must place results before rhetoric. That is the challenge to the Senate. Above all, we need to fulfill our constitutional duty as Senators.

Since Justice O'Connor announced her retirement now 11 days ago, the Supreme Court nomination has garnered a lot of attention in Washington, in the press, among our colleagues, and indeed all across America. As the President considers her replacement, many Senators have been talking about the issue of consultation. This raises some important questions: Is the President obligated to consult with Senators about a particular nominee? And if so, to what extent?

Under the Constitution, the President is not obligated to consult with Senators before making a nomination. In fact, he is not obligated to consult with anyone. Indeed, the consultation is a courtesy, it is not a constitutional mandate. The Constitution plainly states in article II that the President shall nominate and the Senate shall provide advice and consent. That is it. Yet this White House has welcomed suggestions from Senators.

On the very same day we departed for our recess, on the same day Justice O'Connor announced her retirement, the President personally engaged in the consultation process. He called Senator REID and myself, the two leaders of the Senate. He called the chairman and ranking member of the Judiciary Committee, Senators SPECTER and LEAHY. Since then, the President and the White House have continued to consult in an unprecedented manner and a very inclusive manner. For example, while in Europe at the G–8 summit with the President, White House Chief of Staff Andy Card made time to call a number of Senators, including Senators DURBIN, SCHUMER, KENNEDY, and Senator BEN NELSON. In the last few weeks, White House counsel Harriet Miers met one-on-one with the Democrat leader, with myself, with Senator LEAHY, and with Senator SPECTER. She has called a number of other Senators to discuss the Supreme Court vacancy specifically.

All together, the White House has reached out to more than 60 Senators, including more than half of the Democratic caucus and every single member of the Judiciary Committee. This consultation process is well underway and, as I mentioned earlier, continued again bright and early this morning when the President invited the four of us to breakfast, the two leaders and the two leaders of the Judiciary Committee, the chairman and ranking member. That meeting was productive. We freely exchanged views on the nomination process and what to expect. We discussed the type of nominee the President may want to consider. It was in a good spirit, bipartisan, working together, everyone stressing the importance of, once the nomination is made, having a process that would play out and have that nominee in place by October 3.

I do commend the President for taking all of these steps. He is not obligated to consult before selecting a Supreme Court nominee, but he is choosing to consult. He is reaching out in this inclusive and bipartisan manner. It is a manner that is unprecedented.

I understand the White House will continue to consult after the nomination is made. Despite this effort by the President, I am concerned that no amount of consultation will be sufficient for a few of our colleagues in this Senate, and statements will continue to be made. I say that because co-nomination rather than consultation may be their ultimate goal. Some Senators may prefer to choose the nominee for the President, but that is not the way the system works. That is not the way the Constitution works.

The President has the power to nominate, and the Senate offers advice and consent. Again, consultation does not mean conomination; consultation is a courtesy of the President. It works two ways. If he extends it to us, as he has, we should extend it to him.

As we look ahead, most Senators face a relatively new challenge in a Supreme Court nomination. We talked about it this morning at breakfast. More than half of us in this Senate were not here 11 years ago when the Senate last confirmed a Supreme Court nominee. But I am confident we will rise to the occasion. We should work together to ensure that the nomination process is fair, dignified, and respectful, and we should make sure that a new Justice is confirmed before the Supreme Court begins its new term on October 3.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New York.

SUPREME COURT NOMINATIONS

Mr. SCHUMER. Mr. President, I was listening to our majority leader's words on consultation and the process thus far. I will make a couple of points.

The first is that we are off to a good start. I certainly agree with the majority leader. The phone calls that have been made and this morning's meeting with Senators FRIST, REID, SPECTER, and LEAHY are a good first start. That is how it should be. But simply phone calls or meetings, if they are devoid of substance, are not going to lead to real consultation.

I certainly agree with the majority leader's point. The Senate is not a co-nominee. It is the President who has to do the nominating. The way consultation has successfully worked in the past is for the President to quietly, privately, offer some of the names he is considering to those on both sides of the aisle and get opinions about those names: How would this one fare? How would that one fare? Would this one cause a fight? How about that one?

It is not that we would be conominators at all. Consultation is that. The President is the nominator, and a good consultation means that nominator discusses who he is thinking of nominating, takes the temperature, if you will, of the Senate, particularly of the other party, to see if a consensus nominee could come about. Thus far, neither the President nor any of the people working for him—I had one call with Andrew Card, the Chief of Staff—has offered a single name. From what I understand this morning, the President did not offer a single name.

So we are off to a good first start. Make no mistake about it—it is a first start to begin the consultation process. But the consultation process, for it to work, is not going to be, Okay, who do you think is a good name, and that is that and we do not have a back and forth. In fact, for consultation to work—and we all want it to work—the President should suggest some names and get the opinion of those in the Senate.

This is how it worked with President Clinton. It was not simply that President Clinton called up ORRIN HATCH and said, Give me some names, and didn't have a discussion. President Clinton bounced off names. In ORRIN HATCH's book, he states that one of the names offered who President Clinton very much wanted to nominate was Bruce Babbitt, the former Interior Secretary and Governor of Arizona. While ORRIN HATCH did not state how he would vote—and I have talked to ORRIN a little about this—he said: I think Babbitt would cause a big fight. And wisely, President Clinton did not offer his name. So that is how the consultation process, to be successful, ought to go.

In my call with Andrew Card, I told him something I have said repeatedly. And I think I speak for just about every member of this caucus on this side of the aisle. We do not want a fight. We certainly do not relish a fight. We would much prefer a consensus nominee. Furthermore, we know that nominee is not going to be a liberal or even a moderate. It is likely to be a conservative. But our view is—again, this time I am speaking for myself, but I think a lot of my colleagues share this view—our view is very simple: that nominee, though conservative, will interpret law, not make it; will be thoughtful, will be pragmatic, will understand the other point of view. If that happens, I think we can have a process that works well.

So in summary, Mr. President, the consultation we have had is great. The number of phone calls may exceed any others that have been named. But so far, at least according to my phone call and the ones of many of my colleagues with whom I have talked, and from what I have been told about the meeting this morning, we have not gotten into the real nitty-gritty of consultation—not co-nomination, absolutely not. The President is the nominator. But the nitty-gritty means offering some names. The President offers some names and gets the opinion before he

makes his decision—and the decision, of course, by the Constitution is solely his—as to whether that nominee would get broad acceptance or whether that nominee is likely to cause quite a stir in the Senate.

Let us hope this is not the end of the consultation process but the beginning. Let us hope there will be that kind of dialog. I reiterate my call to the President to have a summit, to call a good number of Democrats and Republicans together for a day at Camp David or an evening or dinner at the White House and have a real back-and-forth where we roll up our sleeves and really get into a serious, detailed discussion of how we all feel. Who will benefit if that happens? Who will benefit if there is real consultation? Certainly the President, certainly the Senate, certainly the Supreme Court, but, most of all, certainly the American people.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

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

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2006

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 2360, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2360) making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

Pending:

Reid (for Murray) amendment No. 1129, to provide emergency supplemental funds for medical services provided by the Veterans Health Administration for the fiscal year ending September 30, 2005.

Collins amendment No. 1142, to provide for homeland security grant coordination and simplification.

Feinstein amendment No. 1215 (to amendment No. 1142), to improve the allocation of grants through the Department of Homeland Security.

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

AMENDMENT NO. 1215

Mrs. FEINSTEIN. Mr. President, I rise to call up amendment No. 1215.

The ACTING PRESIDENT pro tempore. That amendment is currently pending.

Mrs. FEINSTEIN. Thank you very much, Mr. President.

Mr. President, this amendment is offered on behalf of the Senator from Texas, Mr. CORNYN, and myself. It is identical to the Homeland Security FORWARD Funding Act of 2005. That is S. 1013.

I am very pleased to be joined not only by my colleague from Texas but, as well, by Senators BOXER, HUTCHISON, KERRY, MARTINEZ, SCHUMER, CLINTON, CORZINE, KENNEDY, LAUTENBERG, and NELSON of Florida. And, Mr. President, I ask unanimous consent to add Senator MIKULSKI to the list of cosponsors.

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

Mrs. FEINSTEIN. Mr. President, a great deal has been said about how homeland security dollars should be allocated. I think it is pretty clear that the American people, and certainly major opinionmakers such as major newspaper editorials, major mayors and major Governors, believe it is time our Nation adopt risk-based analysis to guide critical resource allocation of homeland security efforts.

This legislation will do exactly that. The Cornyn-Feinstein amendment is extremely simple in approach. Its key language, which appears at its beginning, is clear. Let me quote it:

> The Secretary [of Homeland Security] shall ensure that homeland security grants are allocated based on an assessment of threat, vulnerability, and consequence to the maximum extent practicable.

This legislation will ensure that these priorities are set, and set according to analysis of risk and threat.

This bill accomplishes this through five basic mechanisms.

First, the law requires the Secretary of the Department of Homeland Security to allocate grants based on risk. The legislation will mandate that funding decisions be designed according to an assessment of risk. This is a key element of the law, which makes this clear in its very first section, entitled ''Risk-Based Funding For Homeland Security,'' which reads—and I want to repeat it—

> The Secretary [of Homeland Security] shall ensure that covered grants are allocated based on an assessment of threat, vulnerability, and consequence to the maximum extent possible.

The bill defines ''covered grants'' as including the four major first responder grant programs administered by the Department of Homeland Security. That is: First, the State Homeland Security Grant Program; second, the Urban Area Security Initiative; third, the Law Enforcement Terrorism Prevention Program; and, fourth, the Citizens Corps Program.

In addition to these four core grant programs, the legislation also covers grants ''provided by the Department for improving homeland security,'' including grants for seaport and airport security.

The bottom line is that if Federal funds are going to be distributed to improve first responders' ability to ''prevent, prepare for, respond to, or mitigate threatened or actual terrorist attacks,'' those funds should be distributed in accordance with a risk-based analysis. Al-Qaida and its allies do not attack based on a formula. This bill rejects the formula approach in favor of a framework that is flexible and risk focused.

Second, the legislation requires that covered grants be designed to meet ''essential capabilities.'' ''Essential capabilities'' is a concept defined in this law. It is what we get for the money spent: The ability to meet the risk by reducing vulnerability to attack and diminishing the consequences by effective response.

Third, the bill requires States to quickly pass on Federal funds to where they are needed. States should not hold Federal funds back from where they are most needed. This bill will ensure that States quickly and effectively move the funds through to the location.

And, fourth, the bill addresses the small State minimum issue. The underlying bill requires each State to get .75 percent of the grant funding. Now, what does that mean? That means that 37.5 percent of the funds go on a formula basis to areas that might not have risk, threat, or vulnerability. For instance, under the current appropriations bill, of the $1.918 billion appropriated, $548 million is taken right off the top, allocated to States regardless of whether they are vulnerable, whether they have risk, or whether they have threat. Thus, that $548 million is not available to meet risk.

This legislation will significantly reduce this large set-aside. It will reduce it from 37.5 percent to the .25 percent. Now, I must admit I am uncomfortable even with the .25 percent minimum and would prefer to eliminate any impediment to risk-based funding. I believe it is the right thing to do. I would believe this regardless of what State I came from. We set up a huge Department of Homeland Security and have given them the basis and the ability to do the analyses that are required and the intelligence that has moved in to determine what is vulnerable, where it is, where the threats are, and what the risks are. And these are going to be ever changing. But I understand the realities of the Senate, so we decided to track what the President requested in his budget.

In this post-Cold-War world of asymmetric threat, there are two fundamental understandings which apply to efforts to make our Nation more secure against a terrorist attack.

The first understanding is that predicting what terrorists will do requires risk analysis. It is an uncomfortable fact that even with the best intelligence we will never know exactly how, when, and where terrorists will strike. The best we can do is to adequately assess risks and threats and make predictions.

The second understanding is that our defense resources are not infinite. The sum total of money, time, and personnel that can be devoted to homeland security is limited.

Together these two understandings define the task for our Nation: We must accurately assess the risks of an array of possible terrorist attacks, measure the vulnerability of all of these possible targets, and then divide up resources based on that assessment,