DOING THE WILL OF THE PEOPLE

Mr. REID. Madam President, I support the memorandum of understanding. It took the nuclear option off the table. It is gone for our lifetime. We don't have to talk about it anymore. I am disappointed there are still the threats of the nuclear option. Let's move on. We need not go over this, but there were 218 nominees of the President and we turned down 10.

All filibusters are extraordinary. There will be filibusters of judges and of other things. That is what the Senate is all about. That is what the 14 Senators acknowledged. I admire and respect what they did. I am thankful they kept me advised as to what they were doing. It is too bad there were not other opportunities to make a ''deal'' between the majority leader and me.

We have to understand that the Senate needs to operate. I say to my friend, the distinguished majority leader, there was an agreement made on three judges. We feel the merits of those three judges are not good and that we need time to talk about those three judges. We will continue to do that. The rules of the Senate have not been changed. That is what is so good about the agreement of these 14 Senators, who rose above the battle and did the right thing.

I am willing to work with the majority leader. I have said that publicly and privately. But we have to be realistic. Unless we work into next week, we cannot do all these judges. If that is the order—that we are going to work into next week—people should be told that now. We are willing to work within the confines of the rules of the Senate. If cloture is invoked today, the rule is you get 30 hours. We are happy to work on that to shorten it a little bit and to have a vote sometime tomorrow and then go to other matters. I would think we could go to another judge—a controversial judge. We have indicated that the judges from Michigan are not controversial. They were held up on procedural things because of longstanding problems with the Michigan Senators. We would need to debate that for a while.

We are here to work the will of the Senate. Again, I am somewhat disappointed that we still hear threats of nuclear option. That is gone. Let's forget about it. I am happy that one of the things the 14 talked about is having some consultation with the President. I am confident that will work out better for the White House and the Senate. I hope that transpires. We here want to move forward. We have so much that needs to be done.

The distinguished majority leader has talked about things that need to be done, such as the Bolton nomination, which is also controversial. We will be happy to try to work to some degree to make that as easy as possible for everybody. It is a difficult issue. I have spoken to Senator BIDEN early this morning. He has a plan as to what he feels should be done on Bolton. None of this is going to take an hour or two. There are things we have to talk about with Bolton.

As I indicated last night, last night was a good day for the Senate and today is a good day. Let's move forward and work as the Senate feels it should work. There have been no rule changes. We are here to do the will of the people of this country.

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

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

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume executive session to consider the following nomination, which the clerk will report.

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

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 11:40 shall be equally divided between the two leaders or their designees.

The Senator from Alabama is recognized.

Mr. SESSIONS. Madam President, I will say a few things about the compromise that was reached last night. It has a lot of good things in it. I think, first and foremost, it represented a consensus of a group of Senators who would represent the majority, saying that filibusters are not to be routinely utilized in the confirmation process. As a matter of fact, they said only in ''extraordinary circumstances'' should a filibuster be utilized.

This was a rejection of what we have seen for over 2 years in the Senate. It was a movement toward the historical principles of confirmation that I think are very important. I think it is worthy of note that the majority leader, Senator BILL FRIST, who just left the floor, moved so ably on this issue. He spent nearly 2 years studying the history, seeking compromises, working with colleagues on both sides of the aisle, and as of a few weeks ago had, I believe, quite clearly achieved a majority of the Senators who were prepared to exercise the constitutional option to establish the rule that we would not filibuster judicial nominees. We have not had a judicial filibuster in 214 years and we should not have one now. A majority in this Senate was prepared to act to ensure that we would not have one.

It was only at that point that serious discussions began on a compromise and, as a result of those discussions, seven Senators on each side agreed they would act in a certain way and issued the statement they did. It does not reflect the majority of either party, but it does reflect, in my view, the fact that a majority of this Congress does not believe that filibusters are the way to go and should not occur except in extraordinary circumstances.

Frankly, I think that is not the principle we need to adhere to. When President Clinton was President and he sought nominees that he chose for the Federal bench, and people on the Republican side discussed whether a filibuster was appropriate, the Republicans clearly decided no and allowed nominees such as Berzon and Paez to have an up-or-down vote. They were given an up-or-down vote and both were confirmed, even though they were controversial. I think that was significant.

I have to tell you how thrilled I am that Judge Bill Pryor will be able to get an up-or-down vote. He is one of the finest nominees who has come before this body. The hard left groups out there, who have been driving this process, attacked him early on and misrepresented his positions, his character, his integrity, and his legal philosophy. They called him an activist, when he is exactly the opposite of that, and they created a storm and were able to generate a filibuster against him. He had a majority of votes in the Senate, if he could have gotten an up-or-down vote. But he was denied that through the inability of the majority to cut off debate and have a vote.

I am so glad the group of 14 who met and looked at these nominees concluded he was worthy of being able to get a vote up or down. I have to say that has colored my pleasure with the agreement, even though I know some other good judges or nominees were not part of the agreement.

I want to point this out. The minority leader seems to suggest that filibusters are here to stay and they are normal and logical, and get over it and accept it, and that, oh, no, the constitutional option can never be used. That was not in that agreement and that is not what is in the hearts and minds of a majority of the Senators in this body. If this tactic of filibustering is continued to be used in an abusive way, or in a way that frustrates the ability of this Congress to give an up-or-down vote to the fine nominees of President Bush, there has been no waiver of the right to utilize the constitutional option.

As I understand it, even yesterday Senator BYRD, on the Senate floor, admitted the constitutional option is a valid power of the Senate majority. I would say this. It ought not to be abused; it ought not to be used for light or transient reasons. It ought to be used only in the most serious circumstances—the most serious circumstances of the kind we have today when, after 200 years of tradition, 200 years of following the spirit of the Constitution to give judges up-or-down

votes, the Senate is systematically altered as it was in the last Congress. That is why it was brought out, and with the threat of the constitutional option and a majority of Senators who were prepared to support it, a compromise was reached. I believe it is significant.

Finally, I want to note it is exceedingly important that we, as Members of this Senate, understand how judges should be evaluated, how they have basically always been evaluated, except in recent times. How should they be evaluated? They should be evaluated on their judicial philosophy, not their political views or their religious views. There are nominees who have come before this Senate who have demonstrated through a career of practice that they comply with the law, whether they agree with it or not. Some of them are pro-life, some of them are pro-choice, some of them are for big Government, some of them are for smaller Government, some of them are for strong national defense, some of them are not. That is not the test and cannot be the test.

We had one situation that troubled me. I was pleased eventually that this nominee was confirmed. A man and a woman—the man was nominated for judge and had been No. 1 in his law school class. They had written a letter to the members of their church, a Catholic Church in Arkansas, and they discussed their view of marriage in the Christian tradition. They affirmed that and quoted from Scripture. We had persons attack that nominee because they said it somehow elevated a man over a woman. That is not the rich tradition of marriage as was explained in their letter. But it led to that attack. That made starkly clear in my mind what is at stake here. This is the question: Are we to expect that every nominee that comes here has to lay out their personal philosophy, their marital philosophy, their religious beliefs, and we sit and judge them on whether we agree with that?

Is that the way you judge a judge to see if they are qualified: Do I agree with their theology? Do I agree with their political philosophy? Do I agree with their opinion on Franklin Delano Roosevelt? Is that what we do?

We cannot do that. We should not do that. We ought to be pleased that a nominee has cared enough about his or her country to speak out on the issues that come before the country. We ought to be pleased that they have been active and they care and they participate in the great political debate in America. But we ought not say to them, because you said one thing about abortion, and you are pro-life or you are pro-choice, you can never follow the law of the Supreme Court or the Constitution and, therefore, we are not going to allow you to be a judge. We cannot do that. That is a wrong step.

I think that was implicit in this compromise—at least I hope it was. I think it said that judges, such as Judge Bill Pryor who, when asked did if he said abortion was bad, answered: Yes, sir, I do. And when he was asked: Do you still believe it? He said: Yes, sir. I do. He had a record, fortunately, that he could then call on to show that he was prepared to enforce the law whether he agreed with it or not. If he had been in the legislature, he might have voted differently. But as a judge or as attorney general, he had a record on which he could call to show that he enforced the law.

For example, Judge Pryor would certainly have opposed partial-birth abortion, one of the worst possible abortion procedures. But as attorney general in the 1990s, when Alabama passed a partial-birth abortion ban, he wrote every district attorney in the State on his own motion—he did not have to, but he had the power to do so as attorney general—and told them that portions of that bill, with which he probably agreed, were unconstitutional and should not be enforced.

Later, when the Supreme Court of the United States rendered the Stenberg decision that struck down an even larger portion of the foundation of partial-birth abortion statutes that had passed around the country, he wrote another letter to the district attorneys and told them the Alabama statute was unconstitutional.

Does that not prove what we are about here? It is not your personal belief but your commitment to law that counts?

What about the circumstance when he was accused of being too pro-religion? I do not think the facts show an abuse of his power in any way. In fact, he found himself in the very difficult circumstance in Alabama of being the attorney general and having the responsibility to prosecute or present the case against the sitting chief justice of the Alabama Supreme Court who placed the Ten Commandments in the supreme court building. The chief justice had been ordered to remove it by the Federal courts, and he did not remove it. Other judges removed it. Attorney General Bill Pryor presented that case, and Judge Moore was removed from office.

That was a big deal. It was a tough deal. Time after time, he has done that.

Priscilla Owen also is a nominee of the most extraordinary qualifications. She made the highest possible score on the bar exam in Texas. That is a big State and bar exams are not easy. She is a brilliant lawyer, highly successful in the private practice of law in Texas. They encouraged her to run for the supreme court. She did so. She won. The last time she ran, she received 84 percent of the vote in Texas. This is a professional lawyer/jurist, brilliant, hardworking, a woman of great integrity and decency. She has questioned the concept or the idea that judges have a right to go back and reinterpret the meaning of the Constitution or statutes and read into them whatever they like to make them agree with the judge's philosophy. Many today seem to think they are at liberty to do this. In fact, some judges go back and try to twist, bend, stretch the meaning of words to promote agendas in which they believe. Priscilla Owen does not believe in that and has spoken against it.

Her philosophy as a judge reflects restraint, and a dedication to following the law. That is what she has stood for, and she has been criticized roundly as being an extremist—a judge who received 84 percent of the vote and was endorsed by every newspaper in the State.

Judge Priscilla Owen also was rated by the American Bar Association unanimously well qualified, the highest rating they give. This is not an extremist.

What was it here? Outside groups who have made a history of identifying and attacking these nominees have mischaracterized her, just as they did Judge Pryor. Both of these nominees, for example, have tremendous support within their State, tremendous bipartisan support in conference.

That is why I am confident the 14 people who got together and reviewed this situation felt they could not leave her or the other two judges off this list. They just could not deny Janice Rogers Brown, Priscilla Owen, or Judge Bill Pryor an up-or-down vote. They were too decent, had too much of a good record, too many supporters in the African-American community, in the Democratic leadership of their States, and that is why they were given this vote.

I think perhaps we are now moving forward to a new day in confirmations. I hope so. We have been far too bitter in attacking good people. Records have been distorted dishonestly, particularly by outside groups and sometimes that has been picked up by Senators. My Democratic colleagues have outsourced their decisionmaking process at times, I am afraid. They have allowed the People for the American Way and Ralph Neas and the Alliance for Justice, the people who spend their lives digging up dirt, sullying people's reputations, twisting facts, taking cases out of context, taking statements out of context, taking speeches out of context, posturing and painting nominees as things they are absolutely not, to influence their decisions. It is wrong. Hopefully, we are now moving in a better direction.

I am also hopeful that as a result of this agreement, the nomination process in the future will go better. Maybe even issues such as transportation, energy, and defense will go better in this Congress. I hope so. I will try to do my part.

I want to say one thing, the constitutional option has not been removed from the table. We cannot allow filibusters to come back and be abused. We absolutely cannot. The majority should never allow that historic change

to occur while they have the ability to resist and that ability still exists. I believe the majority leader, BILL FRIST, is correct in that analysis. He has stated the ideals of this Senate. He has reminded us of the history and traditions of the Senate. He has reminded us that Republicans were faithful to that tradition and the Democrats need to be, too. So I hope we will be able to move forward with the consideration of more and more nominees as President Bush goes forward in his term, and that as we do so, they will be given a fair hearing. I hope that Senators on both sides of the aisle will look at the facts and allegations about nominees to make sure those are truthful, accurate, and fair characterizations of them, and not mischaracterizations, not distortions, not misrepresentations of what they are and what they have done. If we do that, we are going to be OK.

Let me say this about President Bush. He has gone to the American people. He has stated his case to them. He stated clearly and effectively he believes that judges should be committed to the rule of law, should follow the law, that they should not be activist, they should not seek to impose personal and political agendas through the redefinition of words of statutes or our Constitution. The American people have affirmed him in that.

The Senate obstruction and filibuster of Federal judges has been a big issue in the last two election cycles in this Senate, and Republicans have, as a result, in my opinion—it is my opinion, I will admit—picked up six new Senate seats. I think a large part of that is because people in these States have been concerned about the obstruction of good and decent nominees, and the people of this country are of the opinion that their liberties are in jeopardy when an unelected lifetime-appointed judge starts setting social policy. If they are not happy with my vote on social policy, I can be removed from office, but a judge has a lifetime appointment, and the American people understand that. They understand that an activist judge is, indeed, antidemocratic. It is an antidemocratic act when a judge, without accountability to the public, starts setting social and political policy, as we have seen too often in recent years.

As a result, I believe we need to return to our traditions that have served both sides well, and if we do that, we can move forward, I believe, to a better process on judges and other issues that come before this body. I am cautiously optimistic for the future.

I yield the floor and reserve the remainder of our time on this side.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I understand that by previous agreement, time is allocated; is that correct?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. KENNEDY. And there is to be 1 hour for one side, 1 hour to the other side, prior to the leadership time?

The ACTING PRESIDENT pro tempore. There is 47 minutes remaining for the minority.

Mr. KENNEDY. Madam President, I yield myself 10 minutes.

First, I commend my friend and colleague, our leader, Senator REID, for his perseverance during these past several weeks and adherence to the great traditions of the institution of the Senate. It has been an extraordinary example of devotion to the Senate, to our Constitution, the checks and balances which are written into the Constitution. Our President has a veto, and the Members of Congress have the right to speak. There are those who would like to muzzle, silence, effectively cut off the debate in the Senate. With this agreement of last evening, that time, hopefully, has ended. It certainly has been for this Congress.

I was listening to some of my colleagues earlier. I read from the agreement about rules change:

> In light of the spirit and continuing commitments made in this agreement, we commit to oppose the rules changes in the 109th Congress, which we understand to be any amendment to or interpretation of the Rules of the Senate that would force a vote on a judicial nomination by means other than unanimous consent or rule XXII.

The current rule. There it is. Yet we heard the mention by the leader earlier this morning that he believes somehow the nuclear option is still alive and well.

It does seem to me the American people want to get about the American people's business. This has been an enormous distraction.

I listened to my friend and colleague from Tennessee who says we want to follow the rules and traditions of the Senate, so we are going back to the regular order. If we go back to the regular order, we are going back to the traditions and rules as they stand: You have the vote of every member on this side. That is not what the majority leader was talking about. He was talking about we will go back to the regular order; he was going to change the order with a whole series of changed rules.

That is what the members of this side and the courageous Republicans on the other side found offensive. We believe we ought to be about our people's business. We have approved 95 percent of the Republicans' nominees. I am sure some are, perhaps, pro-choice; many of them—probably most of them—are pro-life. They have still gone through. The real question is whether we are going to be stampeded and be silenced with regard to judges who are so far outside of the mainstream of judicial thinking that it was going to be the judgment of the majority leader that he was going to change the rules in a way that would deny the Senate's Parliamentarian, who has been the safeguarder of these rules for the 214 years of the Senate, and bring in the Vice President, who was going to rule according to his liking rather than to the traditions of the Senate.

That kind of abridgement, that kind of destruction, that kind of running roughshod over the Senate rules is offensive to the American people and offensive to us. It was avoided by the actions that were taken last evening in which our Democratic leader was the principal architect and supporter.

Yesterday was a day that will live in American history, and our grandchildren and their grandchildren will discuss what happened. They will do so with much more insight than we can today because they will know what the results of yesterday's agreements actually turned out to be. I hope that history will judge us well as an institution. We came close to having a vote that threatened the essence of the Senate and of our Government. It risked destruction of the checks and balances among the branches that the Framers so carefully constructed. It risked destruction of the independence of the judiciary, which is at the heart and soul of this issue. It risked an accumulation of power in the President that might have turned back the clock toward the day when we were subjects instead of citizens.

We have avoided that confrontation and have done so within the traditions of the Senate: discussion, debate, negotiation and compromise. Moderation and reason have prevailed. As in any compromise, some on each side are unhappy with specific aspects of the result, but the essence is clear. A majority of this body does not want to break its rules and traditions. Those rules and traditions will be preserved.

This body's self-regulating mechanisms will continue to be a moderating influence, not only within the body but also on the other House and the other branches of Government. Once again, the Senate has reminded the Chief Executive that we are not merely occupants of a beautiful building at the other end of Pennsylvania Avenue. We taught George Washington that lesson when we rejected one of his Supreme Court nominations. We taught Thomas Jefferson that lesson when we refused to convict an impeached Justice whose opinions Jefferson did not like. We taught Franklin Roosevelt that lesson when he tried to pack the Supreme Court. We taught Richard Nixon that lesson when he sent us a worse nominee after we defeated his first nominee for a Supreme Court position.

As even the Republicans in the agreement group said, this agreement should persuade the President to take more seriously the advice portion of the advice and consent. If the President understands the message and takes it to heart, his nominees will be better off, the courts will be better off, and the Nation will be better off.

Our principal goal was to preserve the ability of the Senate to protect the independence of the Federal courts, including the Supreme Court, and we

have succeeded in doing so. We have sent a strong message to the President that if he wants to get his judicial nominees confirmed, his selections must have a broader support from the American people.

As a result of this agreement, we can hope that no Senator will ever again pretend that the Constitution commands a final vote on every Executive nominee, for it has never done so and it does not do so now.

We can hope that no one will again pretend that there has never been a filibuster of a judicial nominee when they can look across the Senate floor at three Democratic Senators who witnessed the Republican filibuster against Justice Fortas and Republican Senators who participated in other judicial filibusters. We can hope that no one again will pretend that it is possible to break the fundamental Senate rule on ending a filibuster without shattering the basic bonds of trust that make this institution the world's greatest deliberative body.

I believe history will judge that we have not failed those who created America two centuries ago by what we have done. We have fought off those who would have destroyed this institution and its vital role in our Government for shameful partisan advantage. By rejecting the nuclear option, the Senate has lived up to its responsibilities as a separate and equal branch of Government.

I say to my colleagues on both sides of the aisle, that agreement does not change the serious objections to the nominations that have been debated in the past days. Those of us who care about the judiciary, who respect mainstream values, who reject the notion that judgeships are spoils to be awarded to political fringe groups, will continue to oppose the nomination of Priscilla Owen, Janice Rogers Brown, and William Pryor because they would roll back rights and freedoms important to the American people.

Now that these nominees are slated to get a vote on the floor, I hope courageous and responsible Republicans will show their independence from the White House and thoroughly examine the records of each of them. If they do, I hope they will agree that these nominees should not be given lifetime appointments to the Nation's courts, where they will wield enormous power over the lives of all Americans.

Those of us who oppose the nomination of Priscilla Owen have done so with good cause because her record makes clear that she puts her own ideology above laws that protect the American people. I have made that case. I just remind our colleagues of what the Houston Chronicle said. The Houston Chronicle, from her own area, wrote that her record shows less interest in impartiality and interpreting law than in pushing an agenda. She too often contorts rulings to conform to her particular conservative outlook. Those are not fringe groups. That is the Houston Chronicle.

Austin American-Statesman: Priscilla Owen is so conservative she places herself outside of the broad mainstream of jurisprudence and she seems all too willing to bend the law to fit her views.

Those are not leftwing fringe groups. That is the Austin American-Statesman.

San Antonio Express News: She has always voted with a small court minority that consistently tries to bypass the law as written by the legislature.

I have included at other times in the RECORD the 10 different occasions when the current Attorney General of the United States criticized Priscilla Owen for being outside of the mainstream of judicial thinking. I ask unanimous consent that six or eight of those, and the cases, be printed in the RECORD.

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

EXAMPLES OF GONZALES'S CRITICISMS OF OWEN

In one case, Justice Gonzales held that Texas law clearly required manufacturers to be responsible to retailers that sell their defective products. He wrote that Justice Owen's dissenting opinion would "judicially amend the statute" to let manufacturers off the hook.

In a case in 2000, Justice Gonzales and a majority of the Texas Supreme Court upheld a jury award holding that the Texas Department of Transportation and the local transit authority were responsible for a deadly auto accident. He explained that the result was required by the "plain meaning" of Texas law. Justice Owen dissented, claiming that Texas should be immune from these suits. Justice Gonzales wrote that her view misread the law, which he said was "clear and unequivocal."

In another case, Justice Gonzales joined a majority opinion that criticized Justice Owen for "disregarding the procedural limitations in the statute," and "taking a position even more extreme" than had been argued by the defendant in the case.

In another case in 2000, private landowners tried to use a Texas law to exempt themselves from local environmental regulations. The court's majority ruled that the law was an unconstitutional delegation of legislative authority to private individuals. Justice Owen dissented, claiming that the majority's opinion "strikes a severe blow to private property rights." Justice Gonzales joined a majority opinion criticizing her view, stating that most of her opinion was "nothing more than inflammatory rhetoric which merits no response."

Justice Gonzales also wrote an opinion holding that an innocent spouse could recover insurance proceeds when her co-insured spouse intentionally set fire to their insured home. Justice Owen joined a dissent that would have denied coverage of the spouse, on the theory that the arsonist might somehow benefit from the court's decision. Justice Gonzales' majority opinion stated that her argument was based on a "theoretical possibility" that would never happen in the real world, and that violated the plain language of the insurance policy.

In still another case, Justice Owen joined a partial dissent that would have limited the right to jury trials. The dissent was criticized by the other judges as a "judicial sleight of hand" to bypass the Texas Constitution.

Mr. KENNEDY. This is Attorney General Gonzales on the supreme court with Priscilla Owen, critical of her of being outside the mainstream. That is the point we have basically made.

This week, the American people are saying loudly and clearly that they are tired of the misplaced priorities and abuse of power by the rightwing. This agreement sends a strong message to the President that if he wants to get his judicial nominees confirmed, his selections need to have broad support from the American people.

Going forward on any nomination, the President must take the advice and consent clause seriously. The Senate is not a rubberstamp for the White House. The message of Monday's agreement is clear: Abuse of power will not be tolerated. Attempts to trample the Constitution will be stopped.

Over the last few weeks, the Republican Party has shown itself to be outside the mainstream, holding up the Senate over the judges while gas prices have jumped up through the ceiling, stubbornly insisting on the Social Security plan that cuts benefits and makes matters worse, passing a budget that offers plenty to corporations but little to students, nurses, and cops, and running roughshod over ethics rules. These are not the priorities of the American people. The American people want us to get back to what is of central concern to their lives, the lives of their children, their parents, and their neighbors. That is what we ought to be about doing, and preserving the Constitution and the rules of the Senate. The agreement that was made in a bipartisan way does that, and it should be supported by our colleagues in the Senate.

I reserve the remainder of our time.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

Mr. GRAHAM. Madam President, No. 1, there has been a lot said about last night. I was one of the signatories of the agreement. I think last night gives us a chance to start over. Seldom in life do people get a chance to start over and learn from their mistakes.

There have been some mistakes made for about 20 years on judges, and it finally all caught up with us. It started with Judge Bork. He was the first person I can remember in our lifetime who was basically subjected to "how will he decide a particular case," and he was attacked because of his philosophy, not because of his qualifications. It has just gotten worse over time. Clarence Thomas—we all remember that.

The truth is, when the Republicans were in charge of the Judiciary Committee, there is a pretty good case to be made that some of President Clinton's nominees were bottled up when we had control of the Judiciary Committee, and they never got out into the normal process.

Where do we find ourselves now? It started with an attack on one person because people did not like the philosophy of that person, which was new for the Senate. Before that, when a judge

was sent over, we looked at whether they were qualified ethically and intellectually.

One has to understand that there is a consequence to an election. When a President wins an election, that President has a right to send nominees over to the Senate for Federal courts. It has always been assumed that conservative people are going to pick conservative judges, and moderate and liberal people are going to be somewhere in the middle. That has worked for 200 years.

The bottom line is, the President can send over somebody who they think is conservative, and they can be fooled. They can send somebody they think is liberal, and over a lifetime they may change. What we have been able to do as a body is to push back but eventually give people a chance to be voted on.

I was a ''yes'' vote. Senator DEWINE and myself were ready to vote for the nuclear option this morning if we had to, the constitutional option. It can be called whatever one wants to call it, but it would have been a mess for the country. It would have been better to end this mess now than pass it on to the next generation of Senators because if the filibuster becomes an institutional response where 40 Senators driven by special interest groups declare war on nominees in the future, the consequence will be that the judiciary will be destroyed over time. People can get rid of us every 6 years, thank God, but once a judge is put on the bench, it is a lifetime appointment. We should be serious about that.

We should also understand that people who want to be judges have rejected the political life, and when we make them political pawns and political footballs, a lot of good, qualified men and women who are moderate, conservative, or liberal will take a pass on sitting on the bench. If the filibuster becomes the way we engage each other on judges, if it becomes the response of special interest groups to a President who won who they are upset with, the Senate will suffer a black eye with the American people, but the judiciary will slowly but surely become unraveled.

That is why I think we have a chance to start over. That is why I voted for us to start over, and I hope we have learned our lesson.

As to Priscilla Owen, it is the most manufactured opposition to a good person I have seen short of Judge Pickering, only to soon-to-be Judge Pryor and a close third is Justice Brown. What has been said about these people is beyond the pale. They have been called Neanderthals. If one has somebody they know and care about and they are thinking about being a judge, I think they need to be given fair warning that if they decide a case that a special interest group does not like, a lot of bad things are going to be coming their way.

Do we really need to call three people who have graduated near the top of their class, who have had a lifetime of service to the bar, Neanderthals? We have a chance to start over, and we better take it, because one thing the American people have from this whole show is that the Senate is out of touch with who they are and what they believe because we have allowed this thing to sink into the abyss. Priscilla Owen got 84 percent of the vote in Texas, and JOHN CORNYN knows her well. He served with her. She graduated at the top of her class; scored the highest on the bar exam. She has been a solid judge. What has been said about her has been a cut-and-paste, manufactured character assassination. Whether she is in the mainstream, the best way to find out is when people vote. When Priscilla Owen finally gets a vote here soon, you are going to see she is very much in the mainstream, if a supermajority of Senators count for anything. She is going to get votes. She is going to get a lot more than 50 of them. So is Judge Pryor.

The problem I have had with Bill Pryor and the way he has been handled is that he is the type person I grew up with. He is a conservative person. He is a good family man. But he has made some calls in Alabama that are unbelievably heroic, when it comes to politics and the law. Being for the Ten Commandments is a big deal in Alabama. Judge Moore, Justice Moore took that and rode that horse and beat it to death and it got to be a hot issue in Alabama and it got to be a hot issue all over the country. The attorney general of Alabama, Bill Pryor, followed the law and took on Justice Moore. He didn't have to, but he chose to.

At every turn he has proved to me he is bigger than the political moment. When he gets voted on, I am going to take this floor and we are going to talk a little bit longer about him. The people in Alabama across the board should be proud of Bill Pryor. He is going to make a heck of a Federal judge.

Now, where do we go? This agreement was among 14 Senators who believed that starting over would matter—14 Senators from different regions of the country, supported by their colleagues in a quiet fashion, more than you will ever know. What happens in the future depends on all of us working together. It depends on trust and good faith. The White House needs to talk with us more, and they will. Our Democratic friends need to understand that the filibuster as a tool to punish George W. Bush is not going to sustain you very long and will put you on the wrong side of the American people and will eventually destroy the judiciary.

The agreement says that in future nomination battles, the seven Democrats will not filibuster unless there are extraordinary circumstances. What does that mean? Well, we will know it when we see it. It means we will keep talking. It means they don't have to lay down in the road if there is a Supreme Court fight. There is going to be a Supreme Court nomination coming, probably soon, and that is what this is about. But our seven Democratic colleagues decided to find a middle way to bring some calm to the body. I think we can get a conservative justice nominated and confirmed if we try hard. Nobody should expect anything less from George W. Bush. But there is a way to get there from here and I do believe the seven Democrats who signed this agreement will work very hard to make that happen along with all Senators at the end of day.

But if there comes a point in time in the future when one of the seven Democrats believes this person before them is so unacceptable they have to get back in the filibuster business, here is what it means to the Republicans—because I helped write the language. It means we will talk, we will listen, and we will discuss why they feel that way. But it means I am back in the ball game. If one of the seven decides to filibuster and I believe it is not an extraordinary circumstance for the country, for the process, then I have retained my rights under this agreement to change the rules if I think that is best for the country. That is only fair. My belief is we will never have to cross that bridge. But those who say this is a one-sided deal misrepresent what happened in that room. This is about moving forward, avoiding conflict in the future by talking and trusting.

But there may come a time, and I hope to God it doesn't happen, where we go different directions. The only reason we will ever go different directions is that we will start playing politics again and lose sight of the common good.

The two nominees who were in category two I think will get back in the process in a fair way. The truth is all of the nominees were never going to make it. There are some Republicans who will vote against some of these nominees. But they all deserve a fair process and they all deserve to be fairly treated. None of them deserve to be called Neanderthals.

It is my hope and my belief we will get this group of nominees fairly dealt with. Some are going to make it and some will not. But they will get the process back to the way it used to be. As to the future, it is my belief that by talking and working together in collaboration with the White House, we can pick Supreme Court Justices, if that day ever comes, so that everybody can be at least happy with the process, if not proud of the nominee. That is possible because we have done it for 200 years. But please don't say, as a Democrat, you can do anything you want to do in the 109th Congress and nothing can happen, because that is not true.

I have every confidence we can get through this mess, but there is no agreement that allows one side to unilaterally do what it would like to do and the other side be ignored. Because if that were the case, it wasn't much of an agreement.

I look forward to voting for Justice Owen, I look forward to voting for

Judge Pryor, I look forward to voting for Justice Brown, and putting to rest the idea that these nominees were out of the mainstream.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Before my friend and colleague from South Carolina leaves, I want to congratulate him and my colleagues on both sides of the aisle for bringing us to this point. The most important point about what has happened in the last 12 hours is we have maintained the checks and balances in the Senate. We are retaining the ability for minority views to be heard. That is most important.

It is not always Democrats versus Republicans. It could be little States, such as the State of my friend from Delaware, whom I see on the floor, versus Michigan or California. It could be different groups of people. It could be Great Lakes Senators banding together to protect our Great Lakes versus others who want to divert water. It could be a variety of issues.

The fact that the Senate is the place we can come together and minority views can be heard is a part of our democratic process. It is a part of our democracy that has held us together for over 200 years. I commend my colleagues for standing up and saying no to eliminating the filibuster and no to eliminating the checks and balances of our Government.

It involves some compromise, as these agreements always do. While I personally will not support the nomination of the person before us today, I understand that in order to maintain the broad principle of checks and balances in the Senate, in order to allow us to exercise our minority views at a future point if there are extreme nominees coming forward, this was an important compromise to make.

Part of that is an important piece that Senator LEVIN and I contributed to the process of allowing the Senate to move forward on three nominees of the Sixth Circuit from Michigan. So there are compromises that have been made in the interests of the larger good, in the interests of maintaining the checks and balances, the ability for us to work together on both sides of the aisle to get things done for the American people. That is why we are here.

Now we need to get about the business of getting things done for people. When I go home every weekend, when I talk to my family in Michigan, when I talk to everyone I represent—families all across Michigan, they say, We want you to focus on jobs, American jobs. We want our jobs here. We want to reward work in this country and know that when we work hard every day and play by the rules, we are going to be able to care for our families and that we have respect for the dignity of work and that we will reward Americans who are working hard every day.

They say to me they are desperately concerned about their pensions. Look what is happening. We in this body need to be focusing on protecting the pensions, the retirement security of all the Americans who worked all their lives. They put that money aside and they count on that pension in retirement for themselves and their families. Now they are seeing that American dream eroded. Pension security, strengthening Social Security, making sure health care is available to every American—these are the issues that, in this body, we need to be working on together because they directly affect every single person we represent.

I am hopeful we will now be able to put this aside and we will be able to move on with the people's agenda for this country, creating opportunities for everybody to succeed, rewarding work, making sure we are protecting and expanding American jobs and American businesses, making sure we are energy independent.

We will be having legislation brought before us shortly. I know there is important bipartisan work going on. But we need to say we are going to be independent in terms of energy resources and that we are going to move forward as well on issues that relate to national security—not only a strong defense abroad but making sure our police officers and firefighters have what they need, and our emergency responders, so that we have security at home. When somebody calls 911, they will know they are going to get the response they need in terms of their security.

We have a lot of work to do. People are expecting us to get about the people's business. I am very proud that last night our leader on this side of the aisle, the Democratic leader, Senator REID, spoke to those issues. In praising where we are now, the fact that we will continue to have the rules and checks and balances of the Senate, he also then spoke about the fact that we have to get about the people's business because every day when people get up in the morning they are wondering what is going to happen that day for themselves and their families.

It is our job to do everything we can to make sure their hard work is rewarded and opportunities for the future, for our children and grandchildren, are protected. This is a fight for the future. It is a fight about where we need to go as a country. Our families are counting on us to turn to the things they care about every day. The values and priorities of the American people need to be what we are talking about and acting on in this Chamber. I am hopeful we will very quickly turn to those matters: jobs, health care for every single American, opportunities for our kids to be successful, energy independence, a strong defense here and abroad. If we do that, then we will be able to hold our heads high, because we will have done those things that matter most to the families we represent.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, when I was in college and law school, there was a character played by the actress Gilda Radner on ''Saturday Night Live,'' who was known best for purporting to do the news and would engage in this screed about some subject, and then she would be corrected, only to have her then reply, ''Never mind.''

I thought about that when I have contemplated the occurrences of the last few days, particularly the last day when it came to the sort of apocalyptic terms that were used as we approached breaking the logjam over the President's long-delayed judicial nominees. But for this secret negotiation conducted by 14 Senators that none of the rest of the Senate was a party to, we would be, I believe, about the process of reestablishing the precedent of majority rule that had prevailed for 214 years in the Senate, that would say any President's nominees, whether they be Republican or Democrat, if they have the support of a majority of the Senate, will get an up-or-down vote in the Senate. Senators who believe these nominees should be confirmed can vote for them and those who believe they should not be confirmed can vote against them.

I was not a party to the negotiations and what happened in this room off the Senate floor, but I do have some concerns I wanted to express about what has happened.

It is important to recognize what this so-called agreement among these 14 Senators does and what it does not do. First of all, one of the things it does, it means that at least three of the President's nominees—Bill Pryor, Janice Rogers Brown, and Priscilla Owen—will get an up-or-down vote on the Senate floor and that they will be, I trust, confirmed to serve in the Federal judiciary.

What this agreement by these 14 Senators does not do, it does not give any assurance that other nominees of the President—Mr. Myers, in particular, and others—will get an up-or-down vote that they deserve according to the common understanding of the Senate for more than 200 years by which those who enjoyed majority support did get that vote and did get confirmed.

What this agreement says, we are told, is that seven Democrats and, presumably, seven Republicans reserve the right to filibuster judicial nominees under extraordinary circumstances, but we are left to wonder what those extraordinary circumstances might be. What makes me so skeptical about this agreement among these 14 is that extraordinary circumstances are in the eye of the beholder.

Looking at the litany of false charges made against Priscilla Owen for the last 4 years makes me skeptical that any nominee, no matter how qualified, no matter how deserving, that under appropriate circumstances our colleagues, some of our colleagues, will find the circumstances extraordinary and still reserve unto themselves what

they perceive as their right to engage in a filibuster and deny a bipartisan majority our right to an up-or-down vote.

It is clear to me this agreement among these 14 to which 86 Senators were not a party does not solve anything. What it does do is perhaps delay the inevitable. Senator DEWINE, in particular, one of the signatories of this agreement, says this is an effort to break the logjam on these three nominees, hopefully, change the standard by which at least seven Senators on the other side of the aisle will engage in a filibuster, and perhaps start anew.

I hope Senator DEWINE is correct in his reading and his understanding of this agreement. I was not a party to it; presumably, 84 Senators were not a party to it. Negotiations took place in a room where I didn't participate, where the American people were not given the opportunity to listen and judge for themselves.

The thing that disturbs me most about this temporary resolution, if you can call it that, is that while 7 Republicans and 7 Democrats were a party to this agreement, a product of these negotiations, the fact is that the 7 Republicans of this 14 would have agreed to close off debate and would have agreed to allow an up-and-down vote, while it is clear that the 7 Democrats would not have agreed otherwise to withhold the filibuster and allow an up-or-down vote.

What reminds me so much of Roseanne Rosannadanna on Saturday Night Live and Gilda Radner, now in effect what they are saying after 4 years of character assassination, unjustified attacks, and a blatant misrepresentation of the record of these fine nominees, they are saying, in effect, never mind, as if it never happened. But it did happen. It is important to recognize what has happened. It is a blight on the record of this body, and it is further evidence of how broken our judicial confirmation process has been.

I have nothing but admiration for the courage of our majority leader in bringing us to this point. I believe if he had not had the courage and determination—and, I might add, our assistant majority leader, MITCH MCCONNELL—if our leadership had not had the determination to bring us to this point, I have no doubt that we would not have reached at least this temporary resolution. They are entitled to a whole lot of credit for their courage and their willingness to hold the feet to the fire of those in the partisan minority who would have denied a bipartisan majority the right to an up-and-down vote on these nominees.

This agreement of these 14 Senators delays but does not solve the problem. Of course, we all anticipate that before long, there will be a Supreme Court vacancy which will test this definition of what these 14 call extraordinary circumstances. I wonder whether this standard will be applied to the other nominees who were not explicitly covered by this agreement; that is, other nominees who have been pending for years who were not given, as Justice Owen, Justice Brown, and Judge Pryor have been, the opportunity for an up-or-down vote.

Let me say I hope I am wrong. But there is plenty of reason to be skeptical about this so-called agreement of these 14. Perhaps we will see a triumph of hope over experience, but our experience over the last 4 years has been a bad one and one which I don't think reflects well on the Senate.

I hope I am wrong. I hope what has been established is a new precedent that says that the filibuster is inappropriate and will not be used against judicial nominees because of perceived difference in judicial philosophy, that people who have certain fundamental convictions will not automatically be disqualified from judicial office. I hope that is where we are. As we know, though, extraordinary circumstances could be interpreted by some to mean that if you can vilify and demonize a nominee enough, that, indeed, the filibuster continues to be justified. We know from the false accusations made against too many of President Bush's nominees how easy that is to do.

After $10 million—that is one estimate I have heard—in the various special interest attack ads have been run against Priscilla Owen and Janice Rogers Brown and others, after $10 million or more, perhaps, the American people are told, never mind, we did not really mean it; or even if we did mean it, you are not supposed to take us seriously because what this is all about is a game.

This is about the politics of character assassination, the politics of personal destruction. In Washington, perhaps people can be forgiven for believing that happens far too much. Indeed, that is what has happened with these fine nominees. But now they are told, particularly in the case of Justice Owen, after 4 years, never mind, all the things that were said about you, all the questions raised are beside the point, and you are not going to serve on the Fifth Circuit Court of Appeals after waiting 4 years for an up-or-down vote.

I worry some nominees in the future will simply say: I am not going to put my family through that. I think about Miguel Estrada, who waited 2 years for an up-or-down vote with the wonderful American success story, but after 2 years he simply had to say: I can't wait anymore. My reputation cannot sustain the continued unjustified attacks. I am simply going to withdraw.

Unfortunately, when we have good men and women who simply say, I can't pay the price that public service demands of me and demands of my family, I fear we are all losers as a result of that process.

I am skeptical of this agreement made by 14 after secret negotiations that we were not a party to. Perhaps I am being unduly skeptical. I hope I am wrong. I hope what has happened today and I hope we are reassured over the hours and days that lie ahead that what has been established is a new precedent, one that says we will not filibuster judicial nominees, we are not going to assassinate their character, we are not going to spend millions of dollars demonizing them.

I hope I am wrong and that we have a fresh start when it comes to judicial nominations. The American people deserve better. These nominees deserve better. This Senate deserves better than what we have seen over the last 4 years.

I yield the floor.

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

Mr. CARPER. Mr. President, a week ago, I stood in this Chamber and I reminded Members to look back some 200 years. The issue of how we are going to nominate and confirm judicial appointees is not a new issue. At the 1787 Constitutional Convention in Philadelphia, there were many issues to resolve. One of the last issues resolved was, who is going to select these Federal judges to serve a lifetime appointment?

Ben Franklin led the forces on one side in an effort to try to curb the powers of this President we are going to establish to make sure we did not have a king in this country. And Ben Franklin and those who sided with him said the judges ought to be selected by the Senate, by the Congress.

There was another school of thought that prevailed as well in the Constitutional Convention, those forces led by Alexander Hamilton. Hamilton and his allies said: No, the President should choose the people who are going to serve lifetime appointments to the Federal bench.

In the end, a compromise was proposed and voted on. Here is the compromise: The President will nominate, with the advice and consent of the Senate, men and women to serve lifetime appointments to the Federal bench. That compromise was voted on. It was defeated. They wrangled for a while longer and came back and they voted on the same compromise again. It was defeated. They went back and wrangled among themselves and came back and voted a third time on the same compromise. And it was accepted. That was 1787.

A lot of years have passed since then, and this issue, this check and balance that was embedded in our Constitution, is one we have revisited over and over again. We did it this week. It was a big issue when Thomas Jefferson was President, the beginning of his second term when he sought to stack the courts and was rebuffed by his own party. That was in the 1800s. It was a big issue in the 1900s when FDR, at the beginning of his second term, sought to stack the courts, pack the courts. He, too, was rebuffed largely by his own party.

Is this compromise hammered out over the last couple of weeks going to

last forever? My guess is probably not. Just as this has been an issue of contention for over 200 years, it is probably going to be a source of controversy for a while longer.

My friend from Texas, who spoke just before me, talked about the mistreatment of those who have been nominated to serve on the Federal bench by President Bush over the last 4 years. He mentioned a number, as it turns out, about 10 out of over 200, who were confirmed over the last 4 years. He mentions the 10 who, frankly, have had their lives disrupted, and in some cases were held up to poor commentary in the public and in the Senate with respect to their worthiness to serve on the bench for a lifetime appointment.

I like to practice treating other people the way I want to be treated. I know most of us try to live by that credo. Sometimes we fall short. I know I do. But I think just to be fair we ought to go back to the first 4 years of when Bill Clinton was President. It was not just 5 percent of his nominees who were not confirmed. Some 19 percent of his nominees were not confirmed. It was not that they were denied a vote on the floor, they never got out of committee.

One person—one person—could put a hold, stop a nominee from even having a hearing in the Senate Judiciary Committee. A handful of Senators in the committee could deny a nominee ever coming out of committee to be debated and voted on in the Senate. And somehow the idea that Bill Clinton could only get 81 percent of his nominees confirmed the first 4 years was OK for some, but yet a 95-percent approval rate for this President's nominees in his first 4 years was unacceptable. I see an irony there. I hope others do, too.

Let me talk about the compromise that is before us. Most compromises I have been familiar with, frankly, do not leave either side especially happy for the final result. And that certainly is true in this case as well. But in the final analysis, the center of this body has held, barely, but it has held. A critical element of our Nation's system of checks and balances has been tested, but it still lives. For that, most of us should be happy—and if not happy, we should at least be relieved.

I believe the path to a productive legislative session has been reopened, too. And almost like Lazarus rising from the grave, I think prospects for arriving at a middle ground on a whole range of issues we face has a new lease on life. We need to transfer the trust that I hope has grown out of this negotiation among the seven Democrats and seven Republicans. I salute them all for the good work they have done. I am not going to get into naming names, but they know who they are, and I am grateful to each of them.

But what we need to do, as a body, as a Senate, is to transfer some of the trust that is a foundation of this agreement. We need to capture that trust and turn it to addressing some of the most pressing issues that face America: our huge and growing dependence on foreign oil, an enormous trade deficit and budget deficit, reining in the growth of health care and trying to make sure more people have health care available, winning this war on terrorism, and finding ways to improve our Nation's air quality. All those issues beg to be addressed.

For this Senator, the good news that comes out of this agreement over the last 24 hours is that now we can turn to our Nation's business. We can get back to work. We need to. America wants us to.

For the President and our friends in the White House, let me say, in going forward on judicial nominees, if you will consult with the Congress—Democrats and Republicans—we can actually approve most of those nominees. If this President will nominate mainstream judges, conservative judges—I expect them to be Republicans—if he will nominate those, for the most part, if they are not outside the mainstream, they will be approved. If the President will actually consult with the Senate, as the Constitution calls for, we will be better off, he will be better off, and, frankly, our Nation will be better off.

The same applies to the legislative agenda that is now before us. For if the administration, the President, will work not just with Republicans but with Democrats, too, we can make real progress, and when we look back on the 109th Congress, we can say, with pride, that we got a lot done that needed to get done.

I yield back the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, how much time is remaining on this side?

The PRESIDING OFFICER. Under the previous order, debate will continue until 11:40. The minority side has 20 minutes remaining. The majority side has 1 minute remaining.

Mr. LEAHY. I thank the distinguished Presiding Officer, my neighbor across the Connecticut River.

Mr. President, last night I spoke, praising the Senators on both sides of the aisle who came together to avert the so-called nuclear option. I see on the floor the distinguished Senator from Pennsylvania, the chairman of the Senate Judiciary Committee. I think those Senators have made his and my work a lot easier. I also commend the distinguished Senator from Delaware for his comments.

This President, with the compliance of the Republican majority, has tried to push the Senate across an unprecedented threshold that would forever change and weaken this body. This move would have stripped the minority of the crucial rights that have been a hallmark of this chamber, and it would have fundamentally altered the brilliant system of checks and balances designed by the Founders.

This misguided bid for one-party rule, the nuclear option, has been deterred for now. This ill-advised power grab was thwarted through the work and commitment of a bipartisan group of 14 Senators who have prevented the Republican majority leader from pulling this potentially devastating trigger. Pursuant to that agreement, I expect a few Democrats who had previously voted against cloture on the Owen nomination in the last Congress to vote in favor of cloture today. I understand that they are taking this action to save the Senate from the nuclear option and to preserve the filibuster.

This Republican tactic put the protection of the rights of the minority in this chamber in serious risk. That protection is fundamental to the Senate and to the Senate's ability to act as a check and balance in our national government. That protection is essential if we are to protect the independence of the Judiciary and the Judiciary is to remain a protector of the rights of all Americans against the overreaching of the political branches.

I will continue to work in good faith, as I have always done, to fulfill the Senate's constitutionally-mandated role as a partner with the Executive branch in determining who will serve in the Judiciary. I urge all Senators to take these matters to heart and to redouble our efforts to invest our advice and consent responsibility with the seriousness and scrutiny it deserves. As I have said before, just as Democratic Senators alone could not avert the nuclear option, Democratic Senators alone cannot assure that the Senate fulfills its constitutional role with the check and balance on the Executive. I believe Republican Senators will also need to evaluate, with clear eyes, each of the President's nominees for fitness. If they have doubts about the suitability of a nominee to a lifetime judicial appointment, well, they can no longer look the other way and wait for Democratic Senators to save them from a difficult vote. And there will be a number of difficult votes on the horizon on a number of problematic nominees. There may be even more.

But I also remind everybody that while the Senate is supposed to serve as a check and balance, the whole process begins with the President. I have served here with six Presidents. Five of them have consulted with the Senate and worked with the Senate. President Ford, President Carter, President Reagan, former President Bush, and President Clinton have done that. Frankly, if this President would work with Senators on both sides of the aisle to identify and nominate consensus choices, we can easily add to the tally of 208 confirmations. If the White House will take the view that the President should be a uniter and not a divider, then we can make significant progress.

The design of checks and balances envisioned by the Founders has served us well for over 200 years, and the agreement made last night has preserved it.

Judicial nominations are for lifetime appointments to what has always been revered as an independent third branch of Government, one that while reliant on the balance between the executive and legislative branches, is actually controlled by neither.

For more than two centuries, these checks and balances have been the source of our Government's stability. It has been its hedge against tyranny. We have to preserve them in the interests of the American people. We do that so the courts can be fair and independent. We should not look at our Federal judiciary as being a Democratic judiciary or a Republican judiciary. It should be independent of all of us because they are the backstop to protect the rights of all Americans against encroachment by the Government. And all Americans have a stake in that, no matter who may control the Government at any given time.

The Senate remains available as a rudder that checks against abuse of power, and as a keel that defends the independence of the judiciary. As the distinguished senior Senator from West Virginia, Mr. BYRD, noted last night, the Senate has answered the call sounded by Benjamin Franklin at the conclusion of the Constitutional Convention by preserving our democracy and our Republic, as the Senate has been called upon to do so many times before.

Now we have before us the controversial nomination of Priscilla Owen. I will probably speak to this nomination more after the cloture vote, the cloture vote which now is a foregone conclusion. For some reason we are still having it, but there is no question, of course, that the Senate will now invoke cloture.

Three years ago, after reviewing her record, hearing her testimony, and evaluating her answers, I voted against her confirmation, and I explained at length the strong case against confirmation of this nomination. Nothing about her record or the reasons that led me then to vote against confirmation has changed.

I believe she has shown herself over the last decade on the Texas Supreme Court to be an ends-oriented judicial activist, intent on reading her own policy views into the law. She has been the target of criticism by her conservative Republican colleagues on the court, in a variety of types of cases where the law did not fit her personal views, including in cases where she has consistently ruled for big business and corporate interests in cases against workers and consumers.

The conservative Republican majority of the Texas Supreme Court has gone out of its way to criticize her and the dissents she joined in ways that are highly unusual and in ways which highlight her ends-oriented activism.

In FM Properties v. City of Austin, the majority called her dissent ''nothing more than inflammatory rhetoric.''

In Montgomery Independent School District v. Davis, the majority, which included Alberto Gonzales and two other appointees of then-Governor George W. Bush, is quite explicit in its view that Justice Owen's position disregards the law and that ''the dissenting opinion's misconception . . . stems from its disregard of the procedural elements the Legislature established,'' and that the ''dissenting opinion not only disregards the procedural limitations in the statute but takes a position even more extreme than that argued for by the board. . . .''

In the case of In re Jane Doe, the majority includes an extremely unusual section explaining its view of the proper role of judges, admonishing the dissenters, including Justice Owen, for going beyond their duty to interpret the law in an attempt to fashion policy. In a separate concurrence, then-Justice Alberto Gonzales says that to construe the law as the dissent did ''would be an unconscionable act of judicial activism.''

I understand he now says that when he wrote that opinion he was not referring to her. I recognize why he is saying that. Of course, he has to defend not Governor Bush's appointment but now President Bush's nomination. But a fair reading of his concurring opinion leads me to see it as a criticism of the dissenters, including Justice Owen. And he admitted as much in published statements in the New York Times before Justice Owen's first hearing before the Judiciary Committee.

In the case of In re Jane Doe III, Justice Enoch writes specifically to rebuke Justice Owen and her fellow dissenters for misconstruing the legislature's definition of the sort of abuse that may occur when parents are notified of the minor's intent to have an abortion, saying:

> Abuse is abuse; it is neither to be trifled with nor its severity to be second guessed.

In Weiner v. Wasson, Priscilla Owen went out of her way to ignore Texas Supreme Court precedent to vote against a young man injured by a doctor's negligence. The young man was only 15 years old. Her conservative Republican colleagues on the court, led by then-Justice JOHN CORNYN—now the junior Senator from Texas—lectured her about the importance of following that 12-year-old case and ruling in the boy's favor, calling the legal standard she proposed ''unworkable.''

In Collins v. Ison-Newsome, yet another case where Justice Owen joined a dissent criticized by the majority, the court was offended by the dissenters' arguments. The majority says the dissenters agree the court's jurisdiction is limited, ''but then argues for the exact opposite proposition. . . . This argument defies the Legislature's clear and express limits on our jurisdiction.''

These examples show a judge out of step with the conservative Republican majority of the Texas Supreme Court, a majority not afraid to explain the danger of Priscilla Owen's activist views.

Justice Owen has made other bad decisions where she skews her decisions to show bias against consumers, against victims, and against just plain ordinary people, as she rules in favor of big business and corporations. In fact, according to a study conducted last year by the Texas Watch Foundation, a nonprofit consumer protection organization in Texas, over the last 6 years, Priscilla Owen has not dissented once from a majority decision favoring business interests over victims, but has managed to differ from the majority and dissent in 22 of the 68 cases where the majority opinion was for the consumer.

As one reads case after case, her legal views in so many cases involving statutory interpretation simply cannot be reconciled with the plain meaning of the statute, the legislative intent, or the majority's interpretation.

This all leads to the conclusion that she sets out to justify a preconceived idea of what the law ought to mean. This is not an appropriate way for a judge to make decisions, but it is a way for a judge to make law from the bench—an activist judge.

Justice Owen's activism and extremism is noteworthy in a variety of cases, including those dealing with business interests, malpractice, access to public information, employment discrimination and Texas Supreme Court jurisdiction, in which she writes against individual plaintiffs time and time again, in seeming contradiction of the law as written. A few examples of this include:

FM Properties v. City of Austin, where Justice Owen showed her willingness to rule in favor of large private landowners against the clear public interest in maintaining a fair regulatory process and clean water. Her dissent, which the majority characterized as, ''nothing more than inflammatory rhetoric,'' was an attempt to favor big landowners. At her first hearing, and since, Justice Owen and her supporters on the Committee have tried to recast this case as something more innocent, but at the time she wrote her dissent, Justice Owen was certainly clear about the meaning of this case—property rights for corporations.

GTE Southwest, Inc. v. Bruce, is another example where Justice Owen wrote in favor of GTE in a lawsuit by employees for intentional infliction of emotional distress. Despite the majority's recitation of an exhaustive list of sickening behavior by the supervisor, and its clear application of Texas law to those facts, Justice Owen wrote a concurring opinion to explain that the conduct was not, as the standard requires, so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency. The majority opinion shows Justice Owen's concurrence advocating a point of view that ignores the facts in evidence in order to reach a predetermined outcome in the corporation's favor.

City of Garland v. Dallas Morning News, Justice Owen dissented from a majority opinion and, again, it is difficult to justify her views other than as

based on a desire to reach a particular outcome. In this case, she seeks to shield government decision-making from public view.

Quantum Chemical v. Toennies, another troubling case where Justice Owen joined a dissent advocating an activist interpretation of a clearly written statute, this time in the context of employment discrimination. The majority concluded that they must rely on the plain language of the statute as amended, which could not be any clearer that under Title VII discrimination can be shown to be a motivating factor, contrary to Justice Owen's more activist view.

Mr. President, I said time and time again that when somebody walks into a Federal court, they should not have to say, I may be treated one way because I am a Republican and a different way because I am a Democrat, or one way because I am a plaintiff and a different way because I am a defendant, or one way because I am rich, and a different way because I am poor. They should be treated on the merits of the case, no matter who they are.

In Priscilla Owen's case, it was almost predetermined how she would rule based upon who you are. The rich and powerful are protected. The poor or those hurt by the rich and powerful—she is going to rule against you. This is judicial activism.

After all these years, I am sure the President will get the votes to put Priscilla Owen on the court. But would it not have been better to have nominated somebody who would unite us and not divide us?

Last night, 14 Senators—7 Republicans and 7 Democrats—said: We will protect the Senate, actually protect the Constitution, protect advice and consent, and protect the checks and balances by giving the death knell to this so-called nuclear option. That was a good first step. But I urge the President to look at what was also said in that agreement. They called upon the President to now finally work with Senators from both parties in these lifetime appointments. No political party should own our Federal courts. In fact, no political party should be able to control our Federal courts. Let us work together to have courts that actually work, that are independent of the executive, independent of being swayed, and are truly independent. We can do that and call on the President to do what every President since I have been here—the five before him—has always done, and that is work with both Republicans and Democrats, work to unite us, not divide us.

The PRESIDING OFFICER. Under the previous order, Member time is reserved until 11:40, and the time between 11:40 and 12 o'clock is reserved for both the majority and minority leaders.

Mr. LEAHY. Mr. President, I yield the balance of my time to the Democratic leader to use as he wishes.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. REID. Mr. President, I ask unanimous consent that the couple of extra minutes be divided between the majority leader and me.

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

Mr. REID. Mr. President, in my remarks this morning, I will speak very briefly about the Priscilla Owen nomination and, more generally, about the negotiations that led to the defeat of the so-called nuclear option. As I said this morning, the nuclear option is off the table, and we should stop talking about it after today. I continue, though, to oppose the nomination of Priscilla Owen for the U.S. Court of Appeals.

As a member of the Texas Supreme Court, Justice Owen has consistently ruled for big business, corporate interests, and cases against workers and consumers. Her colleagues on the Texas court, including the man who is now Attorney General of the United States, Alberto Gonzales, have criticized her decisions. Judge Gonzales even called one of her opinions an act of ''unconscionable judicial activism.'' In case after case, her record marks her as a judge who is willing to make law from the bench rather than following the language of the statute and the intent of the legislature. Even on the conservative Supreme Court of Texas, Justice Owen is a frequent dissenter, and her opinions reveal an extreme ideological approach to the law.

As a result of the agreement announced last night, it is clear that this nominee will receive an up-or-down vote. I intend to vote against her confirmation. I urge my colleagues to do so as well. I specifically urge my Republican colleagues to render an independent judgment on this, and the other nominations will follow in the months to come. I am confident they will.

If Justice Owen is confirmed as a Federal judge, I hope she surprises those of us who have fought her nomination. Perhaps her experience as a judicial nominee has exposed her to a broader range of views, and that experience may make her more sensitive to concerns regarding privacy, civil rights, and consumer rights. I have never questioned her intellectual capabilities.

The agreement that will allow Justice Owen to receive an up-or-down vote also had the effect of taking the nuclear option off the table for this Congress and, I think, in our lifetime. I wish to review what I believe was at stake in this debate. The agreement makes clear that the Senate rules have not changed. The filibuster remains available to the Senate minority, whether it be Democrat or Republican.

Last night, the seven Democrats agreed that filibusters will be used only in extraordinary circumstances. In my view, the fact that there have been so few out of the 218 nominations in the last 4 years means that filibusters already are rare.

In any event, the agreement provides that ''each signatory must use his or her own discretion and judgment in determining whether [extraordinary] circumstances exist.'' This, of course, is a subjective test, as it always has been.

The 14 Democrats and Republicans who entered into the agreement last night, and the rest of us who were prepared to vote against the nuclear option, stood for the principles of extended debate, minority rights, and constitutional checks and balances. For 200 years, the Senate rules embodying those principles have protected our liberties and our freedoms. Those rules have not made life easy for Presidents and parties in power, but that is the way our Constitution was written, and that is good.

Most every occupant of the White House, most every majority on Capitol Hill, has grown frustrated with the need to build consensus instead of ruling by their own desires. But that is precisely what our Founding Fathers intended. That is our Constitution.

Those Founders created this body as a place secure from the winds of whim, a place for deliberation and honorable compromise. It is why Nevada, with its little over 2 million people, has as much to say in this body as California, which has 35 million people. It is why sometimes we are governed not by the principles of ''one man, one vote'' but by the principles of one person who rises with a voice of conscience and courage.

When Thomas Jefferson and Franklin Roosevelt tried to pack our courts, patriots of both parties put aside their personal interests to protect our American rights and rules. In Caro's definitive work, ''Master of the Senate,'' he has a wonderful 10 pages where he talks about Roosevelt's attempt to pack the court. It is so revealing. Roosevelt calls Senate leaders to the White House—Democratic leaders—and the President didn't live in the White House, as they do now. His Vice President, James Garner, a former Senator, walked out of that meeting shaking his head and said that the President will not get his support on this, and he didn't. He didn't get the support of a majority of the Democrats. When Jefferson and Roosevelt tried to pack our courts, it didn't work because Members of their own parties rose up against them. They were both Democrats.

Nothing in the advice and consent clause of the Constitution mandates that a nominee receive a majority vote, or even a vote of any kind. According to the Congressional Research Service, over 500 judicial nominees since 1945—18 percent of all judicial nominees—were never voted on by the full Senate. Most recently, over 60 of President Clinton's judicial nominees were denied an up-or-down vote. In contrast, we have approved 208 of President Bush's 218 nominees.

Last night, when I came to the floor, I said it is a happy night for me because the 8 years of the Clinton judicial situation are gone. I said last

night that the 4 years of problems with the Bush administration, as it relates to judges, are gone. Why? Because we are going to start legislating as Senators should. If there is a problem with a judge, that issue will be raised.

There will be occasions, although very infrequent, where a filibuster will take place. That is what the Senate is all about.

The difference between a 95-percent confirmation rate and a 100-percent rate is what this country is all about. That 5 percent reflects the moderating influence and spirit and openness made possible by the advice and consent clause of our Constitution.

When our Founders pledged their lives and fortunes and their sacred honor to the cause of our Revolution, it was not simply to get rid of King George III. It was because they had a vision of democracy. James Madison, the Father of the Constitution, wrote:

> The accumulation of all powers legislative, executive, and judiciary in the same hands, whether of one, a few, or many—and whether hereditary, self-appointed, or elective—may justly be pronounced the very definition of tyranny.

Stripping away these important checks and balances would have meant the Senate becomes merely a rubberstamp for the President. It would have meant one political party, be it Republicans today or Democrats tomorrow, could effectively seize control of our Nation's highest courts. It would have removed the checks on the President's power, meaning one man sitting in the White House could personally hand out lifetime jobs whose rulings on our basic rights can last forever.

It is too much power for one person. It is too much power for one President. It is too much power for one political party. It is not how America works.

Our democracy works when majority rules not with a fist but with an outstretched hand that brings people together. The filibuster is there to guarantee this.

The success of the nuclear option would have marked another sad, long stride down an ever more slippery slope toward partisan crossfire and a loss of our liberties. Instead, this is the moment we turned around and began to climb up the hill toward the common goal of national purpose and rebuilding of America's promise. America owes a debt of gratitude to the 14 Senators who allowed us to be here today.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I begin by thanking the distinguished Democratic leader for his comments and noting with particularity his statement that the use of the filibuster will be occasional and very infrequent. I think that characterization is very important for the future of the Senate in the consideration of judicial nominations.

The term ''extraordinary circumstances'' does not lend itself to any easy interpretation. But when the Democratic leader asserts that this term means occasional and very infrequent, it is very reassuring.

The Senator from Nevada went on to say this wipes away 8 years of Clinton and 4 years of the second President Bush. That puts the whole controversy, in my judgment, into context, because what we have been talking about in the course of these filibusters has been the pattern of payback which began in the last 2 years of President Reagan's administration when Democrats won control of the Senate and the Judiciary Committee, where the nominating process was slowed down, and 4 years of President George H. W. Bush. Then it was exacerbated during the administration of President Clinton when we Republicans won the Senate in the 1994 election. And for the last 6 years of President Clinton's tenure, we had a situation where some 60 judges were bottled up in committee, which was about the same as a filibuster.

I think it is worth noting that both Senator FRIST, our Republican leader, and Senator REID, the Democratic leader, are entitled to plaudits, because a week ago today, late in the afternoon in a room off the first floor, a few steps from where we are at the present time, the leaders met with so-called Republican moderates and Democratic moderates.

While not quite the imprimatur of propriety, their presence signified they knew what was going on, that they were prepared to participate in it, and that, again, while it was not quite the Good Housekeeping stamp of approval, they were interested to see what occurred.

In a series of floor statements on this issue, as the CONGRESSIONAL RECORD will show, I had urged the leaders to remove the party loyalty straitjacket from Senators so the Senators could vote their consciences because of the consistent comments I heard in the corridors and in the cloakrooms by both Republicans and Democrats that they did not like where we were headed; that Democrats were not pleased with this pattern of filibusters, and Republicans were not pleased with the prospect of the so-called constitutional or nuclear option.

And finally, in effect, that did happen when a group of moderate Senators got together, totaling 14 in number, as the parties signatory to the memorandum of understanding of last night, to forge an arrangement where the very important constitutional checks and balances, the very important constitutional separation of powers, would be maintained.

When we talk about the delicate balance of separation of powers, the constitutional scholars traditionally talk about it as so-called play in the joints. Had there been a formal determination of a rule change so that 51 Senators could cut off debate, that would have materially affected the delicate separation of powers where the President would have had much greater authority, be he a Republican President or a Democratic President.

Similarly, had the so-called constitutional or nuclear option been defeated, then I think it is fair to say the minority party—Democrats in this situation—would have been emboldened to go further in the use of the filibuster.

The nominees who have been subjected to the filibuster, in my judgment, have been held hostage, pawns in this escalating spiral of exacerbation by both sides.

In my 25 years in the Senate, during all of which I have served on the Judiciary Committee, I have seen our committee and this body routinely confirm judicial nominees who were the equivalents of those who have been filibustered here. These nominees have every bit the qualification of circuit judges who have been confirmed in the past.

Priscilla Owen, who is the specific nominee in question, would have been confirmed as a matter of routine had she not been caught up in this partisan battle. She has an extraordinary academic record. She was cum laude from Baylor both for an undergraduate degree and a law degree, scored the highest on the Texas bar exam, worked 17 years with a very prestigious law firm in Texas, served 11 years on the Texas State Supreme Court, earned well-qualified ratings from the American Bar Association, and is personally known to President Bush, who speaks of her in the most complimentary terms.

The senior Senator from Texas, KAY BAILEY HUTCHISON, has been a personal friend for years and knows her intimately. She speaks of her glowingly. She shepherded her to many private meetings with Senators. I spoke with Justice Owen at some length and was very much impressed with her on the academic level, on the professional level, and on the personal level.

Our colleague on the Judiciary Committee, Senator JOHN CORNYN, served with her on the Texas Supreme Court and, again, spoke of her in outstanding terms.

I have spoken at length about Justice Owen in the past, and I would simply incorporate by reference the comments which I made which appear in the CONGRESSIONAL RECORD for May 18 of this year, where I cited a selection of cases showing her judicial balance and showing her excellent record on the Texas Supreme Court.

Mr. President, we have been joined by, as I turn around, two distinguished Senators—one a current Member of this body, Senator BILL FRIST, the other a former Member of this body, Senator Alfonse D'Amato. I did not recognize him at first because he was not in his pink suit.

One day, in the back row, Alfonse D'Amato appeared and sang E-I-E-I-O in a pink suit. There was some comment in the Chamber about how much it improved his appearance. I did not agree with this.

I have a very short story. I had a brother who was 10 years older than I. One day he came down from the drugstore to the junkyard where I worked. He said: Arlen, I was just at Russell Drug. Down there they were saying you weren't fit to eat with the pigs. But my brother said: I stuck up for you, Arlen. I said you were. So when I see Alfonse D'Amato on the Senate floor, I remember those good times.

Now I yield to the distinguished majority leader, whose time I hope I have not unduly encroached upon. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, in a few moments, we will vote to conclude debate on the nomination of Judge Priscilla Owen to the Fifth Circuit Court of Appeals. It has been over 4 years since the Senate began consideration of Justice Owen for this position, and the Senate over that time has thoroughly and exhaustively investigated, looked at, examined, and debated Judge Owen's nomination.

She has endured 9 hours of committee hearings, more than 500 questions, and 22 days—it is interesting, 22 days. That is more than all sitting Supreme Court Justices combined have had on the floor of the Senate—all sitting Supreme Court Justices combined. We have had Priscilla Owen's nomination debated on this floor for more days. There has been more than 100 hours of floor debate. Now finally, after more than 4 years of waiting, Judge Owen will receive a fair up-or-down vote on the floor of the Senate.

As her critics now appear to be concede, Judge Owen is a mainstream candidate, who is thoughtful, who is dignified, and imminently qualified. Her academic and professional qualifications are outstanding. The American Bar Association unanimously—unanimously—rated her as well qualified, its highest possible rating. She was reelected to the Texas Supreme Court with 84 percent of the vote. She is supported by Republicans and Democrats on the Texas Supreme Court. She has been endorsed by every major newspaper in her State of Texas.

Moreover, in the face of continuous, sometimes vicious, attacks and distortions of her record in the nominations process, Judge Owen has shown extraordinary patience with this body. Despite 4 years of attacks on her integrity, Priscilla Owen has quietly, has patiently, has gracefully waited for an up-or-down vote.

Priscilla Owen has worked hard, played by the rules, faithfully interpreted the law and gained the respect of her colleagues and constituents. We cannot ask for more from a judicial nominee. It is time to close our debate. It is time to give Justice Owen an up-or-down vote on the floor of the Senate.

Today's vote will allow that up-or-down vote. It will affirm each Senator's right to weigh the facts and vote his or her conscience up or down, yes or no, confirmed or rejected. It is as simple as that. It is about principle. It is about fairness. It is about our constitutional duty to give advice and consent.

Mr. President, I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the hour of 12 o'clock having arrived, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 71, the nomination of Priscilla Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

Bill Frist, Arlen Specter, Trent Lott, Lamar Alexander, Jon Kyl, Jim Talent, Wayne Allard, Richard G. Lugar, John Ensign, C.S. Bond, Norm Coleman, Saxby Chambliss, James Inhofe, Mel Martinez, Jim DeMint, George Allen, Kay Bailey Hutchison, John Cornyn.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit Court of Appeals, shall be brought to a close? Under the rule, the yeas and nays are mandatory. The clerk will call the roll.

Mr. LEVIN. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Under the rules and precedents of the Senate, how many votes are required to invoke cloture and end debate on the pending nomination?

The PRESIDING OFFICER. Three-fifths of the Senators duly chosen and sworn.

The clerk will call the roll.

Mr. LEVIN. Is there an answer to my parliamentary inquiry?

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURKIN. I announce that the Senator from Hawaii (Mr. INOUYE) is necessarily absent.

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

The yeas and nays resulted—yeas 81, nays 18, as follows:

[Rollcall Vote No. 127 Ex.]

YEAS—81

Akaka	Burns	Conrad
Alexander	Burr	Cornyn
Allard	Byrd	Craig
Allen	Carper	Crapo
Baucus	Chafee	DeMint
Bayh	Chambliss	DeWine
Bennett	Clinton	Dole
Bingaman	Coburn	Domenici
Bond	Cochran	Durbin
Brownback	Coleman	Ensign
Bunning	Collins	Enzi
Feinstein	Lieberman	Santorum
Frist	Lott	Schumer
Graham	Lugar	Sessions
Grassley	Martinez	Shelby
Gregg	McCain	Smith (OR)
Hagel	McConnell	Snowe
Harkin	Mikulski	Specter
Hatch	Murkowski	Stevens
Hutchison	Nelson (FL)	Sununu
Inhofe	Nelson (NE)	Talent
Isakson	Obama	Thomas
Johnson	Pryor	Thune
Kohl	Reid	Vitter
Kyl	Roberts	Voinovich
Landrieu	Rockefeller	Warner
Leahy	Salazar	Wyden

NAYS—18

Biden	Dorgan	Levin
Boxer	Feingold	Lincoln
Cantwell	Jeffords	Murray
Corzine	Kennedy	Reed
Dayton	Kerry	Sarbanes
Dodd	Lautenberg	Stabenow

NOT VOTING—1

Inouye

The PRESIDING OFFICER. On this vote, the yeas are 81, the nays are 18. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:30 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

The PRESIDING OFFICER. The Senator from Colorado.

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

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

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

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I read from the King James version of the Holy Bible, from the 22nd chapter of Proverbs, the 28th verse:

> Remove not the ancient landmark, which thy fathers have set.

Mr. President, in his second inaugural address, Abraham Lincoln observed that:

> With malice toward none; with charity for all; with firmness in the right, as God give us to see the right, let us strive on to finish the work we are in; to bind up the nation's wounds. . . .

Mr. President, I have always believed that the Senate, by its nature, attracts and probably also creates men and