



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, FIRST SESSION

Vol. 149

WASHINGTON, THURSDAY, FEBRUARY 13, 2003

No. 27

Senate

The Senate met at 11 a.m. and was called to order by the Honorable CONRAD R. BURNS, a Senator from the State of Montana.

PRAYER

The guest Chaplain, Monsignor Robert J. Fuhrman, offered the following prayer:

Lord God of life and love, Creator of heaven and Earth, morning has again filled the sky and we ask for Your grace. The men and women of this Senate and every American face a world of uncertain promises and fragile peace. Strengthen, bless, and guide our Senators with Your warm light. Then threats and fear will cease to make us weak, for we can do all things in You. Give the Senate wisdom, Lord, the intended at Your throne. With wisdom they will be courageous in leadership, proud servants of a free people. Perfect in them the art of willing service, Lord. Show them and all of us the way. Help us to know what is right and to protect that which is good in this wonderful Nation and this beautiful world. Bless us, protect us from all evil, and give us Your peace. Amen.

Mr. LAUTENBERG. Mr. President, I rise today to welcome the Reverend Monsignor Robert J. Fuhrman to the Senate. Monsignor Fuhrman hails from Saddle River, NJ, and we are very happy that he is joining us today as the Senate's guest Chaplain. Monsignor Fuhrman was ordained to the priesthood in 1981. He received his bachelor's degree from Seton Hall University in 1977 and he currently serves as pastor at St. Gabriel the Archangel Church in Saddle River. He is also currently on the board of directors of the Society for the Propagation of the Faith, which is a mission support agency of the Catholic Church. In this capacity he has daily contact with missionaries providing important services in developing countries around the world.

I am always excited when we can welcome someone from New Jersey to the

Senate Chamber and I am honored to welcome Monsignor Robert J. Fuhrman to lead us in our morning prayer.

PLEDGE OF ALLEGIANCE

The PRESIDING OFFICER led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 13, 2003.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable CONRAD R. BURNS, a Senator from the State of Montana, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. BURNS thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senate majority leader is recognized.

SCHEDULE

Mr. FRIST. The Senate will resume consideration of the nomination of Miguel Estrada to be a circuit judge for the DC Circuit. This is now the sixth day of debate on this judicial nominee. I thank Chairman HATCH, chairman of the Judiciary Committee, for leading

the debate on Miguel Estrada last night. I believe Senator HATCH laid out very clearly the qualifications of this nominee, as well as the traditional practice and process of our judicial confirmations.

I thank all Members on this side of the aisle for their questions last night. I believe those questions and answers provide a great insight and clear away much of the rhetoric surrounding this well-qualified nominee.

Again last night I attempted to reach an agreement as to when we might have an up-or-down vote on the Estrada nomination. All of my proposals were rejected. I hope out of a sense of fairness my Democratic colleagues would rethink their objection and allow the time certain for an up-or-down vote on Miguel Estrada.

With respect to the omnibus appropriations conference report, the House filed the report late, very late, last night. The House is expected to act on that conference report later today. Therefore, it is my intention the Senate will be able to complete action on that measure on Friday.

I will be working with the Democratic leader in an effort to reach a time agreement on that conference report. Rollcall votes are, therefore, possible during today's and tomorrow's session.

The ACTING PRESIDENT pro tempore. The distinguished minority leader from South Dakota.

Mr. DASCHLE. I ask the distinguished majority leader if it is his intention to bring the bill up tomorrow? There have been questions about the schedule tomorrow. You did indicate it was more likely it would come up tomorrow rather than tonight?

Mr. FRIST. Mr. President, in response, it may well be tonight, in which case we could consider moving ahead tonight. It depends on when the House finishes their business and delivers it to us. A number of Senators have asked. Looking realistically, it is likely to be tomorrow. But if we receive it

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



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earlier, I will be more than happy to work on it tomorrow.

I might turn to the distinguished chairman and ask for his perspective on what we might see over the course of today.

Mr. STEVENS. Mr. President, it is my understanding the House will not get to the bill until quite late tonight so I presume we will not receive it until tomorrow.

Mr. DASCHLE. I thank the chairman and the distinguished majority leader.

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume executive session and the consideration of Executive Calendar No. 21, which the clerk will report.

The legislative clerk read the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit.

The ACTING PRESIDENT pro tempore. The distinguished minority leader.

Mr. DASCHLE. I thank the presiding officer.

Let me say in response to the majority leader, it has been 8 days now since Miguel Estrada's nomination came to the Senate floor. The issue in this case is not only Mr. Estrada's qualifications. An even more immediate issue is Mr. Estrada's continued refusal to fill out what, for all intents and purposes, is a job application. Mr. Estrada is asking for a lifetime appointment to the second most powerful court in the land, the court just below the Supreme Court, and yet he refuses to answer the simple questions that are asked routinely of men and women who are nominated to the Federal bench.

We do not need more time to debate the nomination. We need more answers. Without those answers, debate is hollow because we lack the basic information we need to make an informed judgment about Mr. Estrada's fitness. We are prepared to wait as long as we have to for his answers. Whether that wait lasts an hour, a day, a week, or even longer, is up to the administration and Mr. Estrada.

The Constitution does not suggest, it does not hint that maybe it would be a good idea for us to advise the President on his nominees and withhold or offer our consent. The Constitution requires the Senate to advise the President on

the nominees and offer or withhold our consent. By refusing to answer even the most basic questions, Mr. Estrada is not only stonewalling the Senate, he is undermining the Constitution. He is preventing the Senate from exercising our fundamental constitutional responsibility in this matter.

I will simply say to my colleagues: We will not relent on this matter. We are united in our resolve to fulfill our obligation under the Constitution.

There have been efforts made by some on the other side to confuse people. They want the American people to believe that Democrats have been unfair in our handling of judicial nominations. I think most people know better than that. In the last 17 months, we confirmed 100 Federal judges. All of those judges were nominated by President Bush and all of them, one can assume, are quite conservative judges.

Our Republican colleagues have even suggested that this debate may be about Mr. Estrada's ethnicity. Some of his supporters have suggested—incredibly—that if you ask Mr. Estrada to answer questions, you are somehow hostile to the rights of Hispanic Americans. They have asserted on the floor of the Senate and also on the floor of the House that those who ask questions are somehow anti-Hispanic.

That charge is desperate and, frankly, offensive, and it is obviously untrue. In fact, the Congressional Hispanic Caucus, which unanimously opposed Mr. Estrada's nomination, has actually demanded an apology from those who have made this false claim. Regrettably, we have heard no apology from those who have had the poor judgment to make such unfounded allegations. Even one of the groups that supports Mr. Estrada's nomination has denounced those allegations by Republicans. So I hope we are not going to hear any more of that ill-advised talk on the Senate floor.

The fact is, many groups have expressed concern over Mr. Estrada's refusal to answer the Senate's questions. Among them, few have spoken out more forcefully than the organizations representing Hispanic Americans.

His nomination is opposed by every member of the Congressional Hispanic Caucus, by the Mexican-American Legal Defense and Education Fund, and the Puerto Rican Legal Defense and Education Fund.

Leaders of the Mexican-American Legal Defense and Education Fund said:

It is unclear whether Mr. Estrada would be fair to Latino plaintiffs as well as others who would appear before him with claims under the First Amendment, the Fifth Amendment, and Due Process clauses of the Constitution.

They continued:

Further, we found evidence that suggests that [Mr. Estrada] may not serve as a fair and impartial jurist on allegations brought before him in the areas of racial profiling, immigration and abusive or improper police practices . . .

We have concerns about whether he would fairly review standing issues for organiza-

tions representing minority interests, affirmative action programs or claims by low-income consumers.

We are also unsure, after a careful review of his record, whether he would fairly protect labor rights of immigrant workers, or the rights of minority voters under the Voting Rights Act.

All this, not from some Democratic Senator, not from some partisan Democrat, but from one of the most respected Hispanic groups to speak out on this issue, on either side.

Other Hispanic groups, including the Puerto Rican Legal Defense and Education Fund have expressed very similar concerns.

If these perceptions are inaccurate, Mr. Estrada could disprove them—if he would stop stonewalling. But, unfortunately, so far he has refused to do so.

As I said, there is far too much we don't know about Mr. Estrada. We will do everything we can to prevent his nomination from coming to a vote until he provides this Senate and the American people with some straight answers.

Perhaps the most troubling aspect of this situation is not the red herrings. It is not the cynical or false accusations of obstructionism or anti-Hispanic bigotry, as offensive as those charges are. What is even more troubling is what the Senate is not doing right now.

We have made it clear that the Senate cannot vote on the Estrada nomination until the necessary information is provided. Yet our Republican colleagues have chosen to force this fight onto the floor rather than to take up other, more urgent business.

Americans who watched as this debate stretched late into the night last night must have been mystified. They know we are facing daunting challenges at this critical moment in our history. Our Nation may be on the verge of war. We are told that America is at a high risk of terrorist attack. People are experiencing great anxiety about their safety and the safety of their loved ones. What is more, millions of Americans are out of work and our economy is in trouble.

Why—Americans must have asked themselves last night—with all of the great challenges confronting our nation, why has the Republican majority chosen to pick this fight at this time?

I don't understand, and I doubt that people at home do, either.

America faces serious, even life-and-death challenges: homeland security, the economy. That is what the Senate should be working on day and night. That is a good reason for an all-night session.

Miguel Estrada should stop the stonewalling. He should answer the Senate's questions and we should get on with addressing the real, urgent issues confronting our country—the economy, the terrorist attacks, and war in Iraq.

We can wait and we can talk, or we can set this nomination aside until we have the information to make an informed judgment and, in the meantime, we can deal with the issues that

are of far greater consequence and far greater concern to the American people. Until we deal with those concerns, we are not really meeting our responsibilities.

(The remarks of Mr. DASCHLE pertaining to the introduction of S. 385 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mrs. FEINSTEIN. Mr. President, I had an opportunity to come to the floor once before and express my views about the nominee who is before the Senate for confirmation, Miguel Estrada. But I want to make a few additional points at this time, and I hope I don't repeat myself.

I want to say for my part and for the part of many others in the body that this is not a debate we were eager to begin; this is not a debate we are eager to continue; but this is a debate that really goes to the heart of the separation of powers and the checks and balances that the Founders of this Nation so carefully crafted more than 200 years ago.

The President makes nominations to the Federal judiciary. This is true. But it is a judiciary that Congress fashioned, and it is a judiciary that the Senate has been given the constitutional responsibility to help fill, through our advice and consent role.

I am one who has always believed that every nominee should get a full and fair hearing and that every nominee should then get an up-or-down vote. For too long, I watched one after another Clinton nominee languish without any such courtesy, and with no explanation as to why. Many of his nominees were minorities who never even got the chance to speak to the Committee.

Chairman HATCH and I had many conversations during that time about moving more nominees through the committee. And I know he did more than many in his caucus would have liked him to do to move nominees. For that, I thank him. I believe deep in his heart he also believes nominees should move through and get a hearing. But still, too many nominees were stopped from even the most basic of rights during the nomination process—a hearing—a basic right for someone who is nominated to the Judiciary Committee. They should have a right to have a hearing, in my view.

In this case, the Democrat-controlled Senate gave Miguel Estrada a full and fair hearing and every opportunity to show the committee what kind of judge he would be. But he did not use that opportunity well.

Although I believe that every nominee deserves an up-or-down vote, an up-or-down vote on final confirmation should only occur after the Senate has had a full opportunity to learn about the nominee and to properly judge whether or not that nominee can serve impartially in the Federal judiciary. In this case, I don't believe we have enough information to make such a de-

cision, as a direct result of the lack of cooperation by this nominee and by the White House. As a result, we should not be asked to make such an important decision.

I want to clearly state this is not an issue of retaliation, as some have suggested. It is true that the Republican Senate did block a number of very qualified Hispanic nominees—female nominees, and so on—under President Clinton.

And it is true that many on this floor have mentioned those nominees—Enrique Moreno, for instance. But they were mentioned not to begin some tit-for-tat exchange of blocked nominations. Quite the contrary. Under Chairman LEAHY, the Judiciary Committee and the Democrat-controlled Senate confirmed 100 nominees in just over a year.

Mr. Estrada has already been given far better treatment than many were given by the other side in the recent past. All we ask for is some basic answers to the most basic of questions. Think about this: Before us now, we have a 41-year-old nominee about whom we know little. He has been nominated to a crucial appellate court, the DC Circuit, which is, at present, evenly split. That raises the question, Do we have a right to know if this judicial nominee can be impartial? I believe we do.

In this case, this nominee, for some reason, has been very controversial from the beginning. We have heard from many who have worked with Mr. Estrada or even supervised him, and many who have watched him work throughout the years.

Without exception, all of these individuals believe Mr. Estrada is bright. And I am confident that every Democrat in this body agrees with that assessment. But that is not the problem. And that is not the question today.

Without exception, all these individuals believe Mr. Estrada to be well educated, as my colleagues on the other side of the aisle have indicated throughout the last few days. But that, too, is an issue that is not in doubt, and it is not the problem.

And essentially, without exception, all of these individuals believe Mr. Estrada is conservative. Some believe him to be very conservative, some less so, but all recognize him to be a conservative. Even Mr. Estrada himself, as I understand it, would likely describe himself in this manner. But make no mistake, this is not about whether or not Miguel Estrada is conservative.

I have already voted for nominees whom I know to be conservative, as have most, if not all, of my Democratic colleagues.

At the present time, I have just given my proxy to the Judiciary Committee that is considering three nominees to appellate courts who are, in fact, conservative. And I will vote yes on those nominees.

So the question is not whether this nominee—or any nominee—is liberal or

conservative, White or Hispanic, Jewish or Catholic, or any other group or inclination. The question with this nominee—and with every nominee—is whether the nominee can put aside personal beliefs to rule fairly and impartially on the cases that come before him or her.

In some cases, we can get a clear idea of how a nominee would handle the responsibilities of a Federal judgeship. But in this case, as we tried to get a clear idea of how this nominee would handle these responsibilities, we were really stymied at every turn.

On the one hand, we have letters, phone calls. To my office, we have received almost 8,000 phone calls in opposition to this nominee; and less than 400 in favor. All these phone calls seem to indicate the belief that Mr. Estrada is an ideologue who cannot be trusted with a circuit court judgeship.

We have Professor Paul Bender, Mr. Estrada's direct supervisor at the Department of Justice, who said to the press that he believed Estrada to be so "ideologically driven that he couldn't be trusted to state the law in a fair, neutral way." Mr. Bender recently sent a letter to the chairman of the Judiciary Committee essentially reaffirming this statement.

We have major Hispanic organizations—just those groups one might expect to most strongly support Mr. Estrada—strongly opposing him instead.

On the other hand, as we look for facts to counteract such serious concerns, we have almost nothing.

Miguel Estrada has never been a judge, so we have no record of judicial decisionmaking to examine. This in itself is not dispositive, but it is the first area where we find no record to help us in our decisions.

Mr. Estrada is not a prolific writer, so again, unlike many, we have no real record of writings or speeches to examine. Again, this alone would not be dispositive, but, as I said earlier this week, in a sense, it is strike two in terms of where we can get information about this nominee.

We have not been granted access to the memos he wrote at the Department of Justice, so we can only take the word of the man who supervised him that those memos were ideologically driven and could not be trusted. That is strike three.

Mr. Estrada refused to adequately participate in his own confirmation hearing, so we have no real answers to these questions. And the questions are legitimate.

Even when given time to think about his answers, even when he was given questions in written form, he refused to answer those questions, using precisely the same language he used to refuse to answer at his hearing.

For instance, when Senator DURBIN asked this nominee, in writing: "Do you have an opinion on the merits of *Roe v. Wade*?" Mr. Estrada responded, as he did to me in committee, "it

would not be appropriate for me to express such a view without doing the intensive work that a judge hearing the case would have to undertake—not only reading briefs and hearing the arguments of counsel, but also independently investigating the relevant constitutional text, case law, and history.”

In the hearing, I asked him: Do you believe Roe was correctly decided? And he said he could not answer that question.

When Senator KENNEDY asked Mr. Estrada, in writing, how he would have resolved a case that came before the DC Circuit and was then decided by the Supreme Court—Hoffman Plastics—Mr. Estrada again answered that because he had not read the briefs and was not present at oral argument, he could not answer.

When Senator KENNEDY asked him about the Maryland/DC/Delaware Broadcasters case, again Mr. Estrada said he could not, or would not, answer.

When Senator DURBIN asked Mr. Estrada to name any judge, living or dead, whom he would seek to emulate, Mr. Estrada said he could name not one judge he would emulate.

In contrast, let me take a moment to talk about Judge Richard Paez, a well-qualified Hispanic nominee sent to the Senate by President Clinton and eventually confirmed to the Ninth Circuit Court of Appeals.

Judge Paez spent more than 1,500 days before this Senate before he finally got a vote. And this came despite the fact that he answered every question put to him.

For instance, Senator SESSIONS asked him: “Which Supreme Court Justice or federal judge has most influenced your judicial philosophy?” Judge Paez named Judge Harry Hupp, a man he appeared before as a litigator, and a colleague of his on the district court bench.

Senator SESSIONS asked Richard Paez: “In your opinion what is the greatest Supreme Court decision in American history?” Judge Paez did not refuse to answer, or claim that he could not give an answer because he had not been present at oral arguments. Instead, he simply named *Brown v. Board of Education*.

Senator SESSIONS then asked: “What is the worst Supreme Court decision?” Judge Paez answered: “Dred Scott.” This is the decision where the Supreme Court ruled, essentially, “once a slave, always a slave.”

Miguel Estrada, on the other hand, would not answer these types of questions.

Senator SCHUMER asked him to name any Supreme Court case he thought was wrongly decided.

He did not simply say he thinks *Plessy v. Ferguson* was wrongly decided. That is the case that upheld the concept of separate but equal. And even the Supreme Court has since overturned it. I know of few people who would claim *Plessy* was correctly de-

ecided. But Miguel Estrada apparently thinks he could not say so without having heard the oral arguments. He did not say he disagreed with the *Dred Scott* decision, which upheld slavery. He did not say he believed *Korematsu*, which upheld the right of the United States to put American citizens of Japanese descent into internment camps. He named none of these cases. He simply said he could not answer the question.

This is in direct contrast to a recent experience with Jeffrey Sutton during his hearing less than 2 weeks ago. Mr. Sutton is also a controversial nominee, but he answered every question put to him. We got a good sense of how he would think and act as a judge. I, myself, who was concerned about him initially, felt he was a strong advocate, but he knew the difference. He could separate himself from the positions of advocacy and become a fair and impartial judge. So I have given my proxy right now to be carried out to vote yes for Judge Sutton. Mr. Estrada, on the other hand, did his best to keep from putting himself on record on any issue of real substance.

Quite frankly, there are options. One, return this nominee to the Judiciary Committee for answers. The Senate deserves the answers. Democratic nominees were asked by distinguished Republican Senators to answer questions such as this, and they did. Even of those, many had judicial records. Many had prolific writings. Many had speeches so that there were tools we could go to to understand what their thinking was. But in this case we have no speeches. We have no writings. We have no record. Therefore, the answers to the questions become extraordinarily dispositive. They also become meaningful to any Senator who wants to cast an informed vote.

It is that simple. That is what this debate is about. We cannot possibly fulfill our constitutional duty to advise and consent to nominees if we are not given the necessary information about the nominee.

In a case where you have a critical circuit such as the DC Circuit, not only the plumbing grounds for the U.S. Supreme Court, but handling environmental appeals, Superfund appeals, wetlands appeals, OSHA appeals, all kinds of administrative case law appeals, how this court is tilted becomes important to us, particularly if we take this job of confirmation of nominees seriously.

There is another option. That option is appoint Miguel Estrada to a district court. Give him an opportunity to gain that record. He is 41 years old. He is younger than my daughter. Give him an opportunity to gain that record. Remember, this is a man who will serve for 30, 40, possibly even 50 years. It is a lifetime appointment. We are entitled to answers to these questions.

In Miguel Estrada’s questionnaire, he admitted to having written no books, articles, or reports of any kind, save

one Law Review article in law school. That was titled “The Policies Behind Lending Limits.” He wrote that in 1985. At Miguel Estrada’s hearing, he would not comment on whether any case had ever been wrongly decided, even cases that have been overturned. He would not name any single judge he would want to emulate on the bench in any way. He would not answer written questions put to him that would help us learn more about how he thinks about cases and how he would judge them. He would not even try to convince the Justice Department to turn over some of the memos he wrote for the Solicitor General’s Office, nor would he himself turn them over.

If this nominee is confirmed, we believe we would be sending a signal that stonewalling the Judiciary Committee and the full Senate is the way to succeed on the way to a judgeship. That is the wrong signal and the wrong message.

In effect, we would be abdicating our constitutional role, our constitutional duty to advise and consent to nominees, because we would never again be able to learn enough about a nominee to make reasoned decisions.

Nominees could become increasingly young, increasingly ideological, and increasingly silent. The courts would soon be packed with judges of unknown disposition, unknown temperament, and unknown proclivities to judge fairly and impartially.

We should take our constitutional duties more seriously than that. We simply are determined not to let that happen.

I would like to read the concluding sentence from the editorial in today’s *New York Times*:

The White House can call this politics or obstruction. But in fact it is Senators doing their jobs.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I thank my colleague from California. She laid out the facts beautifully. I will attempt to try and talk about this issue from my perspective as someone who worked so hard on getting a couple of nominees through the Senate. Senator FEINSTEIN touched on those particular cases. They are relevant to what we are doing here.

I remind colleagues—I know they are aware of this, but it is worth repeating—we are talking about a lifetime appointment to one of the most important courts in the Nation, the U.S. Court of Appeals for the District of Columbia. It is a lifetime appointment. It is very important when we are looking at these types of appointments.

I have voted for well over 90 percent of the President’s appointees up to this time. It is very unusual for me to stand up here and say: We need more information. It is important to go back to the Constitution and read exactly what it tells us we have to do. Section 2:

[The President] shall have the Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of

the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for . . .

There has been a lot of discussion that we are in essence interfering with the rights of the President. It is very clear: If we sit back and don't do the work of advice and consent, we don't deserve to be in the Senate. This is where the rubber meets the road. This is where we have to play a role. Advice and consent just means that.

I want to relate a story, when Senator HATCH, who is now distinguished chairman of the Judiciary Committee, was chairman before Senator LEAHY and President Clinton was President at that time. Senator HATCH had a very direct conversation with me, and I am sure he did with other Democrats. What I like about Senator HATCH is, you kind of know where he is coming from.

He said: Senator BOXER, you have to send me moderates. Don't send me any liberals. Don't send me any progressives. Don't send me any activists. I want moderates for the bench. I am telling you here now, if they are not, they are not going anywhere. I had a little conversation with him about that but realized this was the pragmatics of politics and this is what we are going to do.

In essence, the nominees I had recommended to the President and President Clinton were mainstream moderate candidates. Even with that, a lot of them had a hard time here. But they made it, and I want to talk about how long it took and how many questions they had to answer and what we went through to make it happen.

I feel sometimes like Alice in Wonderland when I hear the kind of double standard that seems to be coming forward. This man, Mr. Estrada, cannot answer any questions, but look at how many questions they asked Margaret Morrow. Margaret Morrow—we recommended her to President Clinton. She was a distinguished lawyer in a business law firm. She is as straightforward as motherhood and apple pie. They asked her question on question on question. These are Republicans on the Judiciary Committee. She waited maybe 2 years before she could be voted on. Here is the interesting thing. Not only did the Republicans ask her every question known to humankind about everything she had ever written, they had to see everything she ever wrote, and everything else. They then went back and asked her how she voted in elections in California dealing with referendum. It was amazing. The first question was, How did you vote on every memorandum, I think it was, in the last 10 years. She was so stunned with it, she said: Barbara, this is between me and the secrecy of the ballot box. I said: If you want to move forward, you are going to have to respond.

We went to Senator GRASSLEY, who wanted answers to these questions, and he limited it to the 10 most controversial referendums. I am talking about the ones that deal with every single hot button issue. She answered the questions. Believe me, it is really a personal issue, how you vote when you get to the ballot box.

Now there is a big fuss about our getting answers to questions such as: Will you give us one Supreme Court case you didn't agree with or send us your writings, for which there is adequate precedent.

So under the Constitution, the President and the Senate share the power to appoint the principal officers of the United States. I read the Constitution and, if we were to do otherwise, it really would be a dereliction of our duty if we rolled over and said whatever any President wants, just go ahead and roll over the Senate. Not me; I don't care if I have to stand here all night—and I might have to at the rate this is going.

I am here because I have to represent the 35 million people of California. When someone comes up to me in the grocery store and says, I noticed they had a vote on Miguel Estrada to the second most important court in the land, what does he think? I would say that I have no idea.

I have to tell you, there are a lot of groups against Miguel Estrada and they have their reasons. I will list the groups—a lot of Hispanic groups and a lot of other civil rights groups. They have their reasons.

I need to see what he stands for. If I get these papers—that is the reason we are not permitting a vote because if we would get these papers, we would permit a vote here. He may well win that vote or he may lose that vote. That is the fair thing. But advise and consent—before you can consent, you have to see who this man is. Maybe when I see his writings—and I hope we get answers to our questions—I certainly would have no interest in holding this up at all.

Blind judgment is not the proper way to confirm someone to the Federal court. As I said, if I were to engage in blind judgment, I would not be true to my constitutional responsibilities and what I owe the people of my State. Frankly, I told them I would vote for mainstream people, just as President Bush said he would nominate mainstream people. That is what he promised us. The night the Supreme Court decided the election, he said eloquently, "I am going to govern from the center."

Maybe Miguel Estrada is from the center. Nobody here can tell you because he cannot even name one Supreme Court case he disagreed with—even the one on making slavery legal. So these are very serious matters, very serious matters.

Stealth maneuvers are appropriate for the military but not for judicial nominees. By evading questions about his record, Mr. Estrada is trying to slip

into a lifetime position on the Federal bench without sharing information about his record. So if we were to just say, OK, we don't know anything, the man cannot name a case he disagrees with and won't show us any writings, and we just have the vote, what will happen when we get a Supreme Court nominee for a vote?

We have reason to believe there are some who are advising these nominees not to say anything about anything. I will talk about that later. It was really at a Federalist Society luncheon last year that a panelist coached potential nominees on how to get confirmed by the Senate. This has been written about in the legal times.

The simple instructions that came were—I am quoting because this isn't very nice language, but it is the language that was used—"Keep your mouth shut."

What a situation. It is an honor to be nominated by the President, a chance to tell people what you believe in—not to talk about a case before the court or one that is coming. That is not what we are saying.

I represent the largest percentage of Hispanics in the United States. There are close to 11 million Californians who are Latinos. That is approximately 33 percent of my State. I resent roundly some of the comments by my colleagues on the other side that somehow those of us who are saying to Miguel Estrada: answer the question, be a grown up, this is a serious job, that are against minorities. If it wasn't such a serious charge, it would be, in a way, laughable.

I could tell you that the organizations that oppose Mr. Estrada, or have raised concerns, most of them are Latino. They know, in the case of the Democrats in my State, who fights for the Latinos. That isn't even a question. I fought hard to get a Mexican-American nominee, Richard Paez, a position on the Central District Court of California. Mr. President, he became the first Mexican American to sit on that court, and it was a struggle. It was a struggle. President Clinton nominated him. Judge Paez was so stellar in the district court that he was nominated by President Clinton to the circuit court. He had to wait 4—count them—not months, not weeks, but 4 years before the Senate acted on his nomination.

Judge Paez was voted out of committee three times, Mr. President, three times, and still he had to endure 4 years of waiting before the Senate acted on his nomination.

He was nominated in three different Congresses before his confirmation in March 2000. He was the first Hispanic to sit on the district court. He had extensive experience as a judge on State courts, as well as Federal courts, with lawyer reviews in the Almanac of the Federal Judiciary such as "well prepared," "runs a good courtroom," "excellent judicial temperament," "fair," "evenhanded," and "gets to the right result."

Who held him up for 4 years? Not the Democrats. The Republicans.

He answered every question. Every single bit of his writing was analyzed. There were more written questions asked and answered. He was strongly supported by Hispanic groups, such as the Mexican American Legal Defense Fund, in contrast to Mr. Estrada, who has a huge number of Hispanic groups with great concern about his nomination.

I have to tell you when I hear some of the comments from the other side—it is really amazing—I can only think that this is all about politics because reality is not even in the game. This Republican Senate fought so hard against Judge Paez. Four years they made him wait and made him answer question after question—written and oral—and would not stop there.

When his nomination finally came to the floor, there was a filibuster, and it was finally broken.

I have to say as someone who fought for that first Latino to sit on the court in California and for one who fought to get the first Asian American judge on the Eastern District of California, Anthony Ishii, another wonderful appointment by President Clinton. It is extraordinary to me to hear some of the rhetoric from the other side. I have some news for the other side: Tell the man to answer the questions just as they asked Richard Paez, just as they asked Margaret Morrow, just as they asked every single nominee by President Clinton. They asked them to answer the questions. They called them back. They sent them long questionnaires in the mail. How about saying the man the Republicans support has to do the same? It is pretty simple. Then we will not be here wasting this precious time we should be using to discuss homeland security and other issues.

I will tell my colleagues right now, I will stand here as long as it takes until I get answers to those questions because otherwise, I do not deserve to be here. My people in California should boot me out if I roll over and play dead simply because the President says: I want this man; he does not want to answer the questions; and the Federalist Society tells him to keep his mouth shut. This is not what we do in an open society. In an open society, there is no room for secrecy in the judge selection process.

This is the greatest country in the world. If somebody is nominated for this position, they should be proud to talk about what are the Supreme Court cases they may not agree with or some they do. They should be proud to say: Yes, I will make sure you get my writings because I am proud of my writings.

The American people do not like secrecy. They do not like it. I hope they are, in fact, listening to this debate because I want to state again what we Democrats are doing. It is not a handful. The President said a handful of

people—I forget his exact words. I think it was a handful of people were stopping this nomination. The fact is, there are a lot of us from different parts of the country and different philosophies who are saying: Just give us the information. Some of us may wind up voting for Mr. Estrada; some of us may not. Give us the information. We need it. We deserve it. It is in the Constitution.

The Constitution does not say the President shall have everyone he wants. Read it. It gives equal power—equal power—to the Senate. I say to my colleagues on the other side, where is their self-respect for the Senate? That is what it is about. It is unfortunate it turned out to be a partisan split.

I keep remembering back to Margaret Morrow and how many questions the Republicans asked her. Oh, my God. There were two hearings: One in 1996 and one in 1997. There was round after round of followup questions, including how she voted in every California ballot measure for 10 long years. I ask you, Mr. President—maybe you would remember. If you lived in California, I assure you, there would be, oh God, hundreds of referenda. Finally, Senator GRASSLEY, who was asking her this, said: OK, just tell us how you voted on the 10 most controversial ballot measures.

I want to read a partial list of people who are supporting us in this delay: The Congressional Hispanic Caucus; the Congressional Black Caucus—these are elected leaders who have fought hard to get minorities on the bench. This is extraordinary for them to have to stand up and say: We want more minorities on the bench, but we want to know who they are; we do not know who this guy is.

Hispanic organizations: Puerto Rican Legal Defense and Education Fund; Mexican American Legal Defense and Educational Fund; National Association of Latino Elected and Appointed Officials, National Council of La Raza, National Puerto Rican Coalition, California La Raza Lawyers, Puerto Rican Bar Association of Illinois, Southwest Voter Registration Education Project, Labor Council for Latin American Advancement, 52 Latino labor leaders.

Mr. President, these are people who fight hard to put minorities on the bench, and they are very concerned. Do you think this is easy for them? This is not easy for them. It is brave of them. They are doing it because they are very concerned.

There is a list of 52 leaders. I will not read the list. We also have the Leadership Conference on Civil Rights and the Alliance for Justice. We have the Mexican American Legal Defense and Education Fund, Lawyers for Civil Rights Under Law, Alliance for Justice, and it goes on.

I also want to read an article that was in the Legal Times. We put it in the RECORD, but I think it is worth listening to it:

President George W. Bush's judicial nominees received some very specific confirmation advice last week: Keep your mouth shut.

The warning came from someone who had been a part of the process, Laurence Silberman, a senior judge at the U.S. Court of Appeals. . . .

And it goes on. He advises: Don't answer any questions. Don't answer them and, he basically said, you will land a judgeship.

This is dangerous. Talk about the role of the Senate. The Senate cannot do its work on advice and consent if we are stonewalled.

My view on this nomination is clear. I am happy to vote up or down on this nominee any day of the week, but he has to answer the questions. Period. End of quote.

Someone who is afraid to answer questions either does not know the answer, has something he does not want to say, or is hiding something. It makes no sense at all. Answer the questions. If Senator HATCH brings the committee back and Mr. Estrada gets a chance to answer these questions that Senator FEINSTEIN and others have laid out—believe me, I have no interest in knowing how he voted for the last 10 years like the Republicans asked one of my nominees. I think that is going way too far. I do not care about that. I thought it was outrageous when the Republicans asked that of Margaret Morrow. I could not believe it. She was stunned, but she answered it. Even though it is a secret ballot, she answered it because she respected the Senators who asked her the questions. She respected the process. She respected the Constitutional requirement of advice and consent.

So we go from a woman who was asked by the Republicans to tell how she voted on a series of referenda in her home State on the most controversial issues to a candidate where the Republicans say it is fine, forget about it, we are not going to give any answers. It is a remarkable thing. I make that point today. We need to hear from this nominee. We owe it to the American people.

What do my colleagues think this is? This is not some dictatorship. This is not some situation where one man, the President, nominates someone and says, OK, that is it, I can tell the Senate who I want and that is the end of it. If the Founders wanted that, they would not have written this article, which is very clear. As was pointed out by Senator SCHUMER, if we go back to the Federalist Papers, there was a big debate over who should have the power. At one point, it was going to be the Senate that had the full power, but then in the end it was a compromise. So if we assume that what is written in this Constitution is what we swore to uphold, then to do any less is to essentially throw this away.

I do not care what people say, I am not going to do that. They can say anything they want about me, it is OK. I will take the case to my people. I will tell my people it would be far easier to

roll over, but I am not going to do it. If Mr. Estrada answers the question, I will not be standing here. I will be calling for a vote and let the chips fall where they may.

I do not know how my Republicans friends will vote on Mr. Estrada. I am assuming they will support him, and he will be a judge. Or maybe they will find out something in his record that is worrisome that they do not like. I do not know what is in the record because he will not show us the record.

As long as this Constitution is the basis of our Government, we should respect it. What happens when the next judge comes before us? The President may say this is a good deal, my guy did not have to answer anything and he will go on to do whatever he wants, and then he sends someone else who has no record and will not show writings and will not answer questions and listens to the Federalist Society where they say keep your mouth shut, which is exactly what they said. Where are we headed?

This is not a partisan question. I would feel the same way if President Clinton were still President and sent down a nominee who would not answer questions. I went out of my way on Margaret Morrow and on Richard Paez. One was held up for 22 months. One was voted out of three Congresses, waited 4 years. There were oral questions, written questions, more questions. The session ends, and there is a renomination. Again, there are questions; appearances again, writings again. If we go down this road of not asking questions and not demanding answers to basic questions such as was there ever a Supreme Court case you did not agree with, and a man or woman says, you know what, I cannot answer that question, that is a frightening answer. Maybe he agreed with all of them. I do not know, because he will not answer the question.

Mr. President, I believe I have the floor until 12:30, although I technically have it as long as I wish.

The PRESIDING OFFICER (Mr. BENNETT). There is no unanimous consent. The Senator has the floor as long as she is able to stand.

Mrs. BOXER. I thank the Chair. I see one of my colleagues. I do not intend to go on much longer than about 15 minutes, but I want to talk about a couple of other issues.

THE CHALLENGES FACING OUR NATION

Mrs. BOXER. Mr. President, we are making the case about advise and consent but many of our people around the country are worried about what is coming in these next couple of days. The country is on alert. People are asking me, should I really go out and get duct tape? What can I do?

I have been around politics for a very long time. I was elected to the House in 1982. These are the toughest times I have seen, and I have seen some tough ones. We have an economy that is not performing. We have a budget which has turned from surplus to deficit.

The very people who said deficits were terrible when Democrats were in the majority are saying deficits are now fine as long as they are not more than so many percent of the gross national product, no problem. Unfortunately for those people, Alan Greenspan said deficits do matter, and we have an economy that is the worst that it has been in 50 years. On top of that, we have Osama bin Laden who apparently issued a warning to Americans and he told the Iraqi people that if the Americans come in there, do what it takes to hurt them all around the world.

We have the tragedy and sadness of the Shuttle *Columbia*. We have the news that North Korea possesses perhaps the ability to hit the west coast, where I live and my people I represent live and not far from where the Presiding Officer lives. We have a lot of challenges.

What I say today is measured in my comments because whatever the future holds for us, and I think many people fear it is war, we are going to pull together as one. Looking at all of these challenges I mentioned, and I exclude from that the shuttle tragedy, but the North Korea situation, the Iraq situation, the Osama bin Laden situation, the economic situation, I believe this administration has seen these crises and they have amplified them. I do not think they are solving them. I think they are amplifying them. I do not see the path to a prosperous economy in any of the plans. I see more deficits as far as the eye can see. I do not see a path for job creation. I do not see a path where we are protected in our homeland. I see my local responders saying, Where is the help that was promised?

I do not see that. I do not see a path to peace in Iraq. I see a lot of energy and focus on a path to war. I do not see the path—and I have lived through many administrations, Republican and Democratic. I wish the President would put the same focus and attention on avoiding war and disarming Iraq as he does on war to disarm Iraq. War may be inevitable. It should not be a first resort or a second. It should be a very last.

Looking at North Korea, why are we not talking to them? We have brilliant people in the State Department.

As far as I can tell from my post on the Foreign Relations Committee, we have not elevated this to the same level as Iraq in any way, shape, or form. They keep saying we will resolve this diplomatically. I am glad. But I don't see that focus. What I see is when the North Koreans want to talk, they fly to New Mexico to talk to Bill Richardson. Something is wrong with that. We need to do better.

I see issues turning into problems, turning into crises, and I don't see them being resolved; I see them getting worse. I can tell you, when I go home, people are coming up to me in the supermarket—Democrats, Republicans,

Independents—tugging at my sleeve, literally. They say: We are anxious. We are worried. We are scared.

I am waiting for the type of leadership in this administration on all of these issues that will help us see the light at the end of the tunnel. We will pull together as Americans, regardless. The greatest Nation in the world, we will meet our challenges. But there is much more we need to do—not more deficits as far as the eye can see. That is not going to help. Not talk about war, war, war, and ignoring the chance that we can avoid it and achieve the total disarmament of Iraq. I don't see the kind of help to our hometowns, if you will, to get ready.

Someone said it right—this is not original on my part; I believe it was a mayor of one of our Midwest cities. She said when people fear an attack by a terrorist, they are going to call 9-1-1. They are not going to call the Senate, and they are not calling the President. They will call 9-1-1.

What are we doing? We lauded the firemen and the policemen, as well we should have. The best way to honor them is to give them the help they need. Guess what this administration is doing. It is canceling the COPS program. These are the grants to our local law enforcement people who are going to get the 9-1-1 call if, God forbid, there is an attack on our homeland.

This President is spending a lot of money in the budget. But talk to the people back home, and they are not happy with the unfunded mandates they are seeing. We see an unprecedented attack on the environment. Talk about danger, I will tell you about danger. As we worry about chemical and biological attacks, Osama bin Laden, why have we lost the focus on getting him? The President was fierce in his resolve to get Osama bin Laden, and we have not achieved that up until this point. We fear the chemical and biological attack.

Seventy million Americans—and that includes 10 million children—live within 4 miles of a Superfund site which contains these dreadful chemicals that harm our children and all of us. What have they done? They have slowed the cleanups and are now telling taxpayers they have to pick up all of the costs of that program because they do not want to continue a fee on the polluters, which was something put into place under Republican and Democratic administrations. This is a crisis, and it is being amplified by this administration.

I look around and I see the fund sites proliferating. Under President Clinton, we cleaned up an average of 87 sites a year. It is down to 40 sites. It is down to the taxpayers now picking up the tab, and people are beginning to be very fearful about their children's health.

There are many issues that confront us. I will close with this. Last night, the Republicans stayed in the Chamber to make their point. That was a good thing to do. I am in the Chamber today

to make my point. Give me the information, folks. Tell this man to answer the same number of questions you asked Richard Paez. Tell this man to answer the same number of questions you asked Margaret Morrow to answer. Tell this man to answer the same number of questions and in the same depth as President Clinton's nominees answered. And if you do not like that approach, simply ask him to answer the questions that some of President Bush's nominees answered.

We are not going to stand here and treat this Constitution as some relic. We have equal power with the President. If we were not to ask for these answers, we do not deserve to be here.

I see a couple of my friends on the floor, and I have to say, I am ready to vote on Miguel Estrada as soon as he answers the questions. I am not going to roll over for any President, Republican or Democrat, if they send us people who are either too scared to answer the questions or we are told by some Federalist Society expert to keep your mouth shut and it will go well. It is wrong.

I have some self-respect as a Senator. Do you know who gave it to me? I was not born with it. The people who sent me here—35 million strong—believe me, they did not all send me here, but of those who voted, a majority did. Do you know what I told them? I told them that the makeup of the courts is very important and the power of the courts is very important. I promised them that before I cast a vote, aye or nay on anyone, I would have information and I would always tell you why I was voting yes or no. And I have voted for more than 90 percent of this President's nominees. I don't know how I will vote on this one. I might vote for him if I see his writings. I might. I might not. I may find that he does not come from the center, which is what President Bush promised. We would get judges from the center.

They can stay here all night and talk and talk and talk and talk. But I will be ready to vote when I have seen the answers to the questions, the same kind of questions they asked Margaret Morrow, Richard Paez, and every one of Bill Clinton's nominees.

Double standards do not sell with me. I worked very well with Senator HATCH and colleagues on the Judiciary Committee on both sides of the aisle when I had people I was very interested in getting through the process. And I said to them: You deserve to know every single thing you are asking for, and I will work with these nominees and make sure they give you those answers.

That is respect. That is respect for the job we are supposed to do. I respect this job. I respect the people I represent too much to roll over and say to this President or any other: Send nominees down who will not answer questions. It does not matter to me. It is your choice.

If I were to do that, I would be belying this Constitution. When I got

elected to this body, I held up my hand and I swore to protect and defend it. It means everything to me. It is more important than me. It is more important than any other Senator. It is more important than any President. This is the document that has kept us going as the greatest democracy in the world all these years. And God forbid we turn our back on it. If we do, we will not recognize the country we will have.

I see coming, if we roll over on this one, a judge selection process that is essentially a secret process. That is something I cannot support. I will never support, even if I am the only one left who feels that way—and I doubt that will be the case because there are very strong feelings on my side of the aisle that the judicial selection process should be an open process, an honest process, a fair process.

I appreciate the chance to express my views on these issues and other issues. It is time we solve the problems we are facing and not create new ones. A new problem we are creating is judicial nominees who will not talk. That is a new problem. I hope, as a result of what we are doing today, the Republicans will go back, they will chat with Mr. Estrada, they will tell him to answer the questions, and we can get on with a vote and the other important business we have before us.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. COLEMAN. Mr. President, the Honorable Senator from California laid out a very touching and moving litany of the times in which we live. These are difficult times, with the prospect of dealing with a brutal dictator in Iraq, a dictator who has used weapons of mass destruction against his own people, has shown no hesitation to use poison gas, chemicals, and biological weapons, a dictator who clearly has ignored resolution after resolution of the United Nations over a 12-year period, who poses a threat to all of us. That crisis looms out there. The day of decision is coming soon. As the President has noted, Saddam Hussein will either disarm or be disarmed. We have to be concerned about what is happening in North Korea where they are talking about restarting a nuclear program that they agreed to abort.

We have problems of recession. A lot of folks in my State are worried about where the next paycheck is going to come from, worried about the state of the economy. We have a lot of concerns out there. This is a time of great uncertainty. This magnificent, august body, the Senate, one of the greatest deliberative bodies in the world, instead of focusing its efforts on dealing with those issues of great concern, we are involved and engaged in trying to break off a filibuster from my honorable colleagues on the other side who are not going to allow us to have a vote, a simple up-or-down vote—that is all we are asking for—on the nomination of Miguel Estrada to the circuit court of appeals.

I have been here a little over a month. I don't have that great sense of history that my colleagues, such as Mr. BYRD, the Honorable Senator from West Virginia, has. He is a walking history of the Senate. I sit here in awe as I listen to him.

I listen to the honorable chair of the Judiciary Committee, Senator HATCH, who has been here a long time. I still get chills standing where I am standing, looking at this great sense of history. Yet we are sitting here, and I was listening last night, and we are talking about the nomination of the first Hispanic to serve on the circuit court, and what I am listening to is a litany of who did what to whom before. You would almost think that we were the Hatfields and McCoys instead of Democrats and Republicans. You would think we were the Earps and Youngers at the OK Corral.

I don't know who did what in the past. I don't know why a particular judge in the past perhaps took a long period of time before they got a chance to have a vote on the floor of the Senate. I don't know who was right yesterday and who was wrong. But this is today. This is a time when I got elected. I can tell you the citizens of Minnesota were saying they wanted to get past the bitter partisanship that stops the Senate from doing its business. They want public figures to simply get something done, move on, take care of the flood problem, the disaster problems we have had in northwest Minnesota, the drought that is affecting other parts of the country, get an energy bill through, get a budget—that would not be a bad thing for the U.S. Government—get a budget passed. Moms and dads have to deal with that all the time. We have folks out there clamoring for us to just do what we have been elected to do, to do our business.

Instead, I listened last night to the Honorable Senator from New York and the Honorable Senator from Illinois, and they had pictures of candidates in the past who, for some reason or other, did not get through the Judiciary Committee fast enough. We went back and forth and back and forth and back and forth. You know, that was yesterday.

We are never going to be younger than we are today. The proverbial: Today is the first day of the rest of your life. What would be so hard for us, as a deliberative body, to say we are going to start with today, we are going to make sure—we are going to put aside all the sins of yesterday and make sure that, from here on, when folks come up, they have a hearing and they have a vote?

By the way, I have to say I have heard my honorable colleagues on the other side of the aisle talk about Mr. Estrada not answering questions. This has been shown last night; Senator HATCH showed it many times. This is the transcript of the hearing, the all-day hearing in which he answered question after question after question.

Maybe he gave answers folks on the other side of the aisle did not like, but he answered questions. He answered questions. Then, after the hearing itself, a few Senators—I understand two Senators on the other side of the aisle—sent written questions, which he answered. So he has answered the questions.

What we have today, unfortunately, is we are getting caught up in the worst kind of partisan wrangling based on what folks did yesterday.

I think we are better than that. I think this august, deliberative body is better than that. I think it would be good for America today, in this new millennium, this new century, to forget what happened in the last millennium. Let's move forward on this one and say what we are going to do and say a nominee of any President, whether it is a Republican President or President not of my party, will get a fair hearing and a vote, up or down. In fact, when I ran for office, I answered a question in one of the debates, and I said I would use the same standard to judge a nominee from the President of another party as I would to judge a nominee from President Bush. That is what I think we were elected to do.

If we can just get past what happened yesterday, if we can stop talking about who said what to whom and when, then we can kind of move on here to act fairly, act deliberately, and, by the way, act with great respect for this Constitution that we all love.

I heard a wonderful discourse from the Senator from New York yesterday about the Constitution. I love the Constitution. What we are asking for Mr. Estrada is follow the dictates of the Constitution.

Does the Senator from Pennsylvania have a question?

Mr. SANTORUM. I ask the Senator from Minnesota to yield for a unanimous consent request.

Mr. COLEMAN. I yield for that purpose.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I ask unanimous consent that at 1 p.m. today, the Senate stand in recess subject to the call of the Chair.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, I ask my friend from Minnesota through the Chair how much longer he is going to speak because we do have a Member in the Chamber who wishes to speak.

Mr. COLEMAN. Mr. President, I say to the Honorable Democratic whip, I will speak not more than 10 minutes if this understanding is accepted.

Mr. REID. We have two over here. That leaves only 5 minutes for each of them. They have been here waiting for some time.

Mr. COLEMAN. Mr. President, I say to the Honorable Democratic whip, less than 10 minutes. I can move to the other portion of what I was going to

speak about if the Senator from Nebraska seeks the floor.

Mr. REID. If my friend would be kind enough to divide the remaining 20 minutes between Senator NELSON of Nebraska and Senator STABENOW of Michigan?

Mr. COLEMAN. I have no problem with that.

The PRESIDING OFFICER. Is that proposed as a unanimous consent request?

Mr. REID. It is.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Pennsylvania?

Without objection, it is so ordered.

Is there objection to the request of the Senator from Nevada?

Without objection, it is so ordered.

AUTHORITY FOR COMMITTEE TO MEET

Mr. SANTORUM. I further ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup past the hour of 1 o'clock.

Mr. REID. On behalf of Senator KENNEDY, I object.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. COLEMAN. In deference to my colleagues, the Senators from Nebraska and Michigan, I will shorten my comments with regard to the Estrada nomination.

I want to say this to America. I hope they are listening. They should be listening. These are important times. What my colleagues on the other side are doing by engaging in this filibuster is really changing the constitutional standard. And we love this Constitution. It talks about the Senate's role in providing advice and consent. In practice that has always meant 51 votes—a majority. The Constitution specifically lays out when a super majority is needed. What we are witnessing now is a change in the way we abide by this important document, where we will now require 60 votes to get our nation's judges confirmed. That is not good for America, and that is certainly not what our Founders wanted to do.

The PRESIDING OFFICER. The Senator from Michigan.

URGENT NEEDS FOR HOMETOWN SECURITY

Ms. STABENOW. Mr. President, I rise today to speak, once again, about the urgent needs in our local communities for hometown security—efforts for us to support local police and firefighters and emergency medical workers, including those in our local emergency rooms at our hospitals. These people are on the front lines of any terrorist attack that our citizens may face in the days or weeks or months ahead.

Many of us have been talking, since just after 9/11, about the importance of partnering with local communities, and that it is not enough to ask our local sheriffs, firefighters, police officers, and others in the communities, to assume this additional set of duties relating to national security without having the support and assistance of the Federal Government.

I commend all of my colleagues and the President for coming together to make sure our men and women in the armed services have what they need at this critical time. We have come forward with substantial increases in the Department of Defense, and I am sure we will continue to do so.

But when it comes to the home front, we have not yet done what needs to be done. There is a growing sense of urgency and bewilderment in our communities here at home about why this has not occurred and why the President is not supporting the efforts that we have put forward.

I have been holding meetings around Michigan—I believe eight different meetings now—from Detroit to Macomb County, Oakland County; I was in Port Huron, MI, on Monday; on over to Lansing and Kalamazoo, and all the way up to Marquette in the Upper Peninsula of Michigan—and I hear the same thing over and over: We need help purchasing updated radio equipment; we can't talk to one another; the city versus the county or county to county. In some cases, in smaller communities, the fire department cannot talk to the police department. We need a better dispatch system. We need better communications systems. We need, frankly, to be doing this on a statewide and national basis. But the communities do not have the resources to do it alone.

We hear about training, not only having a trainer come in—whether it is for bioterrorism, whether it is other types of training that is needed—but we are hearing from local law enforcement and others that when you have a training certification, and you take 10 police officers away from their normal duties of patrolling our streets and keeping the citizens safe, and they sit in training, no matter how important it is, the police chief still has to replace those 10 officers so the citizens remain safe while that is happening, while the training is occurring. That takes additional dollars.

There are multiple costs to training that we need to be supporting in order to be able to get this done as quickly as possible and as thoroughly as possible. And certainly we need additional personnel, different kinds of personnel, in our local communities.

I am sure my colleagues have received many letters. I have received many letters in addition to the personal conversations that I have had with people across Michigan. Let me share parts of a couple letters from mayors in Michigan.

The mayor from the city of Birmingham wrote to the President and sent me a copy:

Mr. President, I am writing to express my deep concern that funding for first responders promised nearly a year ago has still not been provided to America's cities, towns and villages. As you know, the nation's local municipalities have carried the burden for homeland security during the 15 months since the September 11 attacks, with only the promise of federal support.

This was written back in December.

The absence of federal funding for police, firefighters and emergency response staff has been a disappointment for many city leaders across the country as their concerns were voiced at the recent National League of Cities conference held earlier this year.

I have a similar letter that has come from the mayor of Cadillac, in northern Michigan, again expressing grave concerns and saying:

At the recent National League of Cities conference in Salt Lake City, city leaders from across the country voiced their deep disappointment regarding the absence of federal funding for police, firefighters and emergency response staff.

The city of Fenton, in Michigan, the city of East Lansing, in my own home county—mayors, county officials, police chiefs, sheriffs—and of both parties; this is not Republican and Democrat; this is not urban and rural; this is not a question of one part of the country against another—everyone, every community is saying this same thing.

I am deeply concerned not only about past actions but what is occurring right now in this current budget bill that we will have in front of us tomorrow.

Let me, first, indicate and remind us that last summer we passed an emergency supplemental that included \$2.5 billion, passed by the Senate with bipartisan support, passed by the House with bipartisan support, and sent to the President, an emergency supplemental including \$2.5 billion for local communities. It was on the President's desk. All he had to do was sign it. And he would not declare it as an emergency and would not sign it and release the funds.

We have come back again and again. Twice this last month, in January, Senator BYRD stood in this Chamber and eloquently spoke about the needs of communities and first responders. Again, we could not get the support.

And now in the omnibus budget bill that will be coming before us, despite a unanimous Senate appropriations vote back last July on a series of items that deal with transportation security, border security, community policing, Federal emergency management, firefighter grants, equipment and communications, emergency operations, port container security—and on and on and on—we now have in front of us a bill that, in fact, will cut from that amount supported unanimously by the Senate Appropriations Committee \$4.4 billion from homeland security from what we passed, what the Appropriations Committee passed and recommended to us last summer based on the needs presented to them from communities.

We could go down the list. I am deeply concerned when I see the cuts in community policing, the firefighter grants, the inoperable communications equipment grants, which I am hearing so much concern about, emergency operations, et cetera.

It is time for us to act. It is time for us to hear what our communities are saying. I urge my colleagues to join

with us in making sure we truly keep our communities safe.

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

RECESS SUBJECT TO THE CALL OF THE CHAIR

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess subject to the call of the Chair.

There being no objection, the Senate, at 1 p.m., recessed subject to the call of the Chair and reassembled at 2:07 p.m., when called to order by the Presiding Officer (Mr. ALEXANDER).

EXECUTIVE SESSION

NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT—Continued

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EDWARDS. I thank the Chair.

(The remarks of Mr. EDWARDS pertaining to the introduction of the legislation are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

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

Mr. THOMAS. Mr. President, I will discuss the topic on the floor, the nomination process.

It is interesting the Senator from North Carolina has a bill he thinks is important and probably is important, yet questions are not able to move forward on any of those bills because we are tied up in doing something that is not at all useful, not at all productive, but it continues. Those important things we have to do are not being done, and as a matter of fact will not be done, apparently, for some time.

I rise more to talk a little bit about the disappointment I have in the process in which we find ourselves. There is not much point in talking about the nominee, Mr. Estrada. He has been talked about forever. I can't think of another thing that could be said that has not already been said. What we can do is talk a little about the process being created. Talk about the obstruction that is taking place and the Congress that is faced with a great many important issues we need to get considered.

We all recognize in any issue, particularly of a nominee, it is perfectly legitimate that people have different points of view. That is not unusual. Indeed, that is the way it ought to be. It

also is appropriate for people to come to the floor after the committee has acted and to share those points of view and to do whatever they feel appropriate to try and convince others to share that point of view. That is the way it is supposed to be. Finally, after that is done in a reasonable limit of time, we have a vote, an up-or-down vote, so those who feel one way can vote one way, those who feel the other can vote the other. Not a very unusual process. On the contrary, it is the very well-accepted process.

That is not what has happened here. That is not what has happened.

As has been said before, it is time to move forward. It is time to move on. It is time to deal with the dozens of other important issues out there for this country and for the people of this country, issues that to people in the country are much more meaningful and have more to do with their business and welfare than we have here. I cannot imagine there is more to say from the other side of the aisle in opposition. They are opposed; fine. That is fine. They are able to convince anyone else? I don't think so. We have been working on this for about a week. It looks as if we will be here some more.

It is very disappointing for those who would like to do things that are most important to do. Among other things, of course, the White House has responded. The letter was sent to the President renewing the request to him for confidential judicial memoranda that have never before been released. The response of Mr. Gonzales, the counselor to the President, basically indicates they respect the Senate's constitutional role in the confirmation process, and they agree the Senate must make an informed judgment consistent with the traditional role and practices. However, requests for these kinds of papers have no persuasive support in history and the precedent of judicial appointments. It is not there. It has not been done.

Relevant history and procedures convincingly demonstrate that would be shifting standards. There is no basis for doing that.

In conclusion, the President's counselor said: Miguel Estrada is a well-qualified, well-respected judicial nominee with very strong bipartisan support. Based on our reading of history, we believe you have ample information about this nominee and have had more than enough time to consider questions about his qualifications and his ability. We urge you to stop the unfair treatment and the filibuster and allow an up-or-down vote to confirm Mr. Estrada.

I agree with that. Certainly, that is the case. I am not here to talk about the legal aspects of it, just the operational aspects of it, and make it clear, this man was before the committee from 10 in the morning until 5 in the evening, answering all the questions, answered written questions subsequent to that, and we continue to carry on with it.

It is interesting that a number of newspapers throughout the country who generally do not get very involved in these things have in this case. The St. Louis Post-Dispatch editorial, entitled "A Filibuster is No Fix," said:

Democrats are trying to decide whether to filibuster the nomination of Miguel Estrada to the powerful federal appeals court for the District of Columbia. They consider Mr. Estrada a stealth conservative who is being groomed for the U.S. Supreme Court as a Hispanic Clarence Thomas. The Democrats' fear may turn out to be valid. But the filibuster is the parliamentary equivalent of declaring war. Instead of declaring war, the Democrats should sue for peace and try to fix the process.

That is the St. Louis Post-Dispatch. The Atlanta Journal-Constitution:

Miguel Estrada, a Harvard-educated lawyer who has argued 15 cases before the Supreme Court, is well qualified for the federal appellate bench. Democrats, who are threatening to stall a vote on this confirmation, are choosing the wrong target.

The Florida Times-Union:

If the system were functioning as the founders intended, Miguel Estrada would be confirmed quickly to the federal D.C. Circuit Court of Appeals.

He is extremely qualified in both education and experience—and the American Bar Association unanimously ordered its highest possible rating.

We heard all that. We know that.

People out in the country are saying this is not the right process. We have been through this. We have had enough. We need something different.

The Tampa Tribune:

Leading the charge are committee members picked by the Democratic leadership precisely because of their ideological bent. Until the new Congress was seated, they thought nothing of thwarting the constitutional mandate that gives the Senate—the full Senate—the advise and consent power over the judicial nominations.

So it goes on, and most remarks are very similar all over the country. The Washington Post, not known for its conservatism, particularly, has indicated this is not the way. This nomination in no way deserves a filibuster.

It is not just being talked about here, it is pretty much all over the country.

I go back to the point I made in the beginning, that we have a lot of things to do. We are supposed to be dealing now, and hopefully, today or tomorrow, we will deal with the 11 appropriations that were not passed last year. We have been operating almost half of this year on CRs, instead of doing what we are supposed to do with appropriations.

Certainly, as the Senator discussed, we have homeland security at a new threat level. I can't imagine people in the country are thinking more about this nomination than they are about terrorism and homeland security and the economy and health care and pharmaceuticals. Where do you suppose this would rate among those things? Or national energy policy, which again we didn't do last year because it was pulled out of the committee.

We had a pretty dysfunctional Congress last time. Now we have a chance

to move forward and do some things, and we are blocking ourselves by carrying on this kind of conversation.

Mr. Estrada has had a full hearing, under both Republican and Democrat control. There is nothing left to say. It is time to come to the snubbing post and decide for or against. It is time to have an up-or-down vote. We have been considering this nominee since last week. Obviously, it is becoming nothing more than a delaying tactic. We owe the nominee, we owe ourselves, we owe the American people a decision, and then to move on to all those other issues that confront us.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. CHAMBLISS. Mr. President, I concur with everything just stated by Senator THOMAS. We have been debating this nomination, now, for over a week. As a new Member of this body, and as a new member of the Senate Judiciary Committee, I have a difficult time understanding, as a lawyer, why the delay when you have an individual who has the qualifications this man has, who has the legal background this man has, who has the legal training this man has—both from an educational standpoint as well as a practical standpoint, having practiced law.

He clerked for a judge. He was involved with the Government side of practicing law, being in the Solicitor General's Office. He argued cases at the appellate level, at every appellate level all the way to the U.S. Supreme Court. He has been very successful at every level in his judicial career. Why, just from a purely legal standpoint, we have not already moved to a vote on this man is just beyond me.

But it goes a little further than that. Miguel Estrada is a true success story. He is a man who, if anybody ever lived the American dream, is living it. He is a man who, at 17 years of age, came to the United States from Honduras speaking very little English. He is a man who was not self-taught but who entered the educational system in this country and took advantage of that educational system, just the way all Americans subscribe to do.

This man not only had a great academic record but he went on to law school at Harvard University and was editor in chief of the Law Review.

As a law school student at the University of Tennessee—where the Presiding Officer formerly served as president—I did not make the Law Review. I worked hard, but I didn't quite get there. But here is a man who achieved great success. Anybody who is editor in chief of the Law Review at any school of law is the most outstanding student in his class at that law school—in almost every situation. Miguel Estrada achieved that pinnacle in his education career.

He then went on to clerk for a judge, and not just any judge, he clerked for a judge at a very high level. Then, as I said, he went to work for the Federal

Government, as an assistant to the Solicitor General, not just in a Republican administration but also in the Clinton administration.

So he is not a judge who should be perceived in any way as an activist, particularly a conservative activist. I don't look at other graduates of this great institution, graduates from Harvard, who are particular activists. They are good solid citizens, but they are not conservative activists, certainly. To perceive Miguel Estrada as an activist—I have heard him so characterized—certainly doesn't fit the man when you look at his background.

I want to highlight a few things about Miguel Estrada. He is truly an American success story who represents the mainstream of American law and American values. He came to this country, at age 17, an immigrant from Honduras, speaking very little English. He has risen to the top of his profession, a magna cum laude graduate of Harvard Law School, law clerk to Supreme Court Justice Anthony Kennedy, Federal prosecutor in New York, Assistant to the Solicitor General of the United States for 1 year in the Bush administration and for 4 years in the Clinton administration, and leading appellate lawyer at a national law firm.

Miguel Estrada has argued 15 cases before the Supreme Court of the United States, including 1 case in which he represented a death row inmate pro bono.

He has strong bipartisan support from prominent Democrats, including many high-ranking officials in the Clinton administration such as Ron Klain, Seth Waxman, Bob Litt, and Randy Moss.

The American Bar Association unanimously rated Miguel Estrada well-qualified. That is its highest possible ranking.

Miguel Estrada has strong support in the Hispanic community, including from LULAC, the Hispanic National Bar Association, the U.S. Hispanic Chamber of Commerce, and numerous other Hispanic organizations. This is truly a very historic appointment.

If confirmed, Estrada would be the first Hispanic ever to serve on the DC Circuit Court. Many consider the DC Circuit Court to be the second most important Federal court in America. Miguel Estrada's nomination has been pending now since May 9, 2001. We should bring this nomination to the floor of this body and let it go for an up-or-down vote.

Those who have been very vocal and emotional and very passionate, pleading against the confirmation of Miguel Estrada, will have their day. They can vote no. But this man, and America, deserves to have a vote on this very well qualified lawyer, and a very well qualified man.

Those of us who believe strongly that Miguel Estrada should be confirmed will also have our day. We will have our opportunity to stand up and say: You have earned this, Mr. Estrada. You

have earned the right, not just to have your nomination brought to the floor of the Senate, but we think you have earned the right to be confirmed to the Circuit Court for the District of Columbia.

You have been here in America for now over 25 years. We think you have worked hard to achieve the educational benefits that have been afforded to you. We think you have worked hard to come from a very lowly—not necessarily menial background, because I don't know all the details of his background, but I know Honduras is a very poor country. I know he started out with a very rough, hard life before he came to America—and probably for awhile after he got here.

But he has taken advantage of the opportunities that were presented to him, the same opportunities that everybody in this body has had over the years, to achieve an education and a profession in America—America, the land of the free and the home of the brave. This man chose to come to our country and abide by all of the laws, take advantage of the opportunities that were afforded to him, and he has done that. He has achieved great success.

Everybody who has written in support of him and from the standpoint of folks who have worked with him, both Republicans and Democrats, have said two things consistently about this man.

First, from an intellectual standpoint, he is second to none. He has all of the intellect necessary that would be required of any member of the bench.

The second thing that has been said about him by every individual Republican or Democrat that has written and who he worked for is that this man is one of the hardest working men and one of the most dedicated men they have ever had in their employment. That is true, irrespective of whether it is the law firm in which he has worked, whether it is the judges he has clerked for, or whether it is the individuals in the Office of the Solicitor General for whom he worked. They have been very consistent in stating that this man deserves to be confirmed by this body.

We have just had another hearing this morning on another set of judges before the Judiciary Committee. I went to the meeting this morning with the idea that we were going to vote out a minimum of three judges who have been appointed by President Bush for circuit courts in different parts of the country. When I got to that meeting today, it became very obvious that the same folks who are opposing Miguel Estrada's confirmation on the floor of the Senate did not want those nominees to be voted out of the Judiciary Committee today. We did, in fact, wind up voting out 1 nominee, but we left on the table probably 8, 9, or 10 other judges who should have been voted out. There was no reason not to vote those judges out.

But once again, it was a dilatory tactic being imposed on the judicial sys-

tem in this country by the same folks who are now opposing Miguel Estrada within the Judiciary Committee who decided we should not vote those nominees out.

I just do not think that is right. I don't think that is the real system that our forefathers intended us to operate under when it comes to the appointment of judges to the Federal bench in this country.

I say in closing that I am overwhelmed by the opportunity to serve the people of my State in this great institution. I am in awe of the individuals with whom I serve here on both sides of the aisle who I know are very passionate. They are here for the same reason I am here; and that is, to make America a better place for us and for our children to live.

But I don't understand sometimes why we take issues such as the confirmation of Miguel Estrada and delay and delay and obstruct and obstruct and obstruct at a time in the history of our country when we are fighting to win the war on terrorism—when we are literally under siege.

If you go outside today on the streets of Washington, DC, you see police cars on virtually every corner with their lights flashing indicating they are on high alert. At a time in the history of our country when we are on the brink of possibly going to war and putting young men and women who wear the uniform of the United States of America in harm's way, I just don't understand. And the people who are calling my office don't understand why we are not dealing with issues of that nature instead of seeing the obstructionist attitude that is taking place on the floor of the Senate.

I certainly hope we are able to conclude this debate which has been long lasting now for over a week. There has been much said on both sides of the aisle about this man. I think it is time to bring the nomination of Miguel Estrada to a vote. Let those folks who have been vocal and have been emotional cast their vote in the way they think is proper and let those of us who believe—I think a majority of us do believe—he is qualified and he ought to be confirmed have a vote to confirm Miguel Estrada to the Circuit Court for the District of Columbia.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. Mr. President, I rise to speak about the nomination which, sadly, strikes me as, frankly, an arrogant nomination and an anticonstitutional nomination of Miguel Estrada to be the very first "secret" judge ever nominated for the U.S. Court of Appeals for the District of Columbia, or for any other court in the Federal system.

Over the past few days we have had a considerable amount of debate on this nomination. While I believe the debate has been good, I have been troubled by several of the accusations put forward

about the nature of the opposition to the nomination of Mr. Estrada. I wanted to come to the floor today to discuss this nomination.

Let me set the record straight about what this debate is about and what it is not about.

First, this debate is not about obstructing President Bush's judicial nominee. Under Senator LEAHY's leadership, Democrats have had a remarkable record of approving President Bush's nominees to the Federal court. While Democrats controlled the Senate, we confirmed more than six nominees per month. The rate of confirmations by the Republican-led Senate was much lower in comparison—3.2 nominees confirmed per month during the 104th Congress; 4.25 nominees confirmed per month during the 105th Congress; and 3.04 nominees confirmed per month during the 106th Congress. In fact, the Democrat-led Senate confirmed more nominees in 1 day than the Republican majority confirmed during the entire 1996 session.

On November 14, 2002, the Senate confirmed 18 judicial nominees. In 1996, the Republican majority allowed only 17 district court judges to be confirmed and did not confirm a single circuit court nominee.

Some of the outrage and some of the expressions of self-righteousness, if you will, strike me as badly put.

Personally, I have voted for more than 98 percent of President Bush's judicial nominees—98 percent—including three judges who were unanimously confirmed earlier this week—all conservative Republican judges, no doubt, with my support and my vote.

The record demonstrates our commitment to move qualified nominees quickly through the hearing process and to have a vote on the floor in order to fill the backlog of vacancies on the Federal bench that was created, frankly, by a failure to confirm President Clinton's judicial nominees.

Let me also state—I am saddened this has to be even raised in this Chamber—that this debate is not about race. I have heard some colleagues say the only reason the Democrats are opposed to Mr. Estrada's nomination is that he is Hispanic. Nothing could be further from the truth. Closer examination of the facts reveals what I think everybody knows; that is, the Democrats have a solid record when it comes to approving Latino candidates to the bench. In fact, 80 percent of the Hispanic appellate judges currently serving were appointed by President Clinton.

During the 107th Congress, Democrats held hearings and swiftly confirmed six of President Bush's Hispanic judicial nominees—six of President Bush's Hispanic judicial nominees approved by a Democratic Senate.

Using race as an issue in this debate is a red herring. And that is a kind way to put it. To understand this, you have to only look at the ever-growing list of Hispanic organizations that have expressed their strong opposition to Mr.

Estrada's nomination—the Hispanic organizations that have expressed their opposition to Mr. Estrada as a “secret” nomination. These groups include the Congressional Hispanic Caucus, the Mexican American Legal Defense Fund, the Leadership Conference on Civil Rights, and the Puerto Rican Legal Defense and Education Fund, to name but a few.

To claim that Democrats oppose Mr. Estrada's nomination based on his race is offensive, and it is not worthy of the great traditions of this Senate.

So if the opposition to Mr. Estrada's nomination is not about obstructing President Bush's judicial nominees or about race, then what is this debate about? Simply put, it is about the constitutional duties of the Senate.

When I was sworn in to this Senate, with great pride, great conviction, I swore an oath to God to uphold the Constitution of the United States. Article II, section 2, of the U.S. Constitution gives the President the power to appoint judges with the “Advice and Consent of the Senate.” I take this responsibility very seriously.

The Senate is not a rubberstamp for the nominations of a President—Republican or Democrat. The Senate has a coequal role to play in the approval of nominees from a President. The Constitution requires this body to play that role.

I must follow my constitutional duty to carefully scrutinize each nomination as it comes before the Senate. I render my best judgment as to whether or not the individual is fit and qualified to serve on the court to which he or she has been nominated.

In order to make that judgment, I rely on material provided to the Senate Judiciary Committee by the nominee, his or her legal record, and independent analysis of outside organizations, such as the American Bar Association. In addition, I use the statements and responses to questions put to the nominee during his or her confirmation hearing. All of these sources allow me to make an informed decision on each nominee's qualifications to serve.

I have attempted to follow this process as I have examined Mr. Estrada's nomination, as I have the dozens and dozens and dozens of previous President Bush nominees for whom I have voted, conservative Republican judges, and I voted for them with pride.

But throughout my time in the Senate, I have never seen a nominee with more of a stealth record than Mr. Estrada. Despite a full hearing by the Senate Judiciary Committee, there is simply not enough information about Mr. Estrada's judicial views for me to be able to fulfill my responsibility of advice and consent.

Let me take a few moments to outline Mr. Estrada's failure—utter failure—to provide the information necessary to confirm his nomination to the U.S. Court of Appeals for the District of Columbia.

We are talking here not about a Cabinet position, a political position that

will come and go. We are talking about the approval of an individual for a lifetime appointment, someone who will serve in the second highest court of the land for the rest of the lifetimes of many of us here in this body.

First, during his confirmation hearing, Mr. Estrada refused to comment on a single Supreme Court case. Now, this is an individual who has never served on the bench and so has no record on the bench. He has not been an academic scholar, so he has no writings that are publicly available for anybody to review.

Most other nominees have long experience either on the bench or in academia, and we can examine their record with great scrutiny. I may approve or disapprove of their views on one thing or another, but at least I know what their views are. And overwhelmingly I have voted for them because I knew what their views were. I may have disagreed with some of their views but, nonetheless, found them to be competent, capable individuals for whom I could vote.

But in this instance, Mr. Estrada refused, and has no other record, and refused to comment on a single Supreme Court case. While I understand that nominees often do not like to comment on cases and issues that one day may be appear before them—and I understand that, certainly—Mr. Estrada refused to give the committee a single example of a Supreme Court decision that he disagreed with throughout the entire history of the U.S. Supreme Court.

Mr. Estrada may not want to create a record for himself by stating his views on a controversial case such as *Roe v. Wade*—I understand that—but did his coaching to avoid answering questions include commenting on, say, the *Dred Scott* case? Rather than addressing the issue, he simply refused to give the committee an answer.

Several attempts were made by members of the Judiciary Committee to get Mr. Estrada to elaborate on his approach to legal issues. Despite being asked specific questions about his judicial philosophy, he refused to give the committee an answer—refused. Even when asked to name a single judge—living or dead—whom he admires or would like to emulate, he refused to give the committee an answer.

Finally, members of the Judiciary Committee have asked Mr. Estrada to provide the Senate with legal memos or other analysis which he has prepared in the past and which could possibly shed some light on his judicial thinking. So far, Mr. Estrada has refused to provide this additional information as well.

One of our colleagues has argued that this request for information is merely a delaying tactic or beyond what is truly needed to confirm Mr. Estrada. Yet our Republican friends had no problems asking Democratic judicial nominees for extensive documentation. This included asking Marsha Berzon,

nominated to the Ninth Circuit, for the minutes to every single meeting of the California ACLU during her entire membership period with that organization. It was argued, then, that such information was required by the Senate to be diligent in examining the qualifications of judicial nominees.

If this type of information was necessary to confirm judges in the past, I believe it is fair to ask Mr. Estrada to supply enough information to the Senate to help us understand his judicial philosophy. No stealth judges. No secret judges.

Conservative Republican judges? Yes, of course. President Bush is President of the United States. He is our President. He has the opportunity and the authority to nominate these individuals to the bench. And they have been overwhelmingly approved by this Senate, Democrats and Republicans alike. That is not the question.

The question is, What kind of precedent are we going to set to begin to approve individuals to lifetime appointments to the bench while having utterly no concept of where the individual is in terms of his judicial philosophy?

Mr. Estrada may well be qualified to serve on the U.S. Court of Appeals. He may well be qualified. Unfortunately, it appears he has been coached, he has been advised to say nothing, to elude all questions, and to avoid providing the Senate with any information that would help us to construct an opinion about his thoughts on judicial issues.

I ask each of my colleagues to consider the precedent we will set for future Presidents, future nominees, and, indeed, for this Senate if we confirm a nominee who has refused to provide the Senate with sufficient information. I fear it is a step toward making the Senate merely a rubberstamp for this or any other President's nominations and would, in fact, be an abrogation of our constitutional duties.

We swore an oath to uphold the Constitution of the United States, not to surrender the role of the Senate's responsibilities for advice and consent. The precedent that would be set here would lead to a circumstance where Presidents, perhaps of both political parties, in the future would routinely nominate people to the bench who had some ideological ax to grind, some out-of-the-mainstream judicial views, but who had never sat on the bench before. It would be considered to be a disadvantage to have served on the bench before. It would be considered to be a disadvantage to have been a scholar and written about your views. And we would wind up getting a succession of these stealth candidates who had no record and who also, on top of that, refused to respond to the Senate relative to their judicial philosophy. This would be catastrophic to the integrity of the Federal bench.

Unless we are able to get more complete information, I will vote against Mr. Estrada. My vote is not based on

race. I am proud to have voted for Hispanic nominee after Hispanic nominee. That is not the question. Nor is it an attempt to block President Bush's nominees because I am proud of the dozens and dozens and dozens of President Bush nominees for whom I also have voted.

Even though I may have disagreed to some extent with their political and judicial philosophy, at least I understood where they were coming from, and I knew what they were. They seemed to be, in my best judgment, largely in the mainstream of contemporary American jurisprudence.

I will vote against Mr. Estrada because I believe it would make a mockery of my constitutional obligation for advice and consent to confirm a nominee to a lifetime appointment to the appellate bench, the second highest court in the land, who has refused to answer basic questions and who has no record. What a precedent, what an ugly precedent it would be for this Nation to accept that. This Senate deserves better. The American people deserve better.

I lay before my colleagues my rationale for taking this position on this particular individual. It is my hope that never again will we see this kind of stealth, secret process, this assumption that the Senate will abrogate its advice and consent obligations brought before this body.

I yield the floor.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Alaska.

TONGASS LAND USE MANAGEMENT

Mr. STEVENS. Mr. President, the appropriations bill, the omnibus bill, as we call it, will be here soon. I wanted to comment about stories pertaining to a provision I have in the bill and the change I sought to make in it.

The Tongass language in this omnibus bill that will come back to the Senate is the same language in the bill when it passed the Senate. It was not challenged in the Senate. The language provides that the record of decision for the 2003 supplemental environmental impact statement for the 1997 Tongass Land Use Management Plan shall not be subject to administrative appeal or judicial review.

During the consideration of the omnibus bill, I did suggest some modification of that language. It led to considerable discussion in the press. I might add there are a whole series of provisions in this bill as it comes back that were modified in conference by many Senators, many Members of the House of Representatives. The process by which we do that in many ways has been discussed by other Senators. At a later time I want to discuss the process by which Senators comment upon the work of other Members of the Senate.

In any event, for instance, in the Los Angeles Times, Senator BOXER said:

The stewardship proposal could allow logging of 10 million acres in California if the riders remain in the bill. I intend to discuss them at great length on the Senate floor.

My amendment did not apply to California at all.

The Senator from California also is reported as saying in another release I have that:

This is a dangerous backdoor attempt to silence the public, states, and localities, and to stop our citizens from going to court to protest these destructive riders.

The provision to stop going to court was in the Senate bill.

In another article in the Grand Forks Herald, there is this statement:

The riders would remove Alaska's Tongass and Chugach forests from protection under the national roadless policy and require the Forest Service to offer timber sales to meet market demand regardless of the effects on habitat and the forests' other resources.

I could go on and on with these articles that are in the papers and in the news releases throughout the country.

What I want to do is set the record straight on what the situation is in the Tongass and how we got where we are today. It is a long saga. It takes a little while to relate to the Senate.

In 1997, after 10 years of planning and \$13 million of the taxpayers' money, the Tongass Land Use Management Plan was completed. I opposed that plan because it contained drastic reductions in the timber harvest. I thought the levels were much lower than they needed to be. There were numerous scientists who found the Tongass could sustain far greater development support than what was included in the report.

Today, just 6 years later, that plan seems like the golden age of the Tongass timber industry. I now find myself defending that plan, which Democrats and environmentalists then supported because those same extreme environmentalists and their friends from the previous administration have done so much damage to Alaska's timber industry since that time.

The Tongass Land Use Management Plan reduced the allowable sale quantity (ASQ), for the Tongass to 267 million board feet. That is the plan I am talking about that we are now defending. Of the allowable 267 million board feet of timber, less than 220 million board feet would be economically harvestable under the plan. It provided access to only 676,000 acres of the 17 million acre Tongass National Forest.

Furthermore, it established that timber harvesting on Federal land would be managed over 100-year and 120-year rotations. These rotations provided more than enough time for forest revitalization.

The Tongass is the only forest in Alaska in which timber may be harvested. I call the Senate's attention to this. Our other forest, which is 5.5 million acres, the Chugach, is under a forest management plan which has reduced timber harvesting to zero. This renders the Chugach forest almost completely closed to logging. There are some small inholding tracks that could be logged, but none of them are being logged, to my knowledge. Last year

less than 1 million board feet of salvageable timber ravaged by disease was sold from the Chugach. There is no real commercial harvest there.

Many groups and individuals frame the current debate about the Tongass as an argument about whether or not the forest should be saved. The terms of the 1997 plan made by the Clinton administration make it clear that framing the issue this way is very misleading. The 1997 plan set aside 93 percent of all forested areas in the Tongass National Forest in my home State.

Under the Tongass amendment I asked Congress to approve, that land will remain completely untouched. It will not touch any of the land, 93 percent, that is reserved, set aside. It would remain completely untouched. Clearly the vast majority of the Tongass has already been saved for future generations. Yet they want more. There is 7 percent of the forest that is still open to logging under the agreement made in 1980.

My State's timber industry has experienced a swift decline, threatening thousands of Alaskan families who depend upon that industry for their livelihood. Today timber communities in southeast Alaska have been devastated by unemployment due in large part to jobs lost in the timber industry. I point out to the Senate this bill we will vote on tonight will contain \$3.1 billion for the farm community that has been devastated by about a 15 percent reduction in income. My timber industry will receive nothing even though it has been totally devastated by the actions taken by the Clinton administration.

The Tongass once supported 4,000 timber jobs. Today two-thirds of those jobs have disappeared, and all of them will disappear if the roadless policy is applied to the area set aside for logging in the Tongass format and the Tongass Land Use plan.

In the last 10 years, diseased supply and frivolous lawsuits waged by extreme environmental groups have led to the closure of all of our pulp mills. There is not a single pulp mill left in Alaska. When those mills closed, they took southeast Alaska's best jobs with them. I hasten to point out, as I said, when farming fell 15 percent, Congress declared a disaster. That is \$3.1 billion we put up for the farmers. They are no different than loggers. The only difference is, loggers have been affected by actions of the Department of Agriculture. It is the Department of Agriculture that asks us to protect the farmers.

The situation in the Tongass has not only cost us thousands of jobs, it has also cost the Government valuable tax dollars. The Government may soon have to pay the Alaska Pulp Company \$750 million for the Clinton administration's illegal cancellation of timber contracts in the Tongass. That money should be paid to Alaska's workers.

The rapid decline in Alaska's timber industry is due to two main causes: the

Clinton administration's policy barring logging and roadbuilding on 58.5 million acres of national forest, including the Tongass, and frivolous lawsuits brought by the multibillion-dollar environmental lobby in an effort to lock up public resources on public land.

First, let me talk about the plan implemented by the Clinton administration's final days in office. When Congress passed the Tongass Act in 1947, we set what we called the ASQ level for the Tongass at 1.38 billion board feet per year. That level was slowly eroded. In 1980, the level was reduced to 450 million board feet per year under the Alaska National Interest Lands Act. In 1997, the Tongass land management plan further reduced the level to 267 million board feet. By 2001, the harvest level in the Tongass was only 48 million board feet—from 1.3-plus billion board feet to less than 48 million board feet. When you talk about a disaster, clearly this drastic reduction is one of the most serious disasters for the timber industry.

To give my fellow Senators some perspective, Southeast Alaska has more than 18 million acres of forest land, 95 percent of which is in a national forest and only 850 timber jobs left today. Arkansas has 19 million acres of forest land, 8 percent of which is national forest and 43,000 timber jobs.

Pennsylvania has 17 million acres of forest land, 2 percent of which is in a national forest, and 82,000 timber jobs.

New York has 19 million acres of forest land, 4 percent of which is national forest, and 51,000 timber jobs.

Last year, while Alaska harvested 34 million board feet, New York harvested nearly 900 million board feet of timber.

This history and disparity between how national forest lands are administered in other States and how they are administered in Alaska shows that reductions in the ASQ levels are unfair, unreasonable, and unlawful.

The 1980 Alaska National Interest Lands Conservation Act provided the proper balance between protecting and preserving Alaska's heritage and providing economic and social opportunities to the people of the State of Alaska. That 1980 Act specifically prohibited the changes the Clinton administration made to the Tongass management plan in 1999. Section 708(b) of the 1980 Act specifically states that there will be no "further statewide roadless area review and evaluation of national forest systems lands in the State of Alaska" without the express authorization of Congress—none. We call that one of the "no more clauses." That was the one concession Congress gave to us when it withdrew over a hundred million acres of our State for national interest lands and disallowed any type of development by the people of the State of Alaska.

Section 1326 of that same act—again, deemed the "no more clause"—prohibits review of any future conservation area greater than 5,000 acres without congressional approval. Clearly,

the study of the 18 million acre Tongass was not authorized; it was not previously reviewed by Congress.

The roadless plan was first announced by the Clinton administration in 1999. I hope Senators will listen to this. In the fall of 2000, I received a call from the Clinton administration assuring me as chairman of the Appropriations Committee and the Senator from Alaska that the Tongass would be excluded from the roadless plan. The proposed rule upon which hearings were held specifically excluded Alaska.

Let me consider that now, and I hope the Senate will consider it. As chairman of the Appropriations Committee, the Clinton administration sought my help on many issues in the year 2000 as we considered the 2001 appropriations bills. I was in a position then to hold them to their commitment on the roadless areas.

After the election was over and the appropriations bills had passed, President Clinton personally applied the roadless plan to the Tongass by Executive order. It was not included in the proposed rule upon which hearings were held, but at the last minute the President personally added Alaska to the plan.

In their rush to lock up Alaska on their way out the door, the administration ignored the concerns of my State, the Alaskan Natives, and our timber communities, and they specifically violated the law.

Lawsuits brought by extreme environmentalists have created an equally troubling situation. The lawsuits have forced the Forest Service to keep revising its plans. The groups filing these suits are abusing the National Environmental Policy Act, an act which I cosponsored along with Senator Jackson in the 1970s.

As a cosponsor, I believe I knew the original intent. When we passed that act, we intended it to be used to assess the environmental impact of major Federal decisions. Radical environmentalists have used it to create an absolute barrier to resource development or commercial use on any public lands.

Each time we complete an environmental impact study, it costs the taxpayers up to \$10 million and locks up public resources for years. In effect, this practice has created a class of professional environmental lawyers whose only practice is to prevent the utilization of resources on public lands.

I have been a lawyer for 50 years and I have never seen such development. I have never seen such single-minded people who use a law designed to protect our environment to produce income for themselves, at a cost to the taxpayers and the people of this Nation.

No one seeks to limit due process or debate on these issues, but the extremists have exhausted the time period for a reasonable review process. I ask colleagues to remember new roadless areas are illegal in Alaska under these clauses I have read, unless specifically

approved by Congress. This would not even be an issue if the Clinton Justice Department had raised the "no more clause" when they defended the Tongass land management plan in Federal court. Neither did the Federal district court judge.

Mr. President, I have a letter from the Ketchikan Gateway Borough, one of our major political subdivisions in Alaska. I ask unanimous consent that it be printed in the RECORD.

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

KETCHIKAN GATEWAY BOROUGH,
OFFICE OF THE BOROUGH MANAGER,
Ketchikan, AK.

Re: Amendments relating to Tongass timber issues

Senator TED STEVENS,
Hart Building, Washington, DC.

DEAR SENATOR STEVENS: On behalf of the Ketchikan Gateway Borough, I would like to thank you for your efforts at bringing closure to what has become a decade long dispute crippling the economy of many Southeast Alaska communities, Ketchikan included.

Specifically, with TTRA in 1990, the intent was to bring peace and stability to the timber industry, providing enough timber to meet the demand, and not overproducing and unbalancing normal market forces. The result, however, was an ineffective provision. The phrasing "seek to meet" demand was interpreted in a way which resulted in the demand not being met, and led to a downward spiral of ever reduced capacity and employment. Removing the words "seek to" from this provision would go a long way toward helping the economies in Wrangell, Ketchikan, Prince of Wales Island, and throughout Southeast Alaska recover from the adverse impacts of the prior error.

Second: In addition to the restrictive effect which the "seek to meet" language has had on timber supply, the uncertainty caused by protracted litigation over both the 1997 ROD and the Roadless Rule issues has brought the timber industry almost to a standstill. It has constricted the timber supply to the point where unemployment is threatening the viability of communities. New investment for more environmentally friendly secondary processing is difficult to secure because of the uncertainty as to timber supply and the effect of litigation on the ability of the Forest Service to put out sales.

It has been nearly 6 years since the issuance of the 1997 ROD, a planning document which took nearly a decade to complete. It is time for the decision to be accepted and for people to move on. It will only be a few more years before it is time to begin the next TLMP ROD process. Continuing uncertainty caused by protracted litigation over land use plans is killing the economy in Southeast Alaska. The Ketchikan Gateway Borough has lost nearly 10 percent of its population since 1996, and 2 percent just in the last year. Review of individual sales offers adequate opportunities for appeals if there are issues requiring review.

Third: In regard to the Roadless Rule, the whole process was a rushed pre-determined decision. Application of the rule to Alaska, however, stands out as the most significant injustice of the entire process. Throughout the public comment period the proposal was described as clearly not impacting Alaska. It was only after the comments were closed that the final rule was issued to apply to Alaska as well. This is fundamentally unfair and improper. Further, the "no more" clause of ANILCA precludes such an action.

Even if the process were not flawed, the impacts are drastic and unconscionable. If the Roadless Rule were applied here it would virtually guarantee that there would not be any meaningful timber industry employment in secondary manufacture in Southeast Alaska. The amount of timber available from the largest National Forest would end up as exports in the round and small production of likely less than 100 MMBF of sawlogs and chips.

Further, the ability to build new infrastructure or even support existing infrastructure, would be jeopardized. If the economy in the area continues with such restriction and uncertainty there will be additional loss of population and continued increases in social problems associated with poverty.

The Ketchikan Gateway Borough urges you to use your best efforts to ensure the passage of the riders which address these three issues.

Thank you for your attention to this issue.

Sincerely,

ROY ECKERT,
Borough Manager.

Mr. STEVENS. Mr. President, this letter is from Roy Eckert, borough manager, concerning amendments relating to Tongass timber.

I want to put into the RECORD another letter that has been written to the Secretary of Agriculture and signed by Petersburg city council member, of the Recreation/Wilderness Program manager of the Tongass National Forest, Bill Tremblay. It is a factual letter setting forth parts of the comments that I have made. I hope Members of the Senate will read it.

I ask unanimous consent that this letter be printed in the RECORD.

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

DEAR SECRETARY, thank you for receiving other members of the Petersburg City Council. I would like to take this opportunity to join my voice with the other council members in noting our strongest opposition to the recently signed Roadless Area Conservation Policy. I take exception to this as a member of the City Council and as a Forest Service employee. Some action is needed to address the devastating impacts of this decision to the captive communities within the boundaries of the National Forests in Alaska, particularly on the Tongass National Forest in southeast Alaska.

THE TONGASS NATIONAL FOREST, FINDING THE
FACTS

The Tongass is almost 17 million acres and is one of the oldest forests in the entire National Forest System. The forest is about the size of West Virginia and has more coastline than the entire west coast in the lower 48. More than 95% is federally owned. The forest has almost 5.8 million acres Congressionally designated as wilderness (19 wilderness areas in all) with another 500,000 acres also designated by Congress for recreation purposes (Land Use Designations II (LUD II) through the Tongass Timber Reform Act of 1990).

Attached is some of the literature used by environmental groups to support the Roadless Rule, I'm providing this to highlight some of the misinformation used to solicit comments. National environmental groups continually portrayed all 17 million acres at risk. Of course the result of this effort was the generation of thousands of postcards endorsing the Roadless Rule. Federal courts have ruled that comments to environ-

mental documents must be timely and substantive. Comments cards parroting misstatements of fact are not substantive. Many of these cards were the basis of Chief Dombeck's assertion that "overwhelming public comments in favor of the Roadless Rule" supported the decision. Decisions affecting the management of our resources are supposed to be based on science, federal policy, and the ability of the lands to sustain the proposed action. If we're going to use vote counting as a method of management then I doubt we need the current organizational structure for the Forest Service.

Just a side note, it was well minded people like these that had the Forest Service respond to the need to protect the "Mendenhall Penguins" during the Forest Planning process for the Tongass. Somehow, someone put a message out noting that such creatures existed at the Mendenhall Icefield near Juneau. As a result, there were several hundred letters mailed to the Tongass Land Management Planning Team. I think a lot of the comments received for the protection of the remaining roadless areas on the Tongass were done with just as much understanding of the issues to be addressed.

Please review the evaluation of the comments carefully. Before the President's decision, I overheard members of a regional environmental organization talking about how they had the phone number for making comments on his speed dial so they could call every morning. The process set forth in the National Environmental Protection Act (NEPA) is not a voting process. Again, allowing for the accumulation of one opinion from one person doesn't meet the test for a substantive comment.

ARE FOREST PLANS DEAD?

In 1999 the Tongass National Forest completed a 13 year, \$10 million dollar Forest Plan. To resolve the appeals to the Regional Foresters decision, the final decision was taken away from the Chief of the Forest Service and made by then Undersecretary Jim Lyons. In April 2000, a GAO report on the Process Used to Modify the Forest Plan for the Tongass decision showed that this move, while legal, was unprecedented. I'll also note for the record that Mr. Lyons specifically addressed Roadless in his decision.

After his decision, Mr. Lyons came to Sitka, Alaska to talk with the mayors of the affected communities, and other community representatives. Mr. Lyons, addressing the mayors on behalf of the administration, assured affected communities that the forest plan would provide guidance for the management of the forest for the next 10 to 15 years. Only a few months later we learned that Mr. Lyons was clearly out of touch with his own administration as the Tongass was to be included in the Roadless Rule. The potential inclusion of the Tongass and Chugach National Forests in the Roadless Rule prompted the Governor of Alaska to publicly announce that the State had been "stabbed in the back". The Governor of Alaska is a Democrat and the Republican led State legislature has just voiced their own opposition to the Roadless Rule in passing a bill supporting the Governor's position.

Both actions related to the final forest plan decision and the Roadless Rule fly in the face of other rules filed by the administration encouraging more cooperation at a local level in decision making and the delegation of the decision of Forest Plans down to the Forest Supervisor level. I have been looking over priorities of this new administration and have found their focus on local collaboration and participation is also in concert with these ideas.

The process used to implement the Roadless Rule places the integrity of the

Forest Planning process at risk on a National Scale. The Tongass Plan completed and signed in 1997 by the Regional Forester was environmentally sound, scientifically based and legally defensible. The only flaw in the decision was that it didn't meet the values of members of the past administration. If we are going to have local decisions continually made at the Washington level then we need to resend the new planning regulations and reissue the new procedures to follow to be fair to the public.

THE ROADLESS RULE DOCUMENT

The Roadless Rule FEIS failed miserably in its contents. Many of the points made in the analysis were flawed, inaccurate, incomplete, and not site specific as is required by the CFR's for an environmental analysis. The problems in the analysis should have been identified in the review of the document by the Council on Environmental Quality (CEQ). However, since Mr. Frampton was the head of the CEQ at the time, there wasn't concern about the content and more on the outcome. When a delegation of mayors met with Mr. Frampton, Secretary Glickman, and other in early December, it was evident to them that Mr. Frampton clearly was in charge of the process.

ECONOMIC IMPACTS ANALYSIS

One example of the poor analysis was in the discussion of the economic impacts of this decision. The document notes that nationally the impacts are not significant. In specific reference to the Tongass, it identifies the loss of almost 900 jobs direct and indirect) and an estimated \$17 million loss of annual income to the region. The document notes that the passage of the Secure Schools Act, which makes up the loss of forest receipts, will help deflect the impacts. If you examine the trends of the impacts to communities of southeast Alaska over the past 5 years you'll see that the money generated from this Secure School Act only mitigates the impacts from the falling receipts from previous years. It does nothing to address the Roadless Rule. Attached is a better depiction of the impacts of the rule as provided to the CEQ by the State Director of the USDA Rural Development Program. After looking at her comments we can see that the impacts go far beyond just the payments to the State. I did attached the USDA State Director's comments to my response to the final FEIS but I cannot see where these were ever addressed in the document.

What is not discussed in the document is how southeast Alaska is unlike other regions in the lower 48 States. Displaced workers in southeast Alaska cannot commute to other nearby communities to look for jobs. Because of the isolation of our communities, people without jobs are more likely to be forced to leave the State.

Arguments in favor of the Roadless Rule note that other areas of economic growth available to southeast Alaska, such as tourism and fisheries. Tourism is growing in southeast Alaska but only through the commercialization of communities as though we were a third world entity. More than 80% of the tourism in southeast Alaska comes from large cruise ships. These ships do drop passengers off in communities to participate in shore excursions, but most of these trips are negotiated by contract prior to the season. The free time given to passengers is generally short and allows enough time to these tourists to shop "locally" in shops. Many shops, that use to be local, are now largely owned by the tour ship companies. (See the attached Southeast Empire where the Skagway economy is discussed.) The season for this activity occurs is normally from the first of May to the beginning to September (about 120 days). This leaves the other 240

days of the year with little to no recreation or tourism economy. May of the service industry workers now follow these companies to other parts of the world to maintain their year round employment. Although there are sales taxes generated and wages generated in the summer season, most of the earned wages leave with the seasonal workforce so there is a minimal economic multiplier effect. Many communities are now voting in a head tax for these cruise ship passengers to help support the infrastructure of the communities.

The Chugach National Forest in southcentral Alaska enjoys almost year round use because of its proximity to the largest population center of the State, available roads, and better winter conditions. Poor weather conditions and little infrastructure for access virtually eliminates tourism travel from October to early May in southeast Alaska. These facts were not presented in the Roadless Rule analysis and should have been.

The potential growth in fishing is even bleaker. Glacier Bay National Park in the northern area of southeast Alaska has just recently closed itself to fishing in many places traditionally used. Actions taken by the National Marine Fisheries Service to protect the stellar sea lions put more of our local citizens out of work. Farmed fish from around the world has depressed world salmon prices. Other federal actions are also threatening the fishing and recreation industry. Did you know that one of the mitigations proposed in lieu of breaching the three Snake River dams in Idaho was to stop all troll fishing in southeast Alaska? The troll fisheries are generally small businesses, many of them are guides who came to this business when they lost their lumber jobs because of the decisions by our agency to reduce timber harvesting. While many of these actions are outside the scope of the Roadless Rule decision and our agency, they are federal actions that contribute to the negative cumulative effects to our economy but were never addressed in the analysis.

I raised these economic issues in my comments to the Draft Environmental Impact Statement. I cannot say I am satisfied with the results in the FEIS.

EFFECTS TO THE TIMBER INDUSTRY

When I first got to the Tongass in the early 1980's, Congress had mandated that 450 million board feet (MMBF) annually be made available for sale through the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Most of this timber was required to meet our obligations for the two remaining 50-year timber sale contracts. Volume not tied up in the contracts was also made available to independent timber sale operators. ANILCA also resolved the Alaska native lands settlement and the issue of lands the State of Alaska was entitled to through statehood. The settlement of other land ownership combined with poor timber market conditions never allowed the Forest Service to sell more than about 350 MMBF annually for most of the 1980's.

During the initial work in the revision of the Tongass Land Management Plan, Congress modified ANILCA and the timber sale contracts when they passed the Tongass Timber Reform Act in 1990 (TTRA). In this action they also removed the 450 MMBF annual timber target required by ANILCA. The final decision for the Forest Plan made by the Regional Forester in 1997 set a timber harvest level of approximately 286 MMBF for the annual allowable sale quantity. This was reduced to approximately 150 MMBF in Mr. Lyons 1999 decision. Mr. Lyons decision protected some roadless areas but has forced the agency to plan for some harvesting other

roadless areas to meet the allowable sale quantity. The Roadless Rule decision makes some assumptions that some losses in areas to cut timber might be made up in areas where roads already exist. This statement ignores the 200-year timber rotation put in place by Mr. Lyon's decision for the Tongass. The 200-year rotation will make many of the roaded areas unavailable for timber harvesting for another 160 years.

The Roadless Rule decision suggests that some agency funding might be diverted in a way that would benefit communities impacted by the decision. In the 1990's actions were taken by the agency to cancel the two 50-year timber sale contracts on the Tongass. The cancellation of the first contract resulted in a court settlement that made the agency pay \$100,000,000 to the contractor and allowed them three years of the contracted timber volume for a transition. The second cancellation has just resulted in a \$1.5 billion judgment against our agency. With these financial burdens, what funds are available to help our local communities? The misrepresentation of the facts by this agency alone should be cause enough to find a way to reverse this decision as it impacts the forests in Alaska.

To its credit, the agency has taken some steps to address the downward trend of the timber industry. We have encouraged smaller sawmills or advocated for more secondary processing to take place through grants and bringing in consultants. A new veneer plant has just opened in Ketchikan through much encouragement by this agency and several grants. The Ketchikan mill alone can process 135 MMBF annually. There are several other mills in southeast Alaska that also require a minimal amount of volume to stay viable. The Roadless Rule only allows for an estimated 30 MMBF in annual timber sales off of National Forest System Lands. The agency has purposefully deceived communities and businesses with their intent which has resulted in meaningless investments if the Roadless Rule is allowed to stand. Is there any wonder why the timber industry and the State sued the agency over the Roadless Rule decision?

PREDETERMINED DECISION

More than a week prior to issuing the Draft Environmental Impact Statement for public review, Chief Mike Dombeck addressed Federal Employees noting the accomplishments of the Forest Service. His first statement was; "You are moving ahead with plans to protect a special resource on our national forests and grasslands—54 million areas of roadless areas."

This statement does several things. First it acknowledges the intent of the administration to protect ALL roadless areas before the public had any chance to comment. Second, the acreage immediately included the Tongass which had just had the roadless issue resolved by Mr. Lyon's decision.

It's also interesting to note that the recent Forest Service Strategic Plan for 2000 states the first objective is that, "we will protect roadless areas through the roadless area conservation policy". This strategy was mailed to the printer in October, which was a month before the final EIS was available for review by the public. I will also note that the Forest Service Strategic Plan for 2000 was being distributed to field offices prior to the final decision signed by President Clinton. (I got a copy four days to the final decision.) The predetermined way this document was completed makes a mockery of the entire process and opens the question of our agency standards to public ridicule. It specifically calls to question whether or not the comments to the Roadless Rule were being reviewed for content as required by NEPA or just being processed for a response.

The line officers within the Forest Service were not briefed about the decision prior to the invitations being sent to environmental groups for the White House signing party. In fact, many of our line officers heard of the final decisions through the environmental community before they knew about it from their supervisors.

We have spent years getting our communities and constituents to work with us on a local level in forging decisions that affect the resources and their quality of life. To see our objective environmental analysis process used for a political gain is an embarrassment. While there may be some in favor of the rule, many people within and outside of the agency object to the Roadless Rule primarily because the way the decision was made. If asked, Forest Service employees would pass a vote of "no confidence" for this Chief.

LACK OF SCIENCE IN THE ROADLESS DECISION

We are being told that science played a role in the Roadless Rule decision. When reading this analysis I fail to see where the science was used. In specific reference to the Tongass, what were the measured benefits to the resources provided by the Roadless Rule that were not provided by the 1999 decision made by Mr. Lyons? If you were to look at the planning record for the Tongass Land Management Plan, you'd find that there were only minor concerns for resources expressed by the agency in the 1997 decision made by the Regional Forester. Mr. Lyons 1999 decision more than made up for any shortcomings for resource concerns in the 1997 by issuing a decision based more on values than science (Which is still in court). The Roadless Rule provides additional protections but fails to make a case for who or for what? More roadless is more roadless but it has not been demonstrated that it is needed. This again is a flaw in the environmental analysis which should cause it to be overturned.

LOCAL RESOURCE MANAGEMENT

As previously noted, this decision was made far away from the field, in an apparent partisan way, without science, and in a way that didn't account for local knowledge. By including the Tongass in the Roadless Rule, the administration acknowledged that they don't trust their employees to manage the 3.5% left to manage for resource development in the 1999 decision from Mr. Lyons. They have also put an end to a very cooperative process that has been ongoing for the management of National Forest Systems lands in Alaska.

SOLUTIONS

From what I can see, this administration has four options: (1) Live with the Roadless Rule; (2) Start the process to revise the Roadless Rule; (3) Have Congress overturn the Roadless Rule; (4) Work on something through the courts.

The Roadless Rule can't be ignored because of the tremendous impacts to communities. I'm not sure the Forest Service has the millions of dollars it would take to do another analysis. I also think that the decision might be too controversial to be addressed by Congress that is so closely divided.

This leaves the court system to resolve the conflicts over the Roadless Rule. My suggestion to the agency is to accept the lawsuit filed by the State of Alaska and agree to remove the Tongass and Chugach from the Roadless Rule decision.

The Roadless Rule decision is harmful to the State of Alaska and doing a single purpose study dealing the agency had gone against provisions specifically prohibiting this action as stated in ANILCA. I know the State of Alaska is willing to pursue this in

court because of the impacts this will have on our economy, does our agency want to spend this kind of money defending such an unpopular decision? The agency could cite the cost of the trial, clause of ANILCA it violated, the inadequate evaluation of the impacts in the analysis and find that adequate protection is already provided to the remaining roadless areas of the Tongass through the implementation of the 1999 Tongass decision. With all of the reasons I've presented, I believe the agency has sufficient cause to withdraw the Alaska forests from the Roadless Decision and not defend the decision in the courts.

CLOSING

The day the Roadless Rule was signed, I sent a note directly to the Chief. I told him that in my 20 years as an employee that it was the first day I was ever embarrassed to be a Forest Service employee. I have spent most of my career in the Alaska Region and I have never had a cause to feel this way previously. I am proud of what this agency and its employees have accomplished for the benefit of all people in the management of the resources within the State of Alaska. More than just our management of the resources, we bring some tremendous skills to our communities where we participate fully as community members. The partisan way the Roadless Rule was completed goes counter to everything our agency has been trying to build in community trust and involvement over the past 30 years.

Some people within the community and at work have questioned my persistence in trying to overturn the Roadless Rule. Speaking as a council member for the community, I feel I have an obligation to make every effort to protect our community from harm. As a Forest Service employee, I just want to be proud of who I work for again.

Sincerely,

BILL TREMBLAY.

Mr. STEVENS. Mr. President, I go back to my original statement. I have been here going on 35 years now and I have never seen people make statements that are so unfounded and unfactual about things that I am doing.

I am warning the Senate that if Members of the Senate accuse me of doing things that are not proper and they are absolutely unfactual, I intend to come here and, on a basis of personal privilege, bring those Senators to the floor and demand an apology. This has gone too far. Senators are saying my amendment covers 9 million acres. It does not. It protects 1.7 million acres. The reason we are discussing this here today is that at the last minute, the Clinton administration added my State to the roadless rule. Notwithstanding the fact that the Clinton administration called me personally and said Alaska would not be included in their roadless rule plan because they knew of the provisions of ANILCA. No hearing was ever held on the implications such a rule would have on Alaska, no hearing was held on the proposal, and no request to Congress to include Alaska in the roadless area was ever made. I have never seen anything more deceitful than the conduct of the Clinton administration in their pursuit of the roadless rule.

I intend to pursue this now. I would hope that before my colleagues make statements on the floor or to the media, they review both the Tongass amendment and the Alaska National Interest Lands Conservation Act. I am literally warning Senators that we are going to have it out here on the floor of the Senate if they keep accusing me of doing something which I have not done. That, to me, is a violation of the Senate rules.

When Judge Singleton ordered the Forest Service to review 9.7 million roadless acres, the Forest Service complied. They reviewed the Potential wilderness and roadless areas even though it was in direct violation of ANILCA. There wouldn't even be a review if the Clinton Administration had not ignored ANILCA, which specifically prohibited such review.

Alaskans seek two remedies to the current problems with Forest Policy in the Tongass. First, we want the Forest Service to uphold the law and declare the roadless rule in the Tongass an unlawful violation of ANILCA.

Second, we ask that when the Forest Service issues its decision later this year on the Tongass plan, we declare that it is the final decision on this issue. Judge Singleton's mandate entitled The Environmental Groups to a Review, it did not entitle them to a Forest Service recommendation that is favorable to their position. It did not entitle them to hold up the use of public resources indefinitely. We have been through the process and we all must recognize and abide by the Forest Service's final ruling.

And, if this issue goes before a Federal court again, I expect the Judges to uphold the law—especially the specific provision which we call the "No More Clause."

Alaskans understand the need to conserve our public lands and resources better than anyone else. We have protected more land than any other country on Earth and more than the other 49 States combined.

We were the pioneers of the Nation's last great frontier and our lives have always depended on the sustainability of our natural resources.

Our time in the great wilderness of our State has taught us that man forges a fragile pact with his surroundings. He needs the land and its resources, but he must also preserve them. That is why my State has fought so hard to make sure that our land and waterways and the species that inhabit them will be there for generations to come.

Consistent with our commitment to the environment, we have designated over 58 million acres as pristine wilderness, which represents 55 percent of all wilderness areas in the United States.

Because only 1 percent of Alaska's lands are privately owned, it is imperative that the Federal Government

allow us to use some of our resources on the 235 million acres managed by the Federal Government.

We will always manage our lands in a way that ensures their vitality. Timber is a renewable resource, it can be and will be managed this way under the measures provided in this bill.

Much of my State will always be pristine wilderness. But, we need some degree of certainty that we will be able to harvest small portions of the forest that is not wilderness. We need to know that we will be able to sustain the timber industry we have today. We need assurances that our efforts will not be met with more lawsuits and more resistance. In the days ahead I will pursue this subject again and again.

I ask unanimous consent to have printed in the RECORD letters from my constituents and communities who have been severely impacted by the lawless actions of the previous administration.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

SENATOR STEVENS: This is just a short note to let you know you have huge support for what you are doing with the Tongass riders. You have my support and the support of thousands of Alaskans. Don't consider for a moment that the environmental "wackos" represent the majority view of Alaskans. Keep up the great work on this crucial issue. Thanks for a job well done!!

Please pass this on to Congressman Young if you get a chance. Thanks. Also, Congressman Young did a great job on the call-in show on APR yesterday.

DAVE CARLSON,
Petersburg, AK.

SENATOR STEVENS: Thanks for your efforts to get the timber industry back on its feet. The current effort will remove an obstacle that has held back investment and added to the cost to operate. The continuous delay resulting from challenges to the Forest Plan has been one of the industries biggest problems.

GEORGE WOODBURY,
Wrangell, AK.

SENATOR STEVENS: We in SE Alaska support Senator Stevens and staff in your efforts to pass the Tongass riders. We support the 1997 Tongass plan's determination that no more wilderness is required in the Tongass. We also support the exemption of Alaska from the roadless determination, as originally promised by Clinton. Adequate timber supply is absolutely essential to our Prince of Wales communities and critical to our mill, Viking Lumber, the only viable mill in SE Alaska. Our mill employs 35 year-around and only needs 30 million board feet per year to continue operating. These riders will provide adequate timber for this family-owned mill in the Craig/Klawock area.

Please know that we support your efforts and are prepared to speak out if and when needed.

Hang in there.

TOM BRIGGS,
Craig, AK.

NOTICE

Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.

AUTHORIZING COMMITTEES TO REPORT

Mr. FRIST. Madam President, I ask unanimous consent that notwithstanding the recess, committees be authorized to report legislative and executive matters on Thursday, February 20, from 10 a.m. to 12 noon.

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

ORDERS FOR FRIDAY, FEBRUARY 14, 2003

Mr. FRIST. Madam President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 a.m. Friday, February 14. I further ask unanimous consent that on Friday, following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Sen-

ate then return to executive session to resume consideration of the nomination of Miguel Estrada to be a Circuit Judge for the DC Circuit.

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

PROGRAM

Mr. FRIST. Madam President, for the information of Senators, tomorrow the Senate will, once again, resume debate on the nomination of Miguel Estrada. Again, if Senators desire an opportunity to speak on the nomination, I encourage them to do so. No rollcall votes will occur during Friday's session.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. FRIST. Madam President, if there is no further business to come before the Senate, I ask unanimous con-

sent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 11:09 p.m., adjourned until Friday, February 14, 2003, at 10 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate February 13, 2003:

SECURITIES AND EXCHANGE COMMISSION

WILLIAM H. DONALDSON, OF NEW YORK, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JUNE 5, 2007.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

FOREIGN SERVICE NOMINATIONS BEGINNING RUSSELL J. NICELY AND ENDING GEORGE ADAMS MOORE, JR., WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JANUARY 15, 2003.

FOREIGN SERVICE NOMINATIONS BEGINNING NICHOLAS R. KUCHOVA AND ENDING RICHARD W. JOHNSTON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JANUARY 15, 2003.