the Senate. In that way, we will pass on to those who follow us a Senate that is enhanced, not diminished, by what we do here this week.

Mr. ALEXANDER. Mr. President, I would like to take a moment to remind my colleagues across the aisle just what the Constitution has to say about the confirmation of judges.

In a recent speech on the filibuster of President Bush's judicial nominees, I cited the actions of Senator BYRD when he was majority leader in 1979 as justification for the proposed constitutional option. However, the historical precedent for the actions the Minority is forcing the majority to take goes much further back than even the tenure of the Senator from West Virginia.

The Senate has the power to confirm or deny the President's judicial nominees because the Constitution explicitly grants us that power. Article II, section 2 reads:

> He [the president] shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, which shall be established by law.

The President gets to nominate a judge, but only with the consent of the Senate is that judge actually appointed to serve.

The Constitution is not totally clear on the surface as to what should constitute ''advice and consent'' by the Senate. But, fortunately, our Founding Fathers provided us with not just a Constitution but with a whole raft of writings that help us understand just what they were thinking when they drafted it. Those records confirm, I believe, that they were not concerned with a clash between political parties when they wrote the Constitution, but with the balance of power between the executive, legislative, and judicial branches.

The history of the ''advice and consent'' clause suggests that the Founders were uncomfortable with either branch completely controlling the nomination of judges. As a result, they found a compromise that sought to prevent either the executive or the legislative branch from dominating the nomination process.

In the Constitutional Convention of 1787, there was lengthy discussion about who should appoint judges to the bench—the executive or the legislative branch.

After extensive debate, the delegates to the Constitutional Convention rejected the possibility that the power to elect judges would reside exclusively with one body or another. On June 5, 1787, the Records of the Federal Convention record James Madison's thoughts on the issue:

> Mr. Madison disliked the election of the Judges by the Legislature or any numerous body. Besides the danger of intrigue and partiality, many of the members were not judges of the requisite qualifications. . . . On the other hand he was not satisfied with referring the appointment to the Executive.

Madison and others were concerned that vesting the sole power of appointment in the executive would lead to bias and favoritism.

In the end, the Framers of the Constitution arrived at the language I just read. Should there be any doubt as to what was intended, Alexander Hamilton and others provided us with the Federalist papers. In Federalist 76, Hamilton discusses the nominations clause:

> . . . his [referring to the president] nomination may be overruled: this it certainly may, yet it can only be to make a place for another nomination by himself. The person ultimately selected must be the object of his preference. . . .

Let me emphasize that—Hamilton says the person elected is ultimately the object of the president's preference. That suggests to me that it is not up to the Senate to demand that nominees be withdrawn and that others be nominated in accordance with the leadership in the Senate or the home State senators of the nominee. It sounds to me like the Framers intended for the president to choose and then the Senate to either reject or accept the nominee.

However, I would argue that we don't even need to look to Hamilton to decide that the eventual appointee should be the object of the president's preference. Look where the power to nominate and appoint is placed in the Constitution—in article II, which sets out the powers of the President—not Congress.

In Federalist 76, Hamilton goes on to describe the role of the Senate:

> To what purpose then require the cooperation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though, in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity.

Nowhere in that description of the Senate's role does it suggest that the Senate is supposed to reject nominations based on judges' views of the issues. It suggests that we are here to prevent the president from appointing only nominees from Texas, from appointing only friends or campaign contributors, or from otherwise abusing this power. It does not suggest that we should go through a lengthy process of trying to anticipate how a particular judge would rule on all future cases that may come before him or her.

In fact, given that it was the intent of the Founders to create an appointments process that would allow for the appointment of judges who could serve as a check on the other two branches, I think they would be appalled to think that the Senate might be prepared to block any judges that will not rule on abortion or gay marriage or the reinsertion of a feeding tube in the way the Senate happens to favor at any one time. That sounds to me like anything but an independent judiciary branch. What's next? Will senators ask judges how they will rule on pending bills and support only those judges who will uphold the laws passed by this body?

The role of the Senate having been established, I also want to address the mechanism by which we confirm these judges.

The issue before us centers around whether the Constitution requires a simple majority or a supermajority to confirm judicial nominations. Once again, an analysis of the history suggests that it was the intention of the Framers to provide for only a simple majority of the Senate to confirm nominees.

Look at the language of all of article II, section 2. In the clause immediately before the nominations clause, the Constitution specifically calls for two-thirds of the Senate to concur. In the nominations clause, there is no such provision.

I don't believe that this is an inadvertent omission. During the drafting of the Constitution, Roger Sherman of Connecticut argued at great length for the insertion of a comma instead of a semicolon at one point to make a section on Congressional powers crystal clear. I find it hard to believe that in the meantime the Framers deliberately left this section vague.

In fact, the debate around this section of the bill suggests that there was a specific discussion about how many Senate votes would be required to confirm judges. On July 18, 1787, James Madison proposed a plan that would allow judges to be confirmed with only one-third of the Senate. The record of the debate states that Madison felt that such a requirement would ''unite the advantage of responsibility in the

Executive with the security afforded in the second branch against any incautious or corrupt nomination by the Executive.''

So that sounds to me like the Framers viewed the role of the Senate in such a way as to consider the possibility that even less than a majority could be required to confirm a judge—because the Senate was there as backstop to prevent the appointment of political cronies and unfit characters. That is a far cry from the role my colleagues across the aisle would like for us to play today—that of co-equal to the president in the process and capable of demanding nominees that would rule in favor of their positions.

Madison's language was not adopted, but the language that was adopted certainly cannot be read to require a supermajority. You don't have to just accept my interpretation of this language. Shortly after the Constitutional Convention, Justice Joseph Story—appointed to the Supreme Court by President James Madison—wrote his Commentaries on the Constitution and stated explicitly:

> The president is to nominate, and thereby has the sole power to select for office; but his nomination cannot confer office, unless approved by a majority of the Senate.

Judges are to be confirmed by a majority vote. That is the bottom line. That decision was made long before the first Senate was gaveled into session and before any thought was given to rules of procedure and filibusters.

You will hear during this debate ominous warnings from my colleagues across the aisle about ''the tyranny of the majority.'' You will hear that the Founders intended for the Senate to protect the rights of the minority. You will hear that our Founders created the Senate as a check on the popular whim of the day, as a place to slow down legislation and ensure that only the very best laws are passed. This is true. George Washington is said to have said of the Senate that ''we pour legislation into the senatorial saucer to cool it.''

But the Founders did not create the Senate to give a minority of Senators the power to stop the President from appointing judges. Quite the opposite. As I have outlined, James Madison and Alexander Hamilton, two of the greatest minds that helped design our Constitution, put it down in writing for us that judges are to be confirmed by a majority vote.

So it is not a new idea for the majority in the Senate to believe they should have the power to confirm the president's nominees. It is a very old idea that dates back to the founding of our country.

It is a new idea, however, that a minority should have the power to deny the President's choice. The minority used the filibuster rule in the Senate 10 times in the last Congress to create this new idea that 40 percent should be able to thwart the will of both the President and the majority. It is time for us to restore the Senate to the operation envisioned by the Founding Fathers more than 200 years ago that the President's judicial nominees should be able to be confirmed by majority vote.

Mr. President, 2 years ago, my first speech as a Member of the Senate was on the topic of judges. I have spoken many times since then on this same subject. I would like to not talk about it again—other than to discuss the merits of a particular judge before having an up-or-down vote on confirmation.

That is the way we have functioned in the past, it is the way the Founders meant for us to operate, and it is the way the American people should demand their elected representatives work together.

Mr. LEAHY. Mr. President, I have made no secret how I regard the Republican Leader's bid for one-party rule through his insistence to trigger the ''nuclear option.'' I view it as a misguided effort that would undercut the checks and balances that the Senate provides in our system of government, undermine the rights of the American people, weaken the independence and fairness of the Federal courts, and destroy minority rights here in the Senate. In that regard, I thank the Senators who joined in the debate on Friday for their contributions, including in particular Senator DODD, Senator LEVIN, Senator JEFFORDS, Senator DAYTON, Senator LINCOLN, Senator LIEBERMAN and Senator DORGAN. Theirs were outstanding statements.

The Senate is not the House. It was not intended to function like the House. The ''Great Compromise'' of the Constitutional Convention more than 200 years ago was to create in the Senate a different legislative body from the House of Representatives. Those fundamental differences include equal representation for each State in accordance with article I, section 3. Thus, Vermont has equal numbers of Senators to New York and Idaho, as compared to California. The Founders intended this as a vital check. Representation in the Senate is not a function of population or based on the size of a State or its mineral wealth.

Another key difference is the right to debate in the Senate. The filibuster is quintessentially a Senate practice. James Madison wrote in Federalist No. 63 that the Senate was intended to provide ''interference of some temperate and respectable body of citizens'' against ''illicit advantage'' and the ''artful misrepresentations of interested men.'' It was designed and intended as a check and to provide balance. In no way do I intend to disrespect the House of Representatives by these remarks. I respect the House. I respect its traditions. But it is the Senate that protects the minority and thereby serves a special role in our national government.

Others have alluded to some valuable history lessons during the course of this debate. One of those lessons comes from 1937, the last time a President sought to pack the courts. President Franklin Roosevelt was coming off a landslide victory over Alf Landon. He attempted to pack the Supreme Court. Democrats—Senators from President Roosevelt's own party—stood up to him. In May 1937 the Senate Judiciary Committee criticized the Roosevelt court-packing plan as an effort by the executive branch to dominate the Judicial Branch with the acquiescence of the legislative branch. The Senate stood up for checks and balances and protected the independence of the judiciary. It is time again for the Senate to stand up, and I hope that there are Senators of this President's party who have the courage to do so, today.

The Constitution nowhere says that judicial confirmations require 51 votes. Indeed, when Vermont became the 14th State in 1791, there were then only 28 Members of the U.S. Senate. More recently, Supreme Court Justices Sherman Minton, Louis Brandeis, and James McReynolds were confirmed with 48 votes, 47 votes and 44 votes, respectively.

As the Republican leader admitted in debate with Senator BYRD last week, there is also no language in the Constitution that creates a right to a vote for a nomination or a bill. If there were such a right, it was violated more than 60 times when Republicans refused to consider President Clinton's judicial nominees. According to the Congressional Research Service more than 500 judicial nominations for circuit and district courts have not received a final Senate vote between 1945 and 2004—over 500—that is 18 percent of those nominations. By contrast, this President has seen more than 95 percent of his judicial nominations confirmed, 208 to date.

The Constitution provides for the Senate to establish its own rules in accordance with article I, section 5. The Senate rules have for some time expressly provided for nominations not acted upon by the Senate—''neither confirmed nor rejected during the session at which they are made''—being ''returned by the Secretary to the President.'' That is what happened to those 500 nominations over the last 60 years.

What the Republican leadership is seeking to do is to change the Senate rules not in accordance with them but by breaking them. It is ironic that Republican Senators, who prevented votes on more than 60 of President Clinton's judicial nominees and hundreds of his executive branch nominees because one anonymous Republican Senator objected, now contend that the votes on nominations are constitutionally required.

No President in our history, from George Washington on, has ever gotten all his judicial nominees confirmed by the Senate. President Washington's nomination of John Rutledge to be Chief Justice of the U.S. Supreme Court was not confirmed by the Senate. Senate Republicans now deny the

filibusters they attempted against President Clinton's judicial nominees and they ignore the filibusters they succeeded in using against his executive branch nominees. They seek not only to rewrite the Senate's rules by breaking them but to rewrite history. I ask that a copy of the recent article by Professor John J. Flynn be included in the RECORD.

Helping to fuel this rush toward the nuclear option is new vitriol that is being heaped both upon those who oppose a handful of controversial nominees and oppose the nuclear option, as well as on the judiciary itself. We have seen threats from House Majority Leader TOM DELAY and others about mass impeachments of judges with whom they disagree. We have seen Federal judges compared to the KKK, called ''the focus of evil,'' and we have heard those supporting this effort quote Joseph Stalin's violent answer to anyone who opposed his totalitarianism by urging the formula of ''No man, No problem.'' Stalin killed those with whom he disagreed. That is what the Stalinist solution is to independence. Regrettably, we have heard a Senator trying to relate the recent rash of courtroom violence and the killings of judges and judges' family members with philosophical differences about the way some courts have ruled.

This debate in the Senate last week started with rhetoric from the other side accusing disagreeing Senators of seeking to ''kill'' and ''assassinate.'' Later in the week another member of the Republican leadership likened Democratic opponents of the nuclear option to Adolph Hitler. Still another Republican Senator accused Senators who oppose judicial nominees of discriminating against people of faith. This is in direct violation of the Republican leader's own statement at the outset of this debate that the rhetoric in this debate should ''follow the rules, and best traditions of the Senate.'' This has sunk too low and it has got to stop.

It is one thing for those outside the Senate to engage in incendiary rhetoric. In fact, I would have expected Senators and other leaders to call for a toning down of such rhetoric rather than participating and lending support to events that unfairly smear Senators as against people of faith. Within the last several days, the Rev. Pat Robertson called Federal judges, quote, ''a more serious threat to America then Al Qaeda and the Sept. 11 terrorists'' and ''more serious than a few bearded terrorists who fly into buildings.'' He went on to proclaim the Federal judiciary ''the worst threat American has faced in 400 years worse than Nazi Germany, Japan and the Civil War.'' This is the sort of incendiary rhetoric that Republican Senators should be disavowing. Instead, they are adopting it and exploiting it in favor of their nuclear option.

It is base and it is wrong, and just the sort of overheated rhetoric that we should all repudiate. Not repeating such slander is not good enough. We should reject it and do so on a bipartisan basis. Republicans as well as Democrats should affirmatively reject such harsh rhetoric. It does not inspire; it risks inciting.

Last week as we began this debate, the Judiciary Committee heard the testimony of Judge Joan Lefkow of Chicago. She is the Federal judge whose mother and husband were murdered in their home. She counsels: ''In this age of mass communication, harsh rhetoric is truly dangerous. [F]ostering disrespect for judges can only encourage those that are on the edge, or on the fringe, to exact revenge on a judge who ruled against them.'' She urged us as public leaders to condemn such rhetoric. I agree with her. She is right and she has paid dearly for the right to say so.

Those driving the nuclear option engage in a dangerous and corrosive game of religious McCarthyism, in which anyone daring to oppose one of this President's judicial nominees is branded as being anti-Christian, or anti-Catholic, or ''against people of faith.'' It continued over the last several weekends, it continued last week on the Senate floor. It is wrong; it is reprehensible. These charges, this virulent religious McCarthyism, are fraudulent on their face and destructive.

Injecting religion into politics to claim a monopoly on piety and political truth by demonizing those you disagree with is not the American way. Injecting politics into judicial nominations, as this administration has done, is wrong, as well.

I would like to keep the Senate safe and secure and in a ''nuclear free'' zone. The partisan power play now underway by Republicans will undermine the checks and balances established by the Founders in the Constitution. It is a giant leap toward one-party rule with an unfettered Executive controlling all three branches of the Federal Government. It not only will demean the Senate and destroy the comity on which it depends; it also will undermine the strong, independent Federal judiciary that has protected the rights and liberties of all Americans against the overreaching of the political branches.

Our Senate Parliamentarian and our Congressional Research Service have said that the so-called nuclear option would go against Senate precedent. Do Republicans really want to blatantly break the rules for short-term political gain? Do they really desire to turn the Senate into a place where the parliamentary equivalent of brute force is what prevails?

Just as the Constitution provides in article V for a method of amendment, so, too, the Senate rules provide for their own amendment. Sadly, the current crop of partisans who are seeking to limit debate and minority rights in the Senate have little respect for the Senate, its role in our government as a check on the executive, or its rules. Republicans are in the majority in the Senate and chair all of its committees, including the Rules Committee. If Republicans have a serious proposal to change the Senate rules, they should introduce it. The Rules Committee should hold meaningful hearings on it and consider it and create a full and fair record so that the Senate itself would be in position to consider it. That is what we used to call ''regular order.'' That is how the Senate is intended to operate, through deliberative processes and with all points of view being protected and being heard.

That is not how the ''nuclear option'' will work. It is intended to work outside established precedents and procedures. Use of the ''nuclear option'' in the Senate is akin to amending the Constitution not by following the procedures required by article V but by proclaiming that 50 Republican Senators and the Vice President have determined that every copy of the Constitution shall contain a new section—or not contain some of those troublesome amendments that Americans like to call the Bill or Rights. That is wrong. It is a kind of lawlessness that each of us should oppose. It is rule by the parliamentary equivalent of brute force.

Never in our history has the Senate changed its governing rules except in accordance with those rules. I was a young Senator in 1975 when Senate rule XXII was last amended. It was amended after cloture on proceeding to the resolution to change the rule was invoked in accordance with rule XXII itself and after cloture on the resolution was invoked in accordance with the requirement then and still in our rules that ending debate on a rule change requires the concurrence of two-thirds of the Senate. That was achieved in 1975 due in large part to the extraordinary statesmanship and leadership of Senator BYRD. And then the Senate adopted the resolution, which I supported. The resolution we adopted reduced the number of votes needed to end debate in the Senate from two-thirds to three-fifths of those Senators duly chosen and sworn. The Senate has operated under these rules to terminate debate on legislative matters and nominations for the last 30 years. Before that the Senate's requirement to bring debate to a close was even more exacting and required more Senators to vote to end a filibuster. I say, again, that the change in the Senate rules was accomplished in accordance with the Senate rules and the way in which they provide for their own amendment.

There has been a good deal of chest pounding on the other side of the aisle recently about the supposed sanctity of 51 votes to prevail, to end debate, to amend the Senate rules. Senators know that, in truth, there are a number of instances in which 60 votes are needed to prevail. These are not theoretical matters, but matters constantly used by Republican leaders to thwart ''majority'' votes on matters they do not like.

The most common 60-vote threshold is what is required to prevail on a motion to waive a series of points of orders arising from the Budget Act and budget resolutions. In fact, just this year in the deficit-creating budget passed by the Senate with Republican votes, they created new points of order that will require 60 votes in order to be overcome.

There are dozens of recent examples, but a few should make this concrete. In March 2001, a majority of Senators voted to establish a Social Security and Medicare ''lockbox.'' That was a good idea. Had we been able to prevail then, maybe some of the problems being faced by the Social Security trust fund and Medicare might have been averted or mitigated. But even though 53 Senators voted to waive the point of order and create the lockbox, it was not adopted by the Senate.

There is another example from soon after the 9/11 attacks. A number of us were seeking to provide financial assistance, training and health care coverage for aviation industry employees who lost their jobs as a result of the terrorist attacks. We had a bipartisan coalition of more than 50 Senators; it was, as I recall, 56. But the votes of 56 Senators were not sufficient to end the debate and enact that assistance.

I also remember an instance in October 2001, when I chaired the Foreign Operations Subcommittee of the Senate Appropriations Committee. I very much wanted to have the Senate do our job and complete our consideration of the funding measure necessary to meet the commitments made by President Bush to foreign governments and to provide life-saving assistance around the world. We voted on whether the Senate would be allowed to proceed to consider the bill—not to pass it, mind you, just to proceed to debate it. Republicans objected to considering the bill both times. We were required to make a formal motion to proceed to the bill. Then minority Senators, Republican Senators, filibustered proceeding to consideration of the bill. We were required to petition for cloture to ask the Senate to agree to end the debate on whether to proceed to consider the bill and begin that consideration. Fifty Senators voted to end the debate. Only 47 Senators voted to continue the filibuster. Still, the majority, with 50 votes to 47 votes did not prevail. Although we had a majority, we failed and the Senate did not make progress.

It happened again, in the summer of 2002, a bipartisan majority here in the Senate wanted to make progress on hate crimes legislation. The Senate got bogged down when the bill was filibustered. The effort to end the debate and vote up or down on the bill got 54 votes, 54 to 43. Fifty Senators voted to end the debate. Only 43 Senators voted to continue the filibuster. Did the majority prevail? No. The bill was not passed.

More recently, in 2004, 59 Senators supported a 6-month extension of a program providing unemployment benefits to individuals who had exhausted their State benefits. Those 59 Senators were not enough of a majority to overcome a point of order and provide the much-needed benefits for people suffering from extensive and longstanding unemployment. The vote was 59 to 40, but that was not a prevailing majority.

Around the same time in 2004 we tried to provide the Federal assistance needed to fund compliance with the Individuals with Disabilities Education Act. Although 56 Senates voted in support and only 41 in opposition, that was not enough to overcome a point of order. The vote was 56 to 41, but that was not a sufficient majority.

Just last month, too recently to have been forgotten, there was an effort to amend the emergency supplemental appropriations bill to include the bipartisan Agricultural Jobs bill that Senator CRAIG has championed. That amendment was filibustered and the Senate voted whether to end debate on the matter. The vote was 53 in favor of terminating further debate and proceeding to consider this much needed and long overdue measure. Were those 53 Senators, Republicans and Democrats, enough of a majority to have the Senate proceed to consider an up or down vote on the AgJobs bill to help our local industries? No, here, again, the Republican leadership prevailed and prevented consideration of the bipartisan measure with only 45 votes.

Every Senator knows, and others who have studied the Senate and its practices to protect minority rights, know that the Senate rules retained a provision that requires a two-thirds vote to end debate on a proposed change to the Senate rules. Thus, rule XXII provides that ending debate on ''a measure or motion to amend the Senate rules'' takes ''two-thirds of the Senators present and voting.'' If all 100 Senators vote, that means that 67 votes are required to end debate on a proposal to amend the Senate rules. In 1975, for example, the vote to end debate on the resolution I have spoken about to change the Senate rules was 73 to 21.

Every Senator knows that for the last 30 years, since we lowered the cloture requirement in 1975, it takes ''three-fifths of the Senators duly chosen and sworn,'' or 60 votes to end debate on other measures and matters brought before the Senate. Just recently there was a filibuster on President Bush's nomination to head the Environmental Protection Agency, Douglas Johnson. Sixty-one Senators voted to end that filibuster, to bring that debate to a close, and Mr. Johnson was confirmed. I voted for cloture and for Mr. Johnson. Despite Republican filibusters of Dr. Henry Foster to be the Surgeon General, Sam Brown to be an ambassador and others during the Clinton years, I considered the matter on its merits, as I always try to do, and voted to provide the supermajority needed for Senate action.

So when Republican talking points trumpet the sanctity of 51 votes, Senators know that the Republican majority insists upon 60-vote thresholds all the time, or rather all the time that it is in their short-term interests.

Finally, Mr. President, for purposes of the record, I need to set the record straight, again. I have done so periodically, including most recently on May 9, 2005, and toward the end of the last session of Congress on November 23, 2004.

Unlike the frog in the water who fails to notice the heat slowly rising until he finds himself boiling, Democrats have been warning for years that the Republican destruction of Senate rules and traditions was leading us to this situation. The administration and its facilitators in the Senate have left Democrats in a position where the only way we could effectively express our opposition to a judicial nominee was through the use of the filibuster.

We did not come to this crossroads overnight. No Democratic Senator wanted to filibuster, not a one of us came to those votes easily. We hope we are never forced by an aggressive Executive and compliance majority into another filibuster for a judicial nominee, again. The filibusters, like the confrontation that the Senate is being forced into over the last several days, are the direct result of a deliberate attack by the current administration and its supporters here in the Senate against the rules and traditions of the Senate. Breaking the rules to use the Republican majority to gut Senate rule XXII and prohibit filibusters that Republicans do not like is the culmination of their efforts. That is intended to clear the way for this President to appoint a more extreme and more divisive choice should a vacancy arise on the Supreme Court.

This is not how the Senate has worked or should work. It is the threat of a filibuster that should encourage the President to moderate his choices and work with Senators on both sides of the aisle. Instead, this President has politicized the process and Senate Republicans have systematically eliminated every other traditional protection for the minority. Now their target is the Senate filibuster, the only tool that was left for a significant Senate minority to be heard.

Under pressure from the White House, over the last 2 years, the former Republican chairman of the Judiciary Committee led Senate Republicans in breaking with longstanding precedent and Senate tradition with respect to handling lifetime appointments to the Federal bench. With the Senate and the White House under control of the same political party we have witnessed one committee rule after another broken or misinterpreted away. The Framer's of the Constitution warned against the dangers of such factionalism, undermining the structural separation of powers. Republicans in the Senate have utterly failed to defend this institution's role as a check on the President in the area of nominations. It surely

weakens our constitutional design of checks and balances.

As I have detailed over the last several years, Senate Republicans have had one set of practices to delay and defeat a Democratic President's moderate and qualified judicial nominations and a different playbook to rubberstamp a Republican President's extreme choices to lifetime judicial positions. The list of broken rules and precedents is long—from the way that home State Senators were treated, to the way hearings were scheduled, to the way the committee questionnaire was unilaterally altered, to the way the Judiciary Committee's historic protection of the minority by committee rule IV was repeatedly violated. In the last Congress, the Republican majority of the Judiciary Committee destroyed virtually every custom and courtesy that had been used throughout Senate history to help create and enforce cooperation and civility in the confirmation process.

We suffered through 3 years during which Republican staff stole Democratic files off the Judiciary computers reflecting a ''by any means necessary'' approach. It is as if those currently in power believe that that they are above our constitutional checks and balances and that they can reinterpret any treaty, law, rule, custom or practice they do not like or they find inconvenient.

The Constitution mandates that the President seek the Senate's advice on lifetime appointments to the Federal bench. Up until 4 years ago, Presidents engaged in consultation with home State Senators about judicial nominations, both trial court and appellate nominations. This consultation made sense: Although the judgeships are Federal positions, home State officials were best able to ensure that the nominees would be respected. The structure laid out by the framers for involving the Senate contemplated local involvement in the appointments, and for almost 200 years, with relatively few exceptions, the system worked. This administration, by contrast, rejects our advice but demands our consent.

The sort of consultation and accommodation that went on in the Clinton years is an excellent example. The Clinton White House went to great lengths to work with Republican Senators and seek their advice on appointments to both circuit and district court vacancies. There were many times when the White House made nominations at the direct suggestion of Republican Senators, and there are judges sitting today on the Ninth Circuit and the Fourth Circuit, in the district courts in Arizona, Utah, Mississippi, and many other places because President Clinton listened to the advice of Senators in the opposite party. Some nominations, like that of William Traxler to the Fourth Circuit from South Carolina; Barbara Durham and Richard Tallman to the Ninth Circuit from Washington; Stanley Marcus to the Eleventh Circuit from Florida; Ted Stewart to the District Court in Utah; James Teilborg to the District Court in Arizona; Allen Pepper to the District Court in Mississippi; Barclay Surrick to the District Court in Pennsylvania, and many others were made on the recommendation of Republican Senators. Others, such as President Clinton's two nominations to the Supreme Court, were made with extensive input from Republican Senators. For evidence of this, just look at ORRIN HATCH's book ''Square Peg,'' where he tells the story of suggesting to President Clinton that he nominate Ruth Bader Ginsburg and Stephen Breyer to the Supreme Court and of warning him off of other nominees whose confirmations would be more controversial or politically divisive.

In contrast, since the beginning of its time in the White House, this Bush administration has sought to overturn traditions of bipartisan nominating commissions and to run roughshod over the advice of Democratic Senators. They changed the systems in Wisconsin, Washington, and Florida that had worked so well for so many years. Senators GRAHAM and NELSON were compelled to write in protest of the White House counsel's flaunting of the time-honored procedures for choosing qualified candidates for the bench. They ignored the protests of Senators like BARBARA BOXER and John Edwards who not only objected to the unsuitable nominee proposed by the White House, but who, in attempts to reach a true compromise, also suggested Republican alternatives. Those overtures were flatly rejected.

Indeed, the problems we face today in Michigan are a result of a lack of consultation with that State's Senators. The failure of the nomination of Claude Allen of Virginia to a Maryland seat on the Fourth Circuit shows how aggressive this White House has been. Now, the White House counsel's office will say it informs Democratic Senators' offices of nominations about to be made. Do not be fooled. Consultation involves a give and take, a back and forth, an actual conversation with the other party and an acknowledgement of the other's position. That does not happen.

The lack of consultation by this President and his nominations team resulted in a predictable outcome—a number of instances where home State Senators withheld their consent to nominations. The next action, however, was unpredictable and unprecedented. The former Republican chairman of the Judiciary Committee went ahead, ignored his own perfect record of honoring Republican home State Senators' objections to President Clinton's nominees and scheduled hearings nonetheless. In defense of those hearings we have heard how other chairmen, Senators KENNEDY and BIDEN, modified the committee's policies to allow for more fairness in the consideration of a more diverse Federal bench. That is not what the former Republican chairman was doing, however. His was a case of double standards—one set of rules and practices for honoring Republican objections to President Clinton's nominees and another for overriding Democratic objections to President Bush's.

While it is true that various chairmen of the Judiciary Committee have used the blue-slip in different ways, some to maintain unfairness, and others to attempt to remedy it, it is also true that each of those chairmen was consistent in his application of his own policy—that is, until 2 years ago. When a hearing was held for Carolyn Kuhl, a nominee to the Ninth Circuit from California who lacked consent from both of her home State Senators, that was the first time that the former chairman had ever convened a hearing for a judicial nominee who did not have two positive blue slips returned to the committee. The first time, ever. It was unprecedented and directly contrary to the former Republican chairman's practices during the Clinton years.

Consider the two different blue slips utilized by the former Republican Chairman: one used while President Clinton was in office, and one used after George W. Bush became the President. These pieces of blue paper are what then-Chairman HATCH used to solicit the opinions of home-state Senators about the President's nominees. When President Clinton was in office, the blue slip sent to Senators, asked their consent. On the face of the form was written the following: ''Please return this form as soon as possible to the nominations office. No further proceedings on this nominee will be scheduled until both blue slips have been returned by the nominee's home state senators.''

Now consider the blue slip when President Bush began his first term. That form sent out to Senators was unilaterally changed. The new Republican blue slip said simply: ''Please complete the attached blue slip form and return it as soon as possible to the committee office.'' That change in the blue slip form marked the about-face in the direction of the policy and practice used by the former Republican chairman once the person doing the nominating was a Republican.

I understand why Republican Senators want to have amnesia when it comes to what happened to so many of President Clinton's nominees. The current Republican chairman calculates that 70 of President Clinton's judicial nominees were not acted upon. One of the many techniques used by the former Republican chairman was to enforce strictly his blue slip policy so that no nominee to any court received a hearing unless both home State Senators agreed to it. Any objection acted as an absolute bar to the consideration of any nominee to any court. No time limit was set for returning the blue slip. No reason had to be articulated. In fact, the former Republican chairman cloaked the matter in secrecy

from the public. I was the first Judiciary chairman to make blue slips public. During the Clinton years home State Senators' blue slips were allowed to function as anonymous holds on otherwise qualified nominees. In the 106th Congress, in 1999–2000, more than half of President Clinton's circuit court nominees were denied confirmation through such secret partisan obstruction, with only 15 of 34 confirmed in the end. Outstanding and qualified nominees were never allowed a hearing, an up or down vote in committee vote or on the Senate floor. These nominees included the current dean of the Harvard Law School, a former attorney general from Iowa, a former law clerk to Chief Justice Rehnquist and many others—women, men, Hispanics, African Americans and other minorities, an extensive collection of qualified nominees.

Another longstanding tradition that was broken in the last two years was a consistent and reasonable pace of hearings. Perhaps it is not entirely accurate to say the tradition had been respected during the Clinton administration, since during Republican control months could go by without a single hearing being scheduled. But as soon as the occupant of the White House changed and a Republican majority controlled the committee that all changed. In January, 2003, one hearing was held for three controversial circuit court nominees, scheduled to take place in the course of a very busy day in the Senate. There was no precedent for this in the years that Republicans served in the majority and a Democrat was in the White House. In 6 years during the Clinton administration, never once were three circuit court nominees, let alone three very controversial ones, before this body in a single hearing. But it was the very first hearing that was scheduled by the former Republican chairman when he resumed his chairmanship. That first year of the 107th Congress, with a Republican in the White House, and a Republican chairman of the Judiciary Committee, the Republican majority went from idling—the restrained pace it had said was required for Clinton nominees—to overdrive for the most controversial of President Bush's nominees.

When there was a Democratic President in the White House, circuit nominees were delayed and deferred, and vacancies on the courts of appeals more than doubled under Republican leadership, from 16 in January 1995, to 33 when the Democratic majority took over midway through 2001.

Under Democratic leadership we held hearings on 20 circuit court nominees in 17 months. Indeed, while Republicans averaged seven confirmations to the circuit courts every 12 months for President Clinton, the Senate under Democratic leadership confirmed 17 circuit judges in its 17 months in the majority—and we did so with a White House that was historically uncooperative.

Under Republican control, the Judiciary Committee played fast and loose with other practices. One of those was the committee practice of placing nominees on markup agendas only if they had answered all of their written questions within a reasonable amount of time before the meeting. Last Congress that changed, and nominees were listed when the former chairman wanted them listed, whether they were ready or not. Of course, any nominee can be held over one time by any member for any reason, according to longstanding committee rules. By listing the nominees before they were ready, the former chairman ''burned the hold'' in advance, circumvented the committee rule, and forced the committee to consider them before they were ready. Another element of unfairness was thereby introduced into the process.

Yet another example of the kind of petty changes that occurred during the last Congress were the bipartisan changes to the committee questionnaire that were unilaterally rescinded by the former Republican chairman. In April of 2003 it became clear that the President's nominees had stopped filling out the revised Judiciary Committee questionnaire we had approved a year and a half earlier with the agreement of the administration and Senate Republicans. It was a shame, because my staff and Senator HATCH's staff worked hard to revise the old questionnaire, which had not been changed in many years, and was in need of updating for a number of reasons. There were obsolete references, vague and redundant requests for information, and instructions sorely in need of clarification. There were also important pieces of information not asked for in the old questionnaire, including congressional testimony a nominee might have given, writings a nominee might have published on the Internet, and a nominee's briefs or other filings in the Supreme Court of the United States. We worked hard to include the concerns of all members of the committee, and we included the suggestions from many people who had been involved in the judicial nominations process over a number of years.

Indeed, after the work was finished, Senator HATCH himself spoke positively about the revisions we had made. At a Committee business meeting he praised my staff for, ''working with us in updating the questionnaires.'' He noted: ''Two weeks ago, we resolved all remaining differences in a bipartisan manner. We got an updated questionnaire that I think is satisfactory to everybody on the committee, and the White House as well.'' I accepted his words that day.

As soon as he resumed his chairmanship, he rejected the improvements we made in a bipartisan way, however. The former Republican chairman notified the Department of Justice that he would no longer be using the updated questionnaire he praised not so long before but, instead, decided that the old questionnaire be filled out. He did not notify any member of the minority party on the committee. Unlike the bipartisan consultation my office engaged in during the fall of 2001, and the bipartisan agreement we reached, the former Republican chairman acted by unilateral fiat without consultation.

The protection of the rights of the minority in the committee was eliminated with the negation of the committee's rule IV, a rule parallel to the Senate filibuster rule. In violation of the rules that have governed that committee's proceedings since 1979, the former Republican chairman chose in 2003 to ignore our longstanding committee rules and he short-circuited committee consideration of the circuit court nominations of John Roberts and Deborah Cook.

Since 1979 the Judiciary Committee has had this committee rule to bring debate on a matter to a close while protecting the rights of the minority. It may have been my first meeting as a Senator on the Judiciary Committee in 1979 that Chairman KENNEDY, Senator Thurmond, Senator HATCH, Senator COCHRAN and others discussed adding this rule to those of the Judiciary Committee. Senator Thurmond, Senator HATCH and the Republican minority at that time took a position against adding the rule and argued in favor of any individual Senator having a right to unlimited debate—so that even one Senator could filibuster a matter. Senator HATCH said that he would be ''personally upset'' if unlimited debate were not allowed. He explained:

> There are not a lot of rights that each individual Senator has, but at least two of them are that he can present any amendments which he wants and receive a vote on it and number two, he can talk as long as he wants to as long as he can stand, as long as he feels strongly about an issue.

It was Senator Bob Dole who drew upon his Finance Committee experience to suggest in 1979 that the committee rule be that ''at least you could require the vote of one minority member to terminate debate.'' Senator COCHRAN likewise supported having a ''requirement that there be an extraordinary majority to shut off debate in our committee.''

The Judiciary Committee proceeded to refine its consideration of what became rule IV, which was adopted the following week and had been maintained ever since. It struck the balance that Republicans had suggested of at least having one member of the minority before allowing the chairman to cut off debate. That protection for the minority had been maintained by the Judiciary Committee for 24 years under five different chairmen—Chairman KENNEDY, Chairman Thurmond, Chairman BIDEN, under Chairman HATCH previously and during my tenure as chairman.

Rule IV of the Judiciary Committee rules provided the minority with a

right not to have debate terminated and not to be forced to a vote without at least one member of the minority agreeing to terminate the debate. That rule and practice had until two years ago always been observed by the committee, even as we dealt with the most contentious social issues and nominations that come before the Senate. Until that time, Democratic and Republican chairmen had always acted to protect the rights of the Senate minority.

Although it was rarely utilized, rule IV set the ground rules and the backdrop against which rank partisanship was required to give way, in the best tradition of the Senate, to a measure of bipartisanship in order to make progress. That is the important function of the rule. Just as we have been arguing lately about the Senate's cloture rule, the committee rule protected minority rights, and enforced a certain level of cooperation between the majority and minority in order to get anything accomplished. That was lost last Congress as the level of partisanship on the Judiciary Committee and within the Senate sunk to a new low when Republicans chose to override our governing rules of conduct and proceed as if the Senate Judiciary Committee were a minor committee of the House of Representatives.

That this was a premeditated act was apparent from the debate in the committee. The former Republican chairman indicated that he had checked with the Parliamentarians in advance, and he apparently concluded that since he had the raw power to ignore our committee rule so long as all Republicans on the committee stuck with him, he would do so. It was a precursor of what is happening now in the Senate.

I understand that the Parliamentarians advised the former chairman that there is no enforcement mechanism for a violation of committee rules and that the Parliamentarians view Senate committees as autonomous. I do not believe that they advised him that he should violate our committee rules or that they interpreted our committee rules. I cannot remember a time when Senator KENNEDY or Senator Thurmond or Senator BIDEN were chairing the committee when any of them would have even considered violating their responsibility to the Senate and to the committee and to our rules or that we needed an enforcement mechanism or penalty for violation of a fundamental committee rule.

In fact, the only occasion I recall that the former Republican chairman was previously faced with implementing committee rule IV, he himself did so. In 1997, Democrats on the committee were seeking a Senate floor vote on President Clinton's nomination of Bill Lann Lee to be the assistant attorney general for civil rights at the Department of Justice. Republicans were intent on killing the nomination in committee. The committee rule came into play when in response to an alternative proposal by the Republican Chairman, I outlined the tradition of our Committee and said:

> This committee has rules, which we have followed assiduously in the past and I do not think we should change them now. The rules also say that 10 Senators, provided one of those 10 is from the minority, can vote to cut off debate. We are also required to have a quorum for a vote.
>
> I intend to insist that the rules be followed. A vote that is done contrary to the rules is not a valid one.

Immediately after my comment, the same former Republican Chairman abandoned his earlier plan and said:

> I think that is a fair statement. Rule IV of the Judiciary Committee rules effectively establishes a committee filibuster right, as the distinguished Senator said.

With respect to that nomination in 1997, he acknowledged:

> Absent the consent of a minority member of the Committee, a matter may not be brought to a vote. However, Rule IV also permits the Chairman of the Committee to entertain a non-debatable motion to bring any matter to a vote. The rule also provides as follows: 'The Chairman shall entertain a non-debatable motion to bring a matter before the Committee to a vote. If there is objection to bring the matter to a vote without further debate, a rollcall vote of the Committee shall be taken, and debate shall be terminated if the motion to bring the matter to a vote without further debate passes with ten votes in the affirmative, one of which must be cast by the Minority.'

Thereafter, he made the nondebatable motion to proceed to a vote and under the rules of the committee there was objection and a rollcall vote was taken on whether to end the debate. In that case, the former Republican chairman followed the rules of the committee.

At the beginning of the last Congress, we reaffirmed our tradition and clarified that at the time the Senate was divided 50–50 and the committee was divided 50–50, the rules would be interpreted so that the minority was the party other than that of the chairman.

But when the nominations of John Roberts, Deborah Cook and Jeff Sutton were being considered simultaneously, Democrats sought to continue debate on some of them and focus first on Sutton. We were overridden and the bipartisan tradition and respect for the rights of the minority ended when the former Republican Chairman decided to override our rights and the rule rather than follow it. He did so expressly and intentionally, declaring: ''[Y]ou have no right to continue a filibuster in this committee.'' He decided, unilaterally, to declare the debate over even though all members of the minority were prepared to continue the debate and it was, in fact, terminated prematurely. I had yet to speak to any of the circuit nominees and other Democratic Senators had more to say. He completely reversed his own position from the Bill Lann Lee nomination and took a step unprecedented in the history of the committee.

I know the frustrations that accompany chairing the Judiciary Committee. I know the record we achieved during my 17 months of chairing that committee, when we proceeded with hearings on more than 100 of President Bush's judicial nominees and scores of his executive nominees, including extremely controversial nominations, when we proceeded fairly and in accordance with our rules and committee traditions and practices to achieve almost twice as many confirmation for President Bush as the Republicans had allowed for President Clinton, and know how that record was mischaracterized by partisans. I know that sometimes a chairman must make difficult decisions about what to include on an agenda and what not to include, what hearings to hold and when. In my time as chairman I tried to maintain the integrity of the committee process and to be bipartisan. I noticed hearings at the request of Republican Senators and allowed Republican Senators to chair hearings. I made sure the committee moved forward fairly on the President's nominees in spite of the administration's unwillingness to work with us to fill judicial vacancies with consensus nominees and thereby fill those vacancies more quickly. But I cannot remember a time when Chairman KENNEDY, Chairman THURMOND, Chairman BIDEN, or I, ever overrode by fiat the right of the minority to debate a matter in accordance without longstanding committee rules and practices.

By bending, breaking and changing so many committee rules, Republicans crossed a threshold of partisan overreaching that should never have been crossed. As they passed each awful milestone, I urged the Republican leadership to reconsider, to turn back and to reinstate comity.

That is the backdrop for this debate now before the Senate. An overly aggressive executive, added by a majority of the same political party in the Senate, acted last Congress to eliminate any meaningful role of the minority at the committee level and to eliminate our traditions, rules and practices that had protected the minority. This abuse of power and drive toward one-party rule by the Republican leadership has been building for years and is culminating this week through their unprecedented attack on the Senate's rules, role and history. For years now, Democratic Senators have been warning that the deterioration of Senate rules and practices that have protected minority rights was leaving us, the Senate, and the American people in a dire situation.

This systematic and corrosive erosion of checks and balances has brought the Senate to this precipice. The filibuster in the Senate is the last remaining check on the abuses of one-party rule and the undermining of the fairness and independence of the federal judiciary. If the Senate is to serve its constitutional role as a check on

the executive, its protection must be preserved. That is the decision the Senate will be facing tomorrow.

[From the Salt Lake Tribune]

HATCH IS WRONG ABOUT HISTORY OF JUDICIAL APPOINTMENTS

(By John J. Flynn)

The Constitution provides the president ''shall nominate, and by and with the Advice and Consent of the Senate,'' appoint judges and all other officers of the United States.

Throughout most of the Constitutional Convention, the power to appoint ambassadors, judges and other officers of the United States was vested solely in the Senate. It was decided late in the convention that the Senate should share the appointment power with the president. Clearly, the framers expected the Senate would have an equal say in appointments.

Several nominations for positions in the executive branch have been rejected over the past two centuries. Even more nominations for life-time appointments to the judiciary have been rejected because such nominations are for life and they are nominations to an independent branch of government.

For many years rejections were often carried out by the informal process of senators withholding ''blue slips'' for nominees from their home states. When a senator did not return a blue slip approving the nominee, the nomination was killed without a vote by the full Senate. It was a method for insuring the president sought the ''advice'' of the Senate and senators before nominating a person for the judiciary. The result was that only qualified moderates were usually appointed to the bench.

Utah's Sen. Orrin Hatch ended the ''blue slip'' practice. Sen. Hatch also began the practice of ''filibustering by committee chairperson'' nominees proposed by President Clinton. He simply refused to hold hearings on nominations even where senators from the nominee's home state approved of the nomination.

More than 60 Clinton judicial nominees were not even accorded the courtesy of a hearing during the Hatch chairmanship of the Senate Judiciary Committee. They were never given the chance for an ''up or down vote'' by the full Senate. For Sen. Hatch to now object to the use of a filibuster to halt nominations is less than disingenuous.

Contrary to Sen. Hatch's representations in his Tribune op-ed piece last Sunday, Republicans led a filibuster of the nomination of Justice Abe Fortas to the position of chief justice in 1968. I watched the filibuster. When a cloture vote failed to muster the necessary super majority to end the debate after four days of the filibuster, Justice Fortas asked to have his nomination withdrawn.

The modem divisiveness in the Senate over judicial nominations is directly traceable to the Senate's partisan treatment of judicial nominations beginning with Justice Fortas. The level of divisiveness has been increased by President Bush. He threw down a partisan gauntlet by renominating several controversial candidates not confirmed by the prior Senate.

The main qualifications of these candidates appears to be their appeal to the religious right and their rigid ideological views calling into question their capacity to judge objectively contentious issues coming before the courts.

The Bush administration apparently believes that the Senate should simply rubberstamp nominees it selects without Senate advice, much less the consent of a sizeable majority of the Senate. Slogans like seeking the appointment of judges who will not ''make law'' are trumpeted while President Bush nominates persons who will ''make law''—law of the sort advocated by his administration and its closed-minded right-wing supporters.

Because of the nature of the job of judges, the framers of the Constitution vested the Senate with a co-equal power over the nomination and confirmation of persons for life-time appointments to the judiciary. The Senate's role is not a subservient one of rubber-stamping anyone the president nominates unless it is found that they are an ax murderer or child molester.

This was made clear in the Federalist Papers, numbers 76–78. Over the past two centuries, the Senate developed a number of checks on both the president and members of the Senate to prevent the president and a majority of the Senate from running roughshod over those with substantial objections to nominations made by the president.

The result, until the first Bush administration and Sen. Hatch's chairmanship of the Judiciary Committee, has been negotiation and compromise over judicial nominees and the appointment of qualified moderates to the bench for the most part.

The present dispute over whether to eliminate the filibuster as a device to block nominees that a sizeable block of senators finds objectionable presents a further and dangerous erosion of the Senate's advice-and-consent function.

The Republicans hold a 55–to–45 majority of the seats in the Senate. The Republican majority represents approximately 47 percent of the United States population, while the 45-member Democrat minority represent 53 percent of the population. Senators representing less than a majority of the population are advocating the complete ceding of the advice-and-consent function to any president with a numerical majority of the membership of the Senate from his or her own political party.

The end result of the political campaign to further weaken, if not eliminate, the advice and-consent function of the Senate, will be to establish powers similar to those of the English monarch in 1789. The founders expressly sought to avoid this result by requiring the independent advice and consent of senators in the nomination and confirmation of important executive branch positions and lifetime appointments to the bench.

For Republicans to repudiate that role of the Senate, especially after their sorry record in dealing with the judicial nominees of President Clinton, is not only the height of hypocrisy, but is a dangerous precedent they will live to regret.

This is not the time for political opportunism, presidential arrogance or misleading oped pieces by Sen. Hatch. It is a time for members of the Senate to begin to act responsibly when carrying out their advice-and-consent function rather than further erode an important institutional check upon executive branch power and a majority party in the Senate that does not represent a majority of the American people.

Mr. WARNER. Mr. President, I rise today in support of the nomination of Justice Priscilla Owen to serve as a judge on the United States Court of Appeals for the Fifth Circuit.

When I evaluate individuals for Federal judgeships, I turn first to the U.S. Constitution. Article II, section 2 of the Constitution gives the President the responsibility to nominate, with the ''Advice and Consent of the Senate,'' individuals to serve as judges on the Federal courts. Thus, the Constitution provides a role for both the President and the Senate in this process. The President is given the responsibility of nominating, and the Senate has the responsibility to render ''advice and consent'' on the nomination.

As I have fulfilled my constitutional responsibilities as a Senator over the past 27 years that I have had the honor of representing the citizens of the Commonwealth of Virginia in the U.S. Senate, I have conscientiously made the effort to work on judicial nominations with the Presidents with whom I have served.

Whether our President was President Carter, President Reagan, President Bush, President Clinton, or President George W. Bush, I have accorded equal weight to the nominations of all Presidents, irrespective of party.

I have always considered a number of factors before casting my vote to confirm or reject a nominee. The nominee's character, professional career, experience, integrity, and temperament are all important. In addition, I consider whether the nominee is likely to interpret law according to precedent or impose his or her own views. The opinions of the officials from the State in which the nominee would serve and the views of my fellow Virginians are also important. In addition, I believe our judiciary should reflect the broad diversity of the citizens it serves.

These principles have served me well as I have closely examined the records of thousands of judicial nominees.

With respect to the nominee currently before the Senate, I reviewed Justice Owen's record, met with her personally last week, and considered her qualifications in light of all of these aforementioned factors. And let me say, Mr. President, that I came away rather impressed with this nominee.

You see, out of the thousands of nominees I have reviewed in the U.S. Senate, I have to say that Justice Owen has, without a doubt, one of the more impressive records.

In 1975, she earned her bachelors degree, cum laude, from Baylor University. She then remained at Baylor to earn her law degree. While in law school, she served as a member of the Baylor Law Review. And, when she graduated from law school in 1977, she once again earned the honors of graduating cum laude.

Upon graduating from law school, Justice Owen took the Texas bar exam. Not only did she pass it, she earned the highest score in the State on the December 1977 exam.

Since passing the bar, she spent approximately 16 years practicing law in a distinguished Houston law firm. She started as a young associate and through her efforts as a commercial litigator she later became a partner at the firm.

In 1994, Priscilla Owen was first elected to the Texas Supreme Court. Six years later, she overwhelmingly won a second term with 84 percent of the vote—a strong testament of public support given to her by the citizens of the State of Texas.

But not only do the people of Texas overwhelmingly believe that Judge Owens is a highly qualified Federal judge, it is important to recognize that every major newspaper in Texas endorsed her reelection.

She also has notable bipartisan support for her nomination, including three former Democrat judges on the Texas Supreme Court and the bipartisan support of 15 past Presidents of the State bar of Texas. The American Bar Association, often called the ''gold standard'' around here for evaluating judges, has unanimously deemed Justice Owen ''Well Qualified''—its highest rating.

Despite all of this strong, bipartisan support, however, over the course of the past 4 years, we have been unable to get to an up-or-down vote in the Senate on Justice Owen's nomination. All the while, this outstanding nominee has been waiting patiently for the Senate to act on her nomination. In my view, such an exemplary nominee should have been confirmed far sooner, especially since the seat for which she has been nominated has been dubbed by the Judicial Conference of the United States as a ''judicial emergency.''

The fact of the matter is that Justice Priscilla Owen is a highly distinguished jurist with impeccable credentials. There is no doubt in my mind that she should be confirmed for this lifetime appointment.

I look forward to voting in support of her nomination and encourage my colleagues to do the same.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. DEMINT). The clerk will call the roll.

The legislative clerk proceeded to call the roll

Mr. FRIST. 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. FRIST. Mr. President, I have had the opportunity to review the agreement signed by the Senator from Virginia, the Senator from Arizona, the Senator from Nebraska, and 11 other Senators, an agreement that I have reviewed but to which I am not a party.

Let me start by reminding the Senate of my principle, a simple principle, that I have come to this Senate day after day stating, stressing. It is this: I fundamentally believe it is our constitutional responsibility to give judicial nominees the respect and the courtesy of an up-and-down vote on the floor of the Senate. Investigate them, question them, scrutinize them, debate them in the best spirit of this body, but then vote, up or down, yes or no, confirm or reject, but each deserves a vote.

Unlike bills, nominees cannot be amended. They cannot be split apart; they cannot be horse traded; they cannot be logrolled. Our Constitution does not allow for any of that. It simply requires up-or-down votes on judicial nominees. In that regard, the agreement announced tonight falls short of that principle.

It has some good news and it has some disappointing news and it will require careful monitoring.

Let me start with the good news. I am very pleased, very pleased that each and every one of the judges identified in the announcement will receive the opportunity of that fair up-or-down vote. Priscilla Owen, after 4 years, 2 weeks, and 1 day, will have a fair and up-or-down vote. William Pryor, after 2 years and 1 month, will have a fair up-or-down vote. Janice Rogers Brown, after 22 months, will have a fair up-or-down vote. Three nominees will get up-or-down votes with certainty now because of this agreement, whereas a couple of hours ago, maybe none would get up-or-down votes. That would have been wrong.

With the confirmation of Thomas Griffith to the DC Circuit Court of Appeals we have been assured—though it is not part of this particular agreement—there will be four who will receive up-or-down votes. And based on past comments in this Senate—although not in the agreement—I expect that David McKeague, after 3 years and 6 months, will get a fair up-or-down vote. I expect that Susan Neilson, after 3 years and 6 months, will get a fair or up-or-down vote. I expect Richard Griffin, after 2 years and 11 months, will get a fair up-or-down vote.

Now, the bad news, to me, or the disappointing news in this agreement. It is a shame that well-qualified nominees are threatened, still, with not having the opportunity to have the merits of their nominations debated on the floor.

Henry Saad has waited for 3 years and 6 months for the same courtesy. Henry Saad deserves a vote. It is not in this agreement. William Myers has waited for 2 years and 1 week for a fair up-or-down vote. He deserves a vote but is not in this agreement. If Owen, Pryor, and Brown can receive the courtesy and respect of a fair up-or-down vote, so can Myers and Saad.

I will continue to work with everything in my power to see that these judicial nominees also receive that fair up-or-down vote they deserve. But it is not in this agreement.

But in this agreement is other good news. It is significant that the signers give up using the filibuster as it was deployed in the last Congress in the last 2 years. The filibuster was abused in the last Congress. Mr. President, 10 nominees were blocked on 18 different occasions, 18 different filibusters in the last 2 years alone, with a leadership-led minority party obstruction, threatening filibusters on six others. That was wrong.

It was not in keeping with our precedents over the past 214 years. It made light of our responsibilities as United States Senators under the Constitution. It was a miserable chapter in the history of the Senate and brought the Senate to a new low.

Fortunately, tonight, it is possible this unfortunate chapter in our history can close. This arrangement makes it much less likely—indeed, nearly impossible—for such mindless filibusters to erupt on this floor over the next 18 months. For that I am thankful. Circuit court and Supreme Court nominees face a return to normalcy in the Senate where nominees are considered on their merits. The records are carefully examined. They offer testimony. They are questioned by the Senate Judiciary Committee. The committee acts, and then the Senate discharges its constitutional duty to vote up or down on a nominee.

Given this disarmament on the filibuster and the assurance of fair up-or-down votes on nominees, there is no need at present for the constitutional option. With this agreement, all options remain on the table, including the constitutional option.

If it had been necessary to deploy the constitutional option, it would have been successful and the Senate would have, by rule, returned to the precedent in the past 214 years. Instead, tonight, Members have agreed that this precedent of up-or-down votes should be a norm of behavior as a result of the mutual trust and good will in that agreement.

I, of course, will monitor this agreement carefully as we move ahead to fill the pending 46 Federal vacancies today and any other vacancies that may yet arise during this Congress. I have made it clear from the outset that I haven't wanted to use the constitutional option. I do not want to use the constitutional option, but bad faith and return to bad behavior during my tenure as majority leader will bring the Senate back to the point where all 100 Members will be asked to decide whether judicial nominees deserve a fair up-or-down vote.

I will not hesitate to call all Members to their duty if necessary. For now, gratified that our principle of constitutional duty to vote up or down has been taken seriously and as reflected in this agreement, I look forward to swift action on the identified nominations.

Now, the full impact of this agreement will await its implementation, its full implementation. But I do believe that the good faith and the good will ought to guarantee a return to good behavior, appropriate behavior, on the Senate floor and that when the gavel falls on this Congress, the 109th Congress, the precedent of the last 214 years will once again govern up-or-down votes on the floor of the Senate.

Now, this will be spun as a victory, I would assume, for everybody. Some will say it is victory for leadership, some for the group of 14. I see it as a victory for the Senate. I honestly believe it is a victory for the Senate where Members have put aside a party demand to block action on judicial nominees. They have rose to principle and then acted accordingly.

I am also gratified with how clearly the Democratic leader has repeated over and over again during this debate how much he looks forward to working with us, and I with him, as we move forward on the agenda of the 109th Congress. Our relationship has been forged in part by circumstance, but it has been leavened by friendship. I look forward to working with him as we work together to move the Nation's agenda forward together.

We have a lot to do, from addressing those vital issues of national defense and homeland security, to reinforcing a bill that hopefully will come very soon, addressing our energy independence, our role as a reliable and strong trading partner, to an orderly consideration of all the bills before us about funding, and to put the deficit on the decline. I look forward to working with the Democratic leader on these and many other issues of national importance.

Mr. President, a lot has been said about the uniqueness of this body. Indeed, our Senate is unique, and we all, as individuals and collectively as a body, have a role to play in ensuring its cherished nature remains intact. Indeed, as demonstrated by tonight's agreement, and by the ultimate implementation of that agreement, we have done just that.

It has withstood mighty tests that have torn other governments apart. Its genius is in its quiet voice, not in any mighty thunder. The harmony of equality brings all to its workings with an equal stake at determining its future. In all that the Senate has done in the last 2 years, I, as leader, have attempted to discharge my task to help steward this institution consistent with my responsibilities, not just as majority leader and not just as Republican leader, but also as a Senator from Tennessee.

In closing tonight, with this agreement, the Senate begins the hard work of steering back to its better days, leaving behind some of its worst. While I would have preferred and liked my principle of up-or-down votes to have been fully validated, for this Congress now we have begun our labors for fairness and up-or-down votes on judicial nominees with a positive course. And as all involved keep their word, it should be much smoother sailing.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. REID. Mr. President, this is a day I have waited for for a long time. We can put the 8 years of the Clinton administration behind us, the problems he had with the judges, over 60. We can put the first 4 years of the Bush administration behind us. I have looked forward to this day for a long time. We are now in a new Congress and a new day, and it was made possible by virtue of some very, very unique individuals called Senators. One of them is here on the floor. The other, Senator BYRD, has left.

Senator BYRD has served 53 years in the Congress, 47 in the Senate, 6 in the House. The chairman of the most important committee, many say around here, the Armed Services Committee, Senator WARNER of Virginia—if there were ever a southern gentleman, it is the white-haired Senator from Virginia, JOHN WARNER. They worked for months with some of the youngsters here, LINDSEY GRAHAM, MARK PRYOR, KEN SALAZAR, in coming up with this unique instrument that is only possible in the Senate.

Now, Mr. President, I say that this is not a victory for the Senate, though it is. I say this is a victory for the American people. It is a victory for the American people because the Senate has preserved the Constitution of the United States. No longer will we have to be giving the speeches here about breaking the rules to change the rules. We are moving forward in a new day, a new day where the two leaders can work on legislation that is important to this country.

Just as a side note, I can throw away this rumpled piece of paper I have carried around for more than a month that has the names MCCAIN, CHAFEE, SNOWE, WARNER, COLLINS, HAGEL, SPECTER, MURKOWSKI, and SUNUNU. It is gone. I do not need that any more because of the bravery of these Senators. I am grateful to my colleagues, as I have said, who brokered this deal. And it was a brokerage, for sure.

Now we can move beyond this time-consuming process that has deteriorated the comity of this great institution called the Senate. I am hopeful we can quickly turn to work on the people's business. We need to ensure that our troops have the resources they need to fight in Iraq and around the world and that Americans are free from terrorism. We need to protect retirees' pensions and long-term security. We need to expand health care opportunities for all families. We need to address rising gasoline prices and energy independence, and we need to restore fiscal responsibility and rebuild our economy so it lifts all American workers. That is our reform agenda. Together we can get the job done.

It is off the table. People of good will recognize what is best for the institution. There are no individual winners in this. Individual winners? No. A little teamwork it took. And the American people should see this picture: Democrats and Republicans, some who have been here as long as Senator BYRD and Senator WARNER, and some newcomers. Senator SALAZAR has been here for 5 months. He was part of this arrangement. People from red States, from blue States, they represent America. That is what happened tonight.

Now, I would rather that something else had happened. I would rather that we had marched down here tomorrow and voted and we gave our high fives and we had won. We are not doing that. We have won anyway because this is a victory for the American people.

I love this country, Mr. President. I have devoted my life to public service. I do not regret a day of it. I will have been in public service 41 years, and I said to my caucus that there has never been a more important issue I have dealt with in my political life than this issue that is now terminated. It is over with. And I feel so good. This will be the first night in at least 6 weeks that I will sleep peacefully. I have not had a peaceful night's rest in at least 6 weeks.

I owe a debt of gratitude to these Senators who did what the two leaders could not do. I tried. It could not be done. But I hope, as we proceed in the days to come, that this is past history. Of course, there will be filibusters in the future. It is the nature of this institution. And that is the way it should be. We are not on a slippery slope to saying all the Presidential nominations are subject to a simple majority—to change the rules. We are not going to say that legislation is subject to a simple majority to change the rules. The filibuster is here. Mr. SMITH can still come to Washington.

I, through the Chair, extend my appreciation to the distinguished Republican leader for his patience, my many trips to his office, the few trips he made to my office, the many telephone calls, the BlackBerrys we exchanged. I have admiration for the good doctor from Tennessee. And I hope that we, working together, can do good things for this country. The country needs a Senate that works together.

Again, Mr. President, the only person I see here who I can personally thank is the distinguished Senator from Virginia. I say, through the Chair, to you and the other 13 Senators, thank you very much.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, before he leaves the floor, I want to extend my congratulations to the majority leader for moving us to this point. Obviously, human nature, being what it is, had we not had a deadline, had the Priscilla Owen nomination not been brought up, had the debate not begun, we would not be where we are today. Senator FRIST, in a tireless and persistent manner, has been working on this issue since shortly after the election last year, talking to Senator REID.

I also want to compliment the Democratic leader. I suspect there is no issue upon which Senator FRIST and Senator REID have had discussions more frequently than this one, going back for the last 6 months.

I think there was bipartisan unhappiness in the Senate with the degree to which the Senate had deteriorated in the last Congress—this sort of random, mindless killing of nominees, 10 of them.

I think what has happened tonight is a result not only of the steadfastness of our majority leader, BILL FRIST, but also this coming together of the group

of 14, led in large measure on our side by Senator MCCAIN and Senator WARNER from Virginia, one of the real true supporters of this institution. They have allowed us to sort of step back from the brink. As I read this memorandum of understanding, signed by the seven Democrats and seven Republicans, all options are still on the table with regard to both filibusters and constitutional options. But what I also hear from these 14 distinguished colleagues is that they do not expect this to happen.

We have marched back from the brink, hopefully taken the first step, beginning tomorrow with cloture on Justice Priscilla Owen, to begin to deal with judicial nominations the way we always have prior to the last Congress. Sure, there were occasional cloture votes, but they were always invoked. They were always for the purpose of getting the nominee an up-or-down vote.

I want to thank Senator WARNER and his colleagues for making it possible for us to get back to the way we operated quite comfortably for 214 years. So even though this is not an agreement that I would have made or that the majority leader would have made—because he and I both believe that all nominees who come to the floor are entitled to an up-or-down vote—it is certainly a good beginning. And three very, very distinguished nominees, whose nominations have been languishing for a number of years, are going to get an up-or-down vote. I think that is something we can all celebrate on a bipartisan basis.

So I do indeed think this has been a good night for the Senate. And I am optimistic that for the balance of this Congress, we will operate the way we did for 214 years prior to the last Congress.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I thank the Chair.

Winston Churchill once said there is nothing more exhilarating than being shot at and missed. This evening I think Members of the Senate feel as I do——

The PRESIDING OFFICER. The Senator will excuse me. Let me say that I need to recognize the Senator from Colorado.

Mr. ALLARD. Mr. President, I inquire what the regular order might be. I was scheduled to speak at 8:15. I am not entirely sure on the regular order.

The PRESIDING OFFICER. The majority controls the time until 9 o'clock.

Mr. ALLARD. Mr. President, my time right now as set aside for the majority is now being taken up by this discussion. I would like to have some time reserved for myself in the 30 minutes. Right now we have 6 or 7 or 8 speakers lined up, and so I want to have an opportunity to make my views known at some point in time. I think we need to establish regular order, and if both parties have agreed that it goes back over to the other side at 9 o'clock, I would like to have that extended out so that when we reach 9 o'clock then I can speak from 9 to 9:30.

Mr. DURBIN. Mr. President, I make the unanimous consent request that as soon as I finish speaking, and the other Senators who have sought recognition, the Senator from Colorado be recognized for 30 minutes.

Mr. HARKIN. Mr. President, reserving the right to object, do I understand the order is that when 9 o'clock comes what is in order is before the Senate right now?

The PRESIDING OFFICER. The Senator is correct.

Mr. HARKIN. I did not hear the unanimous consent request of my friend from Illinois.

Mr. DURBIN. I say through the Chair to my friend from Iowa, since there has been the interruption of the good news of this agreement, it was taken from the time of the Senator from Colorado, the majority, and I am trying to make sure his time is protected and that we can move all times to the point where the Senator from Colorado has his 30 minutes as soon as a few of us have spoken for just a few minutes and then we will continue.

Mr. HARKIN. I ask unanimous consent at the conclusion of the 30 minutes for the Senator from Colorado, the Senator from Iowa be recognized for 15 minutes.

Mr. WARNER. Mr. President, reserving the right to object—I shall not object—I hope I could state a few words following the distinguished Senator from Illinois. I was scheduled to speak at 8 o'clock. My time I think has been put to good use, and I would be very pleased if I could make my remarks. So if I could follow the Senator from Illinois for not to exceed 4 minutes.

Mr. SCHUMER. Mr. President, I just want to get the regular order. I was scheduled to speak at 9 o'clock on our side. Is that time preserved under the order?

The PRESIDING OFFICER. The unanimous consent request that the Senator from Colorado have 30 minutes is also at 9 o'clock; is that correct?

Mr. SCHUMER. All right, then, Mr. President, I ask unanimous consent that immediately after the Senator from Colorado, I be given the 15 minutes I was going to be given at 9 o'clock.

The PRESIDING OFFICER. Will the Senator from Illinois modify his request?

Mr. DURBIN. Let me try to modify this appropriately. I ask unanimous consent that I speak for 5 minutes, that I be followed by Senator WARNER who wishes to speak for 5 minutes, Senator SCHUMER for 5 minutes, then Senator ALLARD for 30 minutes, and Senator HARKIN following him for 15 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. And after Senator HARKIN, Senator BOXER for 15 minutes.

Mr. KYL. Mr. President, reserving the right to object, since I was to speak at 9:30, I want to intervene. I will withhold depending upon what my colleagues say in the spirit of the latest agreement to see whether it is necessary to comment, and if not then I won't, but otherwise I will not object to the request that has been made.

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

Mr. DURBIN. I thank my colleagues.

It is great to have these bipartisan agreements on the floor of the Senate. Maybe a new spirit is dawning. I am going to take a very few moments. As I said at the outset, Winston Churchill said there is nothing more exhilarating than being shot at and missed. Many of us in the Senate feel that this agreement tonight means some of the most cherished traditions of the Senate will be preserved, will not be attacked, and will not be destroyed. I think it is a time for celebration on both sides of the aisle.

I salute one of my colleagues who is on the Senate floor this evening, Senator WARNER of Virginia. I was asked by my friends back in Illinois not long ago, Senator WARNER, tell us the Republican Senators you really respect, and I said JOHN WARNER is certainly one of those Senators. And I mean it sincerely. He has played a central role with Senator MCCAIN, Senator BYRD, Senator NELSON, Senator PRYOR, and so many others to bring us to this point.

What I think is important is this: What we have seen as the emergence of resolving this issue is the emergence of people from the center who are dedicated to this institution and to our role in our government. I hope that continues over to other issues, and I hope the White House, as well as the leaders of both political parties, will try to work in that same spirit, the spirit of moving toward the center in moderation. I might say that the fact that the President has had 95 percent of his nominees to the bench approved by the Senate is an indication that if he will pick men and women more toward the center, even a little right of center, which we expect, that the President is not going to run into the resistance he did with a handful of nominees that we on the Democratic side thought went too far.

I would like to say a word about Senator HARRY REID, who was in the Chamber just a moment ago. He spoke about sleepless nights. He and I talked about that for weeks. No one has spent more time worrying over this situation. He understood, as we all did, that this was not just another political issue, not just another political vote, but had Vice President CHENEY come to that chair tomorrow and ruled as we heard he would under the nuclear option, the Senate would have been changed forever. This institution has been preserved. The nuclear option is off the table. We have been admonished, and I think appropriately so, not

to misuse the filibuster, certainly when it comes to judicial nominees. That is good advice on both sides of the aisle under Democratic and Republic Presidents. I thank my colleagues, too, for bringing up some of the more contentious judges as part of this debate.

Senator REID went to Senator FRIST weeks ago and said if this is about one or two judges, let us get that resolved. The Senate, its traditions and the constitutional issues at stake, are more important than any single judge in our land. Unfortunately, that negotiation between Senator REID and Senator FRIST did not lead to the culmination that we had hoped it would. But thanks to the leadership of colleagues on both sides of the aisle in good faith and good spirit on a bipartisan basis we have now moved ourselves beyond this crisis. Now the challenge is whether we can continue in this spirit: Will we tomorrow come together and start working on important issues such as retirement security, health care in America, the protection of our Nation, the support of our men and women in uniform, doing something to help with education? It is an important agenda that calls for the best on both sides of the aisle to work together.

Again, let me thank Senator WARNER for his leadership. I know he has been patient. A couple weeks ago, the Senator came over to me in the corner of the Chamber and said: We ought to work together to get this resolved.

The Senator never quit. I admire him for that. I admire Senators on both sides of the aisle who brought us to this happy occasion.

And at that point, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I thank my distinguished colleague from Illinois.

Mr. President, when we opened our brief press conference upstairs, Senator MCCAIN and Senator BEN NELSON spoke for the entire group. It was made clear our everlasting gratitude to the tireless efforts by Senator FRIST and Senator REID. The framework that we have created can be no stronger than the foundation on which it rests. And that foundation was laid by our two respective leaders, and, indeed, the whips, Senator MCCONNELL and the Senator from Illinois. So we are not around this evening to try to take credit for anything. As a matter of fact, this was the most unusual gathering of Senators, and the manner in which it was conducted over a number of days—total humility among our group.

We are proud of the leadership that Senator MCCAIN gave, Senator BEN NELSON, Senator ROBERT BYRD, and others. But each Senator of the 14 was 1, but 1 among equals, working toward a common goal. And no one articulated that goal time and time again in every meeting more than Senator ROBERT BYRD of West Virginia, who said it is the Nation, it is the institution of the Senate, and the third priority is our own career. So I thank him for that.

I am proud to have been a part of this. I do hope that our wonderful Senate can now resume its long and distinguished service to our Nation over these 214 or 216 years, and I am very privileged to have been a small part of it at this time.

I thank the Chair. I yield the floor.

PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I thank the Chair. I thank all my colleagues. This will go down, hopefully, as a fine night in the Senate, in the U.S. Government. Armageddon has been avoided, and thank God for that. We in the Senate stepped right up to the precipice, but we did not fall in. This Republic works in amazing ways. And just as we were about to fall into an abyss of partisanship, of a destruction of the checks and balances that are the hallmark of this institution and this government, 12 Senators, many Democrats from red States, some Republicans from blue States, came together and created an agreement that I think serves this body well.

Does it have everything that we would have wanted on this side? No. But it takes the nuclear option off the table. It says that filibusters may continue to be used, albeit in a restrained way—although many would argue 10 out of 218 was restrained in itself. It also asks the President to consult and that, to me, would be a key lesson of this agreement. The reason that we came so close to this Armageddon is because, in my judgment, we didn't have the typical consultation that previous Presidents—Clinton, Bush, Reagan—had with the Senate before nominating judges.

The agreement widely states that it is the hope of the Senate—at least of the 12 signatories, but I am sure the other 88 Senators would join—that the President will begin to consult. That will not mean that judges will be so far from his political philosophy. He is the President and he gets to choose them. But it will mean that the kinds of partisan division that we have seen here is gone.

Mr. President, what I most feared about the nuclear option was the destruction of the checks and balances that are the hallmark of this institution. Those checks and balances have been preserved tonight. But make no mistake about it, if we don't all make efforts, we could get right back to this point soon enough. It could be on the issue of judges or on the issue of something else. The poison of too much partisanship is still here, and it is hoped that this agreement will set a model where everyone can pull back, it is hoped that there will be consultation on judges, and it is hoped that this agreement will set the stage for a better Senate, a better Congress, and a better Republic in the future.

Mr. President, this could become a historic night if the agreement that has been created keeps. We must preserve the checks and balances in the Senate. We must preserve the rights of the minority in the Senate. We must understand that a vote of 51 percent on the most major of decisions is not the right vote that is always called for. That has been the tradition in the Senate.

The reason we say that our rules take two-thirds to change is exactly to make it hard to change the rules and force the proposed changer to seek a bipartisan coalition. That bipartisanship is what differentiates us from the other body. Those checks and balances differentiate us from most other governments. We must fight to keep them and tonight we have made a giant step in that direction.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. ALLARD. Mr. President, I thank the Senator from New York for his kind comments on the judicial nomination process. My thanks extend to all my colleagues tonight for their comments on the judicial nomination process and compromise negotiations.

I rise to congratulate the 14 Senators who have indicated through a Memorandum of Understanding that they will no longer support a filibuster on 3 of President Bush's judicial nominees. This is a good first step toward a bipartisan resolution.

My statement this evening is based on remarks that I prepared prior to the announcement of the judicial nomination compromise; however, the basic intent of my remarks has not changed even though the filibuster has been broken on three of the President's nominees. Tonight, I will address the qualifications of Priscilla Owen, and how important it is that we allow a yes or no vote on judicial nominees. All I ask for is an opportunity to have a yes or no vote on those judges that are pending before the Senate.

I am concerned about the next step in the judicial nomination debate—where are we going to go from here when it comes to the filibuster? I join my colleagues on both sides of the aisle who wish to move forward and forget about finger pointing and blame—who voted for who, who voted for a filibuster and how many times did they vote against cloture. I just hope we do indeed move forward. I hope we will look at each judge that is before the Senate for confirmation and vote them up or down based on their qualifications. That is what our forefathers had in mind when the advise and consent.

I join my colleagues in support of the nomination of Priscilla Owen, the Texas Supreme Court justice who was first nominated to the Fifth Circuit Court of Appeals in May 2001 by President Bush. I urge my colleagues to support her confirmation and allow an up-or-down vote on her nomination. I hope that fairness prevails and that we do indeed proceed with a vote on her nomination, and it looks like that is indeed the way the events have unfolded this evening.

I have had the opportunity to meet with Priscilla Owen personally. I don't know how many of my colleagues who oppose or who continue to oppose her have accepted her offer to visit with them, but I hope they will have the courtesy to meet her in person before deciding to refuse to offer her a fair up-or-down vote. If they do, they will quickly learn she is a person of integrity, humility, and possesses a keen understanding of the law.

On a personal note, she is a wonderful human being. I was particularly impressed when she told me that growing up she hoped to be a veterinarian. As a veterinarian myself, you can understand why I was impressed. She spoke of growing up and participating in a family cattle ranching enterprise, helping her parents and grandparents during calving season, nursing and branding.

There is something special about a person who has been kicked by a cow and swatted across the face with a dirty cow tail. It makes a person more real, more understanding of life and hard work. This is exactly the type of judge we need on the bench, one who understands real life, honest-living and hard-working people.

Instead of defaming her, I wish my colleagues would get to know her so that they might recognize the legal skill and value she would bring to the United States as a member of the Fifth Circuit Court of Appeals. Priscilla Owen will uphold the law, not make the law. Some find this to be a problem. I find it to be a blessing.

Priscilla Owen has served the law with distinction. A justice of the Texas Supreme Court since 1995, she received overwhelming approval from the people of Texas, 84 percent of whom voted to retain her service on the bench.

Unlike many Members of the Senate, including myself, when it came time for the voters to decide whether or not she should remain on the bench, Ms. Owen received the endorsement of every major newspaper in the State of Texas. I ask, does that sound like someone who is too extreme?

Priscilla Owen's life has not been limited to the law. She is a decent human being and dedicated community servant. She has worked to educate parents about the effect divorce has on children and worked to lessen the adversarial nature of legal proceedings when a marriage is dissolved. She works with the hearing impaired and organizations dedicated to service animals for those with disabilities. She teaches Sunday school and is committed to the poor and underprivileged.

It is clear that she is qualified to serve on the Fifth Circuit Court. The American Bar Association unanimously rated Justice Owen ''well qualified,'' its highest possible rating. She has the support of former Democrat justices on the Texas Supreme Court and 15 past presidents of the Texas State Bar.

To say that she is not qualified is utterly ridiculous. Because her credentials are so outstanding, throughout this debate, the other side has relied on hyperbole and rhetoric, accusing her of being ''extreme'' in order to smear her nomination. So the question her nomination presents us, then, is whether she is extreme or qualified? The great thing about the Constitution is that it provides us with a mechanism to make this type of ''advice and consent'' determination on whether she is extreme or qualified—through a simple up-or-down vote.

An up-or-down vote is a simple matter of fairness. Every judicial nominee that makes it out of the Judiciary Committee should receive an up or down vote. The filibuster is not in the Constitution. It is merely a parliamentary delay tactic that was relatively unused until modern times. In 214 years, never has a nominee with the majority of support of the United States Senate been denied a vote.

Throughout the history of the United States, a nominee who clearly held the majority support of the Senate had never been defeated by the use of the filibuster—until now. During the last Congress those opposed to President Bush's nominees tried to establish a precedent by using the filibuster to block a nomination. Having witnessed what was taking place, I appealed to my colleagues to restore the fairness that this body and the American people deserve. That is why I am so excited about moving forward with 3 of the nominations, which includes Priscilla Owen, so we can have an up-or-down vote.

Throughout this debate, I have consistently stated we must reach a compromise that allows an up-or-down vote on all nominees, while affording everybody an opportunity to be heard. This is not a partisan issue or flippant suggestion; it is simply a matter of fairness. If a nominee reaches the floor, then they should receive a vote—up or down. I don't believe there is anything wrong with providing a nominee an up-or-down vote once they reach the floor.

Some in this body act as if the filibuster has been used before to kill a judicial nominee. But such actions are simply misguided. Every nominee with a majority of support has received an up-or-down vote—every nominee for over 200 years.

I do not take the confirmation of judicial nominations lightly, nor do my colleagues. But we must not twist the confirmation process into a partisan platform.

Our fundamental duty to confirm the President's nominees is not an easy task. It carries with it the weight and responsibility of generations—a lifetime appointment to a position that requires a deep and mature understanding of the law.

We were elected to the Senate by people who believed we would accomplish our fundamental duties—as representatives of the people to say yes or no to the President's nominees.

I believe Members have a right to express their opinions. I also believe that Members have a right to a vote and that it is wrong to deny others of their opportunity to vote on judicial nominations.

The debate is not about numbers. It is not about percentages—how many judges that Republicans confirmed or how many judges Democrats have confirmed. To frame this debate as a numbers fight is not being fair to the American people. We were not sent to Congress to focus on a numerical count, but instead to carry out our constitutional obligations, in this instance the advice and consent clause.

Some Senators have come to the floor to argue that the advice and consent clause doesn't mean that we actually vote on nominees. They argue that a vote is only needed to confirm the nominee, but that other tactics can be used to disapprove the nominee. Unfortunately, these other tactics that have been used to kill a nomination have resulted in the obstruction of our constitutional duties.

To help address this point, I will turn to a recent article published in the National Review, which discusses the meaning of the advise and consent clause through the eyes of our country's Founders. The article notes the appointment clause is listed as an explicit power vested in the executive.

The advise and consent obligation follows this clause but it is in the article addressing executive powers. It is not listed in the article addressing legislative powers. The author believes that this is instructive because it helps us understand that the Founders intended the President to play the main role in the nomination process, not the legislature. Had the Founders intended the legislature to be the fulcrum, they would have listed the advise and consent clause as a fundamental duty in the article addressing legislative powers.

I ask unanimous consent to have that article printed in the RECORD.

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

[From National Review Online, May 17, 2005]

BREAKING THE RULES: THE FRAMERS INTENDED NO MORE THAN A SENATE MAJORITY TO APPROVE JUDGES

(By Clarke D. Forsythe)

The sharpening debate in the U.S. Senate over whether Democrats can block President Bush's judicial nominations by filibuster raises the basic question of the scope of the Senate's constitutional role to give ''Advice and Consent.'' What does it mean for the Senate to give ''Advice and Consent'' for federal judges?

Many people question whether changing the rules to allow only a majority vote for confirmations is proper, or even constitutional. However, the text of the Constitution, the record of the Constitutional Convention of 1787, and Supreme Court decisions all concur to show that the Constitution intended no more than a majority ''vote'' for the Senate's ''Advice and Consent'' for judicial appointments.

The key provision is Article II, Section 2, called the Appointments Clause: ''[The president] shall have Power, by and with the Advice and Consent of the Senate, to make

Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States . . .''

There are three striking aspects of the Appointments Clause, all of which are intentional and not accidental.

First, it is instructive if not definitive that the Appointments Clause is contained as an explicit power in Article II, involving executive powers, not in Article I, involving legislative powers.

Second, only a simple majority is required. The clause on the treaty power, after mentioning ''Advice and Consent,'' requires concurrence by ''two thirds of the Senators present.'' The clause on the appointment of ambassadors and others, including Supreme Court justices—by contrast—does not.

This is reinforced by the contrast found in several other provisions in the Constitution where a ''supermajority'' vote is required. In Article I, section 3, two-thirds (of members present) are required for Senate conviction for impeachment. In Article I, section 5, two-thirds are required to expel a member of either House. Article I, section 7 requires two-thirds for overriding a presidential veto. The fact that the Constitution explicitly requires two-thirds in some contexts indicates that the Senate's consent in Article II, section 2 is by majority vote when no supermajority vote is required.

The general rule is that majorities govern in a legislative body, unless another rule is expressly provided. Article I, section 5, for example, provides that ''a Majority of each [House] shall constitute a Quorum to do Business.''

More than a century ago, the Supreme Court stated in United States v. Ballin, a unanimous decision, that ''the general rule of all parliamentary bodies is that, when a quorum is present, the act of a majority of the quorum is the act of the body. This has been the rule for all time, except so far as in any given case the terms of the organic act under which the body is assembled have prescribed specific limitations . . . No such limitation is found in the federal constitution, and therefore the general law of such bodies obtains.''

Third, the particular process in the Appointments Clause—of presidential nomination and Senate ''consent'' by a majority—was carefully considered by the Constitutional Convention. A number of alternative processes for appointments were thoroughly considered—and rejected—by the Constitutional Convention. And this consideration took place over several months.

The Constitutional Convention considered at least three alternative options to the final Appointments Clause: (1) placing the power in the president alone, (2) in the legislature alone, (3) in the legislature with the president's advice and consent.

On June 13, 1787, it was originally proposed that judges be ''appointed by the national Legislature,'' and that was rejected; Madison objected and made the alternative motion that appointments be made by the Senate, and that was at first approved. Madison specifically proposed that a ''supermajority'' be required for judicial appointments but this was rejected. On July 18, Nathaniel Ghorum made the alternative motion ''that the Judges be appointed by the Executive with the advice & consent of the 2d branch,'' (following on the practice in Massachusetts at that time). Finally, on Friday, September 7, 1787, the Convention approved the final Appointments Clause, making the president primary and the Senate (alone) secondary, with a role of ''advice and consent.''

Obviously, this question is something that the Framers carefully considered. The Constitution and Supreme Court decisions are quite clear that only a majority is necessary for confirmation. Neither the filibuster, nor a supermajority vote, is part of the Advice and Consent role in the U.S. Constitution. Until the past four years, the Senate never did otherwise. Changing the Senate rules to eliminate the filibuster and only require a majority vote is not only constitutional but fits with more than 200 years of American tradition.

Mr. ALLARD. Mr. President, had the Founders intended a 60-vote supermajority, they would have included the requirement in the Constitution the way they did on the treaty power clause. The clause on the treaty power, after mentioning ''advice and consent,'' requires concurrence by two-thirds of the Senators present. The clause on the appointment of ambassadors and others, including Supreme Court Justices, by contrast, does not.

The author then pointed out several other provisions in the Constitution where a supermajority vote is required. In article I, section 3, two-thirds of Members present are required for Senate conviction for impeachment. In article I, section 5, two-thirds are required to expel a member of either House. Article I, section 7 requires two-thirds for overriding a Presidential veto.

The fact that the Constitution explicitly requires two-thirds in some contexts indicates that the Senate's consent in article II, section 2 is by majority vote when no supermajority vote is required. The general rule is that majorities govern in a legislative body unless another rule is expressly provided.

The article also cited a Supreme Court case noting that more than a century ago, in United States v. Ballin, that ''the general rule of parliamentary bodies is that, when a quorum is present, the act of a majority of the quorum is the act of the body. This has been the rule for all time, except so far as in any given case the terms of the organic act under which the body is assembled have prescribed specific limitations. . . . No such limitation is found in the Federal Constitution and, therefore, the general law of such bodies obtains.''

In the author's own words: ''. . . the particular process in the Appointments Clause—of presidential nomination and Senate 'consent' by a majority''—was carefully considered by the Constitutional Convention. A number of alternative processes for appointments were thoroughly considered—and rejected—by the Constitutional Convention. And this consideration took place over several months.

The Constitutional Convention considered at least three alternative options to the final appointments clause: (1) placing the power in the President alone,(2) in the legislature alone, (3) in the legislature with the President's advice and consent.

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On July 18, Nathaniel Ghorum made the alternative motion ''that the Judges be appointed by the Executive with the advice & consent of the 2d branch,'' following on the practice in Massachusetts at that time.

Finally, on Friday, September 7, 1787, the Convention approved the final appointments clause, making the President primary and the Senate alone secondary with the role of advise and consent.

I am no lawyer, but to me if a document consistently states when a supermajority vote is required and silent when it is not required, that they meant to write it that way and it was not a mere oversight no supermajority was required for the approval of judicial nominees.

Clearly, a supermajority was never intended, but what was intended was an up-or-down vote, a fair nonpartisan up-or-down vote.

If a Member of the Senate disapproves of a judge, then let them vote against the nominee. I encourage them to express their dissatisfaction and vote no on the nominee. But do not deprive those of us in the Senate who support a nominee of our right to a vote. Do not deny an up-or-down vote entirely. Let's decide whether the Members of this body approve or disapprove of the nominees, and let's vote. Let's vote to show whether this body believes the nominees are unfit for service or out of the mainstream. I believe they have majority support—majority support from the elected representatives of the people. But let's vote and find out.

It is our vote—the right of each Member to collectively participate in a show of advise and consent to the President—that exercises the remote choice of the people who sent us to Congress.

Our three-branch system of government cannot function without an equally strong judiciary. It is through the courts that justice is served, rights protected, and that lawbreakers are sentenced for their crimes.

Unfortunately, one out of four of President Bush's circuit nominees have been subjected to the filibuster, the worst confirmation of appellate court judges since the Roosevelt administration. The minority cannot willingly refuse to provide an up-or-down vote on judicial nominees without acknowledging that irreparable harm may be done to an equal branch of government.

The decision to vote up or down on a nominee or deny that vote entirely pits the Constitution against parliamentary procedure. That is the Constitution versus the filibuster. I urge my colleagues to put their faith in the

founding document and not in a filibuster. To do anything else dishonors the Constitution and relegates it to a mere rule of procedure.

I am pleased that we have reached a common ground on three of the judicial nominees. I am pleased that we have recognized our duties as Members of this body to uphold the Constitution. But I would ask my colleagues for fairness as we move forward for the rest of the session, for the rest of this Congress, to put partisan politics aside and to fulfill our advise and consent obligations on all nominations. As we move through the rest of the Congress, let's vote up or down and end this debate about filibusters with honor.

Mr. President, I am excited that we can now move forward.

I yield to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. ALLARD. Mr. President, it seems as though we need to do closing script, and if the Senator from Iowa will yield to me, I will be glad to do that formality.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

MORNING BUSINESS

Mr. ALLARD. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

Mr. STEVENS. Mr. President, I ask unanimous consent that the attached statement from the President of the United States be entered into the RECORD today pursuant to the War Powers Resolution (P.L. 93–148) and P.L. 107–40.

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

THE WHITE HOUSE,
Washington, DC, May 20, 2005.

Hon. TED STEVENS,
President pro tempore of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: I am providing this supplemental consolidated report, prepared by my Administration and consistent with the War Powers Resolution (Public Law 93–148), as part of my efforts to keep the Congress informed about deployments of U.S. combat-equipped armed forces around the world. This supplemental report covers operations in support of the global war on terrorism, Kosovo, and Bosnia and Herzegovina.

THE GLOBAL WAR ON TERRORISM

Since September 24, 2001, I have reported, consistent with Public Law 107–40 and the War Powers Resolution, on the combat operations in Afghanistan against al-Qaida terrorists and their Taliban supporters, which began on October 7, 2001, and the deployment of various combat-equipped and combat-support forces to a number of locations in the Central, Pacific, and Southern Command areas of operation in support of those operations and of other operations in our global war on terrorism.

I will direct additional measures as necessary in the exercise of the U.S. right to self-defense and to protect U.S. citizens and interests. Such measures may include short-notice deployments of special operations and other forces for sensitive operations in various locations throughout the world. It is not possible to know at this time either the precise scope or duration of the deployment of U.S. Armed Forces necessary to counter the terrorist threat to the United States.

United States Armed Forces, with the assistance of numerous coalition partners, continue to conduct the U.S. campaign to pursue al-Qaida terrorists and to eliminate support to al-Qaida.

These operations have been successful in seriously degrading al-Qaida's training capabilities. United States Armed Forces, with the assistance of numerous coalition partners, ended the Taliban regime in Afghanistan and are actively pursuing and engaging remnant al-Qaida and Taliban fighters. Approximately 90 U.S. personnel are also assigned to the International Security Assistance Force (ISAF) in Afghanistan. The U.N. Security Council authorized the ISAF in U.N. Security Council Resolution 1386 of December 20, 2001, and has reaffirmed its authorization since that time, most recently, for a 12-month period from October 13, 2004, in U.N. Security Council Resolution 1563 of September 13, 2004. The mission of the ISAF under NATO command is to assist the Government of Afghanistan in creating a safe and secure environment that allows reconstruction and the reestablishment of Afghan authorities. Currently, all 26 NATO nations contribute to the ISAF. Ten non-NATO contributing countries also participate by providing military and other support personnel to the ISAF.

The United States continues to detain several hundred al-Qaida and Taliban fighters who are believed to pose a continuing threat to the United States and its interests. The combat-equipped and combat-support forces deployed to Naval Base, Guantanamo Bay, Cuba, in the U.S. Southern Command area of operations since January 2002 continue to conduct secure detention operations for the approximately 520 enemy combatants at Guantanamo Bay.

The U.N. Security Council authorized a Multinational Force (MNF) in Iraq under unified command in U.N. Security Council Resolution 1511 of October 16, 2003, and reaffirmed its authorization in U.N. Security Council Resolution 1546 of June 8, 2004, noting the Iraqi Interim Government's request to retain the presence of the MNF. Under U.N. Security Council Resolution 1546, the mission of the MNF is to contribute to the security and stability in Iraq, as reconstruction continues, until the completion of Iraq's political transformation. These contributions include assisting in building the capability of the Iraqi security forces and institutions, as the Iraqi people, represented by the Transitional National Assembly, draft a constitution and establish a constitutionally elected government. The U.S. contribution to the MNF is approximately 139,000 military personnel.

In furtherance of our efforts against terrorists who pose a continuing and imminent threat to the United States, our friends and allies, and our forces abroad, the United States continues to work with friends and allies in areas around the globe. United States combat-equipped and combat-support forces are located in the Horn of Africa region, and the U.S. forces headquarters element in Djibouti provides command and control support as necessary for military operations against al-Qaida and other international terrorists in the Horn of Africa region, including Yemen. These forces also assist in enhancing counterterrorism capabilities in Kenya, Ethiopia, Yemen, Eritrea, and Djibouti. In addition, the United States continues to conduct maritime interception operations on the high seas in the areas of responsibility of all of the geographic combatant commanders. These maritime operations have the responsibility to stop the movement, arming, or financing of international terrorists.

NATO-LED KOSOVO FORCE (KFOR)

As noted in previous reports regarding U.S. contributions in support of peacekeeping efforts in Kosovo, the U.N. Security Council authorized Member States to establish KFOR in U.N. Security Council Resolution 1244 of June 10, 1999. The mission of KFOR is to provide an international security presence in order to deter renewed hostilities; verify and, if necessary, enforce the terms of the Military Technical Agreement between NATO and the Federal Republic of Yugoslavia (which is now Serbia and Montenegro); enforce the terms of the Undertaking on Demilitarization and Transformation of the former Kosovo Liberation Army; provide day-to-day operational direction to the Kosovo Protection Corps; and maintain a safe and secure environment to facilitate the work of the U.N. Interim Administration Mission in Kosovo (UNMIK).

Currently, there are 23 NATO nations contributing to KFOR. Eleven non-NATO contributing countries also participate by providing military personnel and other support personnel to KFOR. The U.S. contribution to KFOR in Kosovo is about 1,700 U.S. military personnel, or approximately 10 percent of KFOR's total strength of approximately 17,000 personnel. Additionally, U.S. military personnel occasionally operate from Macedonia, Albania, and Greece in support of KFOR operations.

The U.S. forces have been assigned to a sector principally centered around Gnjilane in the eastern region of Kosovo. For U.S. KFOR forces, as for KFOR generally, maintaining a safe and secure environment remains the primary military task. The KFOR operates under NATO command and control and rules of engagement. The KFOR coordinates with and supports UNMIK at most levels; provides a security presence in towns, villages, and the countryside; and organizes checkpoints and patrols in key areas to provide security, protect minorities, resolve disputes, and help instill in the community a feeling of confidence.

In accordance with U.N. Security Council Resolution 1244, UNMIK continues to transfer additional competencies to the Kosovar provisional Institutions of Self-Government, which includes the President, Prime Minister, multiple ministries, and the Kosovo Assembly. The UNMIK retains ultimate authority in some sensitive areas such as police, justice, and ethnic minority affairs.

NATO continues formally to review KFOR's mission at 6–month intervals. These reviews provide a basis for assessing current force levels, future requirements, force structure, force reductions, and the eventual withdrawal of KFOR. NATO has adopted the Joint Operations Area plan to regionalize and rationalize its force structure in the Balkans. The UNMIK international police and the Kosovo Police Service (KPS) have full responsibility for public safety and policing throughout Kosovo except in the area of South Mitrovica, where KFOR and UNMIK share this responsibility due to security concerns. The UNMIK international police and KPS also have begun to assume responsibility for guarding patrimonial sites and established border-crossing checkpoints. The

KFOR augments security in particularly sensitive areas or in response to particular threats as needed.

NATO HEADQUARTERS—SARAJEVO IN BOSNIA AND HERZEGOVINA

Pursuant to the June 2004 decision made by NATO Heads of State and Government, and in accordance with U.N. Security Council Resolution 1575 of November 22, 2004, NATO concluded its Stabilization Force (SFOR) operations in Bosnia and Herzegovina and established NATO Headquarters—Sarajevo to continue to assist in implementing the Peace Agreement in conjunction with a newly established European Force (EUFOR). NATO Headquarters—Sarajevo, to which approximately 235 U.S. personnel are assigned, is, with EUFOR, the legal successor to SFOR. The principal tasks of NATO Headquarters—Sarajevo are providing advice on defense reform and performing operational supporting tasks, such as counterterrorism and supporting the International Criminal Tribunal for the Former Yugoslavia.

I have directed the participation of U.S. Armed Forces in all of these operations pursuant to my constitutional authority to conduct U.S. foreign relations and as Commander in Chief and Chief Executive. Officials of my Administration and I communicate regularly with the leadership and other Members of Congress with regard to these deployments, and we will continue to do so.

MEMORIAL DAY

Ms. STABENOW. Mr. President, I rise today to reflect on this year's Memorial Day and the importance of this holiday in American life.

As I attend Memorial Day parades and commemorations, I am struck by the spirit of national unity because I know that across Michigan and across our Nation our fellow Americans are taking part in similar gatherings where we take the time to reflect on our history and the sacrifice that brought us to where we are today.

Memorial Day is unique among American holidays. On Memorial Day we do not honor a particular date or event, a battle or the end of a war. On Memorial Day we do not honor an individual leader—a President or a general. On Memorial Day we do not even honor ourselves at least not in the present tense.

On Memorial Day we pay homage to the thousands and thousands of individual acts of bravery and sacrifice that stretch back to the battlefields of our revolution and to those taking place today in the deserts of Iraq and the mountains of Afghanistan.

This year, Memorial Day has a special significance as the 60th anniversary of the battle of Iwo Jima. This past February marks the dates in history that cost nearly 26,000 lives. The service members involved in that battle responded with courage and bravery. Iwo Jima is one of the most important battles of World War II. On behalf of a grateful Nation, we pay respect to the veterans of Iwo Jima and those who made the ultimate sacrifice.

This Memorial Day we also honor the men and women currently serving in Iraq and Afghanistan. We must honor our commitment to them by making sure they have everything they need to complete their mission and come home safely. We must also keep our promises to those who proudly served our country by making sure they receive the benefits they deserve.

So, as we observe this holiday we call Memorial Day, let us remember the centuries of sacrifice by the many men and women that this day represents. And let's make sure that all who served with honor are honored in return.

ADDITIONAL STATEMENTS

THE PASSING OF GEORGE POOLE

● Mr. CRAIG. Mr. President, I have sought recognition to comment on the passing of a dedicated, 28-year employee of the Department of Veterans Affairs Insurance Center, Mr. George Poole. Until his untimely death, Mr. Poole served within the VA Insurance Service, widely regarded as a model of efficiency and service excellence within the Federal Government.

We in the Congress spent a considerable amount of time on the supplemental appropriations bill debating enhancements to insurance benefits for our servicemembers fighting abroad. We were successful in not only increasing the amount of life insurance benefits available for servicemembers, but also creating a new traumatic injury insurance benefit for those severely disabled. Without the assistance of public servants like George, who provide the Veterans' Affairs Committee, and the Congress, with invaluable technical assistance on all legislation affecting insurance benefits, our job would be very difficult.

George began his life-long dedication to public service while serving honorably in the U.S. Air Force from 1964 through 1968. Subsequent to his service, he then received a bachelor's degree and a law degree, taking full advantage of the Department of Veterans Affairs-administered GI bill. There is little doubt that his time in the military service of his country, and his subsequent studies under the GI bill, inspired him to pursue a career dedicated to helping his fellow veterans. This dedication to fellow veterans translated into a long and distinguished 28-year career with the U.S. Department of Veterans Affairs where he served his Nation from 1977 until his death.

His long career with the Department of Veterans Affairs was entirely within the Insurance Service where he served in an impressive litany of capacities. Starting as a claims examiner in the death claims activity, he worked his way up through numerous management level positions including section chief, division chief and finally culminating his distinguished career as chief, program administration, a senior management position. In this, the final step in his career ladder, he was responsible for a variety of duties, not the least of which was composing legislative initiatives concerning servicemembers' and veterans' group life insurance programs. This insurance coverage is intended for members of this Nation's Active-Duty military and Reserve components, as well as veterans recently released from Active service, who are in, or recently were in, harm's way defending the United States. The importance of assuring that all members of the military, veterans, and their families are properly provided for in their time of need goes without question. Therefore, George's work will undoubtedly have a lasting effect on the families of thousands.

I would like to extend my sincere appreciation on behalf of a grateful Nation to the Poole family for George's dedicated service to this Nation's veterans. I also extend my heartfelt sympathies to the Poole family during their time of sorrow.●

TRIBUTE TO GLENN D. CUNNINGHAM

● Mr. LAUTENBERG. Mr. President, Today I wish to pay tribute to one of New Jersey's most acclaimed advocates of social justice, mayor and State senator Glenn D. Cunningham, on the 1-year anniversary of his passing.

Although Glenn's life was tragically cut short by a heart attack, his extraordinary legacy of public service lives on. His remarkable accomplishments are surpassed only by the love he felt for his family, friends, and the people in the community he served.

A lifelong resident of Jersey City, Glenn demonstrated his sense of duty early in life, enlisting in the United States Marine Corps after he completed high school. He served his country with distinction for four years, and then continued his commitment to public safety by joining the Jersey City Police Department in 1967.

Aided by a strong work ethic and intelligence, Glenn rose through the ranks of the department over the next 25 years, attaining the position of Captain. Realizing the value of education and the power of ideas, during this same time period he attended Jersey City State College and earned a bachelor's degree, graduating cum laude in 1974.

Glenn had a passion for helping people and the ability to take on many diverse responsibilities and perform many tasks at once. He expanded his public service career in 1975, serving as a Hudson County Freeholder until 1978. He was subsequently elected to the Jersey City Council, where he served two consecutive terms, including one term as city council president.

Upon his retirement from the police department in 1991, Glenn was appointed the director of the Hudson County Department of Public Safety.

In 1996, President Clinton appointed Glenn as United States Marshall for

the State of New Jersey. This appointment broke a barrier for African American leaders in our State, and I was proud to support Glenn for the position, knowing that he would do a great job.

Never one to be complacent or satisfied with the status quo, Glenn set his sights on another historic milestone, and in 2001 he became the first African-American mayor of Jersey City. Adding to his already impressive list of ''firsts,'' Glenn's 2004 election to the New Jersey State senate marked the first time a mayor of Jersey City has simultaneously held State office.

Glenn's illustrious career in public service was marked first and foremost by his unwavering commitment to the citizens of Jersey City. Like Frederick Douglass, Glenn battled to improve the lives of the people he represented even if his efforts hurt him politically.

Glenn's constituents could always approach him with their problems or concerns, and he made time to listen to them. His genuine care for others inspired hope, and his courage, dignity, and fierce determination helped reinvigorate a once-distressed city.

The effects of his reform-minded, progressive initiatives continue to resonate today. As a friend, a dedicated public servant, and a groundbreaking pioneer, Glenn is sorely missed by many. His memory, however, lives on, and will continue to inspire others to work for the same positive social change that was so close to his heart.●

HONORING THE VERMONT ARTS COUNCIL

● Mr. JEFFORDS. Mr. President, I rise today to recognize the 40th anniversary of the establishment of the Vermont Arts Council and its dedicated support for the arts in Vermont.

The Vermont Arts Council, the only nonprofit State arts agency in the country, was founded four decades ago ''on a simple and powerful premise: that the arts enrich lives and form a vital part of Vermont community life.''

Throughout the years, the Vermont Arts Council has served as Vermont's foremost arts advocate. Its resources are dedicated to the professional development of local artists, and it is a primary source of information about the arts, their impact on Vermont and across the Nation.

Vermont is rich in culture and creativity, and the Vermont Arts Council has played such a vital role in contributing to this environment where artists and arts organizations thrive. The arts and humanities are a powerful force in bringing us together and their presence is to be nurtured and integrated into our communities at every opportunity.

The Vermont Arts Council became a reality 40 years ago thanks to those who understand the important role the arts play in education and in our daily lives. Pauline Billings, who served as one of the original trustees of the council, has worked tirelessly in support of the arts in Vermont. It is so fitting that she is being honored with the council's Lifetime Achievement Award for the Arts. I cannot think of a more deserving recipient, and I welcome this opportunity to acknowledge Polly for her invaluable contributions.

It is with great pleasure that I recognize the Vermont Arts Council as it marks its 40th anniversary and pay tribute to the council's work in helping the arts remain a vibrant force in Vermont. Here is to another four decades of great achievement.●

OPENING OF THE NORTH DAKOTA COWBOY HALL OF FAME

● Mr. DORGAN. Mr. President, because truth in labeling is important these days, let me just simply label this as some old-fashioned bragging about my brother.

In last Sunday's Fargo Forum, a column by Jack Zaleski described the work of my brother Darrell in an extraordinary way and I wanted to share it far and wide.

Darrell has been a journalist, filmmaker, a writer, a historian and now a builder. It is already a remarkable career and much is yet to come.

But today I am reprinting for my colleagues the newspaper column that describes his latest project: the North Dakota Cowboy Hall of Fame. It will be dedicated to the history of ranch life and cowboy life on the northern Great Plains. His work is an inspiration to those who have a passion about honoring our history.

From the Indians, to the settlers and ranchers, to the rodeo cowboys and the bucking horses, the stories will be brought to life in the Cowboy Hall of Fame in Medora, North Dakota beginning next month.

It is a tribute to the dreams and hard work of Darrell Dorgan and many others who share in this accomplishment.

Congratulations to all of them.

I ask to have the attached article entitled ''Long Ride to Cowboy Hall of Fame'' from the May 22nd edition of the Fargo Forum printed in the RECORD.

The article follows.

[From the Forum, May 22, 2005]

LONG RIDE TO COWBOY HALL OF FAME

(By Jack Zaleski)

I've known Darrell Dorgan for 30 years. He's a member of a shrinking cadre of journalists and former journalists who got started in this business in North Dakota at about the same time. Most of them still are at it. Dorgan (a former journalist) is a contemporary of Grand Forks Herald editor/publisher Mike Jacobs, Bismarck Tribune managing editor Ken Rogers, North Dakota Public Radio news director Dave Thompson, and me.

These days Dorgan is executive director of the North Dakota Cowboy Hall of Fame. A few years ago he wrapped up a career in broadcast journalism during which he established himself as one of the most knowledgeable, dogged reporters in the Bismarck press corps. His work for Prairie Public Broadcasting was some of the best ever done for public television. For his efforts he won nearly every award a broadcaster can win.

But history was calling—specifically the history, legend and lore of western North Dakota. A bona fide expert on the exploits and foibles of Gen. George A. Custer, Dorgan eventually found a way to fold his love for the state's history into a craft and a living: filmmaking. His videos on such topics as Lewis & Clark in North Dakota, Fort Abraham Lincoln and Custer's 7th, and Sheheke, Ambassador of the Mandan have won praise and plaudits across the nation and in Europe.

It wasn't a big leap when Dorgan took on the task of raising funds to establish a North Dakota Cowboy Hall of Fame in historic Medora in the Badlands. As executive director, he worked tirelessly for several years to raise public and private money to fund the $4 million western heritage and cultural center. His efforts have paid off: The hall of fame has a sneak preview scheduled May 28 during the Cowboy Poetry and Art Show. The center will open officially in mid-June. A dedication celebration, complete with induction of hall of fame candidates, will come in early August, at about the time of the Champions Ride rodeo near Sentinel Butte, one of the state's premier bronc riding and roping events.

Dorgan would be the first to say he didn't do it alone. And of course, a lot of people deserve a measure of credit for the success of the project. But without his vision and focus on the task, the hall would still be a wish. It takes a point man to raise that much money. It takes perserverance.

I know there were times when Dorgan was discouraged. But he knew North Dakotans would respond to a center where cowboy and ranch life could be enshrined. He understood how deep western roots are planted in the state's history and heritage. He realized that the unique saga of North Dakota's cowboys, ranches and rodeos needed to be gathered in one western place and told through the eyes and by the voices of the men and women who lived the stories.

It was an ambitious vision from the start. It's been a long ride on a sometimes skittish horse. But Dorgan stuck with it, and this summer the hall of fame will open.

Not bad for a former newsman—and a broadcast journalist at that . . .●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 2:22 p.m., a message from the House of Representatives, delivered by one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2361. An act making appropriations for the Department of the Interior, Environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 2361. An act making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes; to the Committee on Appropriations.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 1098. A bill to prevent abuse of the special allowance subsidies under the Federal Family Education Loan Program.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LOTT, from the Committee on Rules and Administration:

Report to accompany S. Res. 50, An original resolution authorizing expenditures by committees of the Senate for the periods March 1, 2005, through September 30, 2005, October 1, 2005, through September 30, 2006, and October 1, 2006, through February 28, 2007 (Rept. No. 109–70).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. CORZINE (for himself and Mr. LAUTENBERG):

S. 1096. A bill to amend the Wild and Scenic Rivers Act to designate portions of the Musconetcong River in the State of New Jersey as a component of the National Wild and Scenic Rivers System, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 1097. A bill to amend title 4 of the United States Code to prohibit the double taxation of telecommuters and others who work from home; to the Committee on Finance.

By Mr. KENNEDY (for himself, Mrs. MURRAY, Ms. MIKULSKI, Mrs. CLINTON, Mr. DORGAN, and Mr. DURBIN):

S. 1098. A bill to prevent abuse of the special allowance subsidies under the Federal Family Education Loan Program; read the first time.

By Mr. SHELBY:

S. 1099. A bill to repeal the current Internal Revenue Code and replace it with a flat tax, thereby guaranteeing economic growth and greater fairness for all Americans; to the Committee on Finance.

By Mr. BUNNING (for himself, Mr. CONRAD, Mr. HATCH, Mrs. BOXER, Mr. ALEXANDER, and Mr. DURBIN):

S. 1100. A bill to amend the Internal Revenue Code of 1986 to provide capital gains treatment for certain self-created musical works; to the Committee on Finance.

By Mrs. MURRAY (for herself and Mr. DEWINE):

S. 1101. A bill to amend the Head Start Act to address the needs of victims of child abuse and neglect, children in foster care, children in kinship care, and homeless children; to the Committee on Health, Education, Labor, and Pensions.

By Mr. ROCKEFELLER (for himself and Mr. BURNS):

S. 1102. A bill to extend the aviation war risk insurance program for 3 years; to the Committee on Commerce, Science, and Transportation.

By Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. WYDEN, Mr. KYL, Mr. SCHUMER, Mr. CRAPO, Mr. PRYOR, Mr. JEFFORDS, and Mr. FRIST):

S. 1103. A bill to amend the Internal Revenue Code of 1986 to repeal the individual alternative minimum tax; to the Committee on Finance.

By Mrs. CLINTON (for herself, Mr. CHAFEE, Mr. NELSON of Florida, Ms. COLLINS, Mr. BINGAMAN, and Ms. CANTWELL):

S. 1104. A bill to amend titles XIX and XXI of the Social Security Act to provide States with the option to cover certain legal immigrants under the medicaid and State children's health insurance programs; to the Committee on Finance.

By Mr. DODD (for himself, Mr. COCHRAN, Mr. LEVIN, Mr. KENNEDY, and Mr. AKAKA):

S. 1105. A bill to amend title VI of the Higher Education Act of 1965 regarding international and foreign language studies; to the Committee on Health, Education, Labor, and Pensions.

By Mr. ALLARD (for himself and Mr. SALAZAR):

S. 1106. A bill to authorize the construction of the Arkansas Valley Conduit in the State of Colorado, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ENZI (for himself and Mr. KENNEDY):

S. 1107. A bill to reauthorize the Head Start Act, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HAGEL (for himself, Mr. LUGAR, Mr. BIDEN, and Mr. REID):

S. Res. 152. A resolution welcoming His Excellency Hamid Karzai, the President of Afghanistan, and expressing support for a strong and enduring strategic partnership between the United States and Afghanistan; considered and agreed to.

By Mr. LIEBERMAN (for himself and Mr. SESSIONS):

S. Res. 153. A resolution expressing the support of Congress for the observation of the National Moment of Remembrance at 3:00 pm local time on this and every Memorial Day to acknowledge the sacrifices made on the behalf of all Americans for the cause of liberty; to the Committee on the Judiciary.

By Mrs. FEINSTEIN (for herself, Mr. HAGEL, Mr. LAUTENBERG, Mr. DURBIN, Mr. CORZINE, Mr. FEINGOLD, and Mr. LEVIN):

S. Con. Res. 36. A concurrent resolution expressing the sense of Congress concerning actions to support the Nuclear Non-proliferation Treaty on the occasion of the Seventh NPT Review Conference; to the Committee on Foreign Relations.

By Mr. DEWINE:

S. Con. Res. 37. A concurrent resolution honoring the life of Sister Dorothy Stang; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 94

At the request of Mr. LUGAR, the names of the Senator from Nevada (Mr. ENSIGN) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 94, a bill to amend the Internal Revenue Code of 1986 to provide for a charitable deduction for contributions of food inventory.

S. 117

At the request of Mrs. FEINSTEIN, the names of the Senator from Connecticut (Mr. LIEBERMAN), the Senator from New Jersey (Mr. CORZINE) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 117, a bill to amend the Higher Education Act of 1965 to extend loan forgiveness for certain loans to Head Start teachers.

S. 211

At the request of Mrs. CLINTON, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 211, a bill to facilitate nationwide availability of 211 telephone service for information and referral on human services, volunteer services, and for other purposes.

S. 267

At the request of Mr. CRAIG, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 267, a bill to reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000, and for other purposes.

S. 285

At the request of Mr. BOND, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 285, a bill to reauthorize the Children's Hospitals Graduate Medical Education Program.

S. 331

At the request of Mr. JOHNSON, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 331, a bill to amend title 38, United States Code, to provide for an assured adequate level of funding for veterans health care.

S. 333

At the request of Mr. SANTORUM, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 333, a bill to hold the current regime in Iran accountable for its threatening behavior and to support a transition to democracy in Iran.

S. 365

At the request of Mr. COLEMAN, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 365, a bill to amend the Torture Victims Relief Act of 1998 to authorize appropriations to provide assistance for domestic and foreign centers and programs for the treatment of victims of torture, and for other purposes.

S. 401

At the request of Mr. HARKIN, the name of the Senator from New York

(Mrs. CLINTON) was added as a cosponsor of S. 401, a bill to amend title XIX of the Social Security Act to provide individuals with disabilities and older Americans with equal access to community-based attendant services and supports, and for other purposes.

S. 441

At the request of Mr. SANTORUM, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 441, a bill to amend the Internal Revenue Code of 1986 to make permanent the classification of a motorsports entertainment complex.

S. 515

At the request of Mr. BYRD, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 515, a bill to amend title 32, United States Code, to increase the maximum Federal share of the costs of State programs under the National Guard Youth Challenge Program, and for other purposes.

S. 528

At the request of Mr. HARKIN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 528, a bill to authorize the Secretary of Health and Human Services to provide grants to States to conduct demonstration projects that are designed to enable medicaid-eligible individuals to receive support for appropriate and necessary long-term services in the settings of their choice.

S. 567

At the request of Mr. LUGAR, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 567, a bill to provide immunity for nonprofit athletic organizations in lawsuits arising from claims of ordinary negligence relating to the passage, adoption, or failure to adopt rules of play for athletic competitions and practices.

S. 582

At the request of Mr. PRYOR, the name of the Senator from New Hampshire (Mr. SUNUNU) was added as a cosponsor of S. 582, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the desegregation of the Little Rock Central High School in Little Rock, Arkansas, and for other purposes.

S. 601

At the request of Mr. CONRAD, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 601, a bill to amend the Internal Revenue Code of 1986 to include combat pay in determining an allowable contribution to an individual retirement plan.

S. 611

At the request of Mr. FEINGOLD, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 611, a bill to establish a Federal Interagency Committee on Emergency Medical Services and a Federal Interagency Committee on emergency Medical Services Advisory Council, and for other purposes.

S. 633

At the request of Mr. JOHNSON, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 633, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

S. 642

At the request of Mr. FRIST, the names of the Senator from Indiana (Mr. LUGAR), the Senator from Kentucky (Mr. MCCONNELL), the Senator from Maine (Ms. COLLINS) and the Senator from South Carolina (Mr. DEMINT) were added as cosponsors of S. 642, a bill to support certain national youth organizations, including the Boy Scouts of America, and for other purposes.

S. 666

At the request of Mr. KENNEDY, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 666, a bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products.

S. 671

At the request of Mr. LIEBERMAN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 671, a bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for certain fuel cell property.

S. 713

At the request of Mr. ROBERTS, the names of the Senator from Georgia (Mr. CHAMBLISS), the Senator from Pennsylvania (Mr. SANTORUM) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of S. 713, a bill to amend the Internal Revenue Code of 1986 to provide for collegiate housing and infrastructure grants.

S. 724

At the request of Mr. DODD, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 724, a bill to improve the No Child Left Behind Act of 2001, and for other purposes.

S. 756

At the request of Mr. BENNETT, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 756, a bill to amend the Public Health Service Act to enhance public and health professional awareness and understanding of lupus and to strengthen the Nation's research efforts to identify the causes and cure of lupus.

S. 772

At the request of Mr. CORNYN, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 772, a bill to amend the Internal Revenue Code of 1986 to expand workplace health incentives by equalizing the tax consequences of employee athletic facility use.

S. 798

At the request of Mr. FEINGOLD, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 798, a bill to amend the Family and Medical Leave Act of 1993 and title 5, United States Code, to provide entitlement to leave to eligible employees whose spouse, son, daughter, or parent is a member of the Armed Forces who is serving on active duty in support of a contingency operation or who is notified of an impending call or order to active duty in support of a contingency operation, and for other purposes.

S. 811

At the request of Mr. DURBIN, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 811, a bill to require the Secretary of the Treasury to mint coins in commemoration of the bicentennial of the birth of Abraham Lincoln.

S. 884

At the request of Ms. CANTWELL, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 884, a bill to conduct a study evaluating whether there are correlations between the commission of methamphetamine crimes and identify theft crimes.

S. 1022

At the request of Mr. SMITH, the name of the Senator from Missouri (Mr. TALENT) was added as a cosponsor of S. 1022, a bill to amend the Internal Revenue Code of 1986 to allow for an energy efficient appliance credit.

S. 1065

At the request of Mr. THUNE, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1065, a bill to amend title 10, United States Code, to extend child care eligibility for children of members of the Armed Forces who die in the line of duty.

S. 1068

At the request of Mr. BAUCUS, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1068, a bill to provide for higher education affordability, access, and opportunity.

S. 1081

At the request of Mr. KYL, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 1081, a bill to amend title XVIII of the Social Security Act to provide for a minimum update for physicians' services for 2006 and 2007.

At the request of Ms. STABENOW, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1081, supra.

S. 1082

At the request of Mrs. HUTCHISON, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 1082, a bill to restore Second Amendment rights in the District of Columbia.

S. 1084

At the request of Mr. KENNEDY, the names of the Senator from Washington (Mrs. MURRAY) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 1084, a bill to eliminate child poverty, and for other purposes.

S. 1086

At the request of Mr. HATCH, the names of the Senator from Delaware (Mr. BIDEN), the Senator from Florida (Mr. MARTINEZ) and the Senator from Nevada (Mr. ENSIGN) were added as cosponsors of S. 1086, a bill to improve the national program to register and monitor individuals who commit crimes against children or sex offenses.

S. 1092

At the request of Mr. SALAZAR, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 1092, a bill to establish a program under which the Secretary of the Interior offers for lease certain land for oil shale development, and for other purposes.

S.J. RES. 18

At the request of Mrs. FEINSTEIN, the names of the Senator from New York (Mrs. CLINTON) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S.J. Res. 18, a joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003.

AMENDMENT NO. 762

At the request of Mr. NELSON of Florida, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of amendment No. 762 intended to be proposed to S. 1042, an original bill to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CORZINE (for himself and Mr. LAUTENBERG):

S. 1096. A bill to amend the Wild and Scenic Rivers Act to designate portions of the Musconetcong River in the State of New Jersey as a component of the National Wild and Scenic Rivers System, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. CORZINE. Mr. President, today, along with Senator LAUTENBERG, I am introducing legislation, the Musconetcong Wild and Scenic Rivers Act, to designate portions of the Musconetcong River in New Jersey as a component of the National Wild and Scenic Rivers System. I am proud to be joining my New Jersey colleague, Representative SCOTT GARRETT, who has introduced this legislation in the House of Representatives, with the support of Congressmen ROBERT ANDREWS, MICHAEL FERGUSON, RODNEY FRELINGHUYSEN, ROBERT MENENDEZ, FRANK PALLONE, DONALD PAYNE and JAMES SAXTON.

This is important legislation to help preserve and protect one of the most valuable natural resources in the State of New Jersey. The Musconetcong River is a 43 mile river that runs westward from Lake Musconetcong to the Delaware River. It provides many ecological, recreational and scenic benefits to the northwestern portion of our State. In addition, it is also home to a number of archeological sites and other historic areas, including one site in Warren County where scientists have discovered stone knives and other weapons dating back at least ten thousand years. Finally, it feeds acquifers that provide many residents in Hunterdon and Warren counties with quality drinking water.

Unfortunately, the beauty and value that the Musconetcong provides is at risk. The river faces pressures, for example, from the development that is occurring on or near its shores. This has caused water quality to deteriorate from increased levels of bacteria, silt and runoff from roadways. Further, many of the municipalities that lie along the river lack the financial resources to adequately protect the river for future generations.

The Musconetcong Wild and Scenic Rivers Act would help state, county and local officials begin to address these concerns, working alongside environmental and public interest groups. By including this river in the Wild and Scenic River System, it would allow New Jersey to implement a management plan for the river that has the support of three counties and 13 municipalities. In addition it would make the river eligible for financial, planning, and technical assistance to help preserve and protect it. The goal is to encourage uses and development that is compatible with the river.

The Wild and Scenic River System already includes the Maurice and Great Egg Harbor Rivers in New Jersey as well as the lower and middle portions of the Delaware River

I will work hard in the 109th Congress to see that the Musconetcong is added to this list. I hope my colleagues will support this legislation, and I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1096

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Musconetcong Wild and Scenic Rivers Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Secretary of the Interior, in cooperation and consultation with appropriate Federal, State, regional, and local agencies, is conducting a study of the eligibility and suitability of the Musconetcong River in the State of New Jersey for inclusion in the Wild and Scenic Rivers System;

(2) the Musconetcong Wild and Scenic River Study Task Force, with assistance from the National Park Service, has prepared a river management plan for the study area entitled ''Musconetcong River Management Plan'' and dated April 2002 that establishes goals and actions to ensure long-term protection of the outstanding values of the river and compatible management of land and water resources associated with the Musconetcong River; and

(3) 13 municipalities and 3 counties along segments of the Musconetcong River that are eligible for designation have passed resolutions in which the municipalities and counties—

(A) express support for the Musconetcong River Management Plan;

(B) agree to take action to implement the goals of the management plan; and

(C) endorse designation of the Musconetcong River as a component of the Wild and Scenic Rivers System.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADDITIONAL RIVER SEGMENT.—The term ''additional river segment'' means the approximately 4.3–mile Musconetcong River segment designated as ''C'' in the management plan, from Hughesville Mill to the Delaware River Confluence.

(2) MANAGEMENT PLAN.—The term ''management plan'' means the river management plan prepared by the Musconetcong River Management Committee, the National Park Service, the Heritage Conservancy, and the Musconetcong Watershed Association entitled ''Musconetcong River Management Plan'' and dated April 2002 that establishes goals and actions to—

(A) ensure long-term protection of the outstanding values of the river segments; and

(B) compatible management of land and water resources associated with the river segments.

(3) RIVER SEGMENT.—The term ''river segment'' means any segment of the Musconetcong River, New Jersey, designated as a scenic river or recreational river by section 3(a)(167) of the Wild and Scenic Rivers Act (as added by section 4).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 4. DESIGNATION OF PORTIONS OF MUSCONETCONG RIVER, NEW JERSEY, AS SCENIC AND RECREATIONAL RIVERS.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding at the end the following:

''(167) MUSCONETCONG RIVER, NEW JERSEY.—

''(A) DESIGNATION.—The 24.2 miles of river segments in New Jersey, consisting of—

''(i) the approximately 3.5–mile segment from Saxton Falls to the Route 46 bridge, to be administered by the Secretary of the Interior as a scenic river; and

''(ii) the approximately 20.7–mile segment from the Kings Highway bridge to the railroad tunnels at Musconetcong Gorge, to be administered by the Secretary of the Interior as a recreational river.

''(B) ADMINISTRATION.—Notwithstanding section 10(c), the river segments designated under subparagraph (A) shall not be administered as part of the National Park System.''.

SEC. 5. MANAGEMENT.

(a) MANAGEMENT PLAN.—

(1) IN GENERAL.—The Secretary shall manage the river segments in accordance with the management plan.

(2) SATISFACTION OF REQUIREMENTS FOR PLAN.—The management plan shall be considered to satisfy the requirements for a comprehensive management plan for the river segments under section 3(d) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(d)).

(3) RESTRICTIONS ON WATER RESOURCE PROJECTS.—For purposes of determining whether a proposed water resources project would have a direct and adverse effect on the values for which a river segment is designated as part of the Wild and Scenic Rivers System under section 7(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1278(a)), the Secretary shall consider the extent to which the proposed water resources project is consistent with the management plan.

(4) IMPLEMENTATION.—The Secretary may provide technical assistance, staff support, and funding to assist in the implementation of the management plan.

(b) COOPERATION.—

(1) IN GENERAL.—The Secretary shall manage the river segments in cooperation with appropriate Federal, State, regional, and local agencies, including—

(A) the Musconetcong River Management Committee;

(B) the Musconetcong Watershed Association;

(C) the Heritage Conservancy;

(D) the National Park Service; and

(E) the New Jersey Department of Environmental Protection.

(2) COOPERATIVE AGREEMENTS.—Any cooperative agreement entered into under section 10(e) of the Wild and Scenic Rivers Act (16 U.S.C. 1281(e)) relating to a river segment—

(A) shall be consistent with the management plan; and

(B) may include provisions for financial or other assistance from the United States to facilitate the long-term protection, conservation, and enhancement of the river segment.

(c) LAND MANAGEMENT.—

(1) IN GENERAL.—The Secretary may provide planning, financial, and technical assistance to local municipalities and nonprofit organizations to assist in the implementation of actions to protect the natural and historic resources of the river segments.

(2) PLAN REQUIREMENTS.—After adoption of recommendations made in section IV of the management plan, the zoning ordinances of the municipalities bordering the segments shall be considered to satisfy the standards and requirements under section 6(c) of the Wild and Scenic Rivers Act (16 U.S.C. 1277(c)).

(d) DESIGNATION OF ADDITIONAL RIVER SEGMENT.—

(1) FINDING.—Congress finds that the additional river segment is suitable for designation as a recreational river if the Secretary determines that there is adequate local support for the designation of the additional river segment in accordance with paragraph (3).

(2) DESIGNATION AND ADMINISTRATION.—If the Secretary determines that there is adequate local support for designating the additional river segment as a recreational river—

(A) the Secretary shall publish in the Federal Register notice of the designation of the segment;

(B) the segment shall be designated as a recreational river in accordance with the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.); and

(C) the Secretary shall administer the additional river segment as a recreational river.

(3) CRITERIA FOR LOCAL SUPPORT.—In determining whether there is adequate local support for the designation of the additional river segment, the Secretary shall consider the preferences of local governments expressed in resolutions concerning designation of the additional river segment.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this Act and the amendments made by this Act.

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 1097. A bill to amend title 4 of the United States Code to prohibit the double taxation of telecommuters and others who work from home; to the Committee on Finance.

Mr. DODD. Mr. President. I am pleased to rise today, together with my colleague Senator LIEBERMAN, to introduce The Telecommuter Tax Fairness Act of 2005.

The Telecommuter Tax Fairness Act of 2005 will put an end to legal doctrine that unfairly penalizes thousands of workers in Connecticut and in other States throughout the country whose only offense is that they sometimes work from home or from a local office of their employer.

Technology has changed the way business is conducted in America. With the use of cell phones, lap-top computers, email, the Internet, mobile networking, and many other telecommunication advancements of the 21st century, Americans have a greater flexibility in where they can work, without compromising productivity. Many citizens now choose to work from home or alternative offices when their physical presence is not necessary at their primary place of work.

Telecommuting provides enormous benefits for businesses, families, and communities. It helps businesses lower costs and raise worker productivity. It reduces congestion on our roads and rails, and in so doing it lowers pollution. It helps workers better manage the demands of work and family. And last but not least, it can mean lower income taxes for working men and women.

Yet, the many benefits to workers of telecommuting are today placed in jeopardy because of current law in New York and a few other States. Today, New York State requires that workers pay income tax on income even if it is not earned in the State through their ''convenience of the employer'' rule. While there are several States that have the ''convenience of the employer'' rule, no other State applies it with the same rigor as New York.

New York's ''convenience of the employer'' rule requires that by working for a New York employer, all income earned from that employer must be declared in New York so long as the worker ''could'' perform his or her duties in New York. A worker for a New York employer who works part-time from home in Connecticut or another State is still subject to taxation by New York on 100 percent of his or her income. At the same time, the work done by that worker in a State outside New York is subject to taxation by that State.

This unfairly subjects many workers who telecommute from their homes or from satellite offices outside of New York to a double tax on that part of the income earned from home. According to Connecticut's Attorney General, thousands of Connecticut residents alone are affected by this unfair double taxation.

However, it isn't only Connecticut residents that are affected.

Thomas Huckaby is a Tennessee-based computer programmer that telecommuted for a firm in Queens, NY. In 1994 and 1995, Mr. Huckaby spent 75 percent of his time working in Tennessee and the remaining 25 percent working in the Queens office and attempted to apportion his income accordingly. New York, however, sought to tax 100 percent of his income and was successful due to it's ''convenience of employer'' rule. On March 29, 2005 the New York Court of Appeals upheld New York's rule in a 4 to 3 decision. Currently, Mr. Huckaby is in the process of petitioning the Supreme Court.

A similar story involves Arthur Gray, a New Hampshire resident who worked for the New York Company Cowen & Co. as an investment counselor from 1976 through 1996, and paid New York State income taxes during that time. In 1997, Arthur Gray, per his employer's request, opened and managed an office from his home in New Hampshire. Several times during the year, Mr. Gray worked in New York, but most of his days were spent in New Hampshire. When paying his taxes during this time, he paid New York State income taxes for the days he was in New York, but not for the days he worked in New Hampshire. New York, however, sought to tax 100 percent of his income and was successful due to this ''convenience of the employer'' rule.

These are only two examples of the far-reaching consequences of this ''convenience of employer'' rule. There are thousands of individuals across the country who are adversely impacted by this rule. Most, however, but most lack the time, money, or energy to take their case to court.

This potential for double taxation is not only unfair, it also discourages workers from telecommuting when we should be doing the opposite.

Legislation is needed to protect these honest workers who deserve fair and equitable treatment under the law. The Telecommuter Tax Fairness Act of 2005 accomplishes this by specifically preventing a State from engaging in the current fiction of deeming a nonresident to be in the taxing State when the nonresident is actually working in another State. In doing so, it will eliminate the possibility that citizens will be double-taxed when telecommuting.

Establishing a ''physical presence'' test—as this legislation would do—is the most logical basis for determining tax status. If a worker is in a State, and taking advantage of that State's infrastructure, the worker should pay taxes in that State.

Some suggest that the double-taxation quandary can easily be fixed by having other States provide a tax credit to those telecommuters. However, why should Connecticut, or any other

State, be required to allow a credit on income actually earned in the State? If a worker is working in Connecticut, he or she is benefiting from a range of Services paid for and maintained by Connecticut including roads, water, police, fire protection, and communications services. It's only fair that Connecticut ask that worker to help support the services that he or she uses.

This is not just an issue which deals with a small group of citizens from one small State. Rather, this is an issue which affects workers throughout the country. It will only grow more pressing as people and businesses continue to seek to take advantage of new technologies that affect the way we live and work.

I hope our colleagues will favorably consider this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1097

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Telecommuter Tax Fairness Act of 2005''.

SEC. 2. PROHIBITION ON DOUBLE TAXATION OF TELECOMMUTERS.

(a) IN GENERAL.—Chapter 4 of title 4, United States Code, is amended by adding at the end the following new section:

''§ 127. Prohibition on double taxation of telecommuters and others who work at home

''(a) PHYSICAL PRESENCE REQUIRED.—

''(1) IN GENERAL.—In applying its income tax laws to the salary of a nonresident individual, a State may only deem such nonresident individual to be present in or working in such State for any period of time if such nonresident individual is physically present in such State for such period and such State may not impose nonresident income taxes on such salary with respect to any period of time when such nonresident individual is physically present in another State.

''(2) DETERMINATION OF PHYSICAL PRESENCE.—For purposes of determining physical presence, no State may deem a nonresident individual to be present in or working in such State on the grounds that such nonresident individual is present at or working at home for the nonresident individual's convenience.

''(b) DEFINITIONS.—As used in this section—

''(1) STATE.—The term 'State' includes any political subdivision of a State, the District of Columbia, and the possessions of the United States.

''(2) INCOME TAX.—The term 'income tax' has the meaning given such term by section 110(c).

''(3) INCOME TAX LAWS.—The term 'income tax laws' includes any statutes, regulations, administrative practices, administrative interpretations, and judicial decisions.

''(4) NONRESIDENT INDIVIDUAL.—The term 'nonresident individual' means an individual who is not a resident of the State applying its income tax laws to such individual.

''(5) SALARY.—The term 'salary' means the compensation, wages, or other remuneration earned by an individual for personal services performed as an employee or as an independent contractor.

''(c) NO INFERENCE.—Nothing in this section shall be construed as bearing on—

''(1) any tax laws other than income tax laws,

''(2) the taxation of corporations, partnerships, trusts, estates, limited liability companies, or other entities, organizations, or persons other than nonresident individuals in their capacities as employees or independent contractors,

''(3) the taxation of individuals in their capacities as shareholders, partners, trust and estate beneficiaries, members or managers of limited liability companies, or in any similar capacities, and

''(4) the income taxation of dividends, interest, annuities, rents, royalties, or other forms of unearned income.''.

(b) CLERICAL AMENDMENT.—The table of sections of such chapter 4 is amended by adding at the end the following new item:

''127. Prohibition on double taxation of telecommuters and others who work at home.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

By Mr. SHELBY:

S. 1099. A bill to repeal the current Internal Revenue Code and replace it with a flat tax, thereby guaranteeing economic growth and greater fairness for all Americans; to the Committee on Finance.

Mr. SHELBY. Mr. President, I rise today to once again introduce my flat tax bill, S. 1099 the ''Tax Simplification Act of 2005.'' The President has made fundamental tax reform a top priority for his second term. I believe my bill offers that fundamental tax reform and will drastically improve our Nation's economy and the way Americans go about the business of paying taxes. This bill would repeal the current Internal Revenue Code and create a single rate for all taxpayers—seventeen percent when the tax is fully implemented—and gives tax-free treatment to all savings and investment, not just dividends.

A major reason why I support a flat tax is because it will place more money into the hands of hardworking Americans. It will allow individuals—not the government—to decide how to best spend their money. Lowering taxes allows Americans to keep more of their money to keep up with monthly expenses like, insurance coverage, educational costs, and prescription drugs. Lowering taxes also makes it easier for Americans to save for their retirement through private savings plans. Although I strongly believe in the importance of private savings, my bill leaves the Social Security system intact and, in fact, provides seniors with more money by repealing the current tax on Social Security benefits.

I have said many times before that our current progressive tax system is unfair. It punishes success and stymies economic growth. The only way we can remedy this is to adopt a single tax rate for all taxpayers. Transitioning to a flat tax will not only increase the fairness of the tax code, but it will also increase the incentives to work and thus boost economic growth.

Today our tax code and its regulations total more than 60,000 pages which are complex, confusing and costly to comply with. Were a flat tax in place now, taxpayers would file a return the size of a postcard, and every American would be taxed equally and at the same rate. Rather than spending hours poring over convoluted IRS forms, or resorting to professional tax assistance, the flat tax allows taxpayers to determine their taxes quickly and easily. Everyone will fill out the same simple return, everyone will be taxed at the same rate, and everyone will pay their fare share. Paying taxes may never be a pleasant experience, but at least under a flat tax it wouldn't be mind-boggling.

I fully realize that the bill I am introducing today is a monumental shift from the current tax code, but the time is ripe for fundamental tax reform. We must not allow the enormity of the task to deter us from enacting better, more efficient tax laws. I therefore urge my colleagues to join me in support of this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1099

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Tax Simplification Act of 2005''.

(b) TABLE OF CONTENTS.—

TITLE I—TAX REDUCTION AND SIMPLIFICATION

SEC. 101. INDIVIDUAL INCOME TAX.

(a) IN GENERAL.—Section 1 of the Internal Revenue Code of 1986 is amended to read as follows:

''SECTION 1. TAX IMPOSED.

''There is hereby imposed on the taxable income of every individual a tax equal to 19 percent (17 percent in the case of taxable years beginning after December 31, 2007) of the taxable income of such individual for such taxable year.''.

(b) TAXABLE INCOME.—Section 63 of such Code is amended to read as follows:

''SEC. 63. TAXABLE INCOME.

''(a) IN GENERAL.—For purposes of this subtitle, the term 'taxable income' means the excess of—

''(1) the sum of—

''(A) wages (as defined in section 3121(a) without regard to paragraph (1) thereof) which are paid in cash and which are received during the taxable year for services performed in the United States,

''(B) retirement distributions which are includible in gross income for such taxable year, plus

''(C) amounts received under any law of the United States or of any State which is in the nature of unemployment compensation, over

''(2) the standard deduction.

''(b) STANDARD DEDUCTION.—

''(1) IN GENERAL.—For purposes of this subtitle, the term 'standard deduction' means the sum of—

''(A) the basic standard deduction, plus

''(B) the additional standard deduction.

''(2) BASIC STANDARD DEDUCTION.—For purposes of paragraph (1), the basic standard deduction is—

''(A) $25,580 in the case of—

''(i) a joint return, or

''(ii) a surviving spouse (as defined in section 2(a)),

''(B) $16,330 in the case of a head of household (as defined in section 2(b)), and

''(C) $12,790 in the case of an individual—

''(i) who is not married and who is not a surviving spouse or head of household, or

''(ii) who is a married individual filing a separate return.

''(3) ADDITIONAL STANDARD DEDUCTION.—For purposes of paragraph (1), the additional standard deduction is $5,510 for each dependent (as defined in section 152) who is described in section 151(c) for the taxable year and who is not required to file a return for such taxable year.

''(c) RETIREMENT DISTRIBUTIONS.—For purposes of subsection (a), the term 'retirement distribution' means any distribution from—

''(1) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

''(2) an annuity plan described in section 403(a),

''(3) an annuity contract described in section 403(b),

''(4) an individual retirement account described in section 408(a),

''(5) an individual retirement annuity described in section 408(b),

''(6) an eligible deferred compensation plan (as defined in section 457),

''(7) a governmental plan (as defined in section 414(d)), or

''(8) a trust described in section 501(c)(18).

Such term includes any plan, contract, account, annuity, or trust which, at any time, has been determined by the Secretary to be such a plan, contract, account, annuity, or trust.

''(d) INCOME OF CERTAIN CHILDREN.—For purposes of this subtitle—

''(1) an individual's taxable income shall include the taxable income of each dependent child of such individual who has not attained age 14 as of the close of such taxable year, and

''(2) such dependent child shall have no liability for tax imposed by section 1 with respect to such income and shall not be required to file a return for such taxable year.

''(e) INFLATION ADJUSTMENT.—

''(1) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2006, each dollar amount contained in subsection (b) shall be increased by an amount determined by the Secretary to be equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment for such calendar year.

''(2) COST-OF-LIVING ADJUSTMENT.—For purposes of paragraph (1), the cost-of-living adjustment for any calendar year is the percentage (if any) by which—

''(A) the CPI for the preceding calendar year, exceeds

''(B) the CPI for the calendar year 2005.

''(3) CPI FOR ANY CALENDAR YEAR.—For purposes of paragraph (2), the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on August 31 of such calendar year.

''(4) CONSUMER PRICE INDEX.—For purposes of paragraph (3), the term 'Consumer Price Index' means the last Consumer Price Index for all-urban consumers published by the Department of Labor. For purposes of the preceding sentence, the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1986 shall be used.

''(5) ROUNDING.—If any increase determined under paragraph (1) is not a multiple of $10, such increase shall be rounded to the next highest multiple of $10.

''(f) MARITAL STATUS.—For purposes of this section, marital status shall be determined under section 7703.''.

SEC. 102. TAX ON BUSINESS ACTIVITIES.

(a) IN GENERAL.—Section 11 of the Internal Revenue Code of 1986 (relating to tax imposed on corporations) is amended to read as follows:

''SEC. 11. TAX IMPOSED ON BUSINESS ACTIVITIES.

''(a) TAX IMPOSED.—There is hereby imposed on every person engaged in a business activity a tax equal to 19 percent (17 percent in the case of taxable years beginning after December 31, 2007) of the business taxable income of such person.

''(b) LIABILITY FOR TAX.—The tax imposed by this section shall be paid by the person engaged in the business activity, whether such person is an individual, partnership, corporation, or otherwise.

''(c) BUSINESS TAXABLE INCOME.—For purposes of this section—

''(1) IN GENERAL.—The term 'business taxable income' means gross active income reduced by the deductions specified in subsection (d).

''(2) GROSS ACTIVE INCOME.—

''(A) IN GENERAL.—For purposes of paragraph (1), the term 'gross active income' means gross receipts from—

''(i) the sale or exchange of property or services in the United States by any person in connection with a business activity, and

''(ii) the export of property or services from the United States in connection with a business activity.

''(B) EXCHANGES.—For purposes of this section, the amount treated as gross receipts from the exchange of property or services is the fair market value of the property or services received, plus any money received.

''(C) COORDINATION WITH SPECIAL RULES FOR FINANCIAL SERVICES, ETC.—Except as provided in subsection (e)—

''(i) the term 'property' does not include money or any financial instrument, and

''(ii) the term 'services' does not include financial services.

''(3) EXEMPTION FROM TAX FOR ACTIVITIES OF GOVERNMENTAL ENTITIES AND TAX-EXEMPT ORGANIZATIONS.—For purposes of this section, the term 'business activity' does not include any activity of a governmental entity or of any other organization which is exempt from tax under this chapter.

''(d) DEDUCTIONS.—

''(1) IN GENERAL.—The deductions specified in this subsection are—

''(A) the cost of business inputs for the business activity,

''(B) wages (as defined in section 3121(a) without regard to paragraph (1) thereof) which are paid in cash for services performed in the United States as an employee, and

''(C) retirement contributions to or under any plan or arrangement which makes retirement distributions (as defined in section 63(c)) for the benefit of such employees to the extent such contributions are allowed as a deduction under section 404.

''(2) BUSINESS INPUTS.—

''(A) IN GENERAL.—For purposes of paragraph (1), the term 'cost of business inputs' means—

''(i) the amount paid for property sold or used in connection with a business activity,

''(ii) the amount paid for services (other than for the services of employees, including fringe benefits paid by reason of such services) in connection with a business activity, and

''(iii) any excise tax, sales tax, customs duty, or other separately stated levy imposed by a Federal, State, or local government on the purchase of property or services which are for use in connection with a business activity.

Such term shall not include any tax imposed by chapter 2 or 21.

''(B) EXCEPTIONS.—Such term shall not include—

''(i) items described in subparagraphs (B) and (C) of paragraph (1), and

''(ii) items for personal use not in connection with any business activity.

''(C) EXCHANGES.—For purposes of this section, the amount treated as paid in connection with the exchange of property or services is the fair market value of the property or services exchanged, plus any money paid.

''(e) SPECIAL RULES FOR FINANCIAL INTERMEDIATION SERVICE ACTIVITIES.—In the case of the business activity of providing financial intermediation services, the taxable income from such activity shall be equal to the value of the intermediation services provided in such activity.

''(f) EXCEPTION FOR SERVICES PERFORMED AS EMPLOYEE.—For purposes of this section, the term 'business activity' does not include the performance of services by an employee for the employee's employer.

''(g) CARRYOVER OF CREDIT-EQUIVALENT OF EXCESS DEDUCTIONS.—

''(1) IN GENERAL.—If the aggregate deductions for any taxable year exceed the gross active income for such taxable year, the credit-equivalent of such excess shall be allowed as a credit against the tax imposed by this section for the following taxable year.

''(2) CREDIT-EQUIVALENT OF EXCESS DEDUCTIONS.—For purposes of paragraph (1), the credit-equivalent of the excess described in paragraph (1) for any taxable year is an amount equal to—

''(A) the sum of—

''(i) such excess, plus

''(ii) the product of such excess and the 3-month Treasury rate for the last month of such taxable year, multiplied by

''(B) the rate of the tax imposed by subsection (a) for such taxable year.

''(3) CARRYOVER OF UNUSED CREDIT.—If the credit allowable for any taxable year by reason of this subsection exceeds the tax imposed by this section for such year, then (in lieu of treating such excess as an overpayment) the sum of—

''(A) such excess, plus

''(B) the product of such excess and the 3-month Treasury rate for the last month of such taxable year, shall be allowed as a credit against the tax imposed by this section for the following taxable year.

''(4) 3-MONTH TREASURY RATE.—For purposes of this subsection, the 3-month Treasury rate is the rate determined by the Secretary based on the average market yield (during any 1-month period selected by the Secretary and ending in the calendar month in which the determination is made) on outstanding marketable obligations of the United States with remaining periods to maturity of 3 months or less.''.

(b) TAX ON TAX-EXEMPT ENTITIES PROVIDING NONCASH COMPENSATION TO EMPLOYEES.—Section 4977 of such Code is amended to read as follows:

''SEC. 4977. TAX ON NONCASH COMPENSATION PROVIDED TO EMPLOYEES NOT ENGAGED IN BUSINESS ACTIVITY.

''(a) IMPOSITION OF TAX.—There is hereby imposed a tax equal to 19 percent (17 percent in the case of calendar years beginning after December 31, 2007) of the value of excludable compensation provided during the calendar year by an employer for the benefit of employees to whom this section applies.

''(b) LIABILITY FOR TAX.—The tax imposed by this section shall be paid by the employer.

''(c) EXCLUDABLE COMPENSATION.—For purposes of subsection (a), the term 'excludable compensation' means any remuneration for services performed as an employee other than—

''(1) wages (as defined in section 3121(a) without regard to paragraph (1) thereof) which are paid in cash,

''(2) remuneration for services performed outside the United States, and

''(3) retirement contributions to or under any plan or arrangement which makes retirement distributions (as defined in section 63(c)).

''(d) EMPLOYEES TO WHOM SECTION APPLIES.—This section shall apply to an employee who is employed in any activity by—

''(1) any organization which is exempt from taxation under this chapter, or

''(2) any agency or instrumentality of the United States, any State or political subdivision of a State, or the District of Columbia.''.

SEC. 103. SIMPLIFICATION OF RULES RELATING TO QUALIFIED RETIREMENT PLANS.

(a) IN GENERAL.—The following provisions of the Internal Revenue Code of 1986 are hereby repealed:

(1) NONDISCRIMINATION RULES.—

(A) Paragraphs (4) and (5) of section 401(a) (relating to nondiscrimination requirements).

(B) Sections 401(a)(10)(B) and 416 (relating to top heavy plans).

(C) Section 401(a)(17) (relating to compensation limit).

(D) Sections 401(a)(26) and 410(b) (relating to minimum participation and coverage requirements).

(E) Paragraphs (3), (8), (11), and (12) of sections 401(k), and section 4979, (relating to actual deferral percentage).

(F) Section 401(l) (relating to permitted disparity in plan contributions or benefits).

(G) Section 401(m) (relating to nondiscrimination test for matching contributions and employee contributions).

(H) Paragraphs (1)(D) and (12) of section 403(b) (relating to nondiscrimination requirements).

(I) Paragraph (3) of section 408(k) and paragraph (6) (other than subparagraph (A)(i)) of such section (relating to simplified employee pensions).

(2) CONTRIBUTION LIMITS.—

(A) Sections 401(a)(16), 403(b) (2) and (3), and 415 (relating to limitations on benefits and contributions under qualified plans).

(B) Sections 401(a)(30) and 402(g) (relating to limitation on exclusion for elective deferrals).

(C) Paragraphs (3) and (7) of section 404(a) (relating to percentage of compensation limits).

(D) Section 404(l) (relating to limit on includible compensation).

(3) RESTRICTIONS ON DISTRIBUTIONS.—

(A) Section 72(t) (relating to 10-percent additional tax on early distributions from qualified retirement plans).

(B) Sections 401(a)(9), 403(b)(10), and 4974 (relating to minimum distribution rules).

(C) Section 402(e)(4) (relating to net unrealized appreciation).

(4) SPECIAL REQUIREMENTS FOR PLAN BENEFITING SELF-EMPLOYED INDIVIDUALS.—Subsections (a)(10)(A) and (d) of section 401.

(5) PROHIBITION OF TAX-EXEMPT ORGANIZATIONS AND GOVERNMENTS FROM HAVING QUALIFIED CASH OR DEFERRED ARRANGEMENTS.—Section 401(k)(4)(B).

(b) EMPLOYER REVERSIONS OF EXCESS PENSION ASSETS PERMITTED SUBJECT ONLY TO INCOME INCLUSION.—

(1) REPEAL OF TAX ON EMPLOYER REVERSIONS.—Section 4980 of such Code is hereby repealed.

(2) EMPLOYER REVERSIONS PERMITTED WITHOUT PLAN TERMINATION.—Section 420 of such Code is amended to read as follows:

''SEC. 420. TRANSFERS OF EXCESS PENSION ASSETS.

''(a) IN GENERAL.—If there is a qualified transfer of any excess pension assets of a defined benefit plan (other than a multiemployer plan) to an employer—

''(1) a trust which is part of such plan shall not be treated as failing to meet the requirements of section 401(a) or any other provision of law solely by reason of such transfer (or any other action authorized under this section), and

''(2) such transfer shall not be treated as a prohibited transaction for purposes of section 4975.

The gross income of the employer shall include the amount of any qualified transfer made during the taxable year.

''(b) QUALIFIED TRANSFER.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified transfer' means a transfer—

''(A) of excess pension assets of a defined benefit plan to the employer, and

''(B) with respect to which the vesting requirements of subsection (c) are met in connection with the plan.

''(2) ONLY 1 TRANSFER PER YEAR.—No more than 1 transfer with respect to any plan during a taxable year may be treated as a qualified transfer for purposes of this section.

''(c) VESTING REQUIREMENTS OF PLANS TRANSFERRING ASSETS.—The vesting requirements of this subsection are met if the plan provides that the accrued pension benefits of any participant or beneficiary under the plan become nonforfeitable in the same manner which would be required if the plan had terminated immediately before the qualified transfer (or in the case of a participant who separated during the 1-year period ending on the date of the transfer, immediately before such separation).

''(d) DEFINITION AND SPECIAL RULE.—For purposes of this section—

''(1) EXCESS PENSION ASSETS.—The term 'excess pension assets' means the excess (if any) of—

''(A) the amount determined under section 412(c)(7)(A)(ii), over

''(B) the greater of—

''(i) the amount determined under section 412(c)(7)(A)(i), or

''(ii) 125 percent of current liability (as defined in section 412(c)(7)(B)).

The determination under this paragraph shall be made as of the most recent valuation date of the plan preceding the qualified transfer.

''(2) COORDINATION WITH SECTION 412.—In the case of a qualified transfer—

''(A) any assets transferred in a plan year on or before the valuation date for such year (and any income allocable thereto) shall, for purposes of section 412, be treated as assets in the plan as of the valuation date for such year, and

''(B) the plan shall be treated as having a net experience loss under section 412(b)(2)(B)(iv) in an amount equal to the amount of such transfer and for which amortization charges begin for the first plan year after the plan year in which such transfer occurs, except that such section shall be applied to such amount by substituting '10 plan years' for '5 plan years'.''.

SEC. 104. REPEAL OF ALTERNATIVE MINIMUM TAX.

Part VI of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is hereby repealed.

SEC. 105. REPEAL OF CREDITS.

Part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is hereby repealed.

SEC. 106. REPEAL OF ESTATE AND GIFT TAXES AND OBSOLETE INCOME TAX PROVISIONS.

(a) REPEAL OF ESTATE AND GIFT TAXES.—

(1) IN GENERAL.—Subtitle B of the Internal Revenue Code of 1986 is hereby repealed.

(2) EFFECTIVE DATE.—The repeal made by paragraph (1) shall apply to the estates of decedents dying, and gifts and generation-skipping transfers made, after December 31, 2005.

(b) REPEAL OF OBSOLETE INCOME TAX PROVISIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), chapter 1 of the Internal Revenue Code of 1986 is hereby repealed.

(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

(A) sections 1, 11, and 63 of such Code, as amended by this Act,

(B) those provisions of chapter 1 of such Code which are necessary for determining whether or not—

(i) retirement distributions are includible in the gross income of employees, or

(ii) an organization is exempt from tax under such chapter, and

(C) subchapter D of such chapter 1 (relating to deferred compensation).

SEC. 107. EFFECTIVE DATE.

Except as otherwise provided in this title, the amendments made by this title shall apply to taxable years beginning after December 31, 2005.

TITLE II—SUPERMAJORITY REQUIRED FOR TAX CHANGES

SEC. 201. SUPERMAJORITY REQUIRED.

(a) IN GENERAL.—It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment thereto, or conference report thereon that includes any provision that—

(1) increases any Federal income tax rate,

(2) creates any additional Federal income tax rate,

(3) reduces the standard deduction, or

(4) provides any exclusion, deduction, credit, or other benefit which results in a reduction in Federal revenues.

(b) WAIVER OR SUSPENSION.—This section may be waived or suspended in the House of Representatives or the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

By Mrs. MURRAY (for herself and Mr. DEWINE):

S. 1101. A bill to amend the Head Start Act to address the needs of victims of child abuse and neglect, children in foster care, children in kinship care, and homeless children; to the Committee on Health, Education, Labor, and Pensions.

Mrs. MURRAY. Mr. President, today I rise with Senator DEWINE to introduce the ''Improving Head Start Access for Homeless and Foster Children Act of 2005.''

Head Start has made significant strides in providing comprehensive services to low-income children. Since

Head Start was established in 1965, low-income preschool-aged children have received education, health, nutritional, social and developmental services they would not otherwise have access to. Unfortunately, children in greatest need of these services—homelss and foster youth—are not receiving those services at adequate levels.

It is estimated that 1.35 million children experience homelessness each year, and the mean income of a homeless family is at 46 percent of the Federal poverty level. Due to extreme poverty and the inherent instability of homelessness, children facing these conditions have considerably higher physical, mental and emotional difficulties. It is not surprising that homeless children are reported to be twice as likely to have a learning disability and three times as likely of having an emotional or behavioral problem that interferes with their learning.

These children also face significant barriers to participation in Head Start. These children lack transportation. They lack the necessary documentation. They suffer from the invisibility of homeless families which leaves the community unaware of the need to include these children in Head Start recruitment and prioritization. As a result of these and other barriers, only 15 percent of preschool children identified as homeless are enrolled in preschool programs of any kind, compared to the 57 percent of low-income preschool children. Currently only 2 percent of the more than 900,000 students served by Head Start are children identified as homeless. States report that 60 percent of homeless students are having difficulties gaining access to Head Start.

In addition to homeless children, kids in foster care face a unique set of challenges which both increase their need for the stability and educational services provided by Head Start. Tragically, these same challenges also hinder their ability to gain access to those services. Foster children are likely to suffer from both emotional and physical instability. With more than 500,000 children in foster care and a shortage of foster parents in this country, these children often go without the attention and advocacy that preschool age children need.

More than 40 percent of the children in homeless shelters are under the age of five. The first years of a child's life significantly impact personal development and future academic achievement. That is why I once again stand with Senator DEWINE to increase access to Head Start for homeless and foster children.

Our bill would ensure equal access and benefits from to early education and supportive services provided by Head Start for the Nation's poorest children. It would make all homeless children eligible for Head Start. The bill also allow homeless children to be immediately enrolled in Head Start by allowing them extra time to provided required documentation; providing that that documentation be in a reasonable time frame. And, our bill would require school, district liaisons to assist families in obtaining necessary documents. In addition, our bill increases Head Start's outreach to homeless and foster children. Further, the bill would reduce barriers by encouraging coordination between Head Start agencies and community programs that serve these vulnerable populations.

Again, I would like to thank my colleague Senator DEWINE for his many efforts in supporting homeless and foster youth. I urge the Senate to ensure that all children, despite their background and socioeconomic situation receive equal access to a quality education.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1101

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Improving Head Start Access for Homeless and Foster Children Act of 2005''.

SEC. 2. DEFINITIONS.

Section 637 of the Head Start Act (42 U.S.C. 9832) is amended by adding at the end the following:

''(18) The term 'family' means all persons living in the same household who are—

''(A) supported by the income of at least 1 parent or guardian (including any relative acting in place of a parent, such as a grandparent) of a child enrolling or participating in the Head Start program; and

''(B) related to the parent or guardian by blood, marriage, or adoption.

''(19) The term 'homeless child' means a child described in section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)).

''(20) The term 'homeless family' means the family of a homeless child.''.

SEC. 3. ALLOTMENT OF FUNDS; LIMITATIONS ON ASSISTANCE.

(a) QUALITY IMPROVEMENT.—Section 640(a)(3) of the Head Start Act (42 U.S.C. 9835(a)(3)) is amended—

(1) in subparagraph (B)—

(A) in clause (ii), by inserting ''children in foster care, children referred to Head Start programs by child welfare agencies, '' after ''background''; and

(B) in clause (v), by inserting '', including collaboration to increase program participation by underserved populations, including homeless children, children in foster care, and children referred to Head Start programs by child welfare agencies'' before the period; and

(2) in subparagraph (C)—

(A) in clause (ii)(IV)—

(i) by inserting ''homeless children, children in foster care, children referred to Head Start programs by child welfare agencies, '' after ''dysfunctional families''; and

(ii) by inserting ''and families'' after ''communities'';

(B) in clause (v)—

(i) by inserting ''homeless children, children in foster care, children referred to Head Start programs by child welfare agencies,'' after ''dysfunctional families''; and

(ii) by inserting ''and families'' after ''communities'';

(C) by redesignating clause (vi) as clause (viii); and

(D) by inserting after clause (v) the following:

''(vi) To conduct outreach to homeless families and to increase Head Start program participation by homeless children.''.

(b) COLLABORATION GRANTS.—Section 640(a)(5)(C)(iv) of the Head Start Act (42 U.S.C. 9835(a)(5)(C)(iv)) is amended—

(1) by inserting ''child welfare (including child protective services),'' after ''child care,'';

(2) by inserting ''home-based services (including home visiting services),'' after ''family literacy services''; and

(3) by striking ''and services for homeless children'' and inserting ''services provided through grants under section 106 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a) and parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq. and 670 et seq.), and services for homeless children (including coordination of services with the Coordinator for Education of Homeless Children and Youth designated under section 722 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11432)), children in foster care, and children referred to Head Start programs by child welfare agencies''.

(c) ALLOCATION OF FUNDS.—Section 640(g)(2) of the Head Start Act (42 U.S.C. 9835(g)(2)) is amended—

(1) in subparagraph (C)—

(A) by inserting ''organizations and agencies providing family support services, child abuse prevention services, protective services, and foster care, and'' after ''(including''; and

(B) by striking ''and public entities serving children with disabilities'' and inserting '', public entities, and individuals serving children with disabilities and homeless children (including local educational agency liaisons designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11432(g)(1)(J)(ii)))'';

(2) in subparagraph (F), by inserting ''and homeless families'' after ''low-income families''; and

(3) in subparagraph (H), by inserting ''(including the local educational agency liaison designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11432(g)(1)(J)(ii)))'' after ''community involved''.

(d) ENROLLMENT OF HOMELESS CHILDREN.—Section 640 of the Head Start Act (42 U.S.C. 9835) is amended by adding at the end the following:

''(m) The Secretary shall issue regulations to remove barriers to the enrollment and participation of homeless children in Head Start programs. Such regulations shall require Head Start agencies to—

''(1) implement policies and procedures to ensure that homeless children are identified and prioritized for enrollment;

''(2) allow homeless children to apply to, enroll in, and attend Head Start programs while required documents, such as proof of residency, immunization and other medical records, birth certificates, and other documents, are obtained; and

''(3) coordinate individual Head Start programs with programs for homeless children (including efforts to implement subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.)).''.

SEC. 4. DESIGNATION OF HEAD START AGENCIES.

Section 641(d)(4) of the Head Start Act (42 U.S.C. 9836(d)(4)) is amended—

(1) in subparagraph (B), by inserting ''including providing services, to the extent

practicable, such as transportation, to enable such parents to participate'' after ''level''

(2) in subparagraph (E)(iv), by striking ''; and'' and inserting a semicolon;

(3) in subparagraph (F), by inserting ''and'' after the semicolon; and

(4) by adding at the end the following:

''(G) to meet the needs of homeless children (including, to the extent practicable, the transportation needs of such children), children in foster care, and children referred to Head Start programs by child welfare agencies;''.

SEC. 5. QUALITY STANDARDS; MONITORING OF HEAD START AGENCIES AND PROGRAMS.

Section 641A of the Head Start Act (42 U.S.C. 9836a) is amended—

(1) in subsection (a)(2)(B)—

(A) in clause (iii), by inserting ''homeless children, children being raised by grandparents or other relatives, children in foster care, children referred to Head Start Programs by child welfare agencies,'' after ''children with disabilities,''; and

(B) in clause (vi), by striking ''background and family structure of such children'' and inserting ''background, family structure of such children (including the number of children being raised by grandparents and other relatives and the number of children in foster care), and the number of homeless children''; and

(2) in subsection (c)(2)(C), by striking ''disabilities)'' and inserting ''disabilities, homeless children, children being raised by grandparents or other relatives, children in foster care, and children referred to Head Start programs by child welfare agencies)''.

SEC. 6. POWERS AND FUNCTIONS OF HEAD START AGENCIES.

Section 642 of the Head Start Act (42 U.S.C. 9837) is amended—

(1) in subsection (b)—

(A) in paragraph (6), by inserting ''mental health services and treatment, domestic violence services, and'' after ''participating children'';

(B) in paragraph (10), by striking ''; and'' and inserting a semicolon;

(C) in paragraph (11)(B), by striking the period and inserting ''; and''; and

(D) by adding at the end the following:

''(12) inform foster parents or grandparents or other relatives raising children enrolled in the Head Start program, that they have a right to participate in programs, activities, or services carried out or provided under this subchapter.'';

(2) in subsection (c), by inserting '', the agencies responsible for administering section 106 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a), parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq. and 670 et seq.), and programs under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.), homeless shelters, other social service agencies serving homeless children and families,'' after ''(42 U.S.C. 9858 et seq.)''; and

(3) in subsection (d)(2)—

(A) in subparagraph (A), by striking ''; and'' and inserting a semicolon;

(B) in subparagraph (B), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(C) collaborating to increase the program participation of homeless children.''.

SEC. 7. HEAD START TRANSITION.

Section 642A of the Head Start Act (42 U.S.C. 9837a) is amended—

(1) in paragraph (2), by inserting ''local educational agency liaisons designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11432(g)(1)(J)(ii)),'' after ''social workers'';

(2) in paragraph (5), by inserting ''and family outreach and support efforts under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.)'' before the semicolon;

(3) in paragraph (6), by striking ''; and '' and inserting a semicolon;

(4) in paragraph (7), by striking the period and inserting ''; and''; and

(5) by adding at the end the following:

''(8) developing and implementing a system to increase program participation of underserved populations, including homeless children.''.

SEC. 8. PARTICIPATION IN HEAD START PROGRAMS.

Section 645(a)(1) of the Head Start Act (42 U.S.C. 9840(a)(1)) is amended—

(1) in subparagraph (B), by striking clause (i) and inserting the following:

''(i) programs assisted under this subchapter may include—

''(I) participation of homeless children, children whose families are receiving public assistance, children in foster care, and children who have been referred to a Head Start program by a child welfare agency; or

''(II) to a reasonable extent, participation of other children in the area served who would benefit from such programs,

whose families do not meet the low-income criteria prescribed pursuant to subparagraph (A); and''; and

(2) in the flush matter following subparagraph (B), by adding at the end the following: ''A homeless child shall automatically be deemed to meet the low-income criteria.''.

SEC. 9. EARLY HEAD START PROGRAMS FOR FAMILIES WITH INFANTS AND TODDLERS.

Section 645A of the Head Start Act (42 U.S.C. 9840a) is amended—

(1) in subsection (b)—

(A) in paragraph (4), by inserting ''(including parenting skills training, training in basic child development, and training to meet the special needs of their children)'' after ''role as parents'';

(B) in paragraph (5)—

(i) by inserting ''(including home visiting and other home-based services)'' after ''with services'';

(ii) by striking ''disabilities)'' and inserting ''disabilities and homeless infants and toddlers (including homeless infants and toddlers with disabilities)); and

(iii) by striking ''services);'' and inserting ''services, housing services, family support services, and other child welfare services);''; and

(C) in paragraph (8), by inserting '', and the agencies responsible for administering section 106 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a) and parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq. and 670 et seq.)'' before the semicolon; and

(2) in subsection (g)(2)(B)—

(A) in clause (iii), by striking ''; and'' and inserting a semicolon;

(B) in clause (iv), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(v) providing professional development designed to increase the program participation of underserved populations, including homeless infants and toddlers, infants and toddlers in foster care, and infants and toddlers referred by child welfare agencies.''.

SEC. 10. TECHNICAL ASSISTANCE AND TRAINING.

Section 648 of the Head Start Act (42 U.S.C. 9843) is amended—

(1) in subsection (c)—

(A) in paragraph (2), by striking ''disabilities)'' and inserting ''disabilities, children in foster care, and children referred by child welfare agencies)'';

(B) in paragraph (5), by inserting '', including the needs of homeless children and their families'' before the semicolon;

(C) in paragraph (10), by striking ''; and'' and inserting a semicolon;

(D) in paragraph (11) by striking the period and inserting ''; and''; and

(E) by adding at the end the following:

''(12) assist Head Start agencies and programs in increasing the program participation of homeless children.''; and

(2) in subsection (e)—

(A) by inserting ''training for personnel providing services to children determined to be abused or neglected, children receiving child welfare services, and children referred by child welfare agencies,'' after ''language),''; and

(B) by inserting ''and family'' after ''community''.

SEC. 11. RESEARCH, DEMONSTRATIONS, AND EVALUATION.

Section 649 of the Head Start Act (42 U.S.C. 9844) is amended—

(1) in subsection (a)(1)(B), by striking ''disabilities)'' and inserting ''disabilities, homeless children, children who have been abused or neglected, and children in foster care''; and

(2) in subsection (c)(1)(B) by inserting '', including those that work with children with disabilities, children who have been abused and neglected, children in foster care, children and adults who have been exposed to domestic violence, children and adults facing mental health and substance abuse problems, and homeless children and families'' before the semicolon.

SEC. 12. REPORTS.

Section 650(a) of the Head Start Act (42 U.S.C. 9846(a)) is amended—

(1) in the matter preceding paragraph (1), by striking ''disabled and'' and inserting ''disabled children, homeless children, children in foster care, and'';

(2) in paragraph (8), by inserting ''homelessness, whether the child is in foster care or was referred by a child welfare agency,'' after ''background''; and

(3) in paragraph (12), by inserting ''substance abuse treatment, housing services,'' after ''physical fitness''.

Mr. DEWINE. Mr. President, today I join with Senator MURRAY to introduce the ''Improving Head Start Access for Homeless and Foster Children Act of 2005.'' The problems children who are homeless and in foster care face are daunting. I am grateful to Senator MURRAY for her leadership in this area. She and I worked on coordinating and improving access to services for homeless and foster children in the Individuals with Disabilities Education Act (IDEA), and I am glad to have had the opportunity to work with her again on this issue.

Who is more vulnerable than a child, under the age of five, living on the street or in a shelter? Who is more vulnerable than a child under five who has been abused and neglected? Just because young children cannot speak to their needs does not mean that they should have no voice. The hundreds of thousands of children in the United States who experience homelessness, separation from their parents, or abuse and neglect each year are in need of our help to ensure their needs are met. Unfortunately, their voices are all too often not heard and their needs go unmet. The bill we are introducing

today would serve as one more step, one move closer, to ensuring homeless and foster children are visible and their voices audible.

In the United States, on any given day, more than half a million children are in foster care, 20,000 of whom are in my home State of Ohio, alone. Of this group, 27 percent are age five and—under. In 2003, we also know that more than 900,000 children were found to be victims of child abuse or neglect. Children as young as six months old can suffer from long-term effects after experiencing or witnessing trauma. More than half of the children in foster care experience developmental delays. Children in foster care have three to seven times more chronic medical conditions, birth defects, emotional disorders, and academic failures than children of similar socioeconomic backgrounds who never enter foster care.

In its 2000 Report to Congress, the U.S. Department of Education noted that only 15 percent of preschool children identified as homeless were enrolled in preschool programs. In comparison, 57 percent of low-income preschool children participated in preschool in 1999. These statistics are especially troubling in light of the fact that over 40 percent of children living in shelters are under the age of five—an age when early childhood education can have a significant positive impact on a child's development and future academic achievement.

Head Start began in 1965, and since its inception, it has served more than 22 million of America's poorest children. This important program has helped these children build the skills they need to succeed in school and provide them with the services they need to be healthy and active in society. With its comprehensive services and family-centered approach, Head Start often offers the most appropriate educational setting for children and families experiencing homelessness and for children in foster care. By providing comprehensive health, nutrition, education, and social services, Head Start helps provide for the needs of these vulnerable children. And, with the passage of this bill, Head Start could help even more. Yet, programmatic and policy barriers continue to limit their access to and participation in Head Start. Some barriers to Head Start access are related to lack of coordination with child welfare agencies, high mobility, lack of required documentation, and lack of transportation.

Our bill would encourage Head Start grantees to reduce these barriers by directing them to increase their outreach to homeless and foster children. It also would encourage coordination between Head Start grantees and community service providers and homeless and foster children. It would increase the coordination for these populations as they transition out of Head Start to elementary school and increase reporting requirements. And, it would allow homeless children to be automatically eligible for Head Start.

Again, I thank my colleague, Senator MURRAY, for her leadership on this issue. I look forward to working with her to incorporate these ideas into the Head Start reauthorization bill currently being considered in the Health, Education, Labor, and Pensions Committee.

By Mr. ROCKEFELLER (for himself and Mr. BURNS):

S. 1102. A bill to extend the aviation war risk insurance program for 3 years; to the Committee on Commerce, Science, and Transportation.

Mr. ROCKEFELLER. Mr. President, I rise today to introduce legislation to mandate that the Federal Aviation Administration (FAA) extend the offering of war risk insurance through August 31, 2007, to our Nation's air carriers. I am very pleased that Senator BURNS, the Chairman of the Aviation Subcommittee, has agreed to co-sponsor this legislation.

Prior to September 11, 2001, war risk insurance was generally attainable and affordable for U.S. airlines. But, as we know, that day changed everything for America. No industry was more dramatically and fundamentally changed than the U.S. aviation industry. Recognizing that the commercial insurance market was not willing to provide war risk insurance to the airline industry in the immediate aftermath of September 11, Congress required the FAA provide war risk insurance to U.S. air carriers. We expected that in time U.S. air carriers would be able to obtain commercial war risk insurance. Unfortunately, the commercial war risk insurance market has priced its products beyond the means of our air carriers. According to the Air Transport Association, a return to the commercial market to obtain war risk insurance could cost U.S. airlines $600 million to $700 million a year, up from the current $140 million. Because of the lack of a vibrant competitive commercial market, last year, Congress extended its mandate that the FAA provide this insurance.

In a report to Congress, the FAA noted that even though war risk insurance is available in the private market, it is offered on terms that the industry just cannot afford. My bill would mandate the continuation of this vital program through August 31, 2008. In time, we should expect the private market to offer this coverage, but the reality is that the insurance industry continues to seek exorbitant rates for this coverage. The market has failed and it is the government's responsibility to provide this insurance as we have done in previous times of war.

The financial conditions faced by domestic airlines have seen little, if any, improvement. This legislation is supported by the low-cost carriers who are the healthiest companies in the industry, as they know that their profitability would be at risk if they were forced to go to commercial market for this insurance at this time. The current commercial market is simply unable to provide adequate war-risk coverage without unreasonable cost to airlines. For airlines, private coverage would mean annual payment increases of millions of dollars. Even with FAA insurance coverage, airlines are projected to lose $5.5 billion this year. This legislation will help the airlines weather their current financial crisis. If U.S. airlines were forced to go to the commercial market for this insurance, we would likely see more airlines in bankruptcy or cease to exist at all.

I believe that airlines remain a prime targets for terrorist acts. It is because of this threat that the commercial insurance market is unaffordable for the airlines. My legislation seeks to address a pressing problem facing one of the most critical industries in the country. My bill is one small but important measure that Congress can take to make sure our nation has a vibrant and financially secure airline industry.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1102

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF AIRLINE WAR RISK POLICIES AND TERRORISM COVERAGE.

(a) EXTENSION OF POLICIES.—Section 44302(f) of title 49, United States Code, is amended by striking ''August 31, 2005, and may extend through December 31, 2005,'' in paragraph (1) and inserting ''August 31, 2008, and may extend through December 31, 2008,''.

(b) EXTENSION OF TERRORISM COVERAGE.—Section 44303(b) of title 49, United States Code, is amended by striking ''December 31, 2005,'' and inserting ''December 31, 2008,''.

By Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. WYDEN, Mr. KYL, Mr. SCHUMER, Mr. CRAPO, Mr. PRYOR, Mr. JEFFORDS, and Mr. FRIST):

S. 1103. A bill to amend the Internal Revenue Code of 1986 to repeal the individual alternative minimum tax; to the Committee on Finance.

Mr. BAUCUS. Mr. President, this weekend, millions of Americans watched in suspense as Anakin Skywalker was lured to the Dark side and became Darth Vader. What millions of those same Americans may not be aware of is another Darth Vader lurking in our tax code; that is, the Alternative Minimum Tax, or AMT.

The AMT has many of the same qualities as Anakin Skywalker. The AMT was supposed to bring order and fairness to the tax world, but it eventually got off on the wrong path and became a threat to middle-income taxpayers. Both Skywalker and the AMT started off with great intentions, but eventually they went astray. And now we have the Darth Vader of the Tax Code bearing down on millions of unsuspecting families.

That is why I am pleased to join with my friend and Chairman CHUCK GRASSLEY, and our fellow committee colleagues, Senators WYDEN and KYL, to introduce legislation today that will repeal the individual AMT. Our bill simply says that individuals beginning January 1, 2006 will owe zero, I repeat, zero dollars under the AMT. Further, our bill provides that individuals with AMT credits can continue to use those up to 90 percent of their regular tax liability.

If we do not act, CRS estimates that in 2006, the family-unfriendly AMT will hit middle-income families earning $63,000 with three children. What was once meant to ensure that a handful of millionaires did not eliminate all taxes through excessive deductions is now meaning millions of working families, including thousands in my home State of Montana, are subject to a higher stealth tax. It is truly bizarre, Mr. Chairman, that we have designed a tax deeming more children ''excessive deductions'' and duly paying your State taxes a bad thing. Already, 5,000 Montana families pay a higher tax because of the AMT. But this number could multiply many times over if we do not act soon.

Not only is the AMT unfair and poorly targeted, it is an awful mess to figure out. The Finance Committee heard testimony today from our National Taxpayer Advocate, who has singled out this item as causing the most complexity for individual taxpayers, and also from a tax practitioner who has seen first-hand how difficult this is for her clients. We heard also from other witnesses who said it is time for repeal of the AMT.

Of course, repeal does not come without cost and that cost is significant even if we assume the 2001 and 2003 tax cuts are not extended. We are committed to working together to identify reasonable offsets. Certainly, I do not think we want a tax system unfairly placing a higher tax burden on millions of middle-income families with children. But it does not serve those families either if our budget deficit is significantly worse.

Again, I look forward to working with my colleagues on this AMT repeal bill will put an end to the Darth Vader of the tax code, without any sequels.

By Mrs. CLINTON (for herself, Mr. CHAFEE, Mr. NELSON of Florida, Ms. COLLINS, Mr. BINGAMAN, and Ms. CANTWELL):

S. 1104. A bill to amend titles XIX and XXI of the Social Security Act to provide States with the option to cover certain legal immigrants under the medicaid and State children's health insurance programs; to the Committee on Finance.

Mrs. CLINTON. Mr. President, I rise to introduce legislation that would allow States to use Federal funds to provide critical healthcare services to pregnant women and children. I want to thank Senator CHAFEE for his leadership on this important issue. I also want to recognize former Senator Bob Graham and the late Senator John Chafee, who championed this legislation for many years. Their commitment laid the groundwork for our bill introduction today.

This bill, the Immigrant Children's Health Improvement Act, is fundamentally about three things—fairness, fiscal relief, and financial savings.

I will start with fairness. All across New York and America, legal immigrants work hard, pay taxes, and exercise their civic responsibilities. I see examples of this every day in New York. They fight for our country in the military. They contribute to our Nation's competitiveness and economic growth. They help revitalize neighborhoods and small towns across the country. And most are fiercely proud to call themselves Americans.

Yet, in 1996, Congress denied safety net services to legal immigrants who had been in the country for less than 5 years. Today, Senator CHAFEE and I are here to introduce legislation that would take a first step towards correcting that injustice. The Immigrant Children's Health Improvement Act will allow States to use, Federal funds to make SCHIP, (the State Children's Health Improvement Program, and Medicaid available to pregnant women and children who are legal immigrants within the 5-year ban.

There is tremendous need for this legislation. An Urban Institute study found that children of immigrants are three times as likely to be in fair or poor health. While most children receive preventative medicine, such as vaccines, too often immigrant children do not. They are forced to receive their healthcare via emergency rooms—the least cost-effective place to provide care. To make matters worse, minor illnesses, which would be easily treated by a pediatrician, may snowball into life-threatening conditions.

This legislation is also a matter of good fiscal policy. Today, 19 States, including New York and Rhode Island, plus the District of Columbia, use State funds to provide healthcare services to legal immigrants within the 5-year waiting period. According to the most recent estimates from the Congressional Budget Office, at least 155,000 children and 60,000 adults are receiving these benefits. A total of 387,000 recent legal immigrants would be eligible to receive these services if their States opt to take advantage of the program.

And finally, this bill is about long-term healthcare cost savings. According to the National Bureau of Economic Research, covering uninsured children and pregnant women through Medicaid can reduce unnecessary hospitalization by 22 percent. Pregnant women who forgo prenatal care are likely to develop complications during pregnancy, which results in higher costs for postpartum care. And women without access to prenatal care are four times more likely to deliver low birth weight infants and seven times more likely to deliver prematurely than women who receive prenatal care, according to the Institute of Medicine. All of these health outcomes are costly to society and to the individuals involved.

Thank you for allotting me this time to speak on such an urgent matter. I look forward to working with you and the rest of my colleagues to enact this bill into law in the near future.

By Mr. DODD (for himself, Mr. COCHRAN, Mr. LEVIN, Mr. KENNEDY, and Mr. AKAKA):

S. 1105. A bill to amend title VI of the Higher Education Act of 1965 regarding international and foreign language studies; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, I rise today with Senators COCHRAN, LEVIN, KENNEDY and AKAKA to introduce The International and Foreign Language Studies Act of 2005.

In recent years, foreign language needs have significantly increased throughout the Federal Government due to the presence of a wider range of security threats, the emergence of new nation states, and the globalization of the U.S. economy. Likewise, American business increasingly needs internationally experienced employees to compete in the global economy and to manage a culturally diverse workforce.

Currently, the U.S. government requires 34,000 employees with foreign language skills across 70 Federal agencies. These agencies have stated over the last few years, that translator and interpreter shortfalls have adversely affected agency operations and hindered U.S. military, law enforcement, intelligence, and diplomatic efforts.

Despite our growing needs, the number of undergraduate foreign language degrees conferred is only one percent of all degrees. Only one third of undergraduates report that they are taking foreign language courses and only 11 percent report that they have studied abroad.

At a time when our security needs are more important than ever, at a time when our economy demands that we enter new markets, and at a time when the world requires us to engage in diplomacy in more thoughtful and considered ways, it is extremely important that we have at our disposal a multilingual, multicultural, internationally experienced workforce. The Dodd-Cochran International and Foreign Language Studies Act attempts to do this in a number of ways.

The Dodd-Cochran International and Foreign Language Studies Act will increase undergraduate study abroad as a means to enhance foreign language proficiency and deepen cultural knowledge. The bill will reinstate undergraduate eligibility for Foreign Language and Area Studies Fellowships. The bill will encourage the Department of Education to engage in the collection, analysis and dissemination of

data on international education and foreign language needs so that we know and understand exactly what our needs in this area are. Within the Institute for International and Public Policy, the bill provides scholarships and creates an ''expert track'' for doctoral students in critical areas, disciplines and languages. And, most importantly, the Dodd-Cochran bill will demonstrate our nation's commitment to increasing the foreign language proficiency and international expertise of our citizens by increasing the amount appropriated to international education, including international business education, to allow for more opportunities for more students.

The Higher Education Act authorizes the Federal Government's major activities as they relate to financial assistance for students attending colleges and universities. It provides aid to institutions of higher education, services to help students complete high school and enter and succeed in postsecondary education, and mechanisms to improve the training of our emerging workforce. This bill will help fulfill that mission.

Foreign language skills and international study are vital to secure the future economic welfare of the United States in an increasingly international economy. Foreign language skills and international study are also vital for the nation to meet 21st century security challenges properly and effectively, especially in light of the terrorist attacks on September 11, 2001.

I hope our colleagues who are not cosponsoring this bill will give it serious consideration. By working together, I believe that the Senate as a body can act to ensure that we strengthen our Nation's security and economy by capitalizing on the talents and dreams of those who wish to enter the international arena.

Mr. KENNEDY. Mr. President, it is a privilege to join my colleagues Senators DODD, COCHRAN, LEVIN and AKAKA in introducing the International and Foreign Languages Studies Act to increase study abroad and increase foreign language study here at home for undergraduate and graduate students.

The study of foreign language and foreign cultures is more important than ever. Yet in 2003, the number of fellowships awarded for such studies was 30 percent less than the high point in 1967. Only 40 percent of undergraduates report taking any foreign language coursework and only 20 percent have studied abroad.

Learning another language is more than a desirable educational goal. It is a national security goal as well. We need more students to pursue other languages, especially the lesser taught languages like Chinese, Japanese, Farsi, Dari Persian and Arabic, which will be critical for international business as well as for national defense.

In addition to supporting language studies, the bill builds bridges with overseas universities to promote research and training abroad for American students. It supports the expansion of the Centers for International Business Education, and increases the scope of the Institute for International and Public Policy by creating an accelerated track for PhD students in key areas.

This bill is an important part of America's participation in globalization, and I urge my colleagues to strongly support it.

By Mr. ALLARD (for himself and Mr. SALAZAR):

S. 1106. A bill to authorize the construction of the Arkansas Valley Conduit in the State of Colorado, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. ALLARD. Mr. President, it is with much excitement and anticipation that I, along with Congresswoman MARILYN MUSGRAVE in the House of Representatives, introduce legislation known as ''The Arkansas Valley Conduit.'' This bill will ensure the expedited construction of a pipeline that will provide the small, financially strapped towns and water agencies along the Arkansas River with safe, clean, affordable water. By creating a Federal-Local cost share to help offset the costs of constructing the Conduit, this legislation will protect the future of Southeastern Colorado. First introduced during the 107th Session of Congress and subsequently in the 108th, we have redrafted the legislation for the 109th Session to create a stronger stand-alone bill. Congresswoman MUSGRAVE and I have worked hard to craft it so that it meets the needs of a region of Colorado that has suffered from decades of inadequate drinking water supplies. On the heels of one of the worst droughts in Colorado history, the Conduit will provide a dependable source of water to communities—water that will allow these communities to grow and prosper.

By way of background, the Arkansas Valley Conduit was originally authorized by Congress forty years ago as a part of the Fryingpan-Arkansas Project. Due to the authorizing statute's lack of a cost share provision and Southeastern Colorado's depressed economic status, the Conduit was never built. Until recently, the region has been fortunate to enjoy an economical and safe alternative to pipeline-transportation of Project Water: the Arkansas River. Sadly, the water quality in the Arkansas has degraded to a point where it is no longer economical to use as a means of transport. At the same time, the Federal Government has continued to strengthen its unfunded water quality standards.

Several years ago, in an effort to resurrect the Conduit, Senator Ben Nighthorse Campbell and I worked to secure $200,000 for a Bureau of Reclamation Re-evaluation Statement on the project. Thanks to this effort, the people of the valley began to realize that the Conduit may one day be more than just a pipedream, and that Congress was serious about fulfilling the promise of the Fryingpan-Arkansas Project.

Our legislation calls for a 80/20 Federal/Local cost share. This is a sizeable sum, but is a far cry from the estimated $640 million it would take to build new treatment facilities for each of the communities if the Conduit was not built. It requires cooperation of the Department of the Interior, U.S. Army Corps of Engineers and local project participants.

The Arkansas Valley Conduit will deliver fresh, clean water to dozens of valley communities and tens-of-thousands of people along the river. Local community participants continue to explore options for financing their share of the costs, and are working hard to develop the organization that will oversee the Conduit project. I applaud those in the community who have worked so hard for the past several years to make the Conduit a reality. Upon its completion, it will stand as testament to a pioneering vision and commitment to sensible water policy.

With the help of my colleagues, the promise made by Congress forty years ago to the people of Southeastern Colorado, will finally become a reality.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 1106

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Arkansas Valley Conduit Act''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) Public Law 87–590 (76 Stat. 389) authorized the Fryingpan-Arkansas project, including construction of the Arkansas Valley Conduit, a pipeline extending from Pueblo Reservoir, Pueblo, Colorado to Lamar, Colorado;

(2) the Arkansas Valley Conduit was never built, partly because of the inability of local communities to pay 100 percent of the costs of construction of the Arkansas Valley Conduit;

(3) in furtherance of the goals and authorization of the Fryingpan-Arkansas project, it is necessary to provide separate authorization for the construction of the Arkansas Valley Conduit;

(4) the construction of the Arkansas Valley Conduit is necessary for the continued viability of southeast Colorado; and

(5) the Arkansas Valley Conduit would provide the communities of southeast Colorado with safe, clean, and affordable water.

(b) PURPOSES.—The purposes of this Act are—

(1) to ensure a safe and adequate water supply for the beneficiaries identified in Public Law 87–590 (76 Stat. 389) and related authorizing documents and subsequent studies; and

(2) to establish a cost-sharing requirement for the construction of the Arkansas Valley Conduit.

SEC. 3. ARKANSAS VALLEY CONDUIT, COLORADO.

(a) IN GENERAL.—The Secretary of the Interior (referred to in this Act as the ''Secretary'') shall plan, design, and construct a water delivery pipeline, and branch lines as needed, from a location in the vicinity (as determined by the Secretary) of Pueblo Reservoir, Pueblo, Colorado to a location in the vicinity (as determined by the Secretary) of Lamar, Colorado, to be known as the ''Arkansas Valley Conduit'', without regard to the cost-ceiling for the Fryingpan Arkansas Project established under section 7 of Public Law 87–590 (76 Stat. 393).

(b) LEAD NON-FEDERAL ENTITY.—

(1) DESIGNATION.—The Southeastern Colorado Water Conservancy District, or a designee of the Southeastern Colorado Water Conservancy District that is recognized under State law as an entity that has taxing authority, shall be the lead non-Federal entity for the Arkansas Valley Conduit.

(2) DUTIES.—The lead non-Federal entity shall—

(A) act as the official agent of the Arkansas Valley Conduit;

(B) pay—

(i) the non-Federal share of any increased costs required under subsection (e)(2)(C); and

(ii) the non-Federal share of construction costs under subsection (e)(2); and

(C) pay costs relating to, and perform, the operations, maintenance, and replacement of the Arkansas Valley Conduit.

(c) COOPERATION.—To the maximum extent practicable during the planning, design, and construction of the Arkansas Valley Conduit, the Secretary shall collaborate and cooperate with the United States Army Corps of Engineers, other Federal agencies, and non-Federal entities.

(d) COST ESTIMATE.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary, in cooperation with the lead non-Federal entity, shall prepare an estimate of the total costs of constructing the Arkansas Valley Conduit.

(2) ACTUAL COSTS.—If the actual costs of construction exceed the estimated costs, the difference between the actual costs and the estimated costs shall be apportioned in accordance with subsection (e)(2)(C).

(3) AGREEMENT ON ESTIMATE AND DESIGN.—The estimate prepared under paragraph (1), and the final design for the Arkansas Valley Conduit, shall be—

(A) subject to the agreement of the Secretary and the lead non-Federal entity;

(B) developed in cooperation with the lead non-Federal entity; and

(C) consistent with commonly accepted engineering practices.

(e) COST-SHARING REQUIREMENT.—

(1) FEDERAL SHARE.—

(A) IN GENERAL.—The Federal share of the total costs of the planning, design, and construction of the Arkansas Valley Conduit shall be 80 percent.

(B) INCREASED COSTS.—The Federal share of any increased costs that are a result of fundamental design changes conducted at the request of any person other than the lead non-Federal entity shall be 100 percent.

(2) NON-FEDERAL SHARE.—

(A) NON-FEDERAL SHARE.—The non-Federal share of the total costs of the planning, design, and construction of the Arkansas Valley Conduit shall be 20 percent.

(B) FORM.—Up to 100 percent of the non-Federal share may be in the form of in-kind contributions or tasks that are identified in the cost estimate prepared under subsection (d)(1) as necessary for the planning, design, and construction of the Arkansas Valley Conduit.

(C) INCREASED COSTS.—

(i) FUNDAMENTAL DESIGN CHANGES.—The lead non-Federal entity shall pay any increased costs that are a result of fundamental design changes conducted at the request of the lead non-Federal entity.

(ii) OTHER CAUSES.—For any increased costs that are from causes (including increased supply and labor costs and unforseen field changes) other than fundamental design changes referred to in clause (i) and paragraph (1)(B)—

(I) the Federal share shall be 80 percent; and

(II) the non-Federal share shall be 20 percent.

(D) UP-FRONT PAYMENT.—Not later than 180 days after the date of completion of the cost-estimate under subsection (d), the Secretary and the non-Federal entity may enter into an agreement under which—

(i) the Secretary pays 100 percent of the non-Federal share on behalf of the non-Federal entity; and

(ii) the non-Federal entity reimburses the Secretary for the funds paid by the Secretary in accordance with the terms of the agreement.

(E) TIMING.—Except as provided in subparagraph (D), the non-Federal share shall be paid in accordance with a schedule established by the Secretary that—

(i) takes into account the capability of the applicable non-Federal entities to pay; and

(ii) provides for full payment of the non-Federal share by a date that is not later than 50 years after the date on which the Arkansas Valley Conduit is capable of delivering water.

(f) TRANSFER ON COMPLETION.—On completion of the Arkansas Valley Conduit, as certified in an agreement between the Secretary and the lead non-Federal entity, the Secretary shall transfer ownership of the Arkansas Valley Conduit to the lead non-Federal entity.

(g) APPLICABLE LAW.—Except as provided in this Act, Public Law 87–590 (76 Stat. 389) and related authorizing documents and subsequent studies shall apply to the planning, design, and construction of the Arkansas Valley Conduit.

(h) WATER RIGHTS.—Nothing in this Act affects any State water law or interstate compact.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this Act.

(b) LIMITATION.—Amounts made available under subsection (a) shall not be used for the operation or maintenance of the Arkansas Valley Conduit.

By Mr. ENZI (for himself and Mr. KENNEDY):

S. 1107. A bill to reauthorize the Head Start Act, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. ENZI. Mr. President, I rise today to introduce the Head Start Improvements for School Readiness Act with my colleague, Senator KENNEDY.

This legislation would reauthorize the Head Start program and make important improvements to the Head Start Act and help ensure that today's children receiving services by this important program will be better prepared for success in the future. Success in life depends a great deal on the preparation for that success, which comes early in life. It is well documented in early childhood education research that students who are not reading well by the third grade will struggle with reading most of their lives. That is why the Head Start program is so important. Head Start provides early education for thousands of children each year, most of whom would not have the opportunity to attend preschool programs elsewhere.

The Head Start program is important generally, but there is some room for improvement. Earlier this year the Senate Committee on Health, Education, Labor and Pensions held a hearing on the administration of the Head Start program, and found that a number of changes might help improve the performance of the program overall.

The first change required by this program would be providing for all Head Start grantees found to have a deficiency to recompete the next time the program's grant is up for renewal. The bill would also require grantees to recompete if they have not resolved issues of noncompliance within 120 days, or a longer time specified by the Secretary of Health and Human Services. This will create an important incentive for programs to operate at their best, which is in the best interest of our children.

The bill would also shorten the timeline for programs to be terminated. In some instances, Head Start grantees have been found to be operating programs that are unsafe, or improperly using Federal funds. In these cases, the Administration has acted to terminate these programs. Unfortunately, under the law, Head Start grantees have been able to appeal these rulings. This process can be lengthy, some examples exceed 600 days, or almost two years, before a final ruling is made. In order to address this issue, and put the health and education of children first, the legislation we introduce today would limit the time available for Head Start grantees to appeal decisions made by the Secretary to terminate grants.

A third improvement is to clarify the role of the governing body and policy councils in individual Head Start programs. After careful review, the Committee found that many of the important fiscal and legal responsibilities of Head Start grantees were not explicitly assigned to either the policy council or the governing body, or in many instances, were assigned equally to both. In order to clarify the shared governance model, the bill we introduce today would clarify the responsibilities of the governing body and the policy council for each Head Start grantee. We believe this will lead to more consistent, high quality fiscal and legal management, which will ensure these programs are serving children in the best way they can.

I wish to thank my colleagues on the Committee, particularly Senator KENNEDY, for their help in drafting this bipartisan legislation to reauthorize the Head Start Act. I believe the legislation we are introducing today will improve the quality and effectiveness of the Head Start program for generations of children to come.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

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

S. 1107

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Head Start Improvements for School Readiness Act''.

SEC. 2. STATEMENT OF PURPOSE.

Section 636 of the Head Start Act (42 U.S.C. 9831) is amended by inserting ''educational instruction in prereading skills, premathematics skills, and language and through'' after ''low-income children through''.

SEC. 3. DEFINITIONS.

Section 637 of the Head Start Act (42 U.S.C. 9832) is amended—

(1) in paragraph (2), by inserting ''(including a community-based organization)'' after ''nonprofit'';

(2) in paragraph (3)(C), by inserting '', including financial literacy,'' after ''Parent literacy'';

(3) in paragraph (17), by striking ''Mariana Islands,'' and all that follows and inserting ''Mariana Islands.''; and

(4) by adding at the end the following:

''(18) The term 'homeless child' means a child described in section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)).

''(19) The term 'limited English proficient', used with respect to a child, means a child—

''(A) who is enrolled or preparing to enroll in a Head Start program, Early Head Start program, or other early care and education program;

''(B)(i) who was not born in the United States or whose native language is a language other than English;

''(ii)(I) who is a Native American, Alaska Native, or a native resident of a United States territory; and

''(II) who comes from an environment where a language other than English has had a significant impact on the child's level of English language proficiency; or

''(iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

''(C) whose difficulty in speaking or understanding the English language may be sufficient to deny such child—

''(i) the ability to successfully achieve in a classroom in which the language of instruction is English; or

''(ii) the opportunity to participate fully in society.

''(20) The term 'deficiency' means—

''(A) a systemic or substantial failure of an agency in an area of performance that the Secretary determines involves—

''(i) a threat to the health, safety, or civil rights of children or staff;

''(ii) a denial to parents of the exercise of their full roles and responsibilities related to program operations;

''(iii) a failure to comply with standards related to early childhood development and health services, family and community partnerships, or program design and management;

''(iv) the misuse of funds under this subchapter;

''(v) loss of legal status or financial viability, loss of permits, debarment from receiving Federal grants or contracts, or the improper use of Federal funds; or

''(vi) failure to meet any other Federal or State requirement that the agency has shown an unwillingness or inability to correct, after notice from the Secretary, within the period specified;

''(B) systemic failure of the board of directors of an agency to fully exercise its legal and fiduciary responsibilities;

''(C) substantial failure of an agency to meet the administrative requirements of section 644(b);

''(D) failure of an agency to demonstrate that the agency attempted to meet the coordination and collaboration requirements with entities described in section 640(a)(5)(D)(iii)(I); or

''(E) having an unresolved area of noncompliance.

''(21) The term 'unresolved area of noncompliance' means failure to correct a noncompliance item within 120 days, or within such additional time (if any) authorized by the Secretary, after receiving from the Secretary notice of such noncompliance item, pursuant to section 641A(d).''.

SEC. 4. FINANCIAL ASSISTANCE FOR HEAD START PROGRAMS.

Section 638 of the Head Start Act (42 U.S.C. 9833) is amended by inserting ''for a period of 5 years'' after ''provide financial assistance to such agency''.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

Section 639 of the Head Start Act (42 U.S.C. 9834) is amended to read as follows:

''SEC. 639. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—There are authorized to be appropriated for carrying out the provisions of this subchapter $7,215,000,000 for fiscal year 2006, $7,515,000,000 for fiscal year 2007, $7,815,000,000 for fiscal year 2008, and such sums as may be necessary for each of fiscal years 2009 and 2010.

''(b) SPECIFIC PROGRAMS.—From the amount appropriated under subsection (a), the Secretary shall make available to carry out research, demonstration, and evaluation activities, including longitudinal studies under section 649, not more than $20,000,000 for fiscal year 2006, and such sums as may be necessary for each of fiscal years 2007 through 2010, of which not more than $7,000,000 for each of fiscal years 2006 through 2010 shall be available to carry out impact studies under section 649(g).''.

SEC. 6. ALLOTMENT OF FUNDS.

(a) ALLOTMENT.—Section 640(a) of the Head Start Act (42 U.S.C. 9835(a)) is amended—

(1) in paragraph (2)—

(A) by striking subparagraph (A) and inserting the following:

''(A) Indian Head Start programs, services for children with disabilities, and migrant and seasonal Head Start programs, except that—

''(i) subject to the availability of appropriations, the Secretary shall reserve for each fiscal year for use by Indian Head Start and migrant and seasonal Head Start programs (referred to in this subparagraph as 'covered programs'), on a nationwide basis, a sum that is the total of not less than 4 percent of the amount appropriated under section 639 for that fiscal year (for Indian Head Start programs), and not less than 5 percent of that appropriated amount (for migrant and seasonal Head Start programs), except that—

''(I) if reserving the specified percentages for Indian Head Start programs and migrant and seasonal Head Start programs would reduce the number of children served by Head Start programs, relative to the number of children served on the date of enactment of the Head Start Improvements for School Readiness Act, taking into consideration an appropriate adjustment for inflation, the Secretary shall reserve percentages that approach, as closely as practicable, the specified percentages and that do not cause such a reduction; and

''(II) notwithstanding any other provision of this subparagraph, the Secretary shall reserve for each fiscal year for use by Indian Head Start programs and by migrant and seasonal Head Start programs, on a nationwide basis, not less than the amount that was obligated for use by Indian Head Start programs and by migrant and seasonal Head Start programs for the previous fiscal year;

''(ii) after ensuring that each grant recipient for a covered program has received an amount sufficient to enable the grant recipient to serve the same number of children in Head Start programs as were served by such grant recipient on the date of enactment of the Head Start Improvements for School Readiness Act, taking into consideration an appropriate adjustment for inflation, and after allotting the funds reserved under paragraph (3)(A) as specified in paragraph (3)(D), the Secretary shall distribute the remaining funds available under this subparagraph for covered programs, by—

''(I) distributing 65 percent of the remainder by giving priority to grant recipients in the States serving the smallest percentages of eligible children (as determined by the Secretary); and

''(II) distributing 35 percent of the remainder on a competitive basis;'';

(B) by striking subparagraph (C) and inserting the following:

''(C) training and technical assistance activities that are sufficient to meet the needs associated with program expansion and to foster program and management improvement activities as described in section 648, in an amount for each fiscal year that is equal to 2 percent of the amount appropriated under section 639 for such fiscal year, of which—

''(i) 50 percent shall be made available to Head Start agencies to use directly, or by establishing local or regional agreements with community experts, colleges and universities, or private consultants, for any of the following training and technical assistance activities, including—

''(I) activities that ensure that Head Start programs meet or exceed the program performance standards described in section 641A(a)(1);

''(II) activities that ensure that Head Start programs have adequate numbers of trained, qualified staff who have skills in working with children and families, including children and families who are limited English proficient and children with disabilities;

''(III) activities to pay expenses, including direct training for expert consultants working with any staff, to improve the management and implementation of Head Start services and systems;

''(IV) activities that help ensure that Head Start programs have qualified staff who can promote language skills and literacy growth of children and who can provide children with a variety of skills that have been identified as predictive of later reading achievement, school success, and other educational skills described in section 641A;

''(V) activities to improve staff qualifications and to assist with the implementation of career development programs and to encourage the staff to continually improve their skills and expertise, including developing partnerships with programs that recruit, train, place, and support college students in Head Start centers to deliver an innovative early learning program to preschool children;

''(VI) activities that help local programs ensure that the arrangement, condition, and implementation of the learning environments in Head Start programs are conducive to providing effective program services to children and families;

''(VII) activities to provide training necessary to improve the qualifications of Head Start staff and to support staff training, child counseling, health services, and other services necessary to address the needs of children enrolled in Head Start programs, including children from families in crises, children who experience chronic violence or homelessness, and children who experience substance abuse in their families, and children under 3 years of age, where applicable;

''(VIII) activities to provide classes or in-service-type programs to improve or enhance parenting skills, job skills, adult and family literacy, including financial literacy, or training to become a classroom aide or bus driver in a Head Start program;

''(IX) additional activities deemed appropriate to the improvement of Head Start agencies' programs, as determined by the agencies' technical assistance and training plans; or

''(X) any other activities regarding the use of funds as determined by the Secretary;

''(ii) 50 percent shall be made available to the Secretary to support a regional or State system of early childhood education training and technical assistance, and to assist local programs (including Indian Head Start programs and migrant and seasonal Head Start programs) in meeting the standards described in section 641A(a)(1); and

''(iii) not less than $3,000,000 of the amount in clause (ii) appropriated for such fiscal year shall be made available to carry out activities described in section 648(d)(4);'';

(C) in subparagraph (D), by striking ''agencies;'' and inserting ''agencies);''; and

(D) by adding at the end of the flush matter at the end the following: ''The Secretary shall require each Head Start agency to report at the end of each budget year on how funds provided to carry out subparagraph (C)(i) were used.'';

(2) in paragraph (3)—

(A) in subparagraph (A)(i)(I)—

(i) by striking ''60 percent of such excess amount for fiscal year 1999'' and all that follows through ''2002, and''; and

(ii) by inserting before the semicolon the following: '', 30 percent of such excess amount for fiscal year 2006, and 40 percent of such excess amount for each of fiscal years 2007 through 2010'';

(B) in subparagraph (B)—

(i) in clause (i), by striking ''performance standards'' and all that follows and inserting ''standards and measures pursuant to section 641A.'';

(ii) by striking clause (ii) and inserting the following:

''(ii) Ensuring that such programs have adequate numbers of qualified staff, and that such staff is furnished adequate training, including training to promote the development of language skills, prematheatics skills, and prereading in young children and in working with limited English proficient children, children in foster care, children referred by child welfare services, and children with disabilities, when appropriate.'';

(iii) by striking clause (iii) and inserting the following:

''(iii) Developing and financing the salary scales and benefits standards under section 644(a) and section 653, in order to ensure that salary levels and benefits are adequate to attract and retain qualified staff for such programs.'';

(iv) by striking clause (iv) and inserting the following:

''(iv) Using salary increases to—

''(I) assist with the implementation of quality programs and improve staff qualifications;

''(II) ensure that staff can promote the language skills and literacy growth of children and can provide children with a variety of skills that have been identified, through scientifically based early reading research, as predictive of later reading achievement, as well as additional skills identified in section 641A(a)(1)(B)(ii); and

''(III) encourage the staff to continually improve their skills and expertise by informing the staff of the availability of Federal and State incentive and loan forgiveness programs for professional development.'';

(v) in clause (v), by inserting '', including collaborations to increase program participation by underserved populations of eligible children'' before the period; and

(vi) by striking clauses (vii) and (viii) and inserting the following:

''(vii) Providing assistance to complete postsecondary coursework including scholarships or other financial incentives, such as differential and merit pay, to enable Head Start teachers to improve competencies and the resulting child outcomes.

''(viii) Promoting the regular attendance and stability of all Head Start children with particular attention to highly mobile children, including children from migrant and seasonal farmworking families (where appropriate), homeless children, and children in foster care.

''(ix) Making such other improvements in the quality of such programs as the Secretary may designate.'';

(C) in subparagraph (C)—

(i) in clause (i)(I), by striking the last sentence and inserting ''Salary increases, in excess of cost-of-living allowances, provided with such funds shall be subject to the specific standards governing salaries and salary increases established pursuant to section 644(a).'';

(ii) in clause (ii)—

(I) in the matter preceding subclause (I), by striking ''education performance'' and inserting ''additional educational'';

(II) in subclause (I), by inserting '', prereading,'' after ''language'';

(III) by striking subclause (II) and inserting the following:

''(II) to help limited English proficient children attain the knowledge, skills, and development specified in section 641A(a)(1)(B)(ii) and to promote the acquisition of the English language by such children and families;''; and

(IV) by striking subclause (IV) and inserting the following:

''(IV) to provide education and training necessary to improve the qualifications of Head Start staff, particularly assistance to enable more instructors to be fully competent and to meet the degree requirements under section 648A(a)(2)(A), and to support staff training, child counseling, and other services necessary to address the challenges of children participating in Head Start programs, including children from immigrant, refugee, and asylee families, children from families in crisis, homeless children, children in foster care, children referred to Head Start programs by child welfare agencies, and children who are exposed to chronic violence or substance abuse.'';

(iii) in clause (iii), by inserting '', educational staff who have the qualifications described in section 648A(a),'' after ''ratio'';

(iv) in clause (v), by striking ''programs, including'' and all that follows and inserting ''programs.'';

(v) by redesignating clause (vi) as clause (ix); and

(vi) by inserting after clause (v) the following:

''(vi) To conduct outreach to homeless families in an effort to increase the program participation of eligible homeless children.

''(vii) To conduct outreach to migrant and seasonal farmworking families and families with limited English proficient children.

''(viii) To partner with institutions of higher education and nonprofit organizations, including community-based organizations, that recruit, train, place, and support college students to serve as mentors and reading coaches to preschool children in Head Start programs.

''(ix) To upgrade the qualifications and skills of educational personnel to meet the professional standards described in section 648A(a)(1), including certification and licensure as bilingual education teachers and for other educational personnel who serve limited English proficient students.'';

(3) in paragraph (4)—

(A) in subparagraph (A), by striking ''1998'' and inserting ''2005''; and

(B) by striking subparagraph (B) and inserting the following:

''(B) any amount available after all allotments are made under subparagraph (A) for such fiscal year shall be distributed as follows:

''(i) Each State shall receive an amount sufficient to serve the same number of children in Head Start programs in each State as were served on the date of enactment of the Head Start Improvements for School Readiness Act, taking into consideration an appropriate adjustment for inflation.

''(ii) After ensuring that each State has received the amount described in clause (i) and after allotting the funds reserved under paragraph (3)(A) as specified in paragraph (3)(D), the Secretary shall distribute the remaining balance, by—

''(I) distributing 65 percent of the balance by giving priority to States serving the smallest percentages of eligible children (as determined by the Secretary); and

''(II) distributing 35 percent of the balance on a competitive basis.'';

(4) in paragraph (5)—

(A) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively; and

(B) by striking subparagraphs (B), (C), and (D) and inserting the following:

''(B)(i) From the reserved sums, the Secretary shall award a collaboration grant to each State to facilitate collaboration between Head Start agencies and entities (including the State) that carry out other activities designed to benefit low-income families and children from birth to school entry.

''(ii) Grants described in clause (i) shall be used to—

''(I) encourage Head Start agencies to collaborate with entities involved in State and local planning processes to better meet the needs of low-income families and children from birth to school entry;

''(II) encourage Head Start agencies to coordinate activities with the State agency responsible for administering the State program carried out under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.) and entities providing resources and referral services in the State to make full-working-day and full calendar year services available to children;

''(III) promote alignment of Head Start services with State early learning and school readiness goals and standards, including the Head Start child outcome framework;

''(IV) promote better linkages between Head Start agencies and other child and family agencies, including agencies that provide health, mental health, or family services, or other child or family supportive services; and

''(V) carry out the activities of the State Director of Head Start Collaboration authorized in subparagraph (D).

''(C) In order to improve coordination and delivery of early education services to children in the State, a State that receives a grant under subparagraph (B) shall—

''(i) appoint an individual to serve as the State Director of Head Start Collaboration;

''(ii) ensure that the State Director of Head Start Collaboration holds a position with sufficient authority and access to ensure that the collaboration described in subparagraph (B) is effective and involves a range of State agencies; and

''(iii) involve the State Head Start Association in the selection of the Director and involve the Association in determinations relating to the ongoing direction of the collaboration office.

''(D) The State Director of Head Start Collaboration, after consultation with the State Advisory Council described in subparagraph (E), shall—

''(i) not later than 1 year after the date of enactment of the Head Start Improvements for School Readiness Act, conduct an assessment that—

''(I) addresses the needs of Head Start agencies in the State with respect to collaborating, coordinating services, and implementing State early learning and school readiness goals and standards to better serve children enrolled in Head Start programs in the State;

''(II) shall be updated on an annual basis; and

''(III) shall be made available to the general public within the State;

''(ii) assess the availability of high quality prekindergarten services for low-income children in the State;

''(iii) develop a strategic plan that is based on the assessment described in clause (i) that will—

''(I) enhance collaboration and coordination of Head Start services with other entities providing early childhood programs and services (such as child care and services offered by museums), health care, mental health care, welfare, child protective services, education and community service activities, family literacy services, reading readiness programs (including such programs offered by public and school libraries), services relating to children with disabilities, other early childhood programs and services for limited English proficient children and homeless children, and services provided for children in foster care and children referred to Head Start programs by child welfare agencies, including agencies and State officials responsible for such services;

''(II) assist Head Start agencies to develop a plan for the provision of full-working-day, full calendar year services for children enrolled in Head Start programs who need such care;

''(III) assist Head Start agencies to align services with State early learning and school readiness goals and standards and to facilitate collaborative efforts to develop local school readiness standards; and

''(IV) enable agencies in the State to better coordinate professional development opportunities for Head Start staff, such as by—

''(aa) assisting 2- and 4-year public and private institutions of higher education to develop articulation agreements;

''(bb) awarding grants to institutions of higher education to develop model early childhood education programs, including practica or internships for students to spend time in a Head Start or prekindergarten program;

''(cc) working with local Head Start agencies to meet the degree requirements described in section 648A(a)(2)(A), including providing distance learning opportunities for Head Start staff, where needed to make higher education more accessible to Head Start staff; and

''(dd) enabling the State Head Start agencies to better coordinate outreach to eligible families;

''(iv) promote partnerships between Head Start agencies, State governments, and the private sector to help ensure that preschool children from low-income families are receiving comprehensive services to prepare the children to enter school ready to learn;

''(v) consult with the chief State school officer, local educational agencies, and providers of early childhood education and care to conduct unified planning regarding early care and education services at both the State and local levels, including undertaking collaborative efforts to develop and make improvements in school readiness standards;

''(vi) promote partnerships (such as the partnerships involved with the Free to Grow initiative) between Head Start agencies, schools, law enforcement, and substance abuse and mental health treatment agencies to strengthen family and community environments and to reduce the impact on child development of substance abuse, child abuse, domestic violence, and other high risk behaviors that compromise healthy development;

''(vii) promote partnerships between Head Start agencies and other organizations in order to enhance the Head Start curriculum, including partnerships to promote inclusion of more books in Head Start classrooms and partnerships to promote coordination of activities with the Ready-to-Learn Television program carried out under subpart 3 of part D of title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6775 et seq.); and

''(viii) identify other resources and organizations (both public and private) for the provision of in-kind services to Head Start agencies in the State.

''(E)(i) The Governor of the State shall designate or establish a council to serve as the State advisory council on collaboration on early care and education activities for children from birth to school entry (in this subchapter referred to as the 'State Advisory Council').

''(ii) The Governor may designate an existing entity to serve as the State Advisory Council, if the entity includes representatives described in subclauses (I) through (XXIV) of clause (iii).

''(iii) Members of the State Advisory Council shall include, to the maximum extent possible—

''(I) the State Director of Head Start Collaboration;

''(II) a representative of the appropriate regional office of the Administration for Children and Families;

''(III) a representative of the State educational agency and local educational agencies;

''(IV) a representative of institutions of higher education;

''(V) a representative (or representatives) of the State agency (or agencies) responsible for health or mental health care;

''(VI) a representative of the State agency responsible for teacher professional standards, certification, and licensing, including prekindergarten teacher professional standards, certification standards, certification, and licensing, where applicable;

''(VII) a representative of the State agency responsible for child care;

''(VIII) early childhood education professionals, including professionals with expertise in second language acquisition and instructional strategies in teaching limited English proficient children;

''(IX) kindergarten teachers and teachers in grades 1 through 3;

''(X) health care professionals;

''(XI) child development specialists, including specialists in prenatal, infant, and toddler development;

''(XII) a representative of the State agency responsible for assisting children with developmental disabilities;

''(XIII) a representative of the State agency responsible for programs under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.);

''(XIV) a representative of the State interagency coordinating councils established under section 641 of the Individuals with Disabilities Education Act (20 U.S.C. 1441);

''(XV) a representative of the State Head Start Association (where appropriate), and other representatives of Head Start programs in the State;

''(XVI) a representative of the State network of child care resource and referral agencies;

''(XVII) a representative of community-based organizations;

''(XVIII) a representative of State and local providers of early childhood education and child care;

''(XIX) a representative of migrant and seasonal Head Start programs and Indian Head Start programs (where appropriate);

''(XX) parents;

''(XXI) religious and business leaders;

''(XXII) the head of the State library administrative agency;

''(XXIII) representatives of State and local organizations and other entities providing professional development to early care and education providers; and

''(XXIV) a representative of other entities determined to be relevant by the chief executive officer of the State.

''(iv)(I) The State Advisory Council shall be responsible for, in addition to responsibilities assigned to the council by the chief executive officer of the State—

''(aa) conducting a periodic statewide needs assessment concerning early care and education programs for children from birth to school entry;

''(bb) identifying barriers to, and opportunities for, collaboration and coordination between entities carrying out Federal and State child development, child care, and early childhood education programs;

''(cc) developing recommendations regarding means of establishing a unified data collection system for early care and education programs throughout the State;

''(dd) developing a statewide professional development and career ladder plan for early care and education in the State; and

''(ee) reviewing and approving the strategic plan, regarding collaborating and coordinating services to better serve children enrolled in Head Start programs, developed by the State Director of Head Start Collaboration under subparagraph (D)(iii).

''(II) The State Advisory Council shall hold public hearings and provide an opportunity for public comment on the needs assessment and recommendations described in subclause (I). The State Advisory Council shall submit a statewide strategic report containing the needs assessment and recommendations described in subclause (I) to the State Director of Head Start Collaboration and the chief executive officer of the State.

''(III) After submission of a statewide strategic report under subclause (II), the State Advisory Council shall meet periodically to review any implementation of the recommendations in such report and any changes in State and local needs.''; and

(5) in paragraph (6)—

(A) in subparagraph (A), by striking ''7.5 percent'' and all that follows and inserting ''11 percent for fiscal year 2006, 13 percent for fiscal year 2007, 15 percent for fiscal year 2008, 17 percent for fiscal year 2009, and 18 percent for fiscal year 2010, of the amount appropriated pursuant to section 639(a).'';

(B) by striking subparagraph (B);

(C) in subparagraph (C)(i), by striking ''required to be''; and

(D) by redesignating subparagraph (C) as subparagraph (B).

(b) SERVICE DELIVERY MODELS.—Section 640(f) of the Head Start Act (42 U.S.C. 9835(f)) is amended by striking ''needs.'' and inserting ''needs, including—

''(1) models that leverage the capacity and capabilities of the delivery system of early childhood education and child care; and

''(2) procedures to provide for the conversion of part-day programs to full-day programs or part-day slots to full-day slots.''.

(c) ADDITIONAL FUNDS.—Section 640(g)(2) of the Head Start Act (42 U.S.C. 9835(g)(2)) is amended—

(1) by striking subparagraph (C) and inserting the following:

''(C) the extent to which the applicant has undertaken communitywide strategic planning and needs assessments involving other community organizations and Federal, State, and local public agencies serving children and families (including organizations and agencies providing family support services and protective services to children and families and organizations serving families in whose homes English is not the language customarily spoken), and individuals, organizations, and public entities serving children with disabilities, children in foster care, and homeless children including the local educational agency liaison designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11432(g)(1)(J)(ii));'';

(2) in subparagraph (D), by striking ''other local'' and inserting ''the State and local'';

(3) in subparagraph (E), by inserting ''would like to participate but'' after ''community who'';

(4) in subparagraph (G), by inserting ''leverage the existing delivery systems of such services and'' after ''manner that will''; and

(5) in subparagraph (H), by inserting '', including the local educational agency liaison designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11432(g)(1)(J)(ii)),'' after ''community involved''.

(d) REGULATIONS.—Section 640(i) of the Head Start Act (42 U.S.C. 9835(i)) is amended by inserting ''and requirements to ensure the appropriate supervision and background checks of individuals with whom the agencies contract to transport those children'' before the period.

(e) MIGRANT AND SEASONAL HEAD START PROGRAMS.—Section 640(l) of the Head Start Act (42 U.S.C. 9835(l)) is amended by striking paragraph (3) and inserting the following:

''(3) In carrying out this subchapter, the Secretary shall continue the administrative arrangement at the national or regional level for meeting the needs of Indian children and children of migrant and seasonal farmworkers and shall ensure that appropriate funding is provided to meet such needs, including training and technical assistance and the appointment of a national migrant and seasonal Head Start collaboration director and a national Indian Head Start collaboration director.

''(4)(A) For the purposes of paragraph (3), the Secretary shall conduct an annual consultation in each affected Head Start region, with tribal governments operating Head Start and Early Head Start programs.

''(B) The consultations shall be for the purpose of better meeting the needs of American Indian and Alaska Native children and families pertinent to subsections (a), (b), and (c) of section 641, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services within tribal communities.

''(C) The Secretary shall publish a notification of the consultations in the Federal Register prior to conducting the consultations.

''(D) A detailed report of each consultation shall be prepared and made available, on a timely basis, to all tribal governments receiving funds under this subchapter.''.

(f) HOMELESS CHILDREN.—Section 640 of the Head Start Act (42 U.S.C. 9835) is amended by adding at the end the following:

''(m) ENROLLMENT OF HOMELESS CHILDREN.—The Secretary shall issue regulations to remove barriers to the enrollment and participation of homeless children in Head Start programs. Such regulations shall require Head Start agencies to—

''(1) implement policies and procedures to ensure that homeless children are identified and receive appropriate priority for enrollment;

''(2) allow homeless children to apply to, enroll in, and attend Head Start programs while required documents, such as proof of residency, proof of immunization, and other medical records, birth certificates, and other documents, are obtained within a reasonable timeframe (consistent with State law); and

''(3) coordinate individual Head Start programs with efforts to implement subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.).

''(n) RULE OF CONSTRUCTION.—Nothing in this subchapter shall be construed to require a State to establish a program of early education for children in the State, to require any child to participate in a program of early education in order to attend preschool, or to participate in any initial screening prior to participation in such program, except as provided under section 612(a)(3) of the Individuals with Disabilities Education Act (20 U.S.C. 1412(a)(3)) and consistent with section 614(a)(1)(C) of such Act (20 U.S.C. 1414(a)(1)(C)).

''(o) MATERIALS.—All curricula funded under this subchapter shall be scientifically based and age appropriate. Parents shall have the opportunity to examine any such curricula or instructional materials funded under this subchapter.''.

SEC. 7. DESIGNATION OF HEAD START AGENCIES.

Section 641 of the Head Start Act (42 U.S.C. 9836) is amended to read as follows:

''SEC. 641. DESIGNATION OF HEAD START AGENCIES.

''(a) DESIGNATION.—

''(1) IN GENERAL.—The Secretary is authorized to designate as a Head Start agency any local public or private nonprofit or for-profit agency, within a community, including a community-based organization that—

''(A) has power and authority to carry out the purpose of this subchapter and perform the functions set forth in section 642 within a community; and

''(B) is determined to be capable of planning, conducting, administering, and evaluating, either directly or by other arrangements, a Head Start program.

''(2) REQUIRED GOALS FOR DESIGNATION.—In order to be designated as a Head Start agency, an entity described in paragraph (1) shall establish program goals for improving the school readiness of children participating in a program under this subchapter, including goals for meeting the performance standards and additional educational standards described in section 641A and shall establish results-based school readiness goals that are aligned with State early learning standards, if applicable, and requirements and expectations for local public schools.

''(3) ELIGIBILITY FOR SUBSEQUENT GRANTS.—In order to receive a grant under this subchapter subsequent to the initial grant provided following the date of enactment of the Head Start Improvements for School Readiness Act, an entity described in paragraph (1) shall demonstrate that the entity has met or is making progress toward meeting the goals described in paragraph (2).

''(4) GOVERNING BODY.—

''(A) IN GENERAL.—

''(i) ENSURING HIGH QUALITY PROGRAMS.—In order to be designated as a Head Start agency, an entity described in paragraph (1) shall have a governing body—

''(I) with legal and fiscal responsibility for administering and overseeing programs under this subchapter; and

''(II) that fully participates in the development, planning, implementation, and evaluation of the programs to ensure the operation of programs of high quality.

''(ii) ENSURING COMPLIANCE WITH LAWS.—The governing body shall be responsible for ensuring compliance with Federal laws and regulations, including the performance standards described in section 641A, as well as applicable State, Tribal, and local laws and regulations, including laws defining the nature and operations of the governing body.

''(B) COMPOSITION OF GOVERNING BODY.—

''(i) IN GENERAL.—The governing body shall be composed as follows:

''(I) Not less than 1 member of the governing body shall have a background in fiscal management.

''(II) Not less than 1 member of the governing body shall have a background in early childhood development.

''(III) Not less than 1 member of the governing body shall live in the local community to be served by the entity.

''(ii) CONFLICT OF INTEREST.—Members of the governing body shall—

''(I) not have a conflict of interest with the Head Start agency or delegate agencies; and

''(II) not receive compensation for service to the Head Start agency.

''(C) RESPONSIBILITIES.—

''(i) IN GENERAL.—The governing body shall be responsible, in consultation with the policy council or the policy committee of the Head Start agency, for—

''(I) the selection of delegate agencies and such agencies' service areas;

''(II) establishing criteria for defining recruitment, selection, and enrollment priorities;

''(III) all funding applications and amendments to funding applications for programs under this subchapter;

''(IV) the annual self-assessment of the Head Start agency or delegate agency's progress in carrying out the programmatic and fiscal intent of such agency's grant application, including planning or other actions that may result from the review of the annual audit, self-assessment, and findings from the Federal monitoring review;

''(V) the composition of the policy council or the policy committee of the Head Start agency and the procedures by which group members are chosen;

''(VI) audits, accounting, and reporting;

''(VII) personnel policies and procedures including decisions with regard to salary scales (and changes made to the scale), salaries of the Executive Director, Head Start Director, the Director of Human Resources, and the Chief Fiscal Officer, and decisions to hire and terminate program staff; and

''(VIII) the community assessment, including any updates to such assessment.

''(ii) CONDUCT OF RESPONSIBILITIES.—The governing body shall develop an internal control structure to facilitate these responsibilities in order to—

''(I) safeguard Federal funds;

''(II) comply with laws and regulations that have an impact on financial statements;

''(III) detect or prevent noncompliance with this subchapter; and

''(IV) receive audit reports and direct and monitor staff implementation of corrective actions.

''(D) RECEIPT OF INFORMATION.—To facilitate oversight and Head Start agency accountability, the governing body shall receive regular and accurate information about program planning, policies, and Head Start agency operations, including—

''(i) monthly financial statements (including detailed credit card account expenditures for any employee with a Head Start agency credit card or who seeks reimbursement for charged expenses);

''(ii) monthly program information summaries;

''(iii) program enrollment reports, including attendance reports for children whose care is partially subsidized by another public agency;

''(iv) monthly report of meals and snacks through programs of the Department of Agriculture;

''(v) the annual financial audit;

''(vi) the annual self-assessment, including any findings related to the annual self-assessment;

''(vii) the community assessment of the Head Start agency's service area and any applicable updates; and

''(viii) the program information reports.

''(E) TRAINING AND TECHNICAL ASSISTANCE.—Appropriate training and technical assistance shall be provided to the members of the governing body to ensure that the members understand the information the members receive and can effectively oversee and participate in the programs of the Head Start agency.

''(b) COMMUNITIES.—For purposes of this subchapter, a community may be a city, county, or multicity or multicounty unit within a State, an Indian reservation (including Indians in any off-reservation area designated by an appropriate tribal government in consultation with the Secretary), or a neighborhood or other area (irrespective of boundaries or political subdivisions) that provides a suitable organizational base and possesses the commonality of interest needed to operate a Head Start program.

''(c) PRIORITY IN DESIGNATION.—In administering the provisions of this section, the Secretary shall, in consultation with the chief executive officer of the State involved, give priority in the designation (including redesignation) of Head Start agencies to any high-performing Head Start agency or delegate agency that—

''(1) is receiving assistance under this subchapter;

''(2) meets or exceeds program and financial management requirements or standards described in section 641A(a)(1);

''(3) has no unresolved deficiencies and has not had findings of deficiencies during the last triennial review under section 641A(c); and

''(4) can demonstrate, through agreements such as memoranda of understanding, active collaboration with the State or local community in the provision of services for children (such as the provision of extended day services, education, professional development and training for staff, and other types of cooperative endeavors).

''(d) DESIGNATION WHEN ENTITY HAS PRIORITY.—If no entity in a community is entitled to the priority specified in subsection (c), the Secretary shall, after conducting an open competition, designate a Head Start agency from among qualified applicants in such community.

''(e) RULE OF CONSTRUCTION.—Notwithstanding any other provision of law, under no condition may a non-Indian Head Start agency receive a grant to carry out an Indian Head Start program.

''(f) EFFECTIVENESS.—In selecting from among qualified applicants for designation as a Head Start agency, the Secretary shall consider the effectiveness of each such applicant to provide Head Start services, based on—

''(1) any past performance of such applicant in providing services comparable to Head Start services, including how effectively such applicant provided such comparable services;

''(2) the plan of such applicant to provide comprehensive health, educational, nutritional, social, and other services needed to aid participating children in attaining their full potential, and to prepare children to succeed in school;

''(3) the capacity of such applicant to serve eligible children with programs that use scientifically based research that promote school readiness of children participating in the program;

''(4) the plan of such applicant to meet standards set forth in section 641A(a)(1), with particular attention to the standards set forth in subparagraphs (A) and (B) of such section;

''(5) the plan of such applicant to coordinate the Head Start program the applicant proposes to carry out with other preschool programs, including—

''(A) the Early Reading First and Even Start programs under subparts 2 and 3 of part B of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6371 et seq., 6381 et seq.);

''(B) programs under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.);

''(C) State prekindergarten programs;

''(D) child care programs;

''(E) the educational programs that the children in the Head Start program involved will enter at the age of compulsory school attendance; and

''(F) reading readiness programs such as those conducted by public and school libraries;

''(6) the plan of such applicant to coordinate the Head Start program that the applicant proposes to carry out with public and private entities who are willing to commit resources to assist the Head Start program in meeting its program needs;

''(7) the plan of such applicant to collaborate with a local library, where available, that is interested in that collaboration, to—

''(A) develop innovative programs to excite children about the world of books, such as programs that involve—

''(i) taking children to the library for a story hour;

''(ii) promoting the use of library cards;

''(iii) developing a lending library or using a mobile library van; and

''(iv) providing fresh books in the Head Start classroom on a regular basis;

''(B) assist in literacy training for Head Start teachers; and

''(C) support parents and other caregivers in literacy efforts;

''(8) the plan of such applicant—

''(A) to seek the involvement of parents of participating children in activities (at home and in the center involved where practicable) designed to help such parents become full partners in the education of their children;

''(B) to afford such parents the opportunity to participate in the development and overall conduct of the program at the local level, including through providing transportation costs;

''(C) to offer (directly or through referral to local entities, such as entities carrying out Even Start programs under subpart 3 of part B of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6381 et seq.), public and school libraries, and entities carrying out family support programs) to such parents—

''(i) family literacy services; and

''(ii) parenting skills training;

''(D) to offer to parents of participating children substance abuse counseling (either directly or through referral to local entities), including information on the effect of drug exposure on infants and fetal alcohol syndrome;

''(E) at the option of such applicant, to offer (directly or through referral to local entities) to such parents—

''(i) training in basic child development (including cognitive development);

''(ii) assistance in developing literacy and communication skills;

''(iii) opportunities to share experiences with other parents (including parent mentor relationships);

''(iv) regular in-home visitation; or

''(v) any other activity designed to help such parents become full partners in the education of their children;

''(F) to provide, with respect to each participating family, a family needs assessment that includes consultation with such parents about the benefits of parent involvement and about the activities described in subparagraphs (C), (D), and (E) in which such parents may choose to become involved (taking into consideration their specific family needs, work schedules, and other responsibilities); and

''(G) to extend outreach to fathers, in appropriate cases, in order to strengthen the role of fathers in families, in the education of their young children, and in the Head Start program, by working directly with fathers and father figures through activities such as—

''(i) in appropriate cases, including fathers in home visits and providing opportunities for direct father-child interactions; and

''(ii) targeting increased male participation in the conduct of the program;

''(9) the ability of such applicant to carry out the plans described in paragraphs (2), (4), and (5);

''(10) other factors related to the requirements of this subchapter;

''(11) the plan of such applicant to meet the needs of limited English proficient children and their families, including procedures to identify such children, plans to provide trained personnel, and plans to provide services to assist the children in making progress toward the acquisition of the English language;

''(12) the plan of such applicant to meet the needs of children with disabilities;

''(13) the plan of such applicant who chooses to assist younger siblings of children who will participate in the Head Start program, to obtain health services from other sources;

''(14) the plan of such applicant to collaborate with other entities carrying out early childhood education and child care programs in the community;

''(15) the plan of such applicant to meet the needs of homeless children and children in foster care, including the transportation needs of such children; and

''(16) the plan of such applicant to recruit and retain qualified staff.

''(g) INTERIM BASIS.—If there is not a qualified applicant in a community for designation as a Head Start agency, the Secretary shall designate a qualified agency to carry out the Head Start program in the community on an interim basis until a qualified applicant from the community is so designated.

''(h) INVOLVEMENT OF PARENTS AND AREA RESIDENTS.—The Secretary shall continue the practice of involving parents and area residents who are affected by programs under this subchapter in the selection of

qualified applicants for designation as Head Start agencies.

''(i) PRIORITY.—In selecting from among qualified applicants for designation as a Head Start agency, the Secretary shall give priority to applicants that have demonstrated capacity in providing effective, comprehensive, and well-coordinated early childhood services to children and their families.''.

SEC. 8. QUALITY STANDARDS; MONITORING OF HEAD START AGENCIES AND PROGRAMS.

Section 641A of the Head Start Act (42 U.S.C. 9836a) is amended—

(1) in subsection (a)—

(A) in paragraph (1)(A), by striking ''642(d)'' and inserting ''642(c)'';

(B) in paragraph (1)(B)—

(i) in clause (i), by striking ''education performance standards'' and inserting ''educational performance standards''; and

(ii) by striking clause (ii) and inserting the following:

''(ii) additional educational standards based on the recommendations of the National Academy of Sciences panel described in section 649(h) and other experts in the field, to ensure that the curriculum involved addresses, and that the children participating in the program show appropriate progress toward developing and applying, the recommended educational outcomes, after the panel considers the appropriateness of additional educational standards relating to—

''(I) language skills related to listening, understanding, speaking, and communicating, including—

''(aa) understanding and use of a diverse vocabulary (including knowing the names of colors) and knowledge of how to use oral language to communicate for various purposes;

''(bb) narrative abilities used, for example, to comprehend, tell, and respond to a story, or to comprehend instructions;

''(cc) ability to detect and produce sounds of the language the child speaks or is learning; and

''(dd) clarity of pronunciation and speaking in syntactically and grammatically correct sentences;

''(II) prereading knowledge and skills, including—

''(aa) alphabet knowledge including knowing the letter names and associating letters with their shapes and sounds in the language the child speaks or is learning;

''(bb) phonological awareness and processes that support reading, for example, rhyming, recognizing speech sounds and separate syllables in spoken words, and putting speech sounds together to make words;

''(cc) knowledge, interest in, and appreciation of books, reading, and writing (either alone or with others), and knowledge that books have parts such as the front, back, and title page;

''(dd) early writing, including the ability to write one's own name and other words and phrases; and

''(ee) print awareness and concepts, including recognizing different forms of print and understanding the association between spoken and written words;

''(III) premathematics knowledge and skills, including—

''(aa) number recognition;

''(bb) use of early number concepts and operations, including counting, simple adding and subtracting, and knowledge of quantitative relationships, such as part versus whole and comparison of numbers of objects;

''(cc) use of early space and location concepts, including recognizing shapes, classification, striation, and understanding directionality; and

''(dd) early pattern skills and measurement, including recognizing and extending simple patterns and measuring length, weight, and time;

''(IV) scientific abilities, including—

''(aa) building awareness about scientific skills and methods, such as gathering, describing, and recording information, making observations, and making explanations and predictions; and

''(bb) expanding scientific knowledge of the environment, time, temperature, and cause-and-effect relationships;

''(V) general cognitive abilities related to academic achievement and child development, including—

''(aa) reasoning, planning, and problem-solving skills;

''(bb) ability to engage, sustain attention, and persist on challenging tasks;

''(cc) intellectual curiosity, initiative, and task engagement; and

''(dd) motivation to achieve and master concepts and skills;

''(VI) social and emotional development related to early learning and school success, including developing—

''(aa) the ability to develop social relationships, demonstrate cooperative behaviors, and relate to teachers and peers in positive and respectful ways;

''(bb) an understanding of the consequences of actions, following rules, and appropriately expressing feelings;

''(cc) a sense of self, such as self-awareness, independence, and confidence;

''(dd) the ability to control negative behaviors with teachers and peers that include impulsiveness, aggression, and noncompliance; and

''(ee) knowledge of civic society and surrounding communities;

''(VII) physical development, including developing—

''(aa) fine motor skills, such as strength, manual dexterity, and hand-eye coordination; and

''(bb) gross motor skills, such as balance and coordinated movements; and

''(VIII) in the case of limited English proficient children, progress toward acquisition of the English language while making meaningful progress in attaining the knowledge, skills, abilities, and development described in subclauses (I) through (VII);'';

(C) in paragraph (1)(D), by striking ''projects; and'' and inserting ''projects, including regulations that require that the facilities used by Head Start agencies (including Early Head Start agencies) and delegate agencies for regularly scheduled center-based and combination program option classroom activities—

''(i) shall be in compliance with State and local requirements concerning licensing for such facilities; and

''(ii) shall be accessible by State and local authorities for purposes of monitoring and ensuring compliance.'';

(D) in paragraph (2)—

(i) in subparagraph (B)—

(I) in clause (i), by striking ''the date of enactment of this section'' and inserting ''the date of enactment of the Head Start Improvements for School Readiness Act'';

(II) in clause (ii), by striking ''the date of enactment of this Act'' and inserting ''the date of enactment of the Head Start Improvements for School Readiness Act'';

(III) in clause (vi), by striking ''; and'' and inserting a semicolon;

(IV) in clause (vii), by striking ''public schools'' and inserting ''the schools that the children will be attending''; and

(V) by adding at the end the following:

''(viii) the unique challenges faced by individual programs, including those programs that are seasonal or short term and those programs that serve rural populations; and'';

(ii) in subparagraph (C)(ii), by striking ''the date of enactment of the Coats Human Services Reauthorization Act of 1998'' and inserting ''the date of enactment of the Head Start Improvements for School Readiness Act''; and

(iii) by adding at the end the following:

''(D) consult with Indian tribes, American Indian and Alaska Native experts in early childhood development, linguists, and the National Indian Head Start Directors Association on the review and promulgation of program standards and measures (including standards and measures for language acquisition and school readiness).'';

(E) by adding at the end the following:

''(4) EVALUATIONS AND CORRECTIVE ACTIONS FOR DELEGATE AGENCIES.—

''(A) PROCEDURES.—

''(i) IN GENERAL.—Subject to clause (ii), the Head Start agency shall establish procedures relating to its delegate agencies, including—

''(I) procedures for evaluating delegate agencies;

''(II) procedures for defunding delegate agencies; and

''(III) procedures for appealing a defunding decision relating to a delegate agency.

''(ii) TERMINATION.—The Head Start agency may not terminate a delegate agency's contract or reduce a delegate agency's service area without showing cause or demonstrating the cost-effectiveness of such a decision.

''(B) EVALUATIONS.—Each Head Start agency—

''(i) shall evaluate its delegate agencies using the procedures established pursuant to this section, including subparagraph (A); and

''(ii) shall inform the delegate agencies of the deficiencies identified through the evaluation that shall be corrected.

''(C) REMEDIES TO ENSURE CORRECTIVE ACTIONS.—In the event that the Head Start agency identifies a deficiency for a delegate agency through the evaluation, the Head Start agency may—

''(i) initiate procedures to terminate the designation of the agency unless the agency corrects the deficiency;

''(ii) conduct monthly monitoring visits to such delegate agency until all deficiencies are corrected or the Head Start agency decides to defund such delegate agency; and

''(iii) release funds to such delegate agency only as reimbursements until all deficiencies are corrected or the Head Start agency decides to defund such delegate agency.

''(D) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to impact or obviate the responsibilities of the Secretary with respect to Head Start agencies or delegate agencies receiving funding under this subchapter.'';

(2) in subsection (b)—

(A) in paragraph (2)—

(i) by striking the paragraph heading and inserting the following:

''(2) CHARACTERISTICS AND USE OF MEASURES.—'';

(ii) in subparagraph (B), by striking '', not later than July 1, 1999; and'' and inserting a semicolon;

(iii) in subparagraph (C), by striking the period and inserting a semicolon;

(iv) by striking the flush matter following subparagraph (C); and

(v) by adding at the end the following:

''(D) measure characteristics that are strongly predictive (as determined on a scientific basis) of a child's school readiness and later performance in school;

''(E) be appropriate for the population served; and

''(F) be reviewed not less than every 4 years, based on advances in the science of early childhood development.

The performance measures shall include the performance standards and additional educational standards described in subparagraphs (A) and (B) of subsection (a)(1).'';

(B) in paragraph (3)—

(i) in subparagraph (A), by striking ''; and'' and inserting a semicolon;

(ii) in subparagraph (B), by striking the period and inserting ''; and''; and

(iii) by adding at the end the following:

''(C) to enable Head Start agencies to individualize programs of instruction to better meet the needs of the child involved.'';

(C) by striking paragraph (4) and inserting the following:

''(4) RESULTS-BASED OUTCOME MEASURES.—Results-based outcome measures shall be designed for the purpose of promoting the knowledge, skills, abilities, and development, described in subsection (a)(1)(B)(ii), of children participating in Head Start programs that are strongly predictive (as determined on a scientific basis) of a child's school readiness and later performance in school.''; and

(D) by striking paragraph (5) and inserting the following:

''(5) ADDITIONAL LOCAL RESULTS-BASED EDUCATIONAL MEASURES AND GOALS.—Head Start agencies may establish and implement additional local results-based educational measures and goals.'';

(3) in subsection (c)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by inserting ''and Head Start centers'' after ''Head Start programs'';

(ii) in subparagraph (A), by striking ''such agency'' and inserting ''Head Start center'';

(iii) by striking subparagraph (C) and inserting the following:

''(C) Unannounced site inspections of Head Start centers for health and safety reasons, as appropriate.'';

(iv) by redesignating subparagraph (D) as subparagraph (E); and

(v) by inserting after subparagraph (C) the following:

''(D) Notwithstanding subparagraph (C), followup reviews, including—

''(i) prompt return visits to agencies, programs, and centers that fail to meet 1 or more of the performance measures developed by the Secretary under subsection (b); and

''(ii) a review of programs with citations that include findings of deficiencies not later than 6 months after the date of such citation.''; and

(B) by striking paragraph (2) and inserting the following:

''(2) CONDUCT OF REVIEWS.—The Secretary shall ensure that reviews described in paragraph (1)—

''(A) that incorporate a monitoring visit, may incorporate the visit without prior notice of the visit to the agency involved or with such limited prior notice as is necessary to ensure the participation of parents and key staff members;

''(B) are conducted by review teams that shall include individuals who are knowledgeable about Head Start and other early childhood education programs and, to the maximum extent practicable, the diverse (including linguistic and cultural) needs of eligible children (including children with disabilities, homeless children, and children in foster care) and limited English proficient children and their families;

''(C) include as part of the reviews of the programs, a review and assessment of program effectiveness, as measured in accordance with the results-based performance measures developed by the Secretary pursuant to subsection (b) and with the standards established pursuant to subparagraphs (A) and (B) of subsection (a)(1);

''(D) seek information from the communities and States where Head Start programs exist about innovative or effective collaborative efforts, barriers to collaboration, and the efforts of the Head Start agencies to collaborate with the entities carrying out early childhood education and child care programs in the community;

''(E) include as part of the reviews of the programs, a review and assessment of whether the programs are in conformity with the income eligibility requirements under section 645 and regulations promulgated under such section;

''(F) include as part of the reviews of the programs, a review and assessment of whether programs have adequately addressed the population and community needs (including needs of populations of limited English proficient children and children of migrant and seasonal farmworking families); and

''(G) include as part of the reviews of the programs, data from the results of periodic child assessments, and a review and assessment of child outcomes and performance as they relate to State, local, and agency-determined school readiness goals.'';

(4) in subsection (d)(1)—

(A) in the matter preceding subparagraph (A), by inserting ''or fails to address the community needs and strategic plan identified in section 640(g)(2)(C),'' after ''subsection (b),''; and

(B) in subparagraph (A), by inserting ''and identify the technical assistance to be provided consistent with paragraph (3)'' after ''corrected'';

(5) in subsection (e), by striking the last sentence and inserting ''The information contained in such report shall be made available to all parents with children receiving assistance under this subchapter in an understandable and uniform format, and to the extent practicable, provided in a language that the parents can understand. Such information shall be made widely available through public means such as distribution through public agencies, and, at a minimum, by posting such information on the Internet immediately upon publication.''; and

(6) by adding at the end the following:

''(f) SELF-ASSESSMENTS.—

''(1) IN GENERAL.—Not less frequently than once each program year, with the consultation and participation of policy groups and, as appropriate, other community members, each agency receiving funds under this subchapter shall conduct a self-assessment of the effectiveness and progress in meeting programs goals and objectives and in implementing and complying with Head Start program performance standards.

''(2) REPORT AND IMPROVEMENT PLANS.—

''(A) REPORT.—An agency conducting a self-assessment shall report the findings of the self-assessment to the relevant policy council, policy committee, governing body, and regional office of the Department of Health and Human Services. Each self-assessment shall identify areas of strength and weakness.

''(B) IMPROVEMENT PLAN.—The agency shall develop an improvement plan approved by the governing body of the agency to strengthen any areas identified in the self-assessment as weaknesses or in need of improvement.

''(3) ONGOING MONITORING.—Each Head Start agency, Early Head Start agency, and delegate agency shall establish and implement procedures for the ongoing monitoring of their Head Start and Early Head Start programs, to ensure that the operations of the programs work toward meeting program goals and objectives and Head Start performance standards.

''(4) TRAINING AND TECHNICAL ASSISTANCE.—Funds may be made available, through section 648(d)(13), for training and technical assistance to assist agencies in conducting self-assessments.

''(g) REDUCTION OF GRANTS AND REDISTRIBUTION OF FUNDS IN CASES OF UNDER-ENROLLMENT.—

''(1) DEFINITIONS.—In this subsection:

''(A) ACTUAL ENROLLMENT.—The term 'actual enrollment' means, with respect to the program of a Head Start agency, the actual number of children enrolled in such program and reported by the agency (as required in paragraph (2)) in a given month.

''(B) BASE GRANT.—The term 'base grant' means, with respect to a Head Start agency for a fiscal year, that portion of the grant derived—

''(i) from amounts reserved for use in accordance with section 640(a)(2)(A), for a Head Start agency administering an Indian Head Start program or migrant and seasonal Head Start program;

''(ii) from amounts reserved for payments under section 640(a)(2)(B); or

''(iii) from amounts available under section 640(a)(2)(D) or allotted among States under section 640(a)(4).

''(C) FUNDED ENROLLMENT.—The term 'funded enrollment' means, with respect to the program of a Head Start agency in a fiscal year, the number of children that the agency is funded to serve through a grant for the program during such fiscal year, as indicated in the grant agreement.

''(2) ENROLLMENT REPORTING REQUIREMENT FOR CURRENT FISCAL YEAR.—Each entity carrying out a Head Start program shall report on a monthly basis to the Secretary and the relevant Head Start agency—

''(A) the actual enrollment in such program; and

''(B) if such actual enrollment is less than the funded enrollment, any apparent reason for such enrollment shortfall.

''(3) SECRETARIAL REVIEW AND PLAN.—The Secretary shall—

''(A) on a semiannual basis, determine which Head Start agencies are operating with an actual enrollment that is less than the funded enrollment based on not less than 4 consecutive months of data;

''(B) for each such Head Start agency operating a program with an actual enrollment that is less than 95 percent of its funded enrollment, as determined under subparagraph (A), develop, in collaboration with such agency, a plan and timetable for reducing or eliminating under-enrollment taking into consideration—

''(i) the quality and extent of the outreach, recruitment, and community needs assessment conducted by such agency;

''(ii) changing demographics, mobility of populations, and the identification of new underserved low-income populations;

''(iii) facilities-related issues that may impact enrollment;

''(iv) the ability to provide full-day programs, where needed, through Head Start funds or through collaboration with entities carrying out other preschool or child care programs, or programs with other funding sources (where available);

''(v) the availability and use by families of other preschool and child care options (including parental care) in the local catchment area; and

''(vi) agency management procedures that may impact enrollment; and

''(C) provide timely and ongoing technical assistance to each agency described in subparagraph (B) for the purpose of implementing the plan described in such subparagraph.

''(4) IMPLEMENTATION.—Upon receipt of the technical assistance described in paragraph (3)(C), a Head Start agency shall immediately implement the plan described in paragraph (3)(B).

''(5) SECRETARIAL ACTION FOR CONTINUED UNDER-ENROLLMENT.—If, 1 year after the date of implementation of the plan described in paragraph (3)(B), the Head Start agency continues to operate a program at less than full enrollment, the Secretary shall, where determined appropriate, continue to provide technical assistance to such agency.

''(6) SECRETARIAL REVIEW AND ADJUSTMENT FOR CHRONIC UNDER-ENROLLMENT.—

''(A) IN GENERAL.—If, after receiving technical assistance and developing and implementing a plan to the extent described in paragraphs (3), (4), and (5) for 9 months, a Head Start agency is still operating a program with an actual enrollment that is less than 95 percent of its funded enrollment, the Secretary may—

''(i) designate such agency as chronically under-enrolled; and

''(ii) recapture, withhold, or reduce the base grant for the program by a percentage equal to the percentage difference between funded enrollment and actual enrollment for the program for the most recent year in which the agency is determined to be under-enrolled under paragraph (2)(B).

''(B) WAIVER OR LIMITATION OF REDUCTIONS.—If the Secretary, after the implementation of the plan described in paragraph (3)(B), finds that—

''(i) the causes of the enrollment shortfall, or a portion of the shortfall, are beyond the agency's control (such as serving significant numbers of migrant or seasonal farmworker, homeless, foster, or other highly mobile children);

''(ii) the shortfall can reasonably be expected to be temporary; or

''(iii) the number of slots allotted to the agency is small enough that under-enrollment does not constitute a significant shortfall, the Secretary may, as appropriate, waive or reduce the percentage recapturing, withholding, or reduction otherwise required by subparagraph (A).

''(C) PROCEDURAL REQUIREMENTS; EFFECTIVE DATE.—The actions taken by the Secretary under this paragraph with respect to a Head Start agency shall take effect 1 day after the date on which—

''(i) the time allowed for appeal under section 646(a) expires without an appeal by the agency; or

''(ii) the action is upheld in an administrative hearing under section 646.

''(7) REDISTRIBUTION OF FUNDS.—

''(A) IN GENERAL.—The Secretary shall use amounts recovered from a Head Start agency through recapturing, withholding, or reduction under paragraph (6) in a fiscal year—

''(i) in the case of a Head Start agency administering an Indian Head Start program or a migrant and seasonal Head Start program, whose base grant is derived from amounts specified in paragraph (1)(C)(i), to redirect funds to 1 or more agencies that—

''(I) are administering Head Start programs serving the same special population; and

''(II) demonstrate that the agencies will use such redirected funds to increase enrollment in their Head Start programs in such fiscal year; or

''(ii) in the case of a Head Start agency in a State, whose base grant is derived from amounts specified in clause (ii) or (iii) of paragraph (1)(C), to redirect funds to 1 or more agencies that—

''(I) are administering Head Start programs in the same State; and

''(II) make the demonstration described in clause (i)(II).

''(B) SPECIAL RULE.—If there is no agency located in a State that meets the requirements of subclauses (I) and (II) of subparagraph (A)(ii), the Secretary shall use amounts described in subparagraph (A) to redirect funds to Head Start agencies located in other States that make the demonstration described in subparagraph (A)(i)(II).

''(C) ADJUSTMENT TO FUNDED ENROLLMENT.—The Secretary shall adjust as necessary the requirements relating to funded enrollment indicated in the grant agreement of a Head Start agency receiving redistributed amounts under this paragraph.''.

SEC. 9. CENTERS OF EXCELLENCE IN EARLY CHILDHOOD.

The Head Start Act is amended by inserting after section 641A (42 U.S.C. 9836a) the following:

''SEC. 641B. CENTERS OF EXCELLENCE IN EARLY CHILDHOOD.

''(a) DEFINITION.—In this section, the term 'center of excellence' means a Center of Excellence in Early Childhood designated under subsection (b).

''(b) DESIGNATION AND BONUS GRANTS.—The Secretary shall, subject to the availability of funds under this subchapter, including under subsection (f), establish a program under which the Secretary shall—

''(1) designate not more than 200 exemplary Head Start agencies (including Early Head Start agencies, Indian Head Start agencies, and migrant and seasonal Head Start agencies) as Centers of Excellence in Early Childhood; and

''(2) make bonus grants to the centers of excellence to carry out the activities described in subsection (d).

''(c) APPLICATION AND DESIGNATION.—

''(1) APPLICATION.—

''(A) NOMINATION AND SUBMISSION.—

''(i) IN GENERAL.—To be eligible to receive a designation as a center of excellence under subsection (b), except as provided in clause (ii), a Head Start agency in a State shall be nominated by the Governor of the State and shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(ii) INDIAN AND MIGRANT AND SEASONAL HEAD START PROGRAMS.—In the case of an Indian Head Start agency or a migrant or seasonal Head Start agency, to be eligible to receive a designation as a center of excellence under subsection (b), such an agency shall be nominated by the head of the appropriate regional office of the Department and Health and Human Services and shall submit an application to the Secretary in accordance with clause (i).

''(B) CONTENTS.—At a minimum, the application shall include—

''(i) evidence that the Head Start program carried out by the agency has significantly improved the school readiness of, and enhanced academic outcomes for, children who have participated in the program;

''(ii) evidence that the program meets or exceeds standards and performance measures described in subsections (a) and (b) of section 641A, as evidenced by successful completion of programmatic and monitoring reviews, and has no findings of deficiencies with respect to the standards and measures;

''(iii) evidence that the program is making progress toward meeting the requirements described in section 648A;

''(iv) evidence demonstrating the existence of a collaborative partnership among the Head Start agency, the State (or a State agency), and other early care and education providers in the local community involved;

''(v) a nomination letter from the Governor, or appropriate regional office, demonstrating the agency's ability to carry out the coordination, transition, and training services of the program to be carried out under the bonus grant involved, including coordination of activities with State and local agencies that provide early childhood services to children and families in the community served by the agency;

''(vi) information demonstrating the existence of a local council for excellence in early childhood, which shall include representatives of all the institutions, agencies, and groups involved in the work of the center for, and the local provision of services to, eligible children and other at-risk children, and their families; and

''(vii) a description of how the Center, in order to expand accessibility and continuity of quality early care and education, will coordinate the early care and education activities assisted under this section with—

''(I) programs carried out under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.);

''(II) other programs carried out under this subchapter, including the Early Head Start programs carried out under section 645A;

''(III)(aa) Early Reading First and Even Start programs carried out under subparts 2 and 3 of part B of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6371 et seq., 6381 et seq.);

''(bb) other preschool programs carried out under title I of that Act (20 U.S.C. 6301 et seq.); and

''(cc) the Ready-to-Learn Television program carried out under subpart 3 of part D of title II of that Act (20 U.S.C. 6775 et seq.);

''(IV) programs carried out under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.);

''(V) State prekindergarten programs; and

''(VI) other early care and education programs.

''(2) SELECTION.—In selecting agencies to designate as centers of excellence under subsection (b), the Secretary shall designate not less than 1 from each of the 50 States, the District of Columbia, an Indian Head Start program, a migrant and seasonal Head Start program, and the Commonwealth of Puerto Rico.

''(3) TERM OF DESIGNATION.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall designate a Head Start agency as a center of excellence for a 5-year term. During the period of that designation, subject to the availability of appropriations, the agency shall be eligible to receive a bonus grant under subsection (b).

''(B) REVOCATION.—The Secretary may revoke an agency's designation under subsection (b) if the Secretary determines that the agency is not demonstrating adequate performance or has had findings of deficiencies described in paragraph (1)(B)(ii).

''(4) AMOUNT OF BONUS GRANT.—The Secretary shall base the amount of funding provided through a bonus grant made under subsection (b) to a center of excellence on the number of children eligible for Head Start services in the community involved. The Secretary shall, subject to the availability of funding, make such a bonus grant in an amount of not less than $200,000 per year.

''(d) USE OF FUNDS.—

''(1) ACTIVITIES.—A center of excellence that receives a bonus grant under subsection (b) may use the funds made available through the bonus grant—

''(A) to provide Head Start services to additional eligible children;

''(B) to better meet the needs of working families in the community served by the center by serving more children in existing Early Head Start programs (existing as of the date the center is designated under this section) or in full-working-day, full calendar year Head Start programs;

''(C) to model and disseminate best practices for achieving early academic success, including achieving school readiness and developing prereading and prematheматics skills for at-risk children and achieving the acquisition of the English language for limited English proficient children, and to provide seamless service delivery for eligible children and their families;

''(D) to further coordinate early childhood and social services available in the community served by the center for at-risk children (birth through age 8), their families, and pregnant women;

''(E) to provide training and cross training for Head Start teachers and staff, child care providers, public and private preschool and elementary school teachers, and other providers of early childhood services, and training and cross training to develop agency leaders;

''(F) to provide effective transitions between Head Start programs and elementary school, to facilitate ongoing communication between Head Start and elementary school teachers concerning children receiving Head Start services, and to provide training and technical assistance to providers who are public elementary school teachers and other staff of local educational agencies, child care providers, family service providers, and other providers of early childhood services, to help the providers described in this subparagraph increase their ability to work with low-income, at-risk children and their families;

''(G) to develop or maintain partnerships with institutions of higher education and nonprofit organizations, including community-based organizations, that recruit, train, place, and support college students to serve as mentors and reading coaches to preschool children in Head Start programs; and

''(H) to carry out other activities determined by the center to improve the overall quality of the Head Start program carried out by the agency and the program carried out under the bonus grant involved.

''(2) INVOLVEMENT OF OTHER HEAD START AGENCIES AND PROVIDERS.—A center that receives a bonus grant under subsection (b), in carrying out activities under this subsection, shall work with the center's delegate agencies, several additional Head Start agencies, and other providers of early childhood services in the community involved, to encourage the agencies and providers described in this sentence to carry out model programs.

''(e) RESEARCH AND REPORTS.—

''(1) RESEARCH.—The Secretary shall, subject to the availability of funds to carry out this subsection, make a grant to an independent organization to conduct research on the ability of the centers of excellence to improve the school readiness of children receiving Head Start services, and to positively impact school results in the earliest grades. The organization shall also conduct research to measure the success of the centers of excellence at encouraging the center's delegate agencies, additional Head Start agencies, and other providers of early childhood services in the communities involved to meet measurable improvement goals, particularly in the area of school readiness.

''(2) REPORT.—Not later than 48 months after the date of enactment of the Head Start Improvements for School Readiness Act, the organization shall prepare and submit to the Secretary and Congress a report containing the results of the research described in paragraph (1).

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal year 2006 and each subsequent fiscal year—

''(1) $90,000,000 to make bonus grants to centers of excellence under subsection (b) to carry out activities described in subsection (d);

''(2) $2,500,000 to pay for the administrative costs of the Secretary in carrying out this section, including the cost of a conference of centers of excellence; and

''(3) $2,000,000 for research activities described in subsection (e).''.

SEC. 10. POWERS AND FUNCTIONS OF HEAD START AGENCIES.

Section 642 of the Head Start Act (42 U.S.C. 9837) is amended to read as follows:

''SEC. 642. POWERS AND FUNCTIONS OF HEAD START AGENCIES.

''(a) IN GENERAL.—In order to be designated as a Head Start agency under this subchapter, an agency shall have authority under its charter or applicable law to receive and administer funds provided under this subchapter, funds and contributions from private or local public sources that may be used in support of a Head Start program, and funds provided under any Federal or State assistance program pursuant to which a public or private nonprofit or for-profit agency (as the case may be) organized in accordance with this subchapter, could act as a grantee, contractor, or sponsor of projects appropriate for inclusion in a Head Start program. Such an agency shall also be empowered to transfer funds so received, and to delegate powers to other agencies, subject to the powers of its governing board and its overall program responsibilities. The power to transfer funds and delegate powers shall include the power to make transfers and delegations covering component projects in all cases in which that power will contribute to efficiency and effectiveness or otherwise further program objectives.

''(b) ADDITIONAL REQUIREMENTS.—In order to be designated as a Head Start agency under this subchapter, a Head Start agency shall also—

''(1) establish a program with all standards set forth in section 641A(a)(1), with particular attention to the standards set forth in subparagraphs (A) and (B) of such section;

''(2) demonstrate the capacity to serve eligible children with scientifically based curricula and other interventions and support services that help promote the school readiness of children participating in the program;

''(3) establish effective procedures and provide for the regular assessment of Head Start children, including observational and direct formal assessment, where appropriate;

''(4) seek the involvement of parents, area residents, and local business in the design and implementation of the program;

''(5) provide for the regular participation of parents and area residents in the implementation of the program;

''(6) provide technical and other support needed to enable such parents and area residents to secure, on their own behalf, available assistance from public and private sources;

''(7) establish effective procedures to facilitate the involvement of parents of participating children in activities designed to help such parents become full partners in the education of their children, and to afford such parents the opportunity to participate in the development and overall conduct of the program at the local level;

''(8) conduct outreach to schools in which Head Start children will enroll, local educational agencies, the local business community, community-based organizations, faith-based organizations, museums, and libraries to generate support and leverage the resources of the entire local community in order to improve school readiness;

''(9) offer (directly or through referral to local entities, such as entities carrying out Even Start programs under subpart 3 of part B of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6381 et seq.)), to parents of participating children, family literacy services, and parenting skills training;

''(10) offer to parents of participating children substance abuse and other counseling (either directly or through referral to local entities), if needed, including information on the effect of drug exposure on infants and fetal alcohol syndrome;

''(11) at the option of such agency, offer (directly or through referral to local entities), to such parents—

''(A) training in basic child development (including cognitive development);

''(B) assistance in developing literacy and communication skills;

''(C) opportunities to share experiences with other parents (including parent mentor relationships);

''(D) regular in-home visitation; or

''(E) any other activity designed to help such parents become full partners in the education of their children;

''(12) provide, with respect to each participating family, a family needs assessment that includes consultation with such parents (including foster parents and grandparents, where applicable) about the benefits of parent involvement and about the activities described in this subsection in which such parents may choose to be involved (taking into consideration their specific family needs, work schedules, and other responsibilities);

''(13) consider providing services to assist younger siblings of children participating in its Head Start program, to obtain health services from other sources;

''(14) perform community outreach to encourage individuals previously unaffiliated with Head Start programs to participate in its Head Start program as volunteers;

''(15)(A) inform custodial parents in single-parent families that participate in programs, activities, or services carried out or provided under this subchapter about the availability of child support services for purposes of establishing paternity and acquiring child support; and

''(B) refer eligible parents to the child support offices of State and local governments;

''(16) provide parents of limited English proficient children outreach and information in an understandable and uniform format and, to the extent practicable, in a language that the parents can understand; and

''(17) at the option of such agency, partner with an institution of higher education and a nonprofit organization to provide college students with the opportunity to serve as mentors or reading coaches to Head Start participants.

''(c) PROGRESS.—

''(1) IN GENERAL.—Each Head Start agency shall take steps to ensure, to the maximum extent possible, that children maintain the developmental and educational gains achieved in Head Start programs and build upon such gains in further schooling.

''(2) COORDINATION.—

''(A) LOCAL EDUCATIONAL AGENCY.—In communities where both public prekindergarten programs and Head Start programs operate, a Head Start agency shall collaborate and coordinate activities with the local educational agency or other public agency responsible for the operation of the prekindergarten program and providers of prekindergarten, including outreach activities to identify eligible children.

''(B) ELEMENTARY SCHOOLS.—Head Start staff shall, with the permission of the parents of children enrolled in Head Start programs, regularly communicate with the elementary schools such children will be attending to—

''(i) share information about such children;

''(ii) get advice and support from the teachers in such elementary schools regarding teaching strategies and options; and

''(iii) ensure a smooth transition to elementary school for such children.

''(C) OTHER PROGRAMS.—The head of each Head Start agency shall coordinate activities and collaborate with the State agency responsible for administering the State program carried out under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.), other entities carrying out early childhood education and development programs, and the agencies responsible for administering section 106 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a), parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq. and 670 et seq.), programs under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.), Even Start programs under subpart 3 of part B of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6381 et seq.), and programs under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.), serving the children and families served by the Head Start agency.

''(3) COLLABORATION.—A Head Start agency shall take steps to coordinate activities with the local educational agency serving the community involved and with schools in which children participating in a Head Start program operated by such agency will enroll following such program, including—

''(A) collaborating on the shared use of transportation and facilities;

''(B) collaborating to reduce the duplication of services while increasing the program participation of underserved populations of eligible children; and

''(C) exchanging information on the provision of noneducational services to such children.

''(4) PARENTAL INVOLVEMENT.—In order to promote the continued involvement of the parents of children that participate in Head Start programs in the education of their children upon transition to school, the Head Start agency shall—

''(A) provide training to the parents—

''(i) to inform the parents about their rights and responsibilities concerning the education of their children; and

''(ii) to enable the parents—

''(I) to understand and work with schools in order to communicate with teachers and other school personnel;

''(II) to support the schoolwork of their children; and

''(III) to participate as appropriate in decisions relating to the education of their children; and

''(B) take other actions, as appropriate and feasible, to support the active involvement of the parents with schools, school personnel, and school-related organizations.

''(d) ASSESSMENT.—Each Head Start agency shall adopt, in consultation with experts in child development and with classroom teachers, an assessment to be used when hiring or evaluating any classroom teacher in a center-based Head Start program. Such assessment shall measure whether such teacher has mastered the functions described in section 648A(a)(1) and attained a level of literacy appropriate to implement Head Start curricula.

''(e) FUNDED ENROLLMENT; WAITING LIST.—Each Head Start agency shall enroll 100 percent of its funded enrollment and maintain an active waiting list at all times with ongoing outreach to the community and activities to identify underserved populations.

''(f) TECHNICAL ASSISTANCE AND TRAINING PLAN.—In order to receive funds under this subchapter, a Head Start agency shall develop an annual technical assistance and training plan. Such plan shall be based on the agency's self-assessment, the community needs assessment, and the needs of parents to be served by such agency.''.

SEC. 11. HEAD START TRANSITION.

Section 642A of the Head Start Act (42 U.S.C. 9837a) is amended to read as follows:

''SEC. 642A. HEAD START TRANSITION AND ALIGNMENT WITH K–12 EDUCATION.

''Each Head Start agency shall take steps to coordinate activities with the local educational agency serving the community involved and with schools in which children participating in a Head Start program operated by such agency will enroll following such program, including—

''(1) developing and implementing a systematic procedure for transferring, with parental consent, Head Start program records for each participating child to the school in which such child will enroll;

''(2) establishing ongoing channels of communication between Head Start staff and their counterparts in the schools (including teachers, social workers, health staff, and local educational agency liaisons designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11432(g)(1)(J)(ii))) to facilitate coordination of programs;

''(3) developing continuity of developmentally appropriate curricula and practice between the Head Start agency and local educational agency to ensure an effective transition and appropriate shared expectations for children's learning and development as the children make the transition to school;

''(4) conducting meetings involving parents, kindergarten or elementary school teachers, and Head Start teachers to discuss the educational, developmental, and other needs of individual children;

''(5) organizing and participating in joint training, including transition-related training of school staff and Head Start staff;

''(6) developing and implementing a family outreach and support program, in cooperation with entities carrying out parental involvement efforts under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), and family outreach and support efforts under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.), taking into consideration the language needs of limited English proficient parents;

''(7) assisting families, administrators, and teachers in enhancing educational and developmental continuity and continuity of parental involvement in activities between Head Start services and elementary school classes;

''(8) linking the services provided in such Head Start program with the education services, including services relating to language, literacy, and numeracy, provided by such local educational agency;

''(9) helping parents understand the importance of parental involvement in a child's academic success while teaching the parents strategies for maintaining parental involvement as their child moves from the Head Start program to elementary school;

''(10) developing and implementing a system to increase program participation of underserved populations of eligible children, including children with disabilities, homeless children, children in foster care, and limited English proficient children; and

''(11) coordinating activities and collaborating to ensure that curricula used in the Head Start program is aligned with State early learning standards with regard to cognitive, social, emotional, and physical competencies that children entering kindergarten are expected to demonstrate.''.

SEC. 12. SUBMISSION OF PLANS TO GOVERNORS.

Section 643 of the Head Start Act (42 U.S.C. 9838) is amended—

(1) in the first sentence—

(A) by inserting ''for approval'' after ''submitted to the chief executive officer of the State''; and

(B) by striking ''45'' and inserting ''30''; and

(2) in the last sentence, by inserting ''to Indian and migrant and seasonal Head Start programs in existence on the date of enactment of the Head Start Improvements for School Readiness Act, or'' after ''other assistance''.

SEC. 13. PARTICIPATION IN HEAD START PROGRAMS.

Section 645(a) of the Head Start Act (42 U.S.C. 9840(a)) is amended—

(1) in paragraph (1)(A), by inserting ''130 percent of'' after ''below''; and

(2) by adding at the end the following:

''(3)(A) In this paragraph:

''(i) The term 'dependent' has the meaning given the term in paragraphs (2)(A) and (4)(A)(i) of section 401(a) of title 37, United States Code.

''(ii) The terms 'member' and 'uniformed services' have the meanings given the terms in paragraphs (23) and (3), respectively, of section 101 of title 37, United States Code.

''(B) The following amounts of pay and allowance of a member of the uniformed services shall not be considered to be income for purposes of determining the eligibility of a dependent of such member for programs funded under this subchapter:

''(i) The amount of any special pay payable under section 310 if title 37, United States Code, relating to duty subject to hostile fire or imminent danger.

''(ii) The amount of basic allowance payable under section 403 of such title, including any such amount that is provided on behalf of the member for housing that is acquired or constructed under the alternative authority for the acquisition and improvement of military housing under subchapter IV of chapter 169 of title 10, United States Code, or any other related provision of law.

''(4) After demonstrating a need through a community needs assessment, a Head Start agency may apply to the Secretary to convert part-day sessions, particularly consecutive part-day sessions, into full-day sessions.''.

SEC. 14. EARLY HEAD START PROGRAMS.

Section 645A of the Head Start Act (42 U.S.C. 9840a) is amended—

(1) by striking the section heading and inserting the following:

''SEC. 645A. EARLY HEAD START PROGRAMS.'';

(2) in subsection (b)—

(A) in paragraph (4), by striking ''provide services to parents to support their role as parents'' and inserting ''provide additional services to parents to support their role as parents (including parenting skills training and training in basic child development)'';

(B) by redesignating paragraphs (5), (6), (7), (8), and (9) as paragraphs (6), (7), (10), (11), and (12), respectively;

(C) by inserting after paragraph (4) the following:

''(5) where appropriate and in conjunction with services provided under this section to the children's immediate families (or as approved by the Secretary), provide home-based services to family child care homes and kin caregivers caring for infants and toddlers who also participate in Early Head Start programs, to provide continuity in supporting the children's physical, social, emotional, and intellectual development;'';

(D) in paragraph (6), as redesignated by subparagraph (B)—

(i) by inserting ''(including home-based services)'' after ''with services''; and

(ii) by inserting '', and family support services'' after ''health services'';

(E) by inserting after paragraph (7), as redesignated by subparagraph (B), the following:

''(8) develop and implement a systematic procedure for transitioning children and parents from an Early Head Start program into a Head Start program or another local early childhood education program;

''(9) establish channels of communication between staff of Early Head Start programs and staff of Head Start programs or other local early childhood education programs, to facilitate the coordination of programs;''; and

(F) in paragraph (11), as redesignated by subparagraph (B)—

(i) by striking ''and providers'' and inserting '', providers''; and

(ii) by inserting '', and the agencies responsible for administering section 106 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a) and parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq. and 670 et seq.)'' after ''(20 U.S.C. 1400 et seq.)'';

(3) in subsection (d)—

(A) in paragraph (1), by inserting '', including tribal governments and entities operating migrant and seasonal Head Start programs'' after ''subchapter''; and

(B) in paragraph (2), by inserting '', including community-based organizations'' after ''private entities'';

(4) in subsection (g)(2)(B), by striking clause (iv) and inserting the following:

''(iv) providing professional development and personnel enhancement activities, including the provision of funds to recipients of grants under subsection (a), relating to—

''(I) effective methods of conducting parent education, home visiting, and promoting quality early childhood development;

''(II) recruiting and retaining qualified staff; and

''(III) increasing program participation for underserved populations of eligible children.'';

(5) by adding at the end the following:

''(h) STAFF QUALIFICATIONS AND DEVELOPMENT.—

''(1) CENTER-BASED STAFF.—The Secretary shall ensure that, not later than September 30, 2010, all teachers providing direct services to Early Head Start children and families in Early Head Start centers have a minimum of a child development associate credential or an associate degree, and have been trained (or have equivalent course work) in early childhood development.

''(2) HOME VISITOR STAFF.—

''(A) STANDARDS.—In order to further enhance the quality of home visiting services provided to families of children participating in home-based, center-based, or combination program options under this subchapter, the Secretary shall establish standards for training, qualifications, and the conduct of home visits for home visitor staff in Early Head Start programs.

''(B) CONTENTS.—The standards for training, qualifications, and the conduct of home visits shall include content related to—

''(i) structured child-focused home visiting that promotes parents' ability to support the child's cognitive, social, emotional, and physical development;

''(ii) effective strengths-based parent education, including methods to encourage parents as their child's first teachers;

''(iii) early childhood development with respect to children from birth through age 3;

''(iv) methods to help parents promote emergent literacy in their children from birth through age 3, including use of research-based strategies to support the development of literacy and language skills for children who are limited English proficient;

''(v) health, vision, hearing, and developmental screenings;

''(vi) strategies for helping families coping with crisis; and

''(vii) the relationship of health and well-being of pregnant women to prenatal and early child development.''.

SEC. 15. APPEALS, NOTICE, AND HEARING AND RECORDS AND AUDITS.

(a) APPEALS.—Section 646(a) of the Head Start Act (42 U.S.C. 9841(a)) is amended by striking paragraphs (3) and (4) and inserting the following:

''(3) financial assistance under this subchapter may be terminated or reduced, and an application for funding may be denied, after the recipient has been afforded reasonable notice and opportunity for a full and fair hearing, including—

''(A) a right to file a notice of appeal of a decision within 30 days of notice of the decision from the Secretary; and

''(B) access to a full and fair hearing of the appeal, not later than 120 days from receipt by the Secretary of the notice of appeal;

''(4) the Secretary shall develop and publish procedures (including mediation procedures) to be used in order to—

''(A) resolve in a timely manner conflicts potentially leading to an adverse action between—

''(i) recipients of financial assistance under this subchapter; and

''(ii) delegate agencies or Head Start Parent Policy Councils;

''(B) avoid the need for an administrative hearing on an adverse action; and

''(C) prohibit a Head Start agency from expending financial assistance awarded under this subchapter for the purpose of paying legal fees pursuant to an appeal under paragraph (3), except that such fees shall be reimbursed by the Secretary if the agency prevails in such decision; and

''(5) the Secretary may suspend funds to a grantee for not more than 30 days.''.

(b) RECIPIENTS.—Section 647(a) of the Head Start Act (42 U.S.C. 9842(a)) is amended by striking ''Each recipient of'' and inserting ''Each Head Start agency, Head Start center, or Early Head Start center receiving''.

(c) ACCOUNTING.—Section 647 of the Head Start Act (42 U.S.C. 9842) is amended by adding at the end the following:

''(c) Each Head Start agency, Head Start center, or Early Head Start center receiving financial assistance under this subchapter shall maintain, and annually submit to the Secretary, a complete accounting of its administrative expenses, including expenses for salaries and compensation funded under this subchapter and provide such additional documentation as the Secretary may require.''.

SEC. 16. TECHNICAL ASSISTANCE AND TRAINING.

Section 648 of the Head Start Act (42 U.S.C. 9843) is amended—

(1) in subsection (a)(2), by striking ''(b) and (c)'' and inserting ''(b), (c), and (d)'';

(2) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively;

(3) by inserting after subsection (a) the following:

''(b) The Secretary shall make available funds set aside in section 640(a)(2)(C)(ii) to support a regional or State system of early childhood education training and technical assistance that improves the capacity of Head Start programs to deliver services in accordance with the standards described in section 641A(a)(1), with particular attention to the standards described in subparagraphs (A) and (B) of such section. The Secretary shall—

''(1) ensure that agencies with demonstrated expertise in providing high-quality training and technical assistance to improve the delivery of Head Start services, including the State Head Start Associations, State agencies, migrant and seasonal Head Start programs, and other entities providing training and technical assistance in early education, for the region or State are included in the planning and coordination of the system; and

''(2) encourage States to supplement the funds authorized in section 640(a)(2)(C)(ii) with Federal, State, or local funds other than Head Start funds, to expand training and technical assistance activities beyond Head Start agencies to include other providers of other early childhood services within a region or State.'';

(4) in subsection (d), as so redesignated—

(A) in paragraph (1)(B)(ii), by striking ''educational performance measures'' and inserting ''measures'';

(B) in paragraph (2), by inserting ''and for activities described in section 1221(b)(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6371(b)(3))'' after ''children with disabilities'';

(C) in paragraph (5), by inserting '', including assessing the needs of homeless children and their families'' after ''needs assessment'';

(D) in paragraph (10), by striking ''; and'' and inserting a semicolon;

(E) in paragraph (11), by striking the period and inserting a semicolon; and

(F) by adding at the end the following:

''(12) assist Head Start agencies and programs in increasing the program participation of homeless children;

''(13) provide training and technical assistance to members of governing bodies to ensure that the members can fulfill the functions described in section 641(a)(4);

''(14) provide training and technical assistance to Head Start agencies to assist such agencies in conducting self-assessments; and

''(15) assist Head Start agencies and Head Start programs in improving outreach to, and quality of services available to, limited English proficient children and their families, including such services to help such families learn English, particularly in communities that have experienced a large percentage increase in the population of limited English proficient individuals, as measured by the Bureau of the Census.'';

(5) in subsection (e), as so redesignated, by inserting ''including community-based organizations,'' after ''nonprofit entities'';

(6) in subsection (f), as so redesignated, by inserting ''or providing services to children determined to be abused or neglected, training for personnel providing services to children referred by entities providing child welfare services or receiving child welfare services,'' after ''English language),''; and

(7) by adding at the end the following:

''(g) The Secretary shall provide, either directly or through grants or other arrangements, funds for training of Head Start personnel in addressing the unique needs of migrant and seasonal farmworking families, families with limited English proficiency, and homeless families.

''(h) Funds used under this section shall be used to provide high quality, sustained, and intensive, training and technical assistance in order to have a positive and lasting impact on classroom instruction. Funds shall be used to carry out activities related to 1 or more of the following:

''(1) Education and early childhood development.

''(2) Child health, nutrition, and safety.

''(3) Family and community partnerships.

''(4) Other areas that impact the quality or overall effectiveness of Head Start programs.

''(i) Funds used under this section for training shall be used for needs identified annually by a grant applicant or delegate agency in its program improvement plan, except that funds shall not be used for long-distance travel expenses for training activities—

''(1) available locally or regionally; or

''(2) substantially similar to locally or regionally available training activities.

''(j)(1) To support local efforts to enhance early language and preliteracy development of children in Head Start programs, and to provide the children with high-quality oral language skills, and environments that are rich in literature, in which to acquire language and preliteracy skills, each Head Start agency, in coordination with the appropriate State office and the relevant State Head Start collaboration office, shall ensure that all of the agency's Head Start teachers receive ongoing training in language and emergent literacy (referred to in this subsection as 'literacy training'), including appropriate curricula and assessments to improve instruction and learning. Such training shall include training in methods to promote phonological and phonemic awareness and vocabulary development in an age-appropriate and culturally and linguistically appropriate manner.

''(2) The literacy training shall be provided at the local level in order—

''(A) to be provided, to the extent feasible, in the context of the Head Start programs of the State involved and the children the program serves; and

''(B) to be tailored to the early childhood literacy background and experience of the teachers involved.

''(3) The literacy training shall be culturally and linguistically appropriate and support children's development in their home language.

''(4) The literacy training shall include training in how to work with parents to enhance positive language and early literacy development at home.

''(5) The literacy training shall include specific methods to best address the needs of children who are English language learners or are limited English proficient.

''(6) The literacy training shall include specific methods to best address the needs of children who have speech and language delays, including problems with articulation, or have other disabilities.''.

SEC. 17. STAFF QUALIFICATION AND DEVELOPMENT.

Section 648A of the Head Start Act (42 U.S.C. 9843a) is amended—

(1) in subsection (a)—

(A) by striking paragraph (2) and inserting the following:

''(2) DEGREE REQUIREMENTS.—

''(A) IN GENERAL.—The Secretary shall ensure that—

''(i) not later than September 30, 2010, all Head Start teachers in center-based programs have at least—

''(I)(aa) an associate degree (or equivalent coursework) relating to early childhood; or

''(bb) an associate degree in a related educational area and, to the extent practicable, coursework relating to early childhood; and

''(II) demonstrated teaching competencies, as determined by the program director involved (including, at a minimum, an appropriate level of literacy, a demonstrated capacity to be highly engaged with children, and a demonstrated ability to effectively implement an early childhood curriculum); and

''(ii) not later than September 30, 2008, all Head Start curriculum specialists and education coordinators in center-based programs have—

''(I) the capacity to offer assistance to other teachers in the implementation and adaptation of curricula to the group and individual needs of a class; and

''(II)(aa) a baccalaureate or advanced degree relating to early childhood; or

''(bb) a baccalaureate or advanced degree and coursework equivalent to a major relating to early childhood;

''(iii) not later than September 30, 2008, all Head Start teaching assistants in center-based programs have—

''(I) at least a child development associate credential;

''(II) enrolled in a program leading to an associate or baccalaureate degree; or

''(III) enrolled in a child development associate credential program to be completed within 2 years; and

''(iv) not later than September 30, 2011—

''(I) in States that have established teacher requirements for State prekindergarten programs, all Head Start teachers in center-based programs—

''(aa) if such requirements are not less than those requirements described in subclause (II), meet such teacher requirements for State prekindergarten programs; and

''(bb) if such requirements are less than those requirements described in subclause (II), meet the requirements described in subclause (II); and

''(II) in States that do not have teacher requirements for their State prekindergarten programs, 50 percent of all Head Start teachers in each center-based program have a baccalaureate degree relating to early childhood (or a related educational area or a baccalaureate degree that meets State specialized training requirements for prekindergarten teachers, such as State licensure, endorsement, or certification for prekindergarten or other early childhood area), and demonstrated teaching competencies, as determined by the program director involved (including, at a minimum, an appropriate level of literacy, a demonstrated capacity to be highly engaged with children, and a demonstrated ability to effectively implement an early childhood curriculum).

''(B) TEACHER IN-SERVICE REQUIREMENT.—Each Head Start teacher shall attend an average of not less than 15 clock hours of professional development per year. Such professional development shall be high quality, sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction and the teacher's performance in the classroom, and regularly evaluated for effectiveness.

''(C) PROGRESS.—

''(i) REPORT.—The Secretary shall—

''(I) require Head Start agencies to—

''(aa) demonstrate continuing progress each year to reach the result described in subparagraph (A);

''(bb) submit to the Secretary a report indicating the number and percentage of classroom instructors in center-based programs with child development associate credentials or associate, baccalaureate, or graduate degrees; and

''(II) compile and submit a summary of all program reports described in subclause (I)(bb) to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

''(ii) DEMONSTRATE PROGRESS.—A Head Start agency may demonstrate progress by partnering with institutions of higher education or other programs that recruit, train, place, and support college students to deliver an innovative early learning program to preschool children.

''(D) SERVICE REQUIREMENTS.—The Secretary shall establish requirements to ensure that, in order to enable Head Start agencies to comply with the requirements of subparagraph (A), individuals who receive financial assistance under this subchapter to pursue a degree described in subparagraph (A) shall—

''(i) teach or work in a Head Start program for a minimum of 3 years after receiving the degree; or

''(ii) repay the total or a prorated amount of the financial assistance received based on the length of service completed after receiving the degree.''; and

(B) by striking paragraphs (3) and (4) and inserting the following:

''(3) WAIVER.—

''(A) IN GENERAL.—On request, the Secretary may grant a waiver of the postsecondary degree requirements of paragraph (2) for 1 or more Head Start agencies, either individually, statewide, or throughout a region, that can demonstrate—

''(i) that continuing aggressive statewide and national efforts have been unsuccessful at recruiting an individual to serve as a Head Start teacher or curriculum specialist or education coordinator who meets the requirements of paragraph (2)(A);

''(ii) limited access to degree programs (including quality distance learning programs), due to the remote location of the program involved; or

''(iii) that Head Start staff members are, as of the day the waiver is granted, enrolled in a program that—

''(I) grants the required degree; and

''(II) will be completed within 1 year.

''(B) LIMITATION.—An agency that receives a waiver under subparagraph (A) shall ensure that Head Start teachers for the agency, as of the day the waiver is granted, who have not met the postsecondary degree requirements of paragraph (2) but are otherwise highly qualified and competent shall be directly and appropriately supervised by a teacher who has met or exceeded the requirements of this subchapter.

''(C) DURATION.—The Secretary may not grant a waiver under subparagraph (A) for a period that exceeds 1 year.'';

(2) in subsection (c)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(4) promote the use of appropriate strategies to meet the needs of special populations (including limited English proficient populations).'';

(3) in subsection (d)(3)(C) by inserting '', including a center,'' after ''any agency''; and

(4) by adding at the end the following:

''(f) PROFESSIONAL DEVELOPMENT PLANS.—Every Head Start agency and center shall create, in consultation with employees of the agency or center (including family service workers), a professional development plan for employees who provide direct services to children, including a plan for classroom teachers, curriculum specialists, and education coordinators to meet the requirements set forth in subsection (a).''.

SEC. 18. TRIBAL COLLEGES AND UNIVERSITIES HEAD START PARTNERSHIP.

The Head Start Act (42 U.S.C. 9831 et seq.) is amended by inserting after section 648A the following:

''SEC. 648B. TRIBAL COLLEGE OR UNIVERSITY HEAD START PARTNERSHIP PROGRAM.

''(a) PURPOSE.—The purpose of this section is to promote social competencies and school readiness in Indian children.

''(b) TRIBAL COLLEGE OR UNIVERSITY HEAD START PARTNERSHIP PROGRAM.—

''(1) GRANTS.—The Secretary is authorized to award grants, for periods of not less than 5 years, to Tribal Colleges and Universities to—

''(A) implement education programs that include education concerning tribal culture and language and increase the number of associate, baccalaureate, and graduate degrees

in early childhood education and related fields that are earned by Indian Head Start agency staff members, parents of children served by such an agency, and members of the tribal community involved;

''(B) develop and implement the programs under subparagraph (A) in technology-mediated formats, including providing the programs through such means as distance learning and use of advanced technology, as appropriate; and

''(C) provide technology literacy programs for Indian Head Start agency staff members and children and families of children served by such an agency.

''(2) STAFFING.—The Secretary shall ensure that the American Indian Programs Branch of the Head Start Bureau of the Department of Health and Human Services shall have staffing sufficient to administer the programs under this section and to provide appropriate technical assistance to Tribal Colleges and Universities receiving grants under this section.

''(c) APPLICATION.—Each Tribal College or University desiring a grant under this section shall submit an application to the Secretary, at such time, in such manner, and containing such information as the Secretary may require, including a certification that the Tribal College or University has established a partnership with 1 or more Indian Head Start agencies for the purpose of conducting the activities described in subsection (b).

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $10,000,000 for fiscal year 2006 and such sums as may be necessary for each of fiscal years 2007 through 2010.

''(e) DEFINITIONS.—In this section:

''(1) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given such term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

''(2) TRIBAL COLLEGE OR UNIVERSITY.—The term 'Tribal College or University'—

''(A) has the meaning given such term in section 316 of the Higher Education Act of 1965 (20 U.S.C. 1059c); and

''(B) means an institution determined to be accredited or a candidate for accreditation by a nationally recognized accrediting agency or association.''.

SEC. 19. RESEARCH, DEMONSTRATIONS, AND EVALUATION.

Section 649 of the Head Start Act (42 U.S.C. 9844) is amended—

(1) in subsection (a)(1)(B), by inserting ''and children determined to be abused or neglected'' after ''children with disabilities'';

(2) in subsection (d)—

(A) in paragraph (8), by adding ''and'' after the semicolon;

(B) by striking paragraph (9);

(C) by redesignating paragraph (10) as paragraph (9); and

(D) by striking the last sentence;

(3) in subsection (g)—

(A) in paragraph (1)(A)—

(i) by striking clause (i); and

(ii) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(B) in paragraph (7)(C)—

(i) in clause (i)(I), by striking ''2003'' and inserting ''2007''; and

(ii) in clause (ii), by striking ''Labor and Human Resources'' and inserting ''Health, Education, Labor, and Pensions''; and

(4) by striking subsection (h) and inserting the following:

''(h) NATIONAL ACADEMY OF SCIENCES STUDY.—

''(1) IN GENERAL.—The Secretary shall enter into a contract with the Board on Children, Youth, and Families of the National Research Council, the Board on Testing and Assessments, and the Institute of Medicine, of the National Academy of Sciences to establish an independent panel of experts to review and synthesize research and theories in the social, behavioral, and biological sciences regarding early childhood, and make recommendations with regard to each of the following:

''(A) Age- and developmentally appropriate Head Start academic requirements and outcomes, including the standards described in section 641A(a)(1)(B)(ii).

''(B) Differences in the type, length, mix, and intensity of services that are necessary to ensure that children from challenging family or social backgrounds (including low-income children, children with disabilities, and limited English proficient children) enter kindergarten ready to succeed.

''(C) Appropriate assessments of young children for the purposes of improving instruction, services, and program quality, including—

''(i) formal and systematic observational assessments in a child's natural environment;

''(ii) assessments of children's development through parent and provider interviews;

''(iii) appropriate accommodations for children with disabilities and limited English proficient children;

''(iv) appropriate assessments for children with disabilities, limited English proficient children, and children from different cultural backgrounds; and

''(v) other assessments used in Head Start programs.

''(D) Identification of existing, or recommendations for the development of, scientifically based, valid and reliable assessments that are capable of measuring child outcomes in the domains important to school readiness, including language skills, prereading ability, premathematics ability, cognitive ability, scientific ability, social and emotional development, and physical development;

''(E) Appropriate use and application of valid and reliable assessments for Head Start programs identified in accordance with subparagraph (D).

''(2) COMPOSITION.—

''(A) IN GENERAL.—The panel described in paragraph (1) shall consist of multiple experts in each of the following areas:

''(i) Child development (including cognitive, social, emotional, and physical development) and child education (including approaches to learning).

''(ii) Professional development, including preparation of individuals who teach young children.

''(iii) Assessment of young children (including children with disabilities and limited English proficient children), including screening, diagnostic, and classroom-based instructional assessment.

''(B) REPRESENTATIVES.—The panel described in paragraph (1) shall be selected and appointed by the National Academy of Sciences, after consultation with the Secretary of Health and Human Services.

''(3) TIMING.—

''(A) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Head Start Improvements for School Readiness Act, the Board on Children, Youth, and Families of the National Research Council, the Board on Testing and Assessments, and the Institute of Medicine, of the National Academy of Sciences shall establish the panel described in paragraph (1), including selecting and appointing the members of the panel. Representatives described in paragraph (2) shall be selected and appointed after consultation with the Secretary.

''(B) RECOMMENDATIONS.—Not later than 1 year after the panel described in paragraph (1) is established, the panel shall complete, and submit to the Secretary a report containing, the recommendations described in paragraph (1). The Secretary shall not implement the amendments made to section 641A(a)(1)(B)(ii) by the Head Start Improvements for School Readiness Act until the panel submits the report.

''(4) APPLICATION OF PANEL REPORT.—The Secretary shall use the results of the review and recommendations described in paragraph (1) to (where appropriate) develop, inform, and revise—

''(A) the educational standards, and the performance measures, described in section 641A; and

''(B) the assessments utilized in the Head Start programs.

''(i) SERVICES TO LIMITED ENGLISH PROFICIENT CHILDREN AND FAMILIES.—

''(1) STUDY.—The Secretary shall conduct a study on the status of limited English proficient children and their families in Head Start or Early Head Start programs.

''(2) REPORT.—The Secretary shall prepare and submit to Congress, not later than September 2009, a report containing the results of the study, including information on—

''(A) the demographics of limited English proficient children from birth through age 5, including the number of such children receiving Head Start or Early Head Start services and the geographic distribution of children described in this subparagraph;

''(B) the nature of Head Start or Early Head Start services provided to limited English proficient children and their families, including the types, content, duration, intensity, and costs of family services, language assistance, and educational services;

''(C) procedures in Head Start programs for the assessment of language needs and the transition of limited English proficient children to kindergarten, including the extent to which Head Start programs meet the requirements of section 642A for limited English proficient children;

''(D) the qualifications and training provided to Head Start and Early Head Start teachers serving limited English proficient children and their families;

''(E) the rate of progress made by limited English proficient children and their families in Head Start programs and Early Head Start programs, including—

''(i) the rate of progress of the limited English proficient children toward meeting the additional educational standards described in section 641A(a)(1)(B)(ii) while enrolled in Head Start programs, measured between 1990 and 2004;

''(ii) the correlation between such progress and the type of instruction and educational program provided to the limited English proficient children; and

''(iii) the correlation between such progress and the health and family services provided by Head Start programs to limited English proficient children and their families; and

''(F) the extent to which Head Start programs make use of funds under section 640(a)(3) to improve the quality of Head Start services provided to limited English proficient children and their families.''.

SEC. 20. REPORTS.

Section 650 of the Head Start Act (42 U.S.C. 9846) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking ''Labor and Human Resources'' and inserting ''Health, Education, Labor, and Pensions'';

(B) in paragraph (8), by inserting ''homelessness, children in foster care, children who are abused or neglected,'' after ''ethnic background,''; and

(C) in the flush matter at the end by striking ''Labor and Human Resources'' and inserting ''Health, Education, Labor, and Pensions''; and

(2) in subsection (b), by striking ''Labor and Human Resources'' and inserting ''Health, Education, Labor, and Pensions''.

SEC. 21. COMPARABILITY OF WAGES.

Section 653 of the Head Start Act (42 U.S.C. 9848) is amended—

(1) by striking ''The Secretary shall take'' and inserting ''(a) The Secretary shall take'';

(2) in the first sentence of subsection (a), by striking ''or (2)'' and inserting ''(2) in excess of the salary of the Secretary, in the case of an individual compensated with funds awarded under this subchapter or the Community Services Block Grant Act (42 U.S.C. 9901 et seq.); or (3)''; and

(3) by adding at the end the following:

''(b) If in any fiscal year the restriction described in subsection (a)(2) is violated, the Secretary shall withhold from the base grant of the Head Start agency involved (as defined in section 641A(g)(1)) for the next fiscal year, an amount equal to the aggregate amount by which the salary that resulted in the violation exceeded the salary of the Secretary.''.

SEC. 22. LIMITATION WITH RESPECT TO CERTAIN UNLAWFUL ACTIVITIES.

Section 655 of the Head Start Act (42 U.S.C. 9850) is amended by inserting ''or in'' after ''assigned by''.

SEC. 23. POLITICAL ACTIVITIES.

Section 656 of the Head Start Act (42 U.S.C. 9851) is amended—

(1) by striking all that precedes ''chapter 15'' and inserting the following:

''SEC. 656. POLITICAL ACTIVITIES.

''(a) STATE OR LOCAL AGENCY.—For purposes of''; and

(2) by striking subsection (b) and inserting the following:

''(b) RESTRICTIONS.—

''(1) IN GENERAL.—A program assisted under this subchapter, and any individual employed by, or assigned to, a program assessed under this subchapter (during the hours in which such individual is working on behalf of such program), shall not engage in—

''(A) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office;

''(B) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or

''(C) any voter registration activity.

''(2) RULES AND REGULATIONS.—The Secretary, after consultation with the Director of the Office of Personnel Management, may issue rules and regulations to provide for the enforcement of this section, which may include provisions for summary suspension of assistance or other action necessary to permit enforcement on an emergency basis.''.

SEC. 24. PARENTAL CONSENT REQUIREMENT FOR HEALTH SERVICES.

The Head Start Act (42 U.S.C. 9831 et seq.) is amended by adding at the end the following new section:

''SEC. 657A. PARENTAL CONSENT REQUIREMENT FOR NONEMERGENCY INTRUSIVE PHYSICAL EXAMINATIONS.

''(a) DEFINITION.—The term 'nonemergency intrusive physical examination' means, with respect to a child, a physical examination that—

''(1) is not immediately necessary to protect the health or safety of the child or the health or safety of another individual; and

''(2) requires incision or is otherwise invasive, or involves exposure of private body parts.

''(b) REQUIREMENT.—A Head Start agency shall obtain written parental consent before administration of, or referral for, any health care service provided or arranged to be provided, including any nonemergency intrusive physical examination of a child in connection with participation in a program under this subchapter.

''(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit agencies from using established methods, for handling cases of suspected or known child abuse and neglect, that are in compliance with applicable Federal, State, or tribal law.''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 152—WELCOMING HIS EXCELLENCY HAMID KARZAI, THE PRESIDENT OF AFGHANISTAN, AND EXPRESSING SUPPORT FOR A STRONG AND ENDURING STRATEGIC PARTNERSHIP BETWEEN THE UNITED STATES AND AFGHANISTAN.

Mr. HAGEL (for himself, Mr. LUGAR, Mr. BIDEN, and Mr. REID) submitted the following resolution; which was considered and agreed to:

S. RES. 152

Whereas Afghanistan has suffered the ravages of war, foreign occupation, and oppression;

Whereas following the terrorist attacks of September 11, 2001, the United States launched Operation Enduring Freedom, which helped to establish an environment in which the people of Afghanistan are building the foundations for a democratic government;

Whereas, on January 4, 2004, the Constitutional Loya Jirga of Afghanistan adopted a constitution that provides for equal rights for full participation of women, mandates full compliance with international norms for human and civil rights, establishes procedures for free and fair elections, creates a system of checks and balances between the executive, legislative, and judicial branches, encourages a free market economy and private enterprise, and obligates the state to prevent terrorist activity and the production and trafficking of narcotics;

Whereas, on October 9, 2004, approximately 8,400,000 Afghans, including nearly 3,500,000 women, voted in Afghanistan's first direct Presidential election at the national level, demonstrating commitment to democracy, courage in the face of threats of violence, and a deep sense of civic responsibility;

Whereas, on December 7, 2004, Hamid Karzai took the oath of office as the first democratically elected President in the history of Afghanistan;

Whereas nationwide parliamentary elections are planned in Afghanistan for September 2005, further demonstrating the Afghan people's will to live in a democratic state, and the commitment of the Government of Afghanistan to democratic norms;

Whereas the Government of Afghanistan is committed to halting the cultivation and trafficking of narcotics and has pursued, in cooperation with the United States and its allies, a wide range of counter-narcotics initiatives;

Whereas the United States and the international community are working to assist Afghanistan's counter-narcotics campaign by supporting programs to provide alternative livelihoods for farmers, sustainable economic development, and capable Afghan security forces; and

Whereas, on March 17, 2005, Secretary of State Condoleezza Rice said of Afghanistan ''this country was once a source of terrorism; it is now a steadfast fighter against terrorism. There could be no better story than the story of Afghanistan in the last several years and there can be no better story than the story of American and Afghan friendship. It is a story of cooperation and friendship that will continue. We have a long-term commitment to this country'': Now, therefore, be it

Resolved, That the Senate—

(1) welcomes, as an honored guest and valued friend of the United States, President Hamid Karzai on the occasion of his visit to the United States as the first democratically elected President of Afghanistan scheduled for May 21 through 25, 2005;

(2) supports a democratic, stable, and prosperous Afghanistan as essential to the security of the United States; and

(3) supports a strong and enduring strategic partnership between the United States and Afghanistan as a primary objective of both countries to advance their shared vision of peace, freedom, security and broad-based economic development in Afghanistan, the broader South Asia region, and throughout the world.

SENATE RESOLUTION 153—EXPRESSING THE SUPPORT OF CONGRESS FOR THE OBSERVATION OF THE NATIONAL MOMENT OF REMEMBRANCE AT 3:00 PM LOCAL TIME ON THIS AND EVERY MEMORIAL DAY TO ACKNOWLEDGE THE SACRIFICES MADE ON THE BEHALF OF ALL AMERICANS FOR THE CAUSE OF LIBERTY

Mr. LIEBERMAN (for himself and Mr. SESSIONS) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 153

Whereas Americans have been formally recognizing the sacrifice of those who gave their lives in the service of their country since 1868 when General John A. Logan, Commander of the Grand Army of the Republic, designated May 30 as Decoration Day;

Whereas those early commemorations encouraged Americans to decorate the graves of war dead with flowers so that, as General Logan stated, ''We should guard their graves with sacred vigilance . . . Let pleasant paths invite the coming and going of reverent visitors and fond mourners. Let no neglect, no ravages of time, testify to the present or to the coming generations that we have forgotten as a people the cost of a free and undivided republic.'';

Whereas in these times of challenge, when Americans have once again answered the call to defend freedom, it is as important as ever that all Americans take time to honor those brave men and women who throughout our Nation's history have given their lives in the cause of liberty;

Whereas in 2000, President Clinton signed into law ''The National Moment of Remembrance Act'' to encourage Americans to pause at 3:00 pm local time on Memorial Day for a minute of silence to remember and honor those who have died in the service of their Nation; and

Whereas the National Moment of Remembrance brings the country together in unity of purpose, to honor the sacrifice of those who have died for their Nation, and to rededicate all Americans to the original spirit of Decoration Day: Now, therefore, be it

Resolved, That the Senate—

(1) reaffirms its support for the National Moment of Remembrance at 3:00 pm on Memorial Day, created to honor the men and women of the United States who died in the pursuit of freedom and peace; and

(2) urges the people of the United States to observe the National Moment of Remembrance this Memorial Day so that the sacrifices of those who have died are not forgotten and that, as President Abraham Lincoln said, ''The mystic chords of memory, stretching from every battlefield and patriot grave to every living heart . . . should swell into a mighty chorus of remembrance, gratitude and rededication . . .''.

Mr. LIEBERMAN. Mr. President, I rise today to submit a Resolution with my good friend, Senator JEFF SESSIONS. Our resolution reaffirms the Senate's support for a National Moment of Remembrance at 3:00 p.m. on Memorial Day, and calls upon all Americans to observe the National Moment of Remembrance this Memorial Day.

Memorial Day is a holiday unique in the world and distinctly American in spirit.

On Memorial Day we honor no single man or woman—no general or admiral—but generations of Americans who selflessly answered their Nation's call to defend not national boundaries but a noble cause.

On Memorial Day we pay homage not to a single battle or war, but to the enduring struggle for freedom that stretches from Bunker Hill to Baghdad.

In these challenging times, when we hear almost daily of American servicemen and women who have sacrificed their lives to defend this great Nation, it is especially important that all Americans take a moment on Memorial Day to honor all these fallen heroes who throughout our history have made the ultimate sacrifice so that we may enjoy the freedoms we have today.

Many may not be aware, but Americans began formally recognizing the sacrifice of those who had given their lives in the service of their country in 1868 when General John A. Logan, Commander of the Grand Army of the Republic, designated May 30 as Decoration Day.

The first large observance was held that year in Arlington National Cemetery.

Those early commemorations encouraged Americans to decorate the graves of war dead with flowers. The goal of this, as General Logan eloquently put it, was that ''We should guard their graves with sacred vigilance. . . Let pleasant paths invite the coming and going of reverent visitors and fond mourners. Let no neglect, no ravages of time, testify to the present or to the coming generations that we have forgotten as a people the cost of a free and undivided republic.''

Through Decoration Day, General Logan began a noble tradition that we carry forward to this day.

We in Congress recently sought to reinforce that tradition and encourage all Americans to not lose sight of the meaning of Memorial Day, as Decoration Day has been known since 1971.

In 2000 we passed and the President signed the ''National Moment of Remembrance Act'' which encouraged all Americans to pause wherever they are at 3:00 p.m. local time on Memorial Day for a moment of silence to remember and honor those who have died in service to their country.

Since we passed that legislation, we have seen our Nation attacked.

Once again our fighting men and women have responded to the call to defend their Nation. They have done so magnificently. Their courage and valor are inspiring and are important reminders that we must continue to support those that fight, and honor those who have fallen.

We honor our heroes who founded and preserved our Nation and have since carried the torch of freedom into corners of the world where people huddled under tyranny's dark shadows.

We honor these heroes with the words of President Abraham Lincoln in our heart when he said: ''The mystic chords of memory, stretching from every battlefield and patriot grave to every living heart . . should swell into a mighty chorus of remembrance, gratitude and rededication.''

SENATE CONCURRENT RESOLUTION 36—EXPRESSING THE SENSE OF CONGRESS CONCERNING ACTIONS TO SUPPORT THE NUCLEAR NON-PROLIFERATION TREATY ON THE OCCASION OF THE SEVENTH NPT REVIEW CONFERENCE

Mrs. FEINSTEIN (for herself, Mr. HAGEL, Mr. LAUTENBERG, Mr. DURBIN, Mr. CORZINE, Mr. FEINGOLD, and Mr. LEVIN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 36

Whereas the Treaty on the Non-proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (in this resolution referred to as the ''Nuclear Non-Proliferation Treaty''), codifies one of the most important international security arrangements in the history of arms control, the arrangement by which states without nuclear weapons pledge not to acquire them, states with nuclear weapons commit to eventually eliminate them, and nonnuclear states are allowed to use for peaceful purposes nuclear technology under strict and verifiable control;

Whereas the Nuclear Non-Proliferation Treaty is one of the most widely supported multilateral agreements, with 188 countries adhering to the Treaty;

Whereas the Nuclear Non-proliferation Treaty has encouraged many countries to officially abandon nuclear weapons or nuclear weapons programs, including Argentina, Belarus, Brazil, Kazakhstan, Libya, South Africa, South Korea, Ukraine, and Taiwan;

Whereas, at the 1995 NPT Review and Extension Conference, the states-parties agreed to extend the Nuclear Non-Proliferation Treaty indefinitely, to reaffirm the principles and objectives of the Treaty, to strengthen the Treaty review process, and to implement further specific and practical steps on non-proliferation and disarmament;

Whereas, at the 2000 NPT Review Conference, the states-parties agreed to further practical steps on non-proliferation and disarmament;

Whereas President George W. Bush stated on March 7, 2005, that ''the NPT represents a key legal barrier to nuclear weapons proliferation and makes a critical contribution to international security,'' and that ''the United States is firmly committed to its obligations under the NPT'';

Whereas the International Atomic Energy Agency (IAEA) is responsible for monitoring compliance with safeguard agreements pursuant to the Nuclear Non-Proliferation Treaty and reporting safeguard violations to the United Nations Security Council;

Whereas Presidents George W. Bush and Vladimir Putin stated on February 24, 2005, that ''[w]e bear a special responsibility for the security of nuclear weapons and fissile material in order to ensure that there is no possibility such weapons or materials would fall into terrorist hands'';

Whereas Article IV of the Nuclear Non-Proliferation Treaty calls for the fullest possible exchange of equipment and materials for peaceful nuclear endeavors and allows states to acquire sensitive technologies to produce nuclear fuel for energy purposes but also recognizes that such fuel could be used to secretly produce fissile material for nuclear weapons programs or quickly produce such material if the state were to decide to withdraw from the Treaty;

Whereas the Government of North Korea ejected international inspectors from that country in 2002, announced its withdrawal from the Nuclear Non-Proliferation Treaty in 2003, has recently declared its possession of nuclear weapons, and is in possession of facilities capable of producing additional nuclear weapons-usable material;

Whereas the Government of Iran has pursued an undeclared program to develop a uranium enrichment capacity, repeatedly failed to fully comply with and provide full information to the IAEA regarding its nuclear activities, and stated that it will not permanently abandon its uranium enrichment program which it has temporarily suspended through an agreement with the European Union;

Whereas the network of arms traffickers associated with A.Q. Khan has facilitated black-market nuclear transfers involving several countries, including Iran, Libya, and North Korea, and represents a new and dangerous form of proliferation;

Whereas governments should cooperate to control exports of and interdict illegal transfers of sensitive nuclear and missile-related technologies to prevent their proliferation;

Whereas the United Nations Secretary-General's High-Level Panel on Threats, Challenges and Change concluded that ''[a]lmost 60 States currently operate or are constructing nuclear power or research reactors, and at least 40 possess the industrial and scientific infrastructure which would enable them, if they chose, to build nuclear weapons at relatively short notice if the legal and normative constraints of the Treaty regime no longer apply,'' and warned that ''[w]e are approaching a point at which the erosion of the non-proliferation regime could become irreversible and result in a cascade of proliferation'';

Whereas stronger international support and cooperation to achieve universal compliance with tighter nuclear non-proliferation rules and standards constitute essential elements of nuclear non-proliferation efforts;

Whereas sustained leadership by the United States Government is essential to help implement existing legal and political commitments established by the Nuclear Non-Proliferation Treaty and to realize a

more robust and effective global nuclear non-proliferation system; and

Whereas the governments of the United States and other countries should pursue a comprehensive and balanced approach to strengthen the global nuclear non-proliferation system, beginning with the Seventh NPT Review Conference of 2005: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring),

SECTION 1. SHORT TITLE.

This resolution may be cited as the ''Reinforce the Nuclear Non-Proliferation Treaty Act of 2005''.

SEC. 2. SENSE OF CONGRESS ON SUPPORT OF THE NUCLEAR NON-PROLIFERATION TREATY.

Congress—

(1) reaffirms its support for the objectives of the Nuclear Non-Proliferation Treaty and expresses its support for all appropriate measures to strengthen the Treaty and to attain its objectives; and

(2) calls on all parties participating in the Seventh Nuclear NPT Review Conference—

(A) to insist on strict compliance with the non-proliferation obligations of the Nuclear Non-Proliferation Treaty and to undertake effective enforcement measures against states that are in violation of their Article I or Article II obligations under the Treaty;

(B) to agree to establish more effective controls on sensitive technologies that can be used to produce materials for nuclear weapons;

(C) to expand the ability of the International Atomic Energy Agency to inspect and monitor compliance with non-proliferation rules and standards to which all states should adhere through existing authority and the additional protocols signed by the states party to the Nuclear Non-Proliferation Treaty;

(D) to demonstrate the international community's unified opposition to a nuclear weapons program in Iran by—

(i) supporting the efforts of the United States and the European Union to prevent the Government of Iran from acquiring a nuclear weapons capability; and

(ii) using all appropriate diplomatic and other means at their disposal to convince the Government of Iran to abandon its uranium enrichment program;

(E) to strongly support the ongoing United States diplomatic efforts in the context of the six-party talks that seek the verifiable and incontrovertible dismantlement of North Korea's nuclear weapons programs and to use all appropriate diplomatic and other means to achieve this result;

(F) to pursue diplomacy designed to address the underlying regional security problems in Northeast Asia, South Asia, and the Middle East, which would facilitate non-proliferation and disarmament efforts in those regions;

(G) to accelerate programs to safeguard and eliminate nuclear weapons-usable material to the highest standards to prevent access by terrorists and governments;

(H) to halt the use of highly enriched uranium in civilian reactors;

(I) to strengthen national and international export controls and relevant security measures as required by United Nations Security Council Resolution 1540;

(J) to agree that no state may withdraw from the Nuclear Non-Proliferation Treaty and escape responsibility for prior violations of the Treaty or retain access to controlled materials and equipment acquired for ''peaceful'' purposes;

(K) to accelerate implementation of disarmament obligations and commitments under the Nuclear Non-Proliferation Treaty for the purpose of reducing the world's stockpiles of nuclear weapons and weapons-grade fissile material; and

(L) to strengthen and expand support for the Proliferation Security Initiative.

Mrs. FEINSTEIN. Mr. President, I rise today along with Senator HAGEL, Senator LAUTENBERG, Senator DURBIN, Senator CORZINE, and Senator FEINGOLD to submit a resolution calling on the parties participating at the Seventh Review Conference in New York City to reaffirm their support for and take additional measures to strengthen the Nuclear Nonproliferation Treaty.

Our resolution calls on parties to the conference to, among other things: insist on strict compliance with the nonproliferation obligations of the Treaty and to undertake effective enforcement measures against states that are in violation of their Article I or Article II obligations; agree to establish more effective controls on sensitive technologies that can be used to produce materials for nuclear weapons; support the efforts of the United States and the European Union (EU) to prevent Iran from acquiring a nuclear weapons capability; support the Six-Party talks that seek the verifiable disarmament of North Korea's nuclear weapons program; accelerate programs to safeguard and eliminate nuclear-weapons usable material to the highest standards to prevent access by terrorists or other states; agree that no state may withdraw from the Treaty and escape responsibility for prior violations of the treaty or retain access to controlled materials and equipment acquired for ''peaceful'' purposes, and; accelerate implementation of the NPT-related disarmament obligations and commitments that would, in particular, reduce the world's stockpiles of nuclear weapons and weapons-grade material.

More than 180 states have gathered in New York to review progress on implementing their respective obligations as signatories of the Treaty and discuss additional steps each party can take to fulfill all of the NPT objectives.

The Nuclear Nonproliferation Treaty has played a critical role in protecting U.S. national security interests and promoting peace and stability in the international community by bringing nuclear armed and non-nuclear armed states together to stop the proliferation of nuclear weapons.

Each party has clear and specific obligations. States with nuclear weapons pledge to eventually eliminate them while states without nuclear weapons pledge not to acquire them.

The track record of the Treaty speaks for itself. This framework has successfully convinced countries such as Ukraine, Kazahkstan, Belarus, Libya and South Africa to forgo possession of nuclear weapons. At the dawn of the nuclear age, who would have thought this would be possible?

Simply put, the fewer number of states with nuclear weapons, the less likely such weapons will be used or fall into the wrong hands. The Treaty has saved lives and prevented unthinkable catastrophe.

The success of the Treaty is a testament to United States leadership and our commitment to multilateral diplomacy and cooperation. The gains in the area of nuclear nonproliferation over the past thirty plus years would not have been possible if we had chosen to shut ourselves out of the international community or take on the great challenges of the world on our own.

And, I might point out, as a signatory to the Treaty, we have increased the security of Americans and our national security interests at a far less cost than any military intervention. Successful arms control treaties give us more bang for our buck.

Now is a critical opportunity to examine the successes of the past and the steps all parties can take to strengthen the Nuclear Nonproliferation Treaty in the future.

Indeed, the world has changed dramatically since the last Review Conference in 1995 and the challenges to the nuclear nonproliferation regime have become more acute. In the past few years we have witnessed: the September 11th attacks and the intent of terrorist groups such as al-Qaeda to acquire and use nuclear weapons; the discovery of the AQ Khan nuclear black market; North Korea's withdrawal from the Nuclear Nonproliferation Treaty and announcement that it possessed nuclear weapons; the exposure of Iran's violations of its obligations as a signatory of the Nuclear Nonproliferation Treaty and the possibility that states may use the ''Article 4 loophole'' and develop a nuclear fuel cycle capability; the existence of global stockpiles of nuclear weapons usable materials.

Combined with an uncertainty on the part of non-nuclear weapon states about the intent of nuclear weapon states to fulfill their disarmament obligations, these challenges threaten the continuation of a successful nuclear nonproliferation regime.

As the United Nation's report ''A More Secure World'' states: ''We are approaching a point at which the erosion of the nonproliferation regime could become irreversible and result in a cascade of proliferation.''

North Korea has already withdrawn from the Treaty and escaped penalty. Iran may be next. How many others will follow if we stand still and do nothing to strengthen the NPT?

It would be an understatement to say that the collapse of the nuclear nonproliferation regime will have a devastating effect on the security and stability of the entire world.

That is why the Review Conference is so important and why we must not let divisions between nuclear armed and non-nuclear armed states prevent the conclusion of a successful conference. We must come together to breathe new life into the nuclear nonproliferation regime and seriously consider the steps

outlined above that will strengthen the treaty and make the world safer from the threat of nuclear terror.

I urge my colleagues to support this resolution.

SENATE CONCURRENT RESOLUTION 37—HONORING THE LIFE OF SISTER DOROTHY STANG

Mr. DEWINE submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 37

Whereas Sister of Notre Dame de Namur Dorothy Stang moved to the Amazon 22 years ago to help poor farmers build independent futures for their families, and was murdered on Saturday, February 12, 2005, at the age of 73, in Anapu, Para, a section of Brazil's Amazon rain forest;

Whereas Sister Dorothy, a citizen of Brazil and the United States, worked with the Pastoral Land Commission, an organization of the Catholic Church that fights for the rights of rural workers and peasants, and defends land reforms in Brazil;

Whereas Sister Dorothy's death came less than a week after her meeting with Brazil's Human Rights Secretary about threats to local farmers from some loggers and landowners;

Whereas, after receiving several death threats, Sister Dorothy recently commented, ''I don't want to flee, nor do I want to abandon the battle of these farmers who live without any protection in the forest. They have the sacrosanct right to aspire to a better life on land where they can live and work with dignity while respecting the environment.'';

Whereas Sister Dorothy was born in Dayton, Ohio, entered the Sisters of Notre Dame de Namur community in 1948, and professed final vows in 1956;

Whereas, from 1951 to 1966, Sister Dorothy taught elementary classes at St. Victor School in Calumet City, Illinois, St. Alexander School in Villa Park, Illinois, and Most Holy Trinity School in Phoenix, Arizona, and began her ministry in Brazil in 1966, in Coroata, in the state of Maranhao;

Whereas, last June, Sister Dorothy was named ''Woman of the Year'' by the state of Para for her work in the Amazon region, in December 2004, she received the ''Humanitarian of the Year'' award from the Brazilian Bar Association for her work helping the local rural workers, and earlier this year, she received an ''Honorary Citizenship of the State'' award from the state of Para; and

Whereas Sister Dorothy lived her life according to the mission of the Sisters of Notre Dame: making known God's goodness and love of the poor through a Gospel way of life, community, and prayer, while continuing a strong educational tradition and taking a stand with the poor, especially poor women and children, in the most abandoned places, and committing her one and only life to work with others to create justice and peace for all: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress hereby honors the life and work of Sister Dorothy Stang.

AMENDMENTS SUBMITTED AND PROPOSED

SA 763. Mr. BURNS (for Mrs. FEINSTEIN) proposed an amendment to the bill S. 188, to amend the Immigration and Nationality Act to authorize appropriations for fiscal years 2005 through 2011 to carry out the State Criminal Alien Assistance Program.

TEXT OF AMENDMENTS

SA 763. Mr. BURNS (for Mrs. FEINSTEIN) proposed an amendment to the bill S. 188, to amend the Immigration and Nationality Act to authorize appropriations for fiscal years 2005 through 2011 to carry out the State Criminal Alien Assistance Program, as follows:

At the end add the following new section:

SEC. 3. LIMITATION ON USE OF FUNDS.

Section 241(i)(6) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(6)) is amended to read as follows:

''(6) Amounts appropriated pursuant to the authorization of appropriations in paragraph (5) that are distributed to a State or political subdivision of a State, including a municipality, may be used only for correctional purposes.''.

MEASURE READ THE FIRST TIME—S. 1098

Mr. ALLARD. Mr. President, I understand that S. 1098, introduced earlier today by Senator KENNEDY, is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the title of the bill for the first time.

The senior assistant bill clerk read as follows:

A bill (S. 1098) to prevent abuse of the special allowance subsidies under the Federal Family Education Loan Program.

Mr. ALLARD. Mr. President, I ask for its second reading and object to my own request.

The PRESIDING OFFICER. The bill will be read the second time at the next legislative session.

ORDERS FOR TUESDAY, MAY 24, 2005

Mr. ALLARD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:45 a.m. on Tuesday, May 24. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and that the Senate then return to executive session and resume consideration of the nomination of Priscilla Owen to the Fifth Circuit Court of Appeals; provided that the time until 11:40 a.m. be divided equally between the leaders or their designees, and the time from 11:40 a.m. to 12 noon be equally divided between the two leaders; provided further that notwithstanding provisions of rule XXII, at 12 noon, the Senate proceed to the cloture vote on the Owen nomination, with the live quorum waived.

I further ask unanimous consent that the Senate recess from 12:30 p.m. until 2:15 p.m. for the weekly party luncheons.

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

PROGRAM

Mr. ALLARD. Mr. President, tomorrow, the Senate will resume consideration of the nomination of Priscilla Owen to be a U.S. circuit judge for the Fifth Circuit Court of Appeals. At 12 noon, we will proceed to the cloture vote on the Owen nomination, and that will be the first vote of the day. Given the events of the day, it is expected cloture will be invoked on this well-qualified nominee. We have had 4 days of substantive debate on the nomination. It is our hope that once cloture is invoked, we can quickly move to a vote on confirmation.

ORDER FOR ADJOURNMENT

Mr. ALLARD. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order, following the remarks of Senator HARKIN for up to 15 minutes, Senator BOXER for up to 15 minutes, Senator LEAHY; provided, that Senator KYL be also recognized prior to adjournment.

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

Mr. ALLARD. I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I ask unanimous consent that Senator LEAHY, because of his time schedule, speak prior to my statement, and I still be allowed my 15 minutes and Senator BOXER still be allowed her 15 minutes.

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

The Senator from Vermont.

Mr. LEAHY. Mr. President, I thank the Senator from Iowa for his courtesy. I apologize to the Senator from Colorado. I was distracted when he was giving the order to put us out. I should have realized, after 31 years here, when we are on autopilot. And, of course, the Senator was following precisely the agreement as usually somebody does in wrapup that has been worked out between the Democratic leader and the Republican leader and was totally within his rights. I apologize for interrupting.

Mr. ALLARD. I thank the Senator from Vermont for speaking up. We certainly did not want to shortchange on his right to speak. I was glad to see when we got to the last part of the iteration we had the Senator from Vermont included.

Mr. LEAHY. Mr. President, the distinguished Senator has always been protective of the rights of Members of both sides.

JUDICIAL NOMINEES

Mr. LEAHY. Mr. President, we have other Senators who wish to speak.

There has been a lot that has gone on here tonight. I will speak further on this tomorrow. I thought on this occasion it would not be inappropriate to quote again from ''Profiles in Courage.''

At the end of that book, President Kennedy included a eulogy. Interestingly enough, it was a eulogy in 1866 upon the death of Senator Solomon Foot, a predecessor of mine from Vermont. The eulogy for Senator Foot of Vermont was delivered by Senator William Pitt Fessenden of Maine. Senator Fessenden, like Senator Foot, was a Republican—in fact, all Senators from Vermont, every single Senator from Vermont, with the exception of one, has been a Republican. But Senator Fessenden would soon thereafter vote against his party to acquit President Andrew Johnson of charges of impeachment.

Senator Fessenden was the first of seven courageous Republican Senators who voted his conscience before his country rather than party. Despite the pressures and whatever the consequences, he exercised his judgment as a Senator, consistent with his oath to do impartial justice.

Let me just read what he said after the death of Senator Foot of Vermont:

When, Mr. President, a man becomes a member of this body, he cannot even dream of the ordeal to which he cannot fail to be exposed;

of how much courage he must possess to resist the temptations which daily beset him;

of that sensitive shrinking from undeserved censure which he must learn to control;

of the ever-recurring contest between a natural desire for public appropriation and a sense of public duty;

of the load of injustice he must be content to bear, even from those who should be his friends;

the imputations of his motives;

the sneers and sarcasms of inmorance malice;

all the manifold injuries which partisan or private malignity, disappointed of its objects, may shower upon his unprotected head.

All this, Mr. President, if he retained his integrity, he must learn to bear unmoved, and walk steadily onward in the path of duty, sustained only by the reflection that time may do him justice, or if not, that after all his individual hopes and aspirations, and even his name among men, should be of little account to him when weighed in the balance against the welfare of a people of whose destiny he is a constituted guardian and defender.

A number of our Senate colleagues today from both parties stood up to keep the Senate from making a terrible, an irreparable mistake—terrible and irreparable because, for the first time in over 200 years, the Senate would no longer have a check and balance. For the first time in over 200 years, the Senate would no longer be able to protect the rights of the minorities.

I applaud them for this. As I said, I will speak more tomorrow. I thank my distinguished colleague and dear friend from Iowa for letting me go ahead.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I am very pleased to hear about the bipartisan agreement that preserves minority rights in the Senate, that preserves the right of the minority to extended debate, that preserves the checks and balances that our Founding Fathers prized so highly.

My hope now is that after weeks of distraction, after weeks during which the majority leader threatened the nuclear option, to sort of blow up the Senate, now we hopefully can return to the people's business.

I thank the 14 Senators, I guess 7 Democrats and 7 Republicans, who worked so hard to bring us back from the brink and get us away from this nuclear option that really would have destroyed the smooth functioning of the Senate.

But we have been talking for weeks and weeks about this, about this nuclear option. People I have talked to have been absolutely astonished that the Senate has been distracted by these nuclear option threats. They keep asking me why haven't we been addressing the real concerns that keep Americans up at night: worrying about their jobs, their health care and their families' future. Why is the Senate spending its time on this narrow ideological agenda and ignoring the people's business?

The majority leader, the Senator from Tennessee, had planned to keep the Senate up through the night tonight as a prelude to detonating this nuclear option.

In anticipation of that, early yesterday, on my Senate Web site and through the news outlets, I informed the people of my State of Iowa I would be coming to the floor late this evening to share their concerns and their worries, the things that keep them up at night.

The response has been overwhelming. I said that my Des Moines office and my Washington offices would be open all night, answering calls and receiving e-mails. I encouraged Iowans to keep the calls and e-mails coming all through the night and to let me know what keeps them up at night. I had planned to spend as much time as possible answering the phones myself.

Since noon today, we have received over 600 e-mails and 500 phone calls. I thank all the Iowans who contacted me by e-mail or by phone. I had planned to read as many as I could tonight, during the long night that we were supposed to be here. Obviously, that is not going to happen. But we have been inundated with messages from Iowans telling us what they want the Senate to stay up all night working on. Believe me, detonating the nuclear option is not on their list.

To the contrary, my fellow Iowans are deeply concerned about ''kitchen table'' issues such as health care, job security, pension security, education, increasing the minimum wage, the war in Iraq, the price of gasoline.

Sherry, in Sioux City e-mailed me to make two points.

One, I do not like the GOP violating the rules and violating the Founding Fathers' checks and balances; and, two, I am retiring from teaching tomorrow and I am afraid most of my students will not be in good enough jobs to afford their own health care. Plus I myself must wait 24 months for health coverage because I don't qualify for Medicare.

Linda in Des Moines sent the following e-mail:

Mr. Harkin, thank you for asking. I will tell you what keeps me up at night. The fear I will get sick and not be able to work. I have to work some overtime every week right now to just get by. I have not been able to accumulate a savings to fall back on. What with more health care costs my employer is putting on me, higher gas prices, higher grocery costs. I have to run as fast as I can to just barely keep up.

Patricia in West Branch, IA, sent this e-mail:

I work two jobs, my husband 3, to send our son to college. We all need some relief from this worry. Education, health care, the poor who do not have homes or food. So let's worry about the real issues here.

Patty in Olin, IA, e-mailed me with what keeps her up at night:

Two Things: Gas and College 1.

Shirley in Eldridge, IA, e-mailed me with the following brief message:

I am bothered about rising health costs for retirees. I am concerned about the rising cost of gasoline and the rising cost of a college education. I am concerned that my grandchildren may not have the same opportunities that I and my children had to obtain an advanced degree.

This is the message that Al in Hinton, IA, sent me:

Health Insurance—I am seeing many educators who want to retire, some who need to retire, however they cannot, due to the cost of health care. They have worked 30 years and must keep working until age 65. After 30 years in the classroom, an individual has earned the right to retire. Please address health care, this is the National Crisis.

Sara in Anamosa, IA, shared a broad range of worries:

Dear Senator Harkin: I am a teacher who is concerned that American High Schools are not given the funds needed to train our students to compete in a global economy.

Sue, a librarian in Iowa City, told me:

I am concerned about the rising cost of a college education. . . .I worry that the divide between those who can afford college and those who cannot is growing ever wider. I don't think our economy will be well-served by making an education an opportunity that only the wealthy can afford.

Susan from Des Moines send me the following e-mail:

The fear that the Social Security system is going to be changed keeps me up at night. . . . My worry is not just for myself but everyone affected by the proposed revisions in the social security system.

Barbara from Mount Vernon, IA, had this to say:

What keeps me up at night is how I'm going to pay my bills and still provide care

for the kids. I serve at my job at Four Oaks, Inc. I'm a youth counselor at 4 Oaks serving children in a residential setting who have been abused or neglected. Some of the needs these children are the need for deep relationships with adults. With the high turnover in facilities such as mine, children go through hardship once again. Staff needs to move on to other fields where the pay will meet their day to day obligations. As a supervisor I do stay up at night worrying about the children and my own financial needs.

Shannon from Garwin, Iowa, sent me this message:

Dear Senator Harkin. I can easily tell you what keeps me up at night. Thank you for asking. I am a 30 year old Registered Nurse. . . . I have a very expensive health insurance plan that goes up every year. It does not cover my family, me only. My husband works as an electrician and has no insurance. Our children have health insurance that we pay for out of pocket. We have no dental. We worry constantly. Save for college? That is a joke in its self.

Ron, in La Mars, IA, said:

We need an aggressive program for alternative fuels. If we do not break away from foreign oil we will be bogged down in the Middle East forever.

Ann, an elementary school principal in Waukon, IA, had this to say:

There are many things that keep me up at night. Among these concerns are the rising meth problem in Iowa. The reduction of services to families through medicaid cuts and cuts in the department of human services. I have families who fear their foodstamps will be cut.

Here is Fabian from Bellevue, IA:

Collapse of the general economy in industrial and manufacturing sectors.

Patrick from Sioux City, IA:

We need to reform the health care and transportation systems in America.

Kim of Cresco, IA:

We need to be more focused on education in America than the filibuster.

Here is Sandra, who e-mailed me:

Dear Senator Harkin, these are the things that keep me up at night:

1. Social security—I think we just need to improve on the program that exists. I know that my husband and I and our children will not have the needed money to start our own savings account. Our children have good jobs, but there is no way they will be able to set-aside enough needed money to retire on.

2. As a health professional, I can tell you first-hand what is happening to people who cannot afford to pay health insurance and also, prescription drugs needed. I treat the results of that each day. Each month, we personally pay, out of our own pocket, nearly $2000.00 for insurance and drugs. Our drugs are for diabetes and prostate problems, something we cannot help. That is $24,0000 a year, and farming is not that profitable. Something has got to change or we will not survive!

This is a comment from George:

I am 62 years old. I had surgery for prostate cancer 4 years ago. Post op I can not afford $1000 month for health insurance and have not seen a doctor in 3 years for follow up procedures. I am sinking into depression (and debt) and see no way out . . . .

Doris, from Wellman said:

We need to raise the minimum wage.

Here is Ann, another person who e-mailed me:

I have families without jobs or such low-paying jobs they work several to make ends meet. Children are left unsupervised. How about increasing the minimum wage?

Mr. President, this is what Iowans are telling me, in 600 plus e-mails, and over 500 phone calls today. This is what they want the Senate working on. And we spent all this time talking about a filibuster, a nuclear option: This judge, that judge. People must wonder if we have become totally dysfunctional around here, so I am hopeful that, with this agreement, we are going to see a new day. I am hopeful that the majority leader will now turn his leadership and his energy to turn the Senate to the people's business.

Let's have a bill out here to raise the minimum wage and let's get an up-or-down vote on it. Let's get the Energy bill here on the floor so we can amend it and then have an up-or-down vote. Let's do something about health care. Why don't we extend the Federal Employees Health Benefit Program that all of us have—why don't we extend it to small businesses all over America so they, too, can have the same kind of health coverage that we in the Congress have?

How about pension security? Let's get legislation on the floor so we do not have more United Airlines, next maybe all the other airlines, perhaps even General Motors has now said they may not be able to meet their pension guarantees.

Education funding? How many times do we hear from our schools that we are not funding No Child Left Behind, that the guarantee we made almost 30 years ago now that we were going to fund the Individuals with Disabilities Education Act at 40 percent of the cost, now we are still at less than 20 percent?

This is what the vast majority of my Iowans say we should be working on. So I hope a new day is here. I hope, with this agreement that was forged, we can leave that past behind us and that we can now bring this type of legislation to the floor. Forget about the nuclear option and get on with the people's business here in the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I understand that I have 15 minutes. I might take 10 or I might want to take another 10 in addition. I ask unanimous consent I may speak up to 25 minutes.

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

Mrs. BOXER. What I want to say, before my friend from Iowa leaves, thank you so much, Senator HARKIN. I think what you addressed in your remarks is something that has been missing from this debate, and that is what the people are telling us back home. They, in my opinion, do not want to see the filibuster go away because they understand it is a very important part of the American fabric of politics for more than 200 years. They also understand, without a doubt, that the issues that concern their everyday lives are just not being addressed. My friend laid them out beautifully.

In Iowa, CA, our people are feeling the same things. They are struggling with high gas prices, lack of health care, worried about the cost of health care, and education. They are absolutely frightened about the President's attack on Social Security. They want us to fight back. They want us to solve the Social Security long-range problem without reducing benefits, without taking away Social Security, and not turning Social Security into a guaranteed gamble. These are issues that are key. Transportation is another issue my friend mentioned. I thank Senator HARKIN for his contribution tonight.

I also thank my colleagues on both sides of the aisle who took this Senate back from a cliff where there were very treacherous waters below. They turned us away from a power grab by the majority, from a move that was clearly an abuse of power. They called it themselves, those who wanted this option, the nuclear option. They were right to call it the nuclear option because it would have been so devastating, not only to the Senate, not only to the people of this country, but to the foundation of our Republic—the checks and balances which were put into this system by our brilliant Founders who came together. As Senator BYRD reminded us tonight that Benjamin Franklin said: ''I've given you a Republic, if you can keep it.''

That is the key. Can we keep the Republic? We do not keep a representative democracy such as this if we allow one side, whichever side that is, to trample upon the rights of the other. What happens is you wind up trampling on the rights of the American people themselves.

The other day I was making a mental note of who supported the nuclear option, taking away the right of any Senator to filibuster a judicial nominee, who in this body supported that, versus those who thought it ought to be sustained and we ought to have that right. When we add up the number of people we represent on each side, the senators on the side that wanted to keep the filibuster represented far more people, millions more people. So this was a moment in time when the rights of so many of those people would have been taken away, just as the rights of their Senators would be taken away.

Again, I thank my colleagues on both sides who worked so hard to bring us back from this abuse of power. I hope that it means forever. I personally hope we never hear the words ''nuclear option'' again. It would be best for this country if we allowed the 200-year history plus of this country to sustain us.

The filibuster started in 1806. This is the filibuster's 200th year. It has been used sparingly. Let's look at how many times we have blocked President Bush's judges. I hope I don't have to bring this chart out again. I hope we

are done with this. But for tonight we need to summarize where we have been.

Mr. President, 208 to 10 is what caused all the angst by the Republicans. They wanted to take away our right to block 5 percent of George Bush's judges. As I have said at home in many meetings, if any one of you got 95 percent of what you wanted in your life, you would be smiling. I would be—unless I wanted everything and I thought I knew best and I was the smartest. We all go through those times when we think that way but one would hope at this point when we get here, after working a little bit here in the Senate—and I admit I didn't see it right in the beginning—we come to respect rights of the minority. The filibuster has been used rarely.

I also want to discuss what I call the filibuster fantasy world that cropped up in these debates. I will show a chart I was going to use in the debate which, thankfully, we do not have to have. But for the purposes of history, we ought to look at what was shaping up.

First of all, every day we came to the Senate we heard Republicans say: The Democrats started the filibusters on judges. That is funny, in a way, because the opposite is true. In modern times, the use of the filibuster began with Abe Fortas in the 1960s. I looked at a headline in the Washington Post from the 1960s. It said: ''Filibuster Launched Against Fortas.'' This was President Johnson's, a Democrat, nominee to the Supreme Court. The first paragraph of that Post article said:

The Republicans launched an all-out filibuster against Abe Fortas.

That is a fact. The filibuster fantasy says that Democrats started the filibusters on judges.

The second fantasy we have heard repeatedly recently from Republicans is Republicans have never filibustered judges.

That one I can state from personal experience does not hold up—I don't have to rely on newspapers; I don't have to rely on hearsay; I don't have to rely on folk tales. I was here and I saw the Republican filibuster against two terrific people from California, Marsha Berzon and Richard Paez. Guess what? That was not in the 1800s or the 1960s. It was the year 2000. And do Members know who voted to continue to filibuster Richard Paez? BILL FRIST, the good doctor, who says he wants to take away our rights. Tonight he says he is backing off. He has no choice but to back off because, luckily, we had enough people from both sides of the aisle to pull us back from this precipice. BILL FRIST himself filibustered Richard Paez. Pretty amazing for him to say that we should never filibuster when he filibustered, when his Republican colleagues are on the record saying they were proud to filibuster and it is their constitutional right to filibuster.

So you can't rewrite the record book. We have a CONGRESSIONAL RECORD. We had a vote to end the filibuster on Richard Paez, a wonderful candidate put up by President Clinton. BILL FRIST voted to filibuster that man. Yet he says if we Democrats vote to filibuster somebody, and I am quoting him, ''we are behaving badly.'' He said that four times tonight. Bad behavior.

This is not a kindergarten class. This is not even high school. This is the Senate. When I decide to filibuster a judge, which is my prerogative, and will remain so, I am happy to say under this good agreement, I am not behaving badly, I am behaving as a Senator who has looked at this nominee, who has seen that this nominee is dangerous to America, who has seen that this nominee is extremist and will hurt the American families who I represent. Am I not behaving as a Senator? No, I am not behaving badly.

Let's look at the other Republican filibuster fantasies. They say all judges should get an up-or-down vote. Do you know how many votes Priscilla Owen had so far? Four. She is about to have the fifth. Janice Rogers Brown has had one. Clinton judges, 61 of them, most of them never made it out of committee. Most of them were pocket filibustered. They never had an up-or-down vote. Every one of George Bush's nominees have had an up-or-down vote. They may not have made the 60 votes they needed to make because for 200 years-plus the Senate has had the right for extended debate. These people could not get the 60 votes.

Why couldn't they get 60 votes? Because these nominees are so extreme. I will talk about one of them in a minute and tell Members why because it is an extraordinary circumstance. The President sent down a nominee who is out of the mainstream.

First, I want to tell you a story about ORRIN HATCH who was the Republican chairman of the Judiciary Committee for a time when Bill Clinton was President. ORRIN HATCH called me into his office and he said: Senator BOXER, if you want to get a vote on a judge from California, don't send me anyone from the liberal side. Send me mainstream judges, Senator. Send me mainstream judges and we will be OK. We had a great chat.

I said: Well, I am not so sure; maybe sometimes you want to have someone a little more liberal.

He said: Don't discuss it with me. Mainstream judges. That's it.

So for ORRIN HATCH, when Bill Clinton was President, he had a litmus test. Mainstream judges. I didn't think it was that unreasonable. Where is the litmus test now on mainstream judges? It has gone out the windows.

Alberto Gonzales himself said that Priscilla Owen's opinions were ''unconscionable judicial activism''. So we say to the President of the United States of America: Do what Bill Clinton did, send us mainstream judges and we do not have any problem with that. We will walk down this aisle proudly. Frankly, we did it 208 times. I am not sure this President has any cause for alarm. He got 95 percent of his judges, but he wants it all, after all, he is George Bush. We had a King George. We had a king. Now we want a President of all the people. We do not want a king. We want him to govern. We do not want him to rule. There is a difference.

This wonderful agreement sustains our right in the future to step out if each of us determines there is a reason to filibuster.

Now, again, the filibuster fantasy is that Priscilla Owen and Janice Rogers Brown have never had a vote in the Senate. I have already stated, they just cannot make the 60-vote cut because they are so out of the mainstream.

Then there is this issue the Republicans have now said they want to change from the nuclear option to the constitutional option. Nothing in the Constitution prohibits filibusters. We know that. The Constitution says the Senate shall writes its own rules, which brings me to another point.

Here is something I want the American people to know. I want my colleagues to understand. The Constitution says the Senate shall write its own rules, and Rule XXII of the Senate says if you want to change a rule of the Senate, folks, you have to get 67 votes to move to change the rules. It is important to do this when you change the rules of the Senate. The Constitution says we shall write our own rules. But the Senate rules do not envision a small group of Senators changing the rules. It ensures that a large group of Senators must approve of changing the Senate rules. If you have to change the rules, this is what you have to have 67 votes to close off debate for a rule change.

Guess what? My Republican friends who brought us the nuclear option knew they could not get 67 votes to destroy the system of checks and balances, to change our government as we have known it for so many years. They could not get 67 votes, not even close. They even had to have DICK CHENEY in the chair for this vote, folks, because it could be that close; 51, maybe. What do they do? How are they going to get around the rules of the Senate? Well, not to worry about the rules of the Senate. We will make a precedent.

The Parliamentarian will say that Senators have a right to filibuster, absolutely. The Parliamentarian will say we need 67 votes to change the rules of the Senate, but DICK CHENEY, sitting in the chair as a rubberstamp for this administration, as part of it, will say: I disagree with the Parliamentarian. We can change this right now by declaring by fiat no more filibusters of judges ever again. That is the new precedent.

I would ask my friends, what kind of an example is this to set for our children? Let's say our children go to school, and they know to get an 80 percent on a test is a B, and they get a 75 percent. Let's say they then go to their teacher and say: Oh, I got a 75 percent,

and I don't want to come home with a C. Can you just change the rules today for me and make it an A? Change the rules. Or if you are serving on a jury, and everyone has to agree on the guilt of someone, but, oh, they decide on this day, only 9 of the 12 have to agree.

I could go on and on with examples like this. The fact is, it is a terrible precedent for our children to see grown people in the Senate change more than 200 years of Senate history by going around the rules of the Senate.

I was here when I was just a freshman. I was annoyed with the filibuster. I was really annoyed. The Republicans were filibustering all the time. I thought it was terrible. One of my colleagues said: Let's change the rules.

I said: Great. I think President Clinton ought to get his whole agenda through. I am tired of hearing about what I don't agree with.

I was wrong. I did not know I was wrong. I was wrong. But one thing I did, I did not try to do it with some slipshod, fake precedent change. I tried to do it by getting 67 votes. We did not even come near 20 because it is a losing proposition.

The nuclear option would have been a disaster. And I have to tell you, out in the countryside, the polling is showing that the people are sick of this place. They do not understand what we are doing. We are irrelevant to them. And indeed it is no wonder we are viewed this way given all the effort we have expended on this nuclear option business. It simply fits into what the people have been saying for a while, that we just do not get it.

They are paying these gas prices at the pump, and what are we doing? Nothing. The President could release some strategic petroleum reserves. Oh, no, the first President in modern times never to do that. And, yes, gas is going down a few pennies, I am happy about that. But, believe you me, it is not going down far enough. What are we doing about that? Nothing that I could see. No, no, we are wasting our time on the nuclear option because the President wanted 100 percent of what he asked for. He did not want 95 percent. He wanted 100 percent of his judges.

Another President once tried to pack the courts, and his name was Franklin Roosevelt, a great Democratic President. Do you know what? When Franklin Roosevelt was in office, there were 74 Democrats in the Senate. Franklin Roosevelt was annoyed. He wanted 100 percent. He got 60 percent in the election, a lot more than this President did. He had 74 Democratic Senators. And he wanted to pack the courts. He wanted to double the number of Supreme Court Justices, put his people in play, have the Democrats in the Senate rubberstamp and make sure that his New Deal would live forever more.

Do you know what stopped him? Democratic Senators. They said: Mr. President, we admire you. We respect you. But we know it is wrong to pack the courts. It is not right. We want an independent judiciary. Let us not change the rules in the middle of the game.

I was so hopeful that we would have some Republican Senators this time who had a sense of history, who understood better than I did when I was new here that the filibuster protects not only the minority but protects the American people.

I want to explain to you, in my final moments, why it is so important that we keep the filibuster. In this deal, three judges are going to go through, are going to have a simple majority vote. One of them is Janice Rogers Brown. Now, I am not thrilled about this because I think her record is so far out of the mainstream that she will hurt the American people. But I do not want to just put out rhetoric. I want to show you Janice Rogers Brown and some of the times in which Janice Rogers Brown, as a judge on the California Supreme Court, stood alone in her dissents. So when you ask me: Senator BOXER, why is it that you filibustered Janice Rogers Brown—and, by the way, I support this deal. Even though she will only need 51 votes, I still support the deal. But I have to tell you, I am going to fight to deprive her of those 51 votes, if I can. She stood alone on a court of six Republicans and one Democrat. She is a Republican. She stood alone 31 times because the court was not rightwing enough for her.

Let's look at some of the times Janice Rogers Brown stood alone, how way out of the mainstream to the extreme she is.

She said a manager could use racial slurs against his Latino employees. Can you imagine a decision like that? It is OK to use racial slurs against Latino employees. Janice Rogers Brown said that in Aguilar v. Avis Rental Car.

She is bad on first amendment rights. She argued that a message sent by an employee to coworkers criticizing a company's employment practices was not protected by the free speech first amendment, but she has been very protective of corporate speech. So she walks away from the individual but supports the right of corporate speech.

If you want individual rights protected, this is not your person. Here is one: She protects companies, not shareholders.

She is bad for rape victims. She was the only member of the court to vote to overturn the conviction of the rapist of a 17-year-old girl because she believed the victim gave mixed messages to the rapist.

Now, I just want to say something here. Every one of us here would come to the defense of a 17-year-old rape victim. And on a court of six Republicans and one Democrat, only one person stood alone, stood by the rapist, Janice Rogers Brown. So when I say I do not want her to be promoted, you can see why.

Janice Rogers Brown is bad for children and families. She was the only member of the court to oppose an effort to stop the sale of cigarettes to children. Now, I do not know how you all feel about this, but this is 2005, and we know what an addiction to cigarettes can be. We do not want our kids being able to purchase cigarettes in stores. Janice Rogers Brown stood alone in Stop Youth Addiction v. Lucky Stores. She stood alone on a court of six Republicans, one Democrat. She stood alone and would not protect our children from the sale of tobacco.

Senior citizens: the only member of the court to find that a 60-year-old woman who was fired from her hospital job could not sue. This is what she said in this dissent, where she stood alone on a court of six Republicans and one Democrat. She said:

> Discrimination based on age does not mark its victims with a stigma of inferiority and second class citizenship.

Really? Really? A 60-year-old woman was fired from her hospital job on age discrimination. State and Federal law prohibit age discrimination. Janice Rogers Brown stood alone and said there is no stigma. Someone fires you because you are old, and there is no stigma.

But that is the least of it. Janice Rogers Brown——

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. BOXER. Mr. President, I ask unanimous consent for 1 minute to close.

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

Mrs. BOXER. Thank you, I say to my friend from Alabama.

Janice Rogers Brown has an attitude toward seniors which is extraordinary. She calls senior citizens cannibals. She says they are militant and they cannibalize their grandchildren by getting free stuff from the Government. I have to tell you, this woman is so far out of the mainstream, this is just a touch of the debate that is to hit the Senate floor.

So when we stand up as Democrats and say no to Janice Rogers Brown, we have a reason. It is not about the Senate. It is not about partisanship. It is about the American people and the American family.

Thank you, Mr. President. And I thank those Senators on both sides of the aisle for bringing us back from this precipice.

I yield the floor.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Alabama.

Mr. SESSIONS. Mr. President, I ask unanimous consent that I may be allowed to speak for up to 20 minutes in morning business.

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

Mr. SESSIONS. Mr. President, I would ask the Senator, before she leaves—I notice the debates over filibusters have seen people maybe flip and change their views—but I would ask her if it is not true that she just said a few moments ago that we must

keep the filibuster, but in 1995 the Senator was one of 19 Senators who voted to eliminate it entirely, not even just against judges but against the whole legislative calendar also?

Mrs. BOXER. If the Senator heard me speak, I spoke quite a while about that. I said how wrong I was, how green I was, how I was frustrated with the Republicans blocking things. And I was dead wrong. I also said that what we tried to do is change the rules, which takes 67 votes. We did not go in the dead of night to try and get it done. So, yes, the Senator is right. I was dead wrong. Tough to admit that, but I have been very open about that since the beginning of the debate.

Mr. SESSIONS. That is good. And I apologize for not being here and hearing your remarks to begin with. I would not have asked that.

Mrs. BOXER. I don't blame the Senator.

Mr. SESSIONS. Mr. President, I want to share a few thoughts at this time. There is no doubt that there has not been maintained in this body a successful filibuster against a President's nominee for a judicial office until this last Congress when the Democrats changed the ground rules, as they stated they were going to do, and commenced systematic leadership-led filibusters against some of the finest nominees we have ever had.

People say: Well, you people in the Senate are upset, and you are fractious, and there is too much of this, and you guys need to get together. But it was not the Republicans who started filibustering judges. And it was a historic change in our procedures when the Democrats started doing it. It caused great pain and anguish.

When you have somebody as fine as Judge Bill Pryor, who I know, from Alabama, the editor and chief of the Tulane Law Review, a man of incredible principle and intelligence and ability, and who always wants to do the right thing, to hear him trashed and demeaned really hurt me.

I am so pleased to hear today that those who have reached the compromise have said that we will give Bill Pryor an up-or-down vote. He had a majority of the Senate for him before, a bipartisan majority. At least two Democrats voted for giving him an up-or-down vote and would have voted for him, I am sure, if he had gotten that up-or-down vote. We would have had that done a long time ago except for having, for the first time in history, a systematic tactic of blocking those nominees from an up-or-down vote through the use of the filibuster on judges.

Priscilla Owen made the highest possible score on the Texas bar exam, got an 84-percent vote in Texas, was endorsed by every newspaper in Texas—a brilliant, successful private practitioner—and they have held her up for over 4 years. The only thing I can see that would justify holding her up was that she is so capable, so talented, that she would have been on a short list for the Supreme Court. She should not have been blocked and denied the right to have an up-or-down vote.

Justice Janice Rogers Brown from California was on the ballot a few years ago with four other judges in California. She got the highest vote in the California ballot, 74 percent of the vote on the California ballot. California is not a rightwing State. She got three-fourths of the vote. And they say she is an extremist? Not fair. It is just not fair to say that about these nominees.

It was said by the Senator from California that they did not get 60 votes, they did not make the cut. When has 60 votes been the cut? The vote, historically, since the founding of this Republic, is a majority vote. Lets look at that. The Constitution says that the Congress shall advise and consent on treaties, provided two-thirds agree, and shall advise and consent on judges and other nominees.

Since the founding of the Republic, we have understood that there was a two-thirds supermajority for ratification and advice and consent on treaties and a majority vote for judges. That is what we have done. That is what we have always done. But there was a conscious decision on behalf of the leadership, unfortunately, of the Democratic Party in the last Congress to systematically filibuster some of the best nominees ever submitted to the Senate. It has been very painful.

And to justify that, they have come up with bases to attack them that really go beyond the pale. I talked to a reporter recently of a major publication, a nationwide publication. People would recognize his name if I mentioned it. I talked about why I thought the nominees had been unfairly attacked, their records distorted and taken out of context, and they really were unfairly misrepresenting their statements, opinions and actions. She said: Well, that's politics, isn't it?

Are we in a Senate now where because somebody is on a different side of the aisle, have we gotten so low that we can just distort somebody's record—a person, a human being who is trying to serve their country—we can do that to them? I don't think that is right. I don't think we should do it. But I do believe we are sliding into that and have been doing so.

For example, it was said recently by Senator BOXER that Judge Gonzales—now Attorney General of the United States—said that Priscilla Owen was an unconscionable activist. He did not say that about her. He did not. He has written a letter to say he did not. He testified under oath at a Judiciary hearing and said he did not. What he said was he reached a certain conclusion about what the legislature meant when they passed a parental notification statute, and based on that, he himself, he said, would have been an unconscionable activist if he voted other than to say that the child did not have to notify her parents. Other members of the court reached a different conclusion about what the legislature meant with the statute, and he did not accuse anyone else of being an unconscionable activist. They have been running ads on television saying that as if it were a fact. It is not. Surely, we should have the decency not to do those kinds of things.

An allegation just made about Janice Rogers Brown was that she criticized the free speech of an employee for criticizing their boss. That is not exactly what the case was. What the facts were—that employee sent out 200,000 e-mails on the boss's computer system attacking the boss and the company. It was a disgruntled employee. How much do you have to take, clogging up the system with spam? One of the most liberal justices on the California Supreme Court joined with her in that view. That is not an extreme position. She wasn't saying a person could not criticize her boss.

Another comment that was really troubling to me—and I have to say it because Janice Rogers Brown, although very firmly established and highly successful in California, grew up in Alabama, a small town not too far from where I grew up. She left Alabama as a young teenager and went to California and ended up going to UCLA Law School and being awarded the distinguished graduate award there. She is a wonderful person. I have taken an interest in her history. She grew up in discrimination in the South. That is one reason they left. A sharecropper's daughter, she was not raised in an environment where African Americans were treated equally. That is a fact. They say now that she said it is OK to use racial slurs against Latinos. You have heard that comment. She said that Janice Rogers Brown said that.

That is not what she said. That is absolutely not the facts of that case. It is really sad to hear that said, and the facts would demonstrate that that claim against her is a totally unfounded charge.

Also, with regard to her position on the Supreme Court of California, she wrote more majority opinions in the year 2002 than any other judge on the court. When a majority reaches a view about the case, and a majority on the court decides how it should come out, they appoint someone to write the opinion for the majority. She wrote more majority opinions than any other justice on the court. How could she be out of the mainstream of the California court? I felt really compelled to make some comments about her and her record.

Mr. President, I will conclude tonight by once again recalling that when the Republicans had the majority in 1998, right after I came to the Senate in 1997, President Clinton was nominating judges. Two of them were very activist judge nominees for the Ninth Circuit Court of Appeals, the most activist court in the United States—the California, West Coast Court of Appeals. It

had been reversed 27 out of 28 times by the U.S. Supreme Court, I believe, the year before that and consistently was the most reversed court in America. Those two nominees, Berzon and Paez, which I strongly opposed—and I think a review of their record would show they have been activist and should not have been confirmed. But Orrin Hatch said in our Republican conference: No, let's don't filibuster judges; that is wrong.

I was a new Member of the Senate, as the Senator from California said she was. He stepped up and said: Don't filibuster. We need to give them and up-or-down vote. The then-majority leader, TRENT LOTT, moved for cloture to give them an up-or-down vote. I voted to give Berzon and Paez an up-or-down vote, and we did that. We invoked cloture, brought them up. The Republican majority brought up the Clinton nominees, and we voted them up. They were both confirmed, and they are both on the bench today.

Our record was one that rejected filibusters. Now, what happened after all of this occurred? It was a huge alteration of the Senate's tradition and, I think, the constitutional intent. I think the Constitution is clear that a majority is what we were looking for. So we were faced with a difficult decision of what to do and how to handle it.

I compliment Senator BILL FRIST, the majority leader of the Senate. He systematically raised this issue with the leadership on the other side. He provided every opportunity to debate these nominees so that nobody could say they didn't have a full opportunity to debate. He researched the history of the Senate, and he presented positions on it and why the filibuster on judicial nominees was against our history. He urged us to reach an accord and compromise. All we heard was no, no, no, you are giving a warm kiss to the far right, you are taking steps that are extreme, you are approving extreme nominees, people who should not be on the bench, and we are not going to compromise and we are not going to talk to you.

After considerable effort and determination and commitment to principle, Senator FRIST moved us into a position to execute the constitutional option, also referred to as the nuclear option. It has been utilized, as he demonstrated, many times by majority leaders in the past. It is not something that should be done lightly, but it is certainly an approved historical technique that has been used in this Senate. As a result of that, and the fact that they were facing a challenge, I think it was at that point we began to have movement on the other side, and they realized this deal was not going to continue as it was and that, under the leadership of Senator FRIST, we were not going to continue this unprecedented, unhistorical action of filibustering judicial nominees.

So it was out of that that we had the agreement that was reached today. With that constitutional option hanging over the heads of a number of people, a serious reconsideration took place. I think a number of Senators on the other side have been uneasy about this filibuster. They have not felt comfortable with it, but it was leadership-led and difficult, apparently, for them to not go along. Although, I have to note that Senator Zell Miller and BEN NELSON consistently opposed it and supported the Republican nominees each and every time as they came forward.

So out of all of this, we have reached an accord tonight. It has led to what appears to be a guarantee that three nominees, at least—Priscilla Owen, Janice Rogers Brown, and William Pryor, who is sitting now as a recess appointee on the Eleventh Circuit—will get an up-or-down vote. I believe all three of them will, and should be, rightfully, confirmed as members of the court of appeals of the United States of America. They will serve with great distinction. I am sorry we don't have that same confidence that Judge Saad or Judge Myers will also get a vote. They may or may not, apparently. But we don't have the same confidence from this agreement that they will. I think they deserve an up-or-down vote also. But today's agreement was a big step forward.

Maybe we can go forward now and set aside some of the things of the past, and we will see Members of the other side adhere to the view of those who signed the agreement that a filibuster should not be executed except under extraordinary circumstances. Certainly, that is contrary to the position that they were taking a few months ago and certainly the position being taken last year.

So progress has been made. I salute particularly the majority leader who I believe, through his leadership and consistency, led to this result today. I am thrilled for Judge Pryor and his family because I know him, I respect him, and I know he will be a great judge. I am excited for his future.

Mr. President, seeing no other Senator here, I yield the floor.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:45 a.m. tomorrow.

Thereupon, the Senate, at 10:13 p.m., adjourned until Tuesday, May 24, 2005, at 9:45 a.m.

NOMINATIONS

Executive nominations received by the Senate May 23, 2005:

DEPARTMENT OF EDUCATION

TOME LUCE, OF TEXAS, TO BE ASSISTANT SECRETARY FOR PLANNING, EVALUATION, AND POLICY DEVELOPMENT, DEPARTMENT OF EDUCATION, VICE BRUNO VICTOR MANNO, RESIGNED.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

ARLENE HOLEN, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION FOR A TERM EXPIRING AUGUST 30, 2010, VICE ROBERT H. BEATTY, JR., TERM EXPIRED.

DEPARTMENT OF JUSTICE

ROD J. ROSENSTEIN, OF MARYLAND, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF MARYLAND FOR THE TERM OF FOUR YEARS, VICE THOMAS M. DIBIAGIO.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. ERIC T. OLSON, 0000