ALITO NOMINATION FILIBUSTER

Mr. HATCH. Mr. President, on Monday United Press International reported the good news that our Democratic colleagues do not plan to filibuster the Supreme Court nomination of Judge Samuel Alito.

I hope that UPI report is true, because this body needs to return to our constitutional and commonsense tradition of fully and fairly evaluating and debating judicial nominations.

Senators may, of course, vote for or against a judicial nominee for any reason, or no reason at all. Our constitutional role of advice and consent, however, requires that after vigorous floor debate, we must vote.

UPI quoted a spokesman for the Democratic leader saying that talk of an Alito filibuster is, in his words, silly and unhelpful.

I can only assume that he was speaking for the Democratic leader and, while I agree with his statement, I am afraid the situation is not quite what he would have our fellow citizens believe.

In fact, not 24 hours earlier, this very same spokesman was himself engaging in some silly and unhelpful filibuster talk of his own, telling the Associated Press that all procedural options are on the table for handling the Alito nomination.

We all know what that means.

The list of all procedural options includes the filibuster, by which those who cannot defeat a judicial nomination on the merits try to do so by preventing any confirmation vote at all.

Before the Democratic spin machine cranks out a press release accusing me of silly and unhelpful filibuster talk, let me remind everyone of some possibly inconvenient facts.

I know that my friend, the distinguished Senator from West Virginia, was on the floor Monday claiming that no Democratic Senator had talked about filibustering the Alito nomination.

With all due respect to him, that is simply not accurate and the public record speaks for itself.

On November 1, for example, the Senator from New York, Mr. SCHUMER, told The Hill newspaper that nothing is off the table.

That same day, the Senator from California, Mrs. BOXER, was more specific, telling the Associated Press that, in her words, the filibuster's on the table.

The next day, the Senator from Iowa, my friend Senator HARKIN, went even further.

The Baltimore Sun quotes him saying that he believes Democrats will indeed filibuster the Alito nomination.

Other Democrats, some of them my colleagues on the Judiciary Committee, have also engaged in what their party's spokesman has branded silly and unhelpful filibuster talk.

The distinguished assistant Democratic leader, Senator DURBIN, said the Democrats' decision whether to allow the nomination to go forward at all will be made after next month's hearing.

Again, we all know what that means.

It means the filibuster is still on the table.

On November 20, the Senator from Delaware, Mr. BIDEN, a former Judiciary Committee chairman, not only suggested a filibuster was possible, but said its prospects had actually increased.

Democratic National Committee Chairman Howard Dean said last month that Senate Democrats should, in his words, absolutely keep the filibuster option on the table.

And finally, the Democratic leader, Senator REID, himself said back on November 1 that an Alito filibuster is possible.

This record is public and very consistent. And this record makes the statement on Monday by the senior Senator from Massachusetts, Mr. KENNEDY, that he does not know a single Democratic Senator who has talked about an Alito filibuster absolutely baffling.

My Democratic colleagues have certainly done so, early and often.

Some Senators, well-meaning Senators, have said that the judicial nomination filibuster issue is really about freedom of speech. The distinguished Senator from West Virginia made that point on Monday here on the Senate floor.

We all believe in freedom of speech. We all believe in full, fair, and vigorous debate. When it comes to the legislation over which this legislative body has complete authority, debate can become an end in itself. That is, after all, the definition of a filibuster, when ending debate proves impossible.

The filibuster has long been, and I believe should remain, part of the legislative process.

Judicial appointments, however, are different than legislation. The Constitution assigns the power to nominate and appoint judges to the President.

And judicial, as opposed to executive, appointments also dramatically affect the third branch of government.

When it comes to judicial nominations, therefore, debate should be a means to an end.

The end of the judicial confirmation process must be an up-or-down vote for nominations reaching the Senate floor.

The Senate can vote to withhold consent to a judicial nomination, and we have done so in the past.

But refusing to vote at all, especially when a judicial nomination clearly has majority support, goes beyond exercising our advice and consent role and attempts to highjack the President's appointment power altogether.

When Republicans were in the minority, we respected President Clinton's primary role in judicial appointments.

This body confirmed his Supreme Court nominee Judge Ruth Bader Ginsburg in 1993 by an overwhelming vote of 96 to 3.

We confirmed his nominee Judge Stephen Breyer in 1994 by a margin of 90 to 9.

Judicial nomination filibusters, then, are not about freedom of speech.

When it comes to the judicial confirmation process, our freedom of speech must be shaped and balanced by the separation of powers, by the Constitution's assignment of authority in that process.

Until recently, the Senate refused to transfer the powerful tool of the filibuster from the legislative process to the judicial confirmation process.

We refused to go down that road and I believe we should put up a permanent roadblock.

With all due respect to my Democratic colleagues, they cannot have it both ways.

They cannot, as they have been doing now for more than 6 weeks, keep filibuster hopes alive by suggestions and hints, and then claim their political hands are clean when Senators on this side of the aisle respond.

I believe that UPI reported the Democratic spokesman's statement accurately, but I am not as confident that his statement is accurate or operative.

Does it mean that Democratic Senators have abandoned their earlier statements and decided that the Senate should indeed debate and then vote on the Alito nomination?

I believe that is what the American people expect us to do, but is that what Democratic Senators will do?

I hope they do.

I hope we can fully and vigorously debate the Alito nomination, and then vote on it.

I also believe that when the Senate and American people get to know Judge Alito, his experience, his character, and his traditional mainstream views of the law and the Constitution at his confirmation hearing, they will like what they hear.

Judge Alito is a good man and a great judge.

My Democratic colleagues can help sort out the confusion their earlier statements have created.

If they mean what they now say, that talk of filibustering the Alito nomination is indeed silly and unhelpful, then let us take the divisive and politicizing option of a filibuster off the table.

Let us agree, right here and now, that this body will do its duty of fully debating the Alito nomination and then voting on it.

The Constitution, Senate tradition, and the American people demand no less.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

VOTE EXPLANATION

• Mr. LIEBERMAN. Mr. President, because of a severe head cold I decided, after a telephone discussion with the minority leader, not to attempt to