

Gregg	McConnell	Specter
Hagel	Murkowski	Stevens
Hatch	Nelson (NE)	Sununu
Hutchison	Nickles	Talent
Inhofe	Santorum	Thomas
Kyl	Sessions	Voinovich
Lott	Shelby	Warner
Lugar	Smith	
McCain	Snowe	

NAYS—41

Akaka	Dayton	Lautenberg
Baucus	Dodd	Leahy
Bayh	Dorgan	Levin
Biden	Durbin	Mikulski
Bingaman	Edwards	Murray
Boxer	Feingold	Nelson (FL)
Breaux	Harkin	Pryor
Byrd	Hollings	Reed
Cantwell	Inouye	Reid
Carper	Jeffords	Rockefeller
Clinton	Johnson	Schumer
Conrad	Kennedy	Stabenow
Corzine	Kohl	Wyden
Daschle	Landrieu	

NOT VOTING—7

Graham (FL)	Lincoln	Sarbanes
Kerry	Miller	
Lieberman	Roberts	

The nomination was confirmed.

● Mrs. LINCOLN. Mr. President, due to an electronic failure, I was absent during the vote on the confirmation of Jeffrey Sutton to be a United States Circuit Judge for the Sixth Circuit Court of Appeals. Had I been present, I would have voted "no" on his confirmation. After reviewing Mr. Sutton's record, I was not confident he could fulfill his obligation as a Federal appellate court judge to follow established precedent, interpret the law and Constitution fairly, and treat all litigants before him without favor or bias. In my estimation, Mr. Sutton's proactive and consistent advocacy to limit Federal civil rights protections is incompatible with the temperament and detachment I look for in nominees being considered for a lifetime appointment. ●

RECESS

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

Thereupon, the Senate, at 12:43 p.m., recessed until 2:16 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

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 President, I ask unanimous consent the order for the quorum call be rescinded.

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

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

Mr. HATCH. Mr. President, I ask unanimous consent the Senate now resume consideration of the nomination of Priscilla Owen to be United States Circuit Judge for the Fifth Circuit.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

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

The PRESIDING OFFICER. Without objection, the Senator will proceed.

Mr. HATCH. Mr. President, I am pleased today to voice my strong support for the confirmation of Justice Priscilla Owen to the Fifth Circuit Court of Appeals. Justice Owen's nomination has been pending now for nearly 2 years—720 days in total, so I hope we can vote on it soon. Justice Owen is among the longest pending judicial nominees selected by President Bush. She was first nominated on May 9, 2001, so it is natural that we should move forward at this time.

I should say at the outset that I truly hope the news reports are inaccurate about another move by the other side to filibuster a well-qualified nominee and deny a vote by the full Senate. We know the usual liberal interest groups are crying for a filibuster, but we ought to do what the American people have sent us here to do, and vote.

I expressed a similar hope when Miguel Estrada's nomination reached the floor on February 5. Yet here we are 3 months and 4 cloture votes later and still he has not been allowed a vote.

We have 200 years of precedent for providing an up-or-down vote on judicial nominees and we should follow that.

If certain Senators do not like Priscilla Owen or Miguel Estrada, they ought to vote no. That is their right. But they ought to vote.

I fully support an open debate on Justice Owen's nomination. And we have had a number of debates already. I do not, however, support any filibuster on a circuit court nominee, or any judge for that matter, or, frankly, anybody on the Executive Calendar. I think in the past some of us voted against cloture on Executive Calendar nominees without realizing how important it is to not filibuster the President's nominees, whoever the President might be. I believe we have made those mistakes. And I believe I probably have. It is the wrong thing. But nobody has ever filibustered a circuit court of appeals nominee until Miguel Estrada. If they filibuster Priscilla Owen, that means two in 1 year in a procedure that has never before been used.

I fully support an open debate on Justice Owen's nomination. Like I say, we should not suffer through another filibuster. My colleagues on the other side of the aisle have already set a terrible partisan precedent in filibustering for the first time in history a circuit court nominee, Miguel Estrada. A simultaneous filibuster of two nominees would not only be unprecedented, but I think it would damage all three institutions even more. Let us have a full and open debate and then leave it

up to each Senator to decide for himself or herself by holding a simple up-or-down vote.

Let me now explain why I intend to vote yes on Justice Owen's nomination.

Justice Owen is a terrific selection for the Fifth Circuit Court of Appeals. She has the intelligence, the education, the experience, and the integrity we look for in a federal judge. A native of Texas, Justice Owen attended Baylor University and Baylor University School of Law. She graduated cum laude from both institutions and served as a member of Baylor's law review. In addition, she finished third in her law school class, which means that she is worthy of the appointment, something most lawyers can never dream about.

Justice Owen went on to earn the highest score on the Texas bar exam and thereafter accepted a position at the nationally ranked Houston law firm of Andrews & Kurth. She worked for the next 17 years as a commercial litigator with the firm, specializing in oil and gas matters and doing some work in securities and railroad issues.

Justice Owen has the full support of Senators HUTCHISON and CORNYN—both Senators from Texas—who know her well. Senator CORNYN has spoken in committee and on the Senate floor about his time working as a fellow Justice to Justice Owen on the Texas Supreme Court. Senator CORNYN has spoken to the criticism of Justice Owen's work on the bench and has made a strong case for Justice Owen's confirmation. I would commend Senator CORNYN's remarks regarding Justice Owen as worthy of the special attention of all my fellow Senators. Senator CORNYN's responses to criticisms of Justice Owen's judicial record are especially enlightening.

Former Texas Supreme Court Justices John L. Hill, Jack Hightower, and Raul Gonzalez—each of them a committed Democrat—also endorse Justice Owen. In particular, they note her impartiality and restraint on the bench. A group of 15 former Presidents of the Texas State Bar supports Justice Owen. This is no partisan group. They write: "Although we profess different party affiliations and span the spectrum of views of legal and policy issues, we stand united in affirming that Justice Owen is a truly unique and outstanding candidate for appointment to the Fifth Circuit."

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

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

HUGHES LUCE LLP,
Dallas, TX, July 15, 2002.

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, 224 Russell Senate Office Building, Washington, DC.

DEAR CHAIRMAN LEAHY: As past presidents of the State Bar of Texas, we join in this letter to strongly recommend an affirmative vote by the Judiciary Committee and confirmation by the full Senate for Justice Priscilla Owen, nominee to the United States Court of Appeals for the Fifth Circuit.

Although we profess different party, affiliations and span the spectrum of views of legal and policy issues, we stand united in affirming that Justice Owen is a truly unique and outstanding candidate for appointment to the Fifth Circuit. Based on her superb integrity, competence and judicial temperament, Justice Owen earned her Well Qualified rating unanimously from the American Bar Association Standing Committee on the Federal Judiciary—the highest rating possible. A fair and bipartisan review of Justice Owen's qualifications by the Judiciary Committee certainly would reach the same conclusion.

Justice Owen's stellar academic achievements include graduating cum laude from both Baylor University and Baylor Law School, thereafter earning the highest score in the Texas Bar Exam in November 1977. Her career accomplishments are also remarkable. Prior to her election to the Supreme Court of Texas in 1994, for 17 years she practiced law specializing in commercial litigation in both the federal and state courts. Since January 1995, Justice Owen has delivered exemplary service on the Texas Supreme Court, as reflected by her receiving endorsements from every major newspaper in Texas during her successful re-election bid in 2000.

The status of our profession in Texas has been significantly enhanced by Justice Owen's advocacy of pro bono service and leadership for the membership of the State Bar of Texas. Justice Owen has served on committees regarding legal services to the poor and diligently worked with others to obtain legislation that provides substantial resources for those delivering legal services to the poor.

Justice Owen also has been a long-time advocate for an updated and reformed system of judicial selection in Texas. Seeking to remove any perception of a threat to judicial impartiality, Justice Owen has encouraged the reform debate and suggested positive changes that would enhance and improve our state judicial branch of government.

While the Fifth Circuit has one of the highest per judge caseloads of any circuit in the country, there are presently two vacancies on the Fifth Circuit bench. Both vacancies have been declared "judicial emergencies" by the Administrative Office of the U.S. Courts. Justice Owen's service on the Fifth Circuit is critically important to the administration of justice.

Given her extraordinary legal skills and record of service in Texas, Justice Owen deserves prompt and favorable consideration by the Judiciary Committee. We thank you and look forward to Justice Owen's swift approval.

Sincerely,

DARRELL E. JORDAN.

On behalf of former Presidents of the State Bar of Texas: Blake Tartt; James B. Sales; Hon. Tom B. Ramey, Jr.; Lonny D. Morrison; Charles R. Dunn; Richard Pena; Charles L. Smith; Jim D. Bowmer; Travis D. Shelton; M. Colleen McHugh; Lynne Liberaito; Gibson Gayle, Jr.; David J. Beck; Cullen Smith.

Mr. HATCH. Mr. President, Justice Owen is recognized for her services for the poor and for her work on gender and family law issues. Justice Owen has taken a genuine interest in improving access to justice for the poor. She successfully fought with others for more funding for legal aid services for the indigent. Hector De Leon, former president of Legal Aid of Central Texas, has written: "Justice Owen has an understanding of and a commitment to the availability of legal services to

those who are disadvantaged and unable to pay for such legal services. It is that type of insight and empathy that Justice Owen will bring to the Fifth Circuit."

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

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

DE LEON, BOGGINS & ICENOGLIE,
Austin, TX, June 26, 2002.

Hon. PATRICK LEAHY,

Chairman, Committee on the Judiciary, U.S. Senate, Russell Senate Office Building, DC.

DEAR SENATOR LEAHY: This correspondence is sent to you in support of the nomination by President Bush of Texas Supreme Court Justice Priscilla Owen for a seat on the U.S. Court of Appeals for the Fifth Circuit.

As the immediate past President of Legal Aid of Central Texas, it is of particular significance to me that Justice Owen has served as the liaison from the Texas Supreme Court to statewide committees regarding legal services to the poor and pro bono legal services. Undoubtedly, Justice Owen has an understanding of and a commitment to the availability of legal services to those who are disadvantaged and unable to pay for such legal services. It is that type of insight and empathy that Justice Owen will bring to the Fifth Circuit.

Additionally, Justice Owen played a major role in organizing a group known as Family Law 2000 which seeks to educate parents about the effect the dissolution of a marriage can have on their children. Family Law 2000 seeks to lessen the adversarial nature of legal proceedings surrounding marriage dissolution. The Fifth Circuit would be well served by having someone with a background in family law serving on the bench.

Justice Owen has also found time to involve herself in community service. Currently Justice Owen serves on the Board of Texas Hearing and Service Dogs. Justice Owen also teaches Sunday School at her Church, St. Barnabas Episcopal Mission in Austin, Texas. In addition to teaching Sunday School Justice Owen serves as head of the altar guild.

Justice Owen is recognized as a well rounded legal scholar. She is a member of the American Law Institute, the American Judicature Society, The American Bar Association, and a Fellow of the American and Houston Bar Foundations. Her stature as a member of the Texas Supreme Court was recognized in 2000 when every major newspaper in Texas endorsed Justice Owen in her bid for re-election to the Texas Supreme Court.

It has my privilege to have been personally acquainted with various members of the U.S. Court of Appeals for the Fifth Circuit. The late Justice Jerry Williams was my administrative law professor in law school and later became a personal friend. Justice Reavley has been a friend over the years. Justice Johnson is also a friend. In my opinion, Justice Owen will bring to the Fifth Circuit the same intellectual ability and integrity that those gentlemen brought to the Court.

I earnestly solicit your favorable vote on the nomination of Justice Priscilla Owen for a seat on the U.S. Court of Appeals for the Fifth Circuit.

Thank you for your attention to this correspondence.

Very truly yours,

HECTOR DE LEON.

Mr. HATCH. Mr. President, Justice Owen is committed to opening opportunities to women in the legal profession. She has been a member of the Texas

Supreme Court Gender Neutral Task Force, and she served as one of the editors of the Gender Neutral Handbook, a guide for all Texas lawyers and judges on the issue of recognizing and combating gender bias in the legal field. Incredibly, this is the same woman the usual interest groups mischaracterize as "anti-woman."

Justice Owen's confirmation is backed by Texas lawyers such as E. Thomas Bishop, president of the Texas Association of Defense Counsel, and William B. Emmons, a Texas trial attorney and a Democrat who says that Justice Owen "will serve [the Fifth Circuit] and the United States exceptionally well."

You can see the type of bipartisan support Justice Priscilla Owen enjoys.

Justice Owen has served on the Texas Supreme Court since 1994, winning reelection to another 6-year term in the year 2000. She had bipartisan support, earning the endorsement of all major Texas newspapers and the endorsement of the Texas voters—84 percent of the electorate to be exact.

This kind of support—running across the board and across party lines—leaves no doubt that Justice Owen is a fair-minded, mainstream jurist.

The fact that Justice Owen earned an ABA rating of unanimous well qualified, the gold standard of many of my colleagues on the other side when evaluating judicial nominees, is further evidence of Justice Owen's fitness to serve on the Fifth Circuit Court of Appeals.

This well qualified rating means that Justice Owen is at the top of the legal profession in her legal community; that she has outstanding legal ability, breadth of experience, and the highest reputation for integrity; and that she has demonstrated, or exhibited the capacity for, judicial temperament.

This ranking comes only after careful investigation and consideration. There is close examination of the nominee's legal writing—whether judicial opinions, law review articles, or other scholarship. Lawyers in private practice and in the public sector are interviewed and provide their candid assessment of the nominee. Those interviewed may be law school professors, lawyers working for public interest services, members of bar associations and legal organizations, and community leaders. Men and women of all backgrounds are invited by the ABA to assess the nominee's fitness for judicial service. All of this investigation is done to provide a full picture of the nominee's qualifications for the federal judiciary.

Justice Priscilla Owen will be a great asset to the Fifth Circuit. One can nitpick at her record, as many have done, and will no doubt continue to do, but when we lay out her full record and look at it with a sense of balance, we see a judge who honors the law and lives up to her judicial oath.

I express my hope, once again, that we will commit to hold a debate and

then vote on Justice Owen's confirmation. This will allow each Senator to decide the merits of her record for himself or herself and allow the entire Senate to fulfill its constitutional duty.

I, for one, hope we are not set up for another filibuster—another first time in history. I hope that will not be the case, but if it is, I hope we can face it head on. Ultimately, I hope we can somehow or other pull out the stops and get a vote for Justice Owen up and down. Those who do not agree with her can vote against her; and those who do, can vote for her.

This is an excellent woman, one of the best nominees I have seen in my whole 27 years on the Senate Judiciary Committee. I do not think you can find better people than Justice Owen. I personally believe she is a person of great capacity, and I think her record proves that.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, the Democratic leader is on his way to the floor and wants to be the first speaker on this matter on our side. We wish that he be the first speaker. In light of that, 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. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

UNANIMOUS CONSENT REQUEST—EXECUTIVE CALENDAR

Mr. DASCHLE. Mr. President, I note we are now debating the Owen nomination. This morning we had a debate, as we have had over the last several days, on the Sutton nomination. There were those who supported Mr. Sutton. Many of us opposed him, we think for good reason. But there ought to be a recognition that, as we consider all of those nominees who come before the Judiciary Committee, there are those, of course, that will divide us but there are many that ought to unify us, that ought to bring us together in recognition of the importance of the record that has already been made with regard to judges these past 2½ years since this administration has come to office.

In that time, the Senate has now confirmed 119 circuit and district judges. I am told that is a record in that period of time, that we have never confirmed that many judges over that period of time. But whether it is a record or not, arguably there are other times when we have been virtually as productive.

We have only opposed two of those nominations. Judge Priscilla Owen was opposed before, and is opposed now. Judge Pickering, of course, in the committee was defeated 2 years ago. The only other nomination to come to the floor, as I said—the second one—is

Judge Estrada, and that has to do with his lack of cooperation and his unwillingness to bring forward the documents that we think ought to be required if we are going to make a collective and a thoughtful judgment about his qualifications.

There are others who have been considered in the committee that I have offered to the distinguished Republican leader, the majority leader, who could be brought up and passed in a very short period of time.

One of those judges is Judge Edward Prado. Judge Prado happens to be in the same circuit as Judge Owen. Judge Owen is from the Fifth Circuit. So is Judge Prado. Judge Prado also happens to be Hispanic. There have been numerous statements on both sides of the aisle with regard to the importance of Hispanic nominees, nominees of any minority. Cases have been made for improving the diversity on the courts. It is in the interest of diversity and the interest of moving forward on those judges for whom there could be agreement that I wanted to come to the floor this afternoon and simply say: Let's take up those for which there is overwhelming agreement. As I noted, Judge Prado is one of those nominees.

I intend to ask unanimous consent that we agree at least on this nominee and many others. We may continue to disagree on the Owen nomination, and we will get into the reasons in the course of the debate. But there is no reason to hold hostage those nominees for whom there is agreement. So I thought it would be appropriate for us to set aside the Owen debate for 3 hours this afternoon so that we can take up an Hispanic nominee who enjoys broad bipartisan support. I would guess if there were a rollcall on Mr. Prado this afternoon, it would pass, if not unanimously, virtually unanimously.

We have a choice this afternoon. We have a choice of continuing this debate, this divisive debate on Priscilla Owen, which we may be forced to experience, or we could at least take a reprieve from that divisive debate and take up a qualified nominee, a Hispanic nominee on whom there is virtually no disagreement.

I ask unanimous consent that the Senate now proceed to Executive Calendar No. 105, the nomination of Edward C. Prado of Texas to be a U.S. Circuit Court Judge for the Fifth Circuit; that there be 3 hours of debate on the nomination equally divided between the chairman and ranking member; that at the conclusion or yielding back of the time, the Senate vote, without intervening action, on the confirmation of the nomination; that the motion to reconsider the Senate's action be laid upon the table; and the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. Reserving the right to object, I believe the majority leader re-

alizes there is a way of doing this and a way not to do this. I will have to object to the unanimous consent request because Priscilla Owen has been nominated for the exact same court of appeals as Judge Prado. We all agree Judge Prado is an excellent candidate and nominee, and we intend to fully support him and to have him confirmed. We also know there is the matter of seniority and a number of other matters as well.

In addition, the majority leader has seen fit to bring the Owen nomination to the floor, because we hope to have a vote up or down on Priscilla Owen. We look forward to that particular vote. We would like to confirm her first.

I made it clear a short while ago, in fact early in the year, that we would try on the Judiciary Committee, to the extent that we can, to bring people up in chronological order. Justice Owen has been sitting in the Judiciary Committee as a nominee on the Executive Calendar for 2 years this May 9. So within a week and a half, she will have been sitting there for 2 solid years. It is only fair to ask that her nomination be acted upon first. We fully intend to do that although it has no reflection at all on Judge Prado.

I have to object at this time. We will get to Judge Prado in due course in the way it should be done, not by bringing him up out of order and not by trying to upset the motions of the majority leader in this body. I look forward to that. Having said all of that, I object.

The PRESIDING OFFICER. Objection is heard.

The Democratic leader.

Mr. DASCHLE. Mr. President, let me just say how disappointed I am at the decision made by our Republican colleagues. The distinguished chair of the Judiciary Committee made a comment that I may have misunderstood. I think he said there really is no difference between the Owen nomination and the Prado nomination with regard to Senate consideration. There is a huge difference.

The Owen nomination, of course, came before the Judiciary Committee in the last Congress. Her nomination was defeated in the Judiciary Committee. It is rare, almost unheard of, for a defeated nominee to be brought back before the committee and then brought back before the Senate.

There is a significant difference between the Owen nomination and the nomination of Edward Prado. Edward Prado was before the committee and now before the Senate in part because of his overwhelming support on both sides of the aisle, because he came before the committee, presented his qualifications and, as a result of those qualifications, was voted out unanimously. There is absolutely no reason to hold Mr. Prado hostage to other controversial nominees. If we wait until we resolve the Owen nomination, Mr. Prado will never be confirmed because I doubt that Ms. Owen will be confirmed. So that is a criterion I hope

will be reconsidered by our colleagues on the other side.

Again, let me express my disappointment and my hope that our colleagues will reconsider as we bring this unanimous consent request back to the floor at a later date.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I have a perfect solution to the distinguished minority leader's suggestion. I would like to have Judge Prado brought up as well. I ask unanimous consent that with respect to the Owen nomination, which was reported on March 27, there be 8 additional hours for debate prior to the vote on the confirmation of the nomination.

Mr. DASCHLE. Mr. President, I object.

Mr. HATCH. Then I modify my request to allow for 10 hours.

Mr. DASCHLE. Mr. President, as I noted before, there are many concerns. This nominee was defeated before the Judiciary Committee in the last Congress, and for many good reasons. We will have the debate. There is no way that 10 hours will accommodate the debate that will be required on Ms. Owen.

The PRESIDING OFFICER. Is there objection?

Mr. REID. I object.

Mr. HATCH. Mr. President, I think I have the floor.

The PRESIDING OFFICER. The Senator from Utah retains the floor, and the Chair has heard an objection.

Mr. HATCH. I yield to the Senator from Nevada without losing my right to the floor.

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

Mr. REID. Parliamentary inquiry: If Senator DASCHLE's request had been that we move to Prado without the conditions he set forth as to time, is that a debatable motion? We are in executive session.

The PRESIDING OFFICER. At this time, it would be a debatable motion.

Mr. REID. I don't want to do that because the Senator from Utah has the floor, but I want everyone to understand, as soon as I get the floor, I will move to Prado. That is debatable.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. REID. Mr. President, if I may complete my statement, I think we would be in a very strange situation where we would have the Republicans filibustering our moving to Prado.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, that is not only absurd, it is ridiculous. But that is typical of what is going on here. Rather than give an honest vote up or down, which is what advise and consent means under the Constitution, they would prefer to try to take back the floor, although they are in the minority.

I have nothing against Judge Prado. In fact, I will vote for him. I think he is terrific. But it is unseemly for them

to try to interrupt the Owen nomination, which has been brought to the floor in accordance with the usual procedures around here, to try to justify their obstruction of not only Miguel Estrada but also Justice Owen by voting for another nominee and making it look as if they are being reasonable about these matters.

First of all, this is the first time in the history of this Republic that a second nominee for a circuit court of appeals is being filibustered.

To make it look like they are not filibustering, to make it look like they are being reasonable, they are trying to overrule what the majority leader has brought to the floor. I suspect if the Parliamentarian continues to maintain that ruling, we will have to face that problem.

Will our colleagues on the other side stop at nothing in their zeal to obstruct a vote up or down on President Bush's nominees? I think it shows even further how broken the Senate is, how broken this procedure and process is.

Now, my Democratic colleagues have brought up the fact that Priscilla Owen was defeated last year. Let us remember that she was defeated on a party line, partisan vote, a vote of obstruction. After the first of this year, she was brought up again in committee and passed through the committee with a majority vote—again, a straight partisan vote. All Republicans voted for her and all Democrats on the committee voted against her.

Mr. President, I think it is unseemly what the Democrats are trying to do. I think they are trying to cover up their approaches. I think they are trying to cover up their obstruction. I think it is an insult to Justice Owen, an insult to the President of the United States, and it is unfair. Unfortunately, I suspect we have to live with this type of unfairness.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Nevada is recognized.

Mr. REID. Mr. President, I say to my friend from Utah, earlier today, the majority leader announced there would be no votes today. He has been always very cooperative with me. So I am not going to move to the nomination of Prado today. But I want to put my friend on notice, as well as everybody else, that tomorrow, when we are going to be in a period of time where we can vote, I will do that.

I say to my friend from Utah, who is my friend, that I have respect for him and his legislative abilities and his fine legal mind. But I believe we should not get bogged down with Miguel Estrada and Priscilla Owen. There are many other things we can do to move forward with lots of Judiciary Committee appointments, as was seen from the vote today. We had 41 votes here. I think with Priscilla Owen and Miguel Estrada there have been extraordinary circumstances that have caused us to do what we have done. There is no need

to go over again why we feel as strongly as we do with Miguel Estrada. The record is replete with that. With Priscilla Owen, the record hasn't been made, but it will be. Here is a person we feel should not be on the court; as simple as that.

I see my friend who was chair and is now ranking member of the important Judiciary subcommittee which deals with judges. So I believe we are fighting over issues that really are not helpful to the family. We have heard a lot of talk here saying let's get Hispanic people on the court. We have Prado; he is Hispanic. Let's move him this afternoon or tomorrow. Also, I am quite certain my friend from Utah did not mean this. I understand why the majority wants to have an orderly process to handle judicial nominations. It is understandable. But there are certain times when you have to clean your house on Friday and not Saturday. Things come up. In this instance, I suggest that there has been a tentative agreement worked out, for example, on Roberts, who has been waiting a long time to become a circuit court judge. Using the logic that I just heard from my friend from Utah, because Estrada is up ahead of him, maybe we should not move to Roberts. But maybe because Roberts has been around longer, he would supersede Estrada.

The point is I think the seniority issue means a great deal in a legislative body but very little in a judicial body. I know that one of the fine people on the Ninth Circuit—I think my friend from Utah would understand he has been an outstanding jurist—Procter Hug, of Stanford Law, served on the court a long time and became the chief judge of the Ninth Circuit. That is based on seniority. But we are not here talking about who is going to be the chief judge of the Fifth Circuit. We are talking about trying to get judicial nominations filled as quickly as we can.

The President said he wants them, and the majority leader said he wants more judges. The chairman of the Judiciary Committee said he wants more judges. We are here to please. We are willing to work. We have approved 119, and there is no reason that by the end of this week we could not get up over 120. We can do that, including Judge Prado. So I hope we can move beyond Priscilla Owen.

I say as respectfully as I can that Priscilla Owen is not going to be approved. Fact. I don't know everything, but one thing I do know is where the votes are most of the time. Priscilla Owen is not going to be approved. We should get off of her and go to something else.

If the majority wants us to go through lots of cloture votes on her, we will march down here and do the same as we have done on Miguel Estrada. I am prepared to lay out why, and I will do that if necessary, and I am sure others can do it. That is why we should move to more substantive matters.

My friend from New York is here and he knows much more than I do about this judge. I know plenty, but not as much as he does because that is one of his obligations as a Member of the Senate—to take care of judges in the country.

Mr. President, let me just say again that we are not here picking fights that we don't feel are not essential to what we stand for. Not very often do we choose to go to battle—very rarely. There are a lot of these judges I voted against because I don't think they are mainstream judges, but they are judges and they have lifetime appointments. The Democratic leader, supported by his caucus, said there are two judges we are not going to let through: Miguel Estrada—and we know the conditions there that will not be met—and Priscilla Owen.

It is not as if we are stopping everything going on with judges. When I go home, it is amazing. It happens that people say things and people have written editorials in opposition to my view saying: Isn't it terrible that he is holding up the judges? When I have had the chance to explain that we had approved 109 and turned down 1, that didn't seem too alarming. Now it is 119 to 2. That kind of quiets whole audiences.

The President of the United States was the owner of a baseball team. Boy, I will tell you, he would like to have a batting average with his team members like that, where for every 119 times up to bat, they made outs on only 2 occasions. Not bad. Ted Williams could not match that, Mr. President.

I would hope, again, everyone understands that we are not out cruising for a bruising. We are standing for what we believe is a principle, that we want a judiciary to be as good as it can be. It cannot be our judiciary—we understand that—but there are certain times when we draw a line in the sand. We have done it on two occasions. That is a pretty deep line we have drawn and people should understand that and not waste the time of the Senate.

We have so many other things to do. We have 13 appropriations bills to move. We have one new subcommittee on homeland security. It is going to be extremely difficult. We have a new chairman, a new ranking member. The whole subcommittee is made up of new people. It is going to be difficult to get that bill done. It is going to take some time. We should be moving toward that.

I went to a press conference that was sponsored by the Congressional Black Caucus, Hispanic Caucus, Native American Caucus, and Asian Pacific Caucus. They asked me to drop by, and I was happy to do that because it, again, suggested to me that we have to do something about our health care crisis. Forty-five million Americans have no health insurance, none. There are millions more who are underinsured. A significant number of those 45 million and those who are underinsured are people represented by those caucuses

because of the diseases that people have in their genes as a result of being of that ethnicity. That is what we should be working on.

The State of Nevada is in desperate shape financially, as are 42 other States in this country. The Republican Governor of the State of Nevada has moved to increase taxes. He is no left-wing Socialist. He is a man who is 65 years old, who spent his entire life helping kids and being an outstanding businessman in the State of Nevada. He said: We are desperate.

One reason they are desperate is the Federal Government has failed the State of Nevada. We have required the State of Nevada to do all kinds of things in homeland security that they are paying for, and we are not helping.

In the Clark County School District there are about 260,000 kids. They are desperate for money. They are talking about creating a 4-day school week. Imagine that. They are talking about dropping band and some athletic programs. People may laugh and say, good, get rid of them, but the way I feel about it is those programs are some of the most important programs young people have. They develop character. It gives them a sense of worth. That is what education is all about.

We passed this Leave No Child Behind Act. It was something that had bipartisan support, but we have not funded it.

Those are the things we should be doing, rather than spending days—not minutes, not hours, but days—weeks, going into months on Estrada, and I guess Owen. I think it is wrong. We have too many other important things to do.

We have an environment about which we should be concerned. We are not dealing with those issues. Do we need to improve the Clean Air Act, the Clean Water Act? Do we need to do something about Superfund? As a member of the Environment and Public Works Committee, having been chairman of it twice, there are lots of things we can do, but it cannot be done if we are spending all of our time on two judges who are not going to become the judges that they have been nominated to become. That does not mean that we have ruined the judicial system.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, let's be honest about this. The Senator has been very blunt, very forthright and honest in his remarks that they intend to stop Miguel Estrada and Priscilla Owen. So now we are in the second filibuster. Let nobody have any illusions, we did not know until now that literally they were going to filibuster Priscilla Owen. Now we have two first-time-in-history filibusters against circuit court of appeals judges because the minority does not like these two judges, even though both of them have their gold standard imprinted upon them, unanimously well qualified, by their gold standard, the American Bar Association.

It is unseemly, and it appears to anybody who is a fairminded person that there is no real desire to treat Miguel Estrada, with all of his qualifications, and Priscilla Owen with all of her qualifications, in a fair manner. It is also very apparent that the President of the United States is not going to be treated in a fair manner as well.

I have no objection to Judge Prado. If that is what they want to do, we will see about that, and we will see about it tomorrow. The fact is, that does not negate the fact that for the first time in history we have this type of obstruction rather than up-or-down votes of executive nominee judges for the circuit court of appeals.

I hate to think how this body has devolved from a body that works together to try to albeit argue and fight over certain nominees, but usually and always in the past we voted on them, how it has devolved into this morass whereby two excellent people with the highest recommendations from the American Bar Association and virtually everybody in their communities are being held up for no good reason at all, other than obstruction.

Now we at least know where we stand. I am willing to say I believe both of these people will be confirmed in the end, and I believe our colleagues on the other side are going to see that confirmation occur. At least that is what I intend. I hope we can fully debate these matters and then vote up or down. If my colleagues do not like Miguel Estrada, vote against him. If they do not like Priscilla Owen, vote against her. But do not do this anticonstitutional approach of filibustering Executive Calendar circuit court of appeals nominees for the first time in history.

We have been willing to put up with a certain amount of this, but there is going to be an end to this type of obstruction. It has got to come to an end, and I intend to see that it comes to an end if I can. I may not be able to, but I think there is a way we can do that. I am just warning the other side that I believe sooner or later we are going to have up-or-down votes on these two jurist candidates.

I think it is pretty hard to make a case against Priscilla Owen that does not distort her record, that is factual and nondistortable. I think it is going to be very difficult to make a case against her. For the life of me, I do not understand why our colleagues on the other side are filibustering this excellent woman, who has such impeccable credentials. They have plucked a couple of cases out of the air to criticize her. I venture to say any judge who has been around for a considerable period of time, any of us could find some faults with that judge or we could find cases with which we do not agree. But relatively few matters can they point to that would justify the kind of treatment Priscilla Owen is receiving at this time.

I think we should continue the debate. I intend to do so, and we will see

where we go from there. I hope my colleagues will be fair, but so far I have not seen it. I think we are in the middle of an obstructive set of tactics that are beneath the dignity of the Senate.

Be that as it may, our colleagues do have certain rights. I respect those rights and we will just see where we go from here. I believe Priscilla Owen ought to be confirmed, as I believe Miguel Estrada ought to be confirmed, as I believe Mr. Sutton, who is now confirmed, needed to be confirmed.

With regard to Roberts, I might as well make it clear we already have a deal. We have made an agreement. So that should not even enter into this question of whether one person should be confirmed ahead of another. I agree that is a *comme ci, comme ca* type of thing, but we expect to have a vote on Mr. Roberts. So we will revote him out of committee. We have a rehearing after 12 hours of hearings.

We were promised a vote on Justice Cook from Ohio. I hope that vote will be tomorrow, or the next day, in accordance with the agreement we made, because she was supposed to come up right away within a week. Roberts will be up for his second extensive confirmation hearing tomorrow. I intend to be there. Then he will be put on the markup a week from this Thursday. We have had a good-faith assurance that they will not try to put him over for another week.

So let's hope our colleagues live up to this agreement. It has not been an easy one for me to make, but we have made it. There have been some pluses to us and some pluses to them. But it is done.

So Roberts is not part of the equation, nor should he be used as part of the equation.

It is the desire of the majority leader to have Owen approved first. On the other hand, we will see what happens tomorrow.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I enjoy listening to all of our colleagues: Our leader from South Dakota, my friend from Nevada, and of course my good friend from Utah, who is just an excellent debater. I would say he is indefatigable because he is on the floor all the time.

I am rising in opposition to Priscilla Owen, and I have a whole bunch of points I would like to make. But I would like to just answer my good friend from Utah on two.

He constantly is using the word right now, "obstruction." It would seem logical by his definition that nonobstruction is only when we approve every judge the President has nominated. The fact is that there are 119 who have been approved and only 3, if you include Judge Pickering in this—that is, Miguel Estrada, Priscilla Owen, and Judge Pickering—only 3 have been held up. Is it fair, I ask my friend from Utah, to call that obstruction?

Mr. HATCH. Will the Senator yield?

Mr. SCHUMER. I will; 119 judges approved, 3 held up. That has been done with greater speed than in any time that anyone has heard of, in terms of the period of time.

So I just ask my colleague, is the only way we can fail to be obstructionist by approving every single judge the President nominates? Because we have come darned close. We only opposed three, and the word "obstruction" flows like water from my good friend's lips.

I yield.

Mr. HATCH. I appreciate the Senator yielding to me on that particular question because, yes, it is obstruction. For the first time in history to now, I understand from the Senator, he will be obstructing three circuit court of appeals nominees: Miguel Estrada, Priscilla Owen, and Judge Pickering; three nominees filibustered for the first time in history.

I agree with the distinguished Senator; I think there have been 119, with Jeffrey Sutton, who have been confirmed. That is a good record. But most of them are district court nominees who act as federal trial judges. There are a number of circuit court of appeals nominees. Five of them are still held over, as I recall it, from May 9 of 2001. Five of those original eleven are still not confirmed. There are all kinds of judicial emergencies out there that we are trying to take care of that are being obstructed. Yes, I think it is obstruction.

I do not expect my colleagues on the other side to approve everybody the President nominates. Vote against them. If you don't approve, vote against them.

Mr. SCHUMER. I would just like to reclaim my time.

Mr. HATCH. Sure. But I am saying if you don't approve of them, vote against them. We didn't obstruct yours. We voted. Everybody who came to the floor was voted upon, and there was no filibuster conducted by us.

Mr. SCHUMER. Reclaiming my time, I would remind my colleague that within a single day, cloture votes were held on Judge Paez and Judge Berzon. There were attempted filibusters on the other side. They waited large numbers of years—more years than Priscilla Owen, Miguel Estrada, or Judge Pickering have waited. I didn't once hear my friend from Utah call it obstruction.

What is good for the goose is good for the gander. There were cloture votes held. There is only one difference—actually there is no difference. Cloture was achieved eventually. But the bottom line is this is not true. For Paez and Berzon I think it was the same day, it may have been within a day of one another—cloture votes were held because a filibuster was being conducted.

Mr. HATCH. Will the Senator yield?

Mr. SCHUMER. I will yield in a minute. It was run by a number of his

friends. I know my friend from Utah will say he worked out a deal and eventually they were approved. So I ask him, when he answers that, to remind all of us how long they waited to be approved. Was it a year? Was it 2 years? No.

So, if my good friend from Utah would have the same patience, and sort of maybe we can come to an agreement 2 or 3 years from now—maybe after 2004—then we would be being fair; we would be judging one side and the other with the same standard.

Unfortunately, there has been a double standard here, when my good colleagues from Alabama and the now-Attorney General but then-Senator from Missouri and others launched filibusters—

Mr. HATCH. Will the Senator yield?

Mr. SCHUMER. Against two nominees for the Ninth Circuit. Those folks waited years, longer times than any of the three we have mentioned. I didn't hear the word "obstruction."

I will be happy to yield.

Mr. HATCH. Remember, on Judge Paez, I was the one who moved Judge Paez admittedly in the 4 years. But in that 4-year period he issued a number of hearings that were highly suspect, not only by people on our side but some on your side. We had other investigations that had to be conducted. Admittedly, it was too long; there is no question in my mind. That is a glaring example.

In the case of Judge Berzon, I was the one who pushed her through. With regard to cloture votes—

Mr. SCHUMER. I would ask my colleague to yield for another question. How long did Judge Berzon wait?

Mr. HATCH. I don't recall how long she waited.

Mr. SCHUMER. I believe the record will show it was a longer time than any of these we are talking about.

Mr. HATCH. I don't know if that is true or not. All I can say is I was the one who put them through.

I also have to correct the record because there has never been a true filibuster against President Clinton's nominees or any other Democrat President's nominees—never. There have been cloture votes. In most of the cloture votes, those were time management approaches. Yes, we had a few people over here who wanted to filibuster, but we were able to stop them. There was no case—none, zero, nada, not ever—where a Democrat nominee who was brought to the floor was not ultimately voted on up or down—never—until this year with Estrada and now Priscilla Owen, and I presume, from what you have said, perhaps Judge Pickering.

My contention is this. I know the distinguished Senator from New York is a good lawyer. He is a good friend. I value his friendship. But the fact is, I think there is much merit in having healthy debate, raising the difficulties you have with a judge, but then having a vote up or down. Vote whichever way

you want to, for or against. But it is unseemly to start clogging up the Senate with true filibusters for the purpose of trying to stop these people from having a vote up or down. That was never done, not at any time during my tenure as chairman, and I made sure it wasn't done because I don't believe that is constitutionally a sound thing to do.

Mr. SCHUMER. I thank my colleague. But I say my good friend from Utah had another method even more effective in bottling up judges, and that was never bringing them up for a vote. I think it is hard to see how keeping someone from a vote in the Judiciary Committee when there were vacancies on the bench, when those nominees waited and waited and waited, is any more commendable. To me, it seems certainly less commendable than bringing them up for a vote and then having a large number of Senators—not a majority but certainly more than 40 percent of this body, as the rules of the Senate allow—not do it.

Mr. HATCH. Will the Senator yield?

Mr. SCHUMER. I am going to move on now.

I will be happy to yield. But the bottom line is that there is a lot of sophistry going on here in terms of argument—not in terms of individuals. When you are forced to invoke cloture to get a vote, if that is not a filibuster, I don't know what is. It seems to me it is. When you don't allow a nominee to come to the floor and get a vote and you don't even bring them before the Judiciary to bring a vote, that is OK. But when they get the vote in Judiciary and then they come to the floor and large numbers of Members feel so strongly that in only 2 cases out of 119 they say this is the only method we can use to stop it, that is wrong. It makes no sense.

Finally, I would say this: It is obstruction when you stop any one of the President's nominees, because what our friend from Utah says he must do when he says just have them come up for a vote is to pass every nominee because, for whatever reason, the discipline on that side is such that they will always get 51 votes.

I am proud of what we have done. I believe we are upholding the Constitution. I believe we are checking the arrogance in the White House, particularly with Miguel Estrada and his refusal to even answer any questions. I believe history will look very kindly on this effort. They will look at it as courageous. They will look at it as right. They will look at it as judicious because it has not been used willy-nilly. They will look at it as fair.

I know my colleague from Utah is doing his job. He does it very well. My hat is off to him. But ultimately all he wants us to do is spend a little time debating each nominee and then approving each one, no matter what—whether they answer questions or not; whether he said, Well, Judge Paez had some bad cases that he ruled on.

Guess what. We think Judge Owen has a lot of bad cases. And some of them were called bad by very conservative colleagues of my friend: The White House counsel, then-Judge Gonzales; and the junior Senator from Texas, then-Judge CORNYN, on the record—very rare—chastising Judge Owen for going way beyond the law. These were not liberal Democrats. These were not even moderate Republicans. I don't think it is disputable that in the eyes of many, Judge Owen has "some bad cases." And if it was permissible to delay Judge Paez for 4 or 5 years because of some bad cases, then clearly we should just have begun on Judge Owen.

Mr. HATCH. Will the Senator yield?

Mr. SCHUMER. I would be happy to yield.

Mr. HATCH. I appreciate the Senator yielding. I think it is a credit to him. We don't have enough debates around here where we have interchanges with each other. We stand up and make speeches, and generally they are written speeches. We don't have this type of high-quality debate.

Let me just answer the Senator on a few of his assertions that I think are profoundly wrong.

First of all, they were not just a few bad cases. They were activist cases that were clearly outside the realm, in the eyes of many, including mine, of what good judicial conduct should be. Second, I think there were other reasons—further investigation and so forth. But even more important than that, I would put my report record up as chairman of the Judiciary Committee against any Democrat chairman—my chairmanship with a Democrat in the White House—against any Democrat chairman with a Republican in the White House with regard to how many people were held over who didn't make it through the process.

For instance, when JOE BIDEN was chairman and the Democrats controlled the committee in 1992 and President Bush left office, there were 97 vacancies and 54 left holding. Two of the fifty-four included Mr. Roberts—who is going to come up again for another hearing tomorrow in committee—and Judge Boyle from North Carolina, who have been sitting there for over 12 years. We didn't complain about it. I think maybe somebody complained, but I didn't. We understand that there are some holdups.

Mr. SCHUMER. Reclaiming my time—

Mr. HATCH. Please let me finish.

Mr. SCHUMER. They were never nominated by President Clinton.

Mr. HATCH. I understand. They were nominated by a Republican President. Let me finish this. My colleague has been very generous with his time.

Mr. SCHUMER. I am happy to have the debate, and I want to clear the record. They were not sitting for 12 years and not disposed of at the end of Congress and not renominated by a new President.

Mr. HATCH. They were nominated—both of them—three times by two different Presidents. From the time they were first nominated to today, it has been 12 years. I will make that more clear.

With regard to the 54 holdovers when the Democrats controlled the committee and we had a Republican President, we didn't have the screaming and mouthing off about that from our side. Compare that to when President Clinton left office and there were 67 vacancies, 30 fewer during my chairmanship and 41 left holding versus the 54.

By the way, of the 41, 9 were put up so late that nobody could have gotten them through no matter who the Judiciary chairman was. There were really 32. If you take away those who had absolutely no consultation with home State Senators—I mean none—then that reduces it some more. If you take away those who had further investigatory problems, that reduced it some more. There were some—I have been honest to admit this—whom I wish I could have gotten through who I think deserved to go through. But there were many in the 54 who were left by the Democrats who should have gotten through, too.

The point I am making is that it isn't the same because the Judiciary Committee chairman can't get some of the holdovers through. I don't blame Senator BIDEN. I don't think I should be blamed. I did the best I could. It isn't the same as when somebody is brought to the floor and a filibuster occurs. The fact is there has never been a true filibuster up until Miguel Estrada—now Priscilla Owen—and from what the Senator told me, it looks as if they are going to filibuster Judge Pickering even before we have his hearing this year. I hope that is not true. But it apparently is true with regard to Miguel Estrada and Priscilla Owen.

I think we have to break through this nonsense. Maybe we will approve all of these judges who are brought to the floor. That is what we should do as Republicans with a Republican President, and we would hope—and, in fact, in every case we have had Democrats' support for these judges—in every case, including Jeffrey Sutton today. It isn't as if it was a wholly partisan process. The Senator is probably right. If we get these judges to the floor, presumably we will pass them. I am not sure of that in every case, as I think we should. But if the Senator doesn't like them, and if others on this side don't, as they did in the case of Jeffrey Sutton, vote against them.

It is true, Jeffrey Sutton is now confirmed and will receive his certification to become a circuit court of appeals judge. But my colleagues on the other side made this political point. They don't like some of the things he has done as an advocate. That was their right, to do so. I thought it wasn't the right thing to do myself. I believed there was too much politics

involved. But you had a right to do that. But he was confirmed. As Senator REID, the distinguished Senator from Nevada, pointed out, there were a number of Presidential candidates who were not here to vote on Jeffrey Sutton's nomination. If they thought it was so important a vote, and that the judicial confirmation process is important, they should have been here. I think we all would agree with that. They knew this was the game that was being played to embarrass Mr. Sutton—not by the Senator from New York, and not by a number of others.

Mr. SCHUMER. I will reclaim my time on that one. There are strong feelings on this side, as the Senator knows. It has nothing to do with games. To me, this rises to a sacred responsibility. And I don't use those words lightly.

The bottom line is—again, I would first say to my friend from Utah, this is not a referendum on his stewardship on the Judiciary. It is, again, part of an extremely important process about who is on the bench, who is part of that third branch of Government and put there for life.

But I would say to my friend—and he is the best in the business—the high dudgeon all of a sudden when a few nominees are held up for whatever reason and sort of the muted signs when he was chairman and many nominees were being held up, albeit not in exactly the same way—I would say it is a difference that doesn't make a difference; it is sort of, well, inconsistent.

Again, that doesn't go to the personal integrity of my friend from Utah who did try in many instances but didn't succeed. And how we should be judged, so to speak, is by who gets on the bench and who does not because that is ultimately what the process is about.

I would mention, in my colleague's recounting, there were lots who withdrew their nominations. You had the DC Circuit, the second most important circuit, for which both Miguel Estrada and Judge Roberts have been nominated, where there were no blue slip problems and there were no votes. So we can go over history. I am sure each side can point to wrongs on the other side.

The fact remains, of 119 judges who have been approved, there have been 3 we can be accused of holding up. As my friend from Nevada said, I have experienced the same thing. I go to parades and people say: What about Estrada? What about the judges? Because they listen to talk radio. I say: I voted for 113 out of 119, and they just be quiet. They say: Well, that is more than fair.

So this idea that we should roll over for every judge and allow them to be approved—and I would argue this with my friend from Utah—no President, certainly in my lifetime, and I think in the history of these United States, has so nominated judges of an ideological cast. You almost have to march lockstep and not be mainstream, not even

be conservative but be way over, in case after case after case. That is what started this: no advise and consent, a desire to change America through the judiciary by creating an ideological litmus test for nominee after nominee after nominee. That is not what the Founding Fathers intended. My guess is, if Jefferson or Washington or Madison were looking down on this Chamber today, they would be approving of what we are doing because they would see that the balance in power—which they so carefully constructed between the President and the Senate, the President and the Congress, in terms of this awesome power to put people on the bench for life—is being eroded. That is why we are here. And we are going to continue to be here.

So my friend from Utah and the majority leader and others have a choice: They can hold up all these other judges and say, well, until we deal with Priscilla Owen we are not going to move anybody else. I would ask a jury of 12 people, fair and true, nonpartisan, who is obstructing?

That is why I would hope we could bring the nomination of Judge Edward Prado to the floor. And one of the reasons we want to do it is, yes, from the mouth of my friend from Utah, there is this view that only certain types of Hispanics would be approved or, from the mouths of others, that we are anti-Hispanic, a charge never leveled when Judge Moreno and Judge Rangel were not voted on to the same circuit by the other side.

But now we have Judge Prado, approved unanimously by the committee. I guess he is every bit as Hispanic as Miguel Estrada. There is one difference: He answered questions. And his views were not so far over as many who know Miguel Estrada report them to be. Why don't we approve him? Why don't we bring him up for a vote? Is he being used?

I will tell you what I think. I think the other side does not want us to approve a Hispanic judge who is within the mainstream. I think that—

Mr. HATCH. Will the Senator yield on that?

Mr. SCHUMER. I think I will call on my colleague in a minute.

Mr. HATCH. Well, if the Senator would yield, maybe I can satisfy—I have no objection—

Mr. SCHUMER. I think it sort of shows that why Miguel Estrada is being held up has nothing to do with his ancestry but, rather, his conduct as he went through the nomination process in a unique refusal to answer questions.

I am going to tell my colleague one other story. President Bush has just nominated a woman to the district court in my State, Justice Dora Irizarry. She is Hispanic. She happened to be the Republican candidate for attorney general in this last election. That does not bother me a bit. I called her to my office. I asked her many of the same questions I asked Miguel

Estrada. She was forthright. I asked her for two Supreme Court cases with which she disagreed. She named them, expostulated on them. She did not say, canon 5 will not let her talk about them. She did not say: I did not have the briefs, so I could not talk about them—both absurd arguments, arrogant arguments, arguments that show contempt for the Senate. And she is going to be approved, with my wholehearted support, even though she is Hispanic, even though she is more conservative than I am, even though she is a Republican officeholder.

So the bottom line is simple: We can fill the bench and increase the number of Hispanic nominees quickly, if we work together, if the nominees would take the process not with contempt but with the responsibility that they should, given the awesome power that Federal judges have.

So I hope we will move to Judge Edward Prado. I hope we will move to him soon. I would like, as my colleague from Nevada, for us to bring him to the floor because there will not be a 2-week debate. There will be a day debate, maybe a 6- or 3-hour debate, and he will be approved.

By the way, if we are worried about vacancies, it is the same circuit as Priscilla Owen. The reason the other side does not want to bring up Judge Prado is very simple; it shows the glaring inconsistency and falsity of their arguments.

Our opposition to a few of these nominees has nothing to do with their ethnic background and nothing to do even with their political party. It has to do with the fact that some of them are so extreme that their own Republican colleagues thought that.

Again, you have Judge Gonzales who is now counsel to the White House. He said, in one of the cases that she dissented on, if the court went along with her, it would "be an unconscionable act of judicial activism." That is from the Republican, conservative, White House counsel. It could be an isolated case, as my good friend from Utah mentions, except that those who followed her on the courts say that was her MO. She constantly wanted to be a judicial activist and make law from the right.

I would be equally opposed to somebody who wanted to make law from the left. I do not like nominees who are too far left or too far right. On my own judicial committee, when those appointed distinguished jurists from around my State have brought forth nominees and suggested nominees who were way over to the left, I have said no. Anyone who has watched me interview judges knows that I am very weary of that because judges of the extremes make law. They do not do what the Founding Fathers said, which is interpret the law.

And it was not just Judge Gonzales. We then have the situation in the case of *Weiner v. Wasson*. This was a medical malpractice case. Again, Justice Owen wrote a dissent about an injured

plaintiff while he was still a minor, and the issue was the constitutionality of a State law requiring minors to file medical malpractice actions before reaching the age of majority or risk being outside the statute of limitations.

Then Justice JOHN CORNYN, now our colleague in the Senate, said:

Generally, we adhere to our precedents for reasons of efficiency, fairness, and legitimacy. First, if we did not follow our own decisions, no issue could ever be considered resolved. The potential volume of speculative relitigation under such certain circumstances alone ought to persuade us that *stare decisis* is a sound policy. Secondly, we should give due consideration to the settled expectations of litigants like Emmanuel Wasson, who have justifiably relied on the principles articulated in [the case]. . . . Finally, under our form of government, the legitimacy of the judiciary rests in part upon a stable and predictable decisionmaking process that differs dramatically from that properly employed by the political branches of government.

According to the conservative majority on the Texas Supreme Court,
—this is not a liberal court—

Justice Owen went out of her way to ignore precedent and would have ruled for the defendants. The conservative Republican majority followed precedent and the doctrine of *stare decisis*.

So this is not a mainstream nominee. This is a nominee who has every indication of being an activist from the right, of being somebody who wishes to turn the clock back, of being somebody who sides over and over and over again with the larger corporate interests against the individual. In my judgment, she does not belong on the Fifth Circuit. If the only way we can stop her is to prolong this debate, so be it. There are many other people in Texas, many other lawyers, many other judges, many others in the realm of the Fifth Circuit who are conservative and intelligent and qualified. If the President wanted to come to some agreement with us, he would nominate them. In fact, one is before us—could be before us: Judge Prado. He will not have any issue with us.

Is there a litmus test? Absolutely not. I have no idea what Judge Prado has ruled. He has been for 19 years on the court. I don't know what his position is on choice. I don't know what it is on gun control. I don't know what it is on gay rights. But his hearing and his record show he is not out of the mainstream.

I have always had three watchwords with people I have supported, both in New York, where I am actively involved in the selection process, and around the country, where obviously I am one one-hundredth of the advise and consent process. Those are "excellence," "balance," and "moderation." My three words are "excellence," "moderation," and "diversity."

I have to give the President credit. On criteria one and three, his nominees meet the bill. They are legally excellent, by and large. These are not political hacks or people who don't have the brainpower to be excellent judges. The

President, to his credit, has gone out of his way for diversity.

But on moderation, it is almost as if he is not even making an effort. It is as if he has over and over and over again nominated people like Jeffrey Sutton, who we just approved, who are trying to change the law, who are trying to turn the clock back, who have an atavistic fear of the Federal Government and what it can do.

Again, it is our obligation to oppose such judges, just as it is our obligation to support those who are qualified.

I urge my colleagues on the other side to realize they are not going to win every single case. They are going to lose a few. I think they should have lost a few more than they did. I would have not liked to see Jeffrey Sutton go to the Sixth Circuit. But to say we will not bring up another judicial nominee until Priscilla Owen is passed is the real obstruction. I don't think it will stand up. We know there are some on the other side who quietly have said this has gone too far, who have urged the White House to moderate its stance, who have said, let us move on from Miguel Estrada or reveal his records. Unfortunately, the White House seems to feel they want it all in every way. They want it all theirs.

That is not what the Founding Fathers intended. It is not even what the Founding Fathers intended when there is a President and a Senate controlled by the same party, as we have today. We will oppose Judge Owen. We will continue to oppose her. We will proudly oppose her.

When we began this fight, which I guess I was one of the first people to get involved in in terms of moderating the judiciary and seeing that there be some moderation, when I proposed to our good majority leader and our chairman of the Judiciary Committee that we not allow Miguel Estrada to go forward until he answered questions, I thought politically it would be a loser. It is easy to get up and say: Just let a majority vote and let the chips fall where they may. I think we had some knowledge that illegitimate charges of not supporting someone because of his ethnic background would be hurled at us.

But do you know what has happened. As the debate has gone forward, first, our caucus is firmer and firmer and stronger and stronger in the belief that what we are doing is right and rises to noble constitutional principles. Second, the public is beginning to catch on.

I found, as I traveled across my State these 2 weeks while we were on Easter break, that people were saying: Why does the President want his way on every single nominee? As soon as people heard I had voted for 113 of 119 of the President's nominees, they said: You have been more than fair.

So anybody on the other end of Pennsylvania Avenue who thinks they are going to take a two by four and break us, we have proven that that is not the

case. The fact that in our caucus there is such strong support to block Priscilla Owen shows we are gaining strength.

I plead with my colleagues to go back to the White House once again and tell them they are not going to win every single fight, that they have an obligation to advise and consent, that there is some degree of compromise in making this government work, and that, most of all, the bench should not be filled with ideologists who have an atavistic, instinctive preference to make law rather than interpret the law as the Founding Fathers intended.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. CHAFEE). Without objection, it is so ordered.

Mr. CORNYN. Mr. President, I rise today to address the Senate with some regret and with somewhat of a heavy heart. I believe in the rule of law. Indeed, this Nation was built on the rule of law, the ultimate strength of our institutions that make up our representative democracy. So it saddens me, along with many of my distinguished colleagues, when I witness the abject failure of one of these institutions. Nowhere has this institution met with greater failure than in the area of judicial nominations.

Nearly two years ago, President Bush announced his first class of nominees to the Federal court of appeals. Five of the eleven nominees have not had a single vote in the Senate two years later. This list includes Justice Priscilla Owen, with whom I served on the Texas Supreme Court, and whose nomination is now pending before this body.

Two years is too long. I believe the Senate has reached a new low in recent months, with the unprecedented use of a filibuster of dubious merit that blocks an exceptionally qualified nominee who enjoys the support of a bipartisan majority. If we were allowed to vote, I am convinced that a bipartisan majority of the Senate would today vote to confirm Justice Priscilla Owen to the Fifth Circuit Court of Appeals.

This dismal political anniversary indicates the true range of the failure of the judicial confirmation process in this body. This process has become unnecessarily but increasingly bitter and destructive, and it does a terrible disservice to the President, to Senators, to nominees, and ultimately to the American people.

I do not know anyone who truly believes in their heart of hearts that the process works now the way it should. I believe most reasonable people looking at this process from the outside would agree with me that the process is broken. But the question now becomes, is it broken without hope of repair?

Today I announced that the Judiciary Committee's Subcommittee on the Constitution will convene a hearing on reform of the broken judicial confirmation process. This hearing will allow distinguished Members of the Senate, on a bipartisan basis, as well as the Nation's leading constitutional experts, the opportunity to discuss the serious constitutional questions raised by the obstruction of judicial nominations. We will address the problems facing the Senate and the Federal judiciary, and we will consider and debate potential solutions and reforms.

Yes, I believe two years is too long. Specifically, it is too long for a candidate as worthy and as qualified as Justice Priscilla Owen. Of the nominees currently pending before the Senate, no one has waited longer than Justice Owen for a vote on the Senate floor on a judicial nomination—no one. As a former state supreme court justice who served with Justice Owen for three years, and now as a member of the Senate Judiciary Committee which carefully considered and endorsed her nomination to the Federal bench last month, I firmly believe Justice Owen deserves to be confirmed to the Court of Appeals for the Fifth Circuit. Of course, the Fifth Circuit covers my home State of Texas as well as the States of Mississippi and Louisiana. If the Senate applies a fair standard, if we continue to respect our Constitution, Senate traditions, and the fundamental democratic principle of majority rule, she will be confirmed.

The arguments of those who oppose Justice Owen's nomination can be summed up in one phrase: Don't confuse us with the facts.

The facts are these: First, the American people are in desperate need of highly qualified individuals of the greatest legal talent and legal minds to fill the numerous vacant positions on the Federal bench, particularly those on the Fifth Circuit Court of Appeals, whose three vacancies are all designated judicial emergencies by the U.S. Judicial Conference.

Second, we must ensure that all judicial nominees understand that judges must interpret the law as written and not as judges or special interest groups would like them to be written. In other words, the judiciary must be a means by which the laws that are passed by Congress and signed by the President are implemented in the daily lives of the American people. The Constitution does not comprehend nor is it appropriate for judges to serve as a super-legislative body or to serve as another legislative branch in a black robe.

Of course, when it comes to interpreting the law faithfully and avoiding the pressure of special interest groups, Justice Owen satisfies both of these standards with flying colors. She is quite simply, by any measure, an outstanding jurist. The facts are testimony to her ability and her intelligence.

Justice Owen graduated at the top of her class at Baylor Law School and was

an editor of the Law Review at a time when few women entered the legal profession. She received the highest score on the bar examination. And she was extremely successful in the private practice of law for seventeen years before joining the bench.

Since she has become a judge about eight years ago, she has served with enormous distinction on the Texas Supreme Court. In her last election to the Texas Supreme Court, she was endorsed by virtually every major Texas newspaper, and most recently when she was reelected she received the vote of 84 percent of those who cast a vote in the election.

She has the support of prominent Texas Democrats and Republicans alike, Democrats such as former members of the Texas Supreme Court, Chief Justice John Hill and Justice Gonzales, as well as a long list of former presidents of the State bar, and leaders in the legal profession in my State. The American Bar Association that provides some analysis of judicial nominees, an objective analysis, has rated her well qualified, a rating that some of my colleagues used to refer to as "the gold standard," but which they now conveniently choose to ignore.

I simply cannot fathom how any judicial nominee can receive all these accolades from opinion leaders, from constituents, from legal experts across the political spectrum, unless the nominee is both an exceptionally qualified lawyer, a judge who respects the law, and a person who steadfastly refuses to insert his or her own political beliefs into the judging of cases.

Based on this remarkable record of achievement and success, of eloquent and evenhanded rulings, it should come as no surprise that Justice Owen has long commanded the support of a bipartisan majority of the Senate.

I would like to take a couple of moments to talk about my own personal observations while serving with Justice Owen on the Texas Supreme Court. She and I served together on that court for three years—from the time she joined the court in January 1995 until the time I left the court after serving seven years in October of 1997.

During those three years, I had the privilege of working closely with Justice Owen. I had the opportunity to observe on a daily basis precisely how she approaches her job as a judge, how she thinks about the law, and what she thinks about the job of judging in literally hundreds, if not thousands, of cases. I spoke with and indeed debated in conference with Justice Owen on countless occasions about how to faithfully read and follow statutes and how to decide cases based upon what the law is—not based on some result we would like to see achieved. I saw her taking careful notes, pulling down the law books from the shelves and studying them with dedication and diligence. I saw how hard she works to faithfully interpret and apply what the Texas legislature had written, without

fear and without favor. Not once did I ever see her attempt to pursue some political agenda in her role as a judge, or try to insert her own belief as opposed to the intent of the legislature or some precedent from a higher court in the case at hand. To the contrary, I can tell you from my personal observation that Justice Owen feels very strongly that judges are called upon—not as legislators or as politicians, but as judges—to faithfully read statutes on the books and interpret and apply them faithfully in cases that come before the court. I can testify from my own personal experience, as her former colleague and as a fellow justice, that Justice Owen is an exceptional judge who works hard to follow the law and enforce the will of the legislature. She is a brilliant legal scholar and a warm and engaging person. To see the kind of disrespect the nomination of such a great Texas judge has received in this body is disappointing and really beneath the dignity, I believe, of this institution.

It is hard to recognize the caricature that opponents of this nominee have drawn. Unfortunately, as a Member of the Senate Judiciary Committee who has had a chance now to vote on a number of President Bush's nominees for the Federal bench, I have seen that the practice of vilifying and marginalizing and demonizing President Bush's judicial nominees is becoming all too common. Indeed, I began to wonder whether there are any good, honorable people with distinguished records in the legal profession or in the judiciary who will submit their names for consideration by this body, knowing that, regardless of the facts, regardless of the truth, they will be painted as some caricature not of what they really are, but of what others have cast them to be, when in fact the truth is far different, and with no justification.

It pains me to see what can only be called the politics of personal destruction played out in the course of the judicial confirmation process. We can and we must do better.

The special interest groups, and the minority in this body—who oppose even calling a vote on Justice Owen have no real arguments to oppose her nomination, at least none based in fact or any that would withstand scrutiny under any fair standard. Their past record shows these groups who have cast aspersions on many highly qualified nominees—many of whom currently serve on the Federal bench—their attacks against judges are simply not credible.

For example, these opponents of a bipartisan majority who would vote to confirm Justice Owen today are the very same folks who predicted that Justice Lewis Powell's confirmation would mean that "justice for women will be ignored." Justice Owen's opponents are the same folks who argued that Justice John Paul Stevens had demonstrated "blatant insensitivity to

discrimination against women" and "seems to bend over backwards to limit" rights for all women. Justice Owen's opponents are the same folks who testified that confirming David Souter to the United States Supreme Court would mean "ending freedom for women in this country"—the same folks who said they "tremble for this country if you confirm David Souter"—who even described now-Justice Souter as "almost Neanderthal" and warned that "women's lives are at stake" if the Senate were to confirm him.

How many times must these irresponsible and baseless allegations be made before we finally say these special interest groups have no credibility when it comes to judicial confirmations? Their claims about Justice Owen are no more accurate and no less hysterical. It reminds me of the boy who cried wolf.

After these repeated charges and accusations and shrill attacks, which typically turn out—certainly in the cases I mentioned—to be utterly baseless and unfair, it makes you wonder just how credible these groups think they really are, or how long their arguments will continue to have currency in this body or in the media.

It also makes you wonder whether these groups make their claims not because they actually believe they are true, but in order to achieve their own political aims—in order to defeat judges nominated by this President, who believe that a judge's role is not to be an activist in a black robe or a super legislator. But I believe these shrill attacks are made with one purpose and one purpose only—to scare people and to support unsubstantiated and baseless attacks against highly qualified nominees like Justice Owen.

In the case of Justice Owen, their attacks are true to form. And they conform to their past patterns and practices—for they are like their attacks of the past, unfair and without foundation either in fact or in law. For example, some of Owen's detractors claim she rewrites statutes in order to further her own political agenda. That is a pretty incredible charge in light of her ABA rating of well qualified, which was unanimous, her strong bipartisan backing, and her enthusiastic support from Texans, people who know her best. It is also a baseless charge.

To ostensibly prove their point, Justice Owen's opponents point out that on occasion, other justices on the Texas Supreme Court have written opinions saying Justice Owen sometimes was rewriting statutes in order to achieve a particular result. That is an absurd standard to apply in a Senate confirmation, for reasons I will detail now. All judges of good faith struggle to read statutes and other legal texts carefully, and faithfully.

In close and difficult cases—and the docket of the Texas Supreme Court is chock full of them—judges will often disagree about the proper and most

correct legal interpretation. Indeed, we establish courts of multiple members—nine members—a collegial decision-making body, believing that judges will sometimes disagree, but in that decision-making process, that there will be a full and fair debate about the various positions, about the various interpretations, and that ultimately majority rule will win out and a case will be fully and finally decided.

But when disagreements occur, a judge may naturally conclude that his or her own reading of a statute is correct. That is why they will decide the case in the way they choose, based on a belief that their interpretation of a statute is correct. And, of course, it only follows that if I believe, in deciding a case, that my interpretation of the statute is correct, that the interpretation of the statute by someone who achieves a different result is not correct.

Now, that is not the final word. Obviously, the final word is the decision of the majority of the court which decides, for all practical purposes, not necessarily in the abstract, but for all practical purposes, what the correct result is, so that the people in our States and across the country can know what the rules are and apply them with some predictability.

I would point out that practically everyone with any significant judicial experience has faced the same criticism that Justice Owen has received in terms of rewriting statute. Yet if Justice Owen's opponents are to be taken seriously, any judge who has been criticized of rewriting a statute is presumptively unfit for the Federal bench. As I pointed out at Justice Owen's confirmation hearing last month, such an absurd standard would exclude practically all of her current and past colleagues on the Texas Supreme Court.

Such an absurd standard would also disqualify numerous members of the U.S. Supreme Court, people with whom Justice Owen's opponents are known to agree. For example, in 1971, Justice Hugo Black and William O. Douglas sharply criticized Justices William Brennan, Harry Blackmun, and others, stating that the "plurality's action in rewriting this statute represents a seizure of legislative power that we simply do not possess."

In a 1985 decision, Justice John Paul Stevens accused Justices Lewis Powell, Sandra Day O'Connor, and Byron White of engaging in "judicial activism."

Countless other examples pervade the U.S. Reports.

Would Justice Owen's opponents and detractors apply the same standard and exclude those Justices with whom they tend to agree from Federal judicial service? Of course not. It is a double standard. It applies to Justice Owen but not to judges who they would prefer. But fairness only dictates that Justice Owen not be made to suffer from an absurd and unreasonable double standard.

I remind my colleagues that just last year, the Democrat-controlled Senate confirmed Professor Michael McConnell to the Federal court of appeals by unanimous consent, even though Judge McConnell, like Justice Ruth Bader Ginsburg and liberal law professors and commentators, has publicly criticized the analysis of several Supreme Court rulings, including *Roe v. Wade*. That is not something, however, that Justice Owen has done.

Now, don't get me wrong. I am glad that Judge McConnell was confirmed. He is an exceptional jurist who is already proving to be a fine judge on the Federal court of appeals. But his case illustrates the inherent foolishness of using ideological litmus tests when assessing the abilities and evenhandedness of judicial nominees.

Mr. President, I can tell you from personal experience, when you put your left hand on the Bible, and raise your right hand, and take an oath as a judge, you change. Your job changes. No longer are you an advocate for a particular position in a court of law that you hope some court will embrace. No longer are you a legislator—assuming you have been a legislator—used to making the law or affecting public policy in a very stark and direct way.

Mr. President, when you raise your right hand, and put your left hand on the Bible, and take a sacred oath to perform the duties of a judge, you change. And, indeed, Justice Owen has been true to that oath and has faithfully discharged her responsibilities as a judge, and will do so on the Fifth Circuit Court of Appeals if this body would simply vote on her nomination.

I want to spend a few moments talking about filibusters.

Clearly, debate is important. In a body such as the Senate, this is one place where we know if there is a difference of opinion on any issue, if there are competing points of view, that there will be a full debate. Debate is, indeed, the only way to ensure we make known to each other our views and our values. It is the only way to ensure we have the opportunity to make our arguments known and to respond to the arguments of others; to appeal to the public and reasonable people who will assess those arguments and achieve or arrive at a judgment on their own about what they believe, what they do not believe, which arguments have value and which have no value, which arguments are supported by facts or evidence and which are baseless. It is the only way to ensure that each of us can be convinced we have been given at least the opportunity to persuade others and to appreciate the wisdom of our respective positions.

But for democracy to work, and for the fundamental democratic principle of majority rule to prevail, the debate must eventually end, and we must eventually bring matters to a vote. As Senator Henry Cabot Lodge famously

said about filibusters: "To vote without debating is perilous, but to debate and never vote is imbecile."

So let's have a debate about this exceptional nominee. And after we have had the debate, let's vote. There should not be a filibuster. A minority of the Senate should not try to impose what is in effect a supermajority requirement for confirming judicial nominees, operating under the constant threat of filibuster.

The Constitution makes clear when the Founders intended to require a supermajority of this body to act. It specifies that two-thirds of each House shall be necessary to override a Presidential veto on legislation, and that two-thirds of each House shall be necessary to amend the Constitution, subject to the ratification by the people. It provides that two-thirds of the Senate shall be necessary to convict an officer pursuant to an impeachment trial, and that two-thirds of the Senate shall be necessary to consent to the ratification of treaties.

It does not say that a supermajority shall be necessary to confirm a President's judicial nominees. And it is well-settled and well-established law, as a matter of both Senate practice and Supreme Court precedent, that majority rule is the norm, whenever the text of the Constitution does not expressly provide otherwise.

The Constitution vests the advice-and-consent function in the entire Senate, not just in the Senate Judiciary Committee. During the last Congress, the Senate Judiciary Committee refused to report Justice Owen's nomination out to the entire Senate. The committee, it should be obvious, does not speak for the entire Senate. Indeed, the committee itself could have reconsidered the nomination and could have reported Justice Owen to the floor even after it had previously refused to do so.

The Constitution requires elections to make sure that the Senate remains accountable to the people. To insist that a new Senate cannot, after an intervening election, reconsider legislation or a nomination rejected by a previous Senate is to reject the very principle of democracy and accountability.

Accordingly, there is no Senate tradition that forbids the President from renominating an individual previously rejected by the full Senate, let alone by the Senate Judiciary Committee. Quite to the contrary, there is a wealth of precedent for such re-nominations.

As recently as 1997, the Senate Judiciary Committee refused to report Bill Lann Lee to the entire Senate. Yet President Clinton not only renominated Lee in subsequent sessions of the Senate, he even gave Lee a recess appointment in 2000 without triggering substantial opposition from the Senate.

I am not asking for the Senate to depart from its traditions. Indeed, the only departure from tradition that is occurring today is the filibuster of Miguel Estrada and now Priscilla

Owen, something that has never happened before to a circuit court nominee.

I hope we have a good, vigorous debate on this nomination because I believe that by any measure Justice Owen is an exceptional judge and an exceptional human being who deserves confirmation.

I am confident that, at the end of the debate, if Members of the Senate really want to know what the facts are, as opposed to the caricature that has been drawn of Justice Owen by special interest groups intent on vilifying, marginalizing, demonizing a good and decent human being, that if we were allowed to have a vote, we would have a strong bipartisan majority that would support her nomination.

I hope no matter what the outcome, we will come to an end of the debate, and we will simply do what the people of our respective states sent us here to do, and that is to vote.

I would not ask the Senate to depart from its traditions of fairness in this case. By any fair measure, Justice Owen is an exceptional judge and exceptional nominee. I am confident she will not only maintain the strong bipartisan majority she has in support of her nomination, but that it will grow as Senators examine the record, test some of the allegations made against her, and find them without substantiation, without justification; that if what we are really interested in is finding the truth about this nominee, and determining whether she will uphold the oath she has taken and that she will take as a judge on the circuit court, she will be confirmed.

I hope this body will abide by the Constitution as written, and not impose some supermajority requirement where the Constitution requires none, and where the Supreme Court and Senate traditions and the fundamental principle of majority rule dictate a majority vote on this nominee, not a 60-vote supermajority.

As long as the Senate applies a fair standard to this nominee, I have no doubt Justice Owen will be confirmed. Now nearly two years have passed since she was nominated to the Federal bench. The Senate should vote to confirm her immediately.

We ask judges to be fair, to be impartial in deciding cases, to show neither fear nor favor. But certainly the requirement of fairness does not end in the judicial branch. It also applies to the Congress and to the Senate in performing our responsibilities. Certainly you would think it is self-evident that it should apply in confirming judicial nominees. Our current state of affairs is neither fair nor representative of the sentiment of a bipartisan majority of this body.

The distinguished Senator from Nevada has said that, when it comes to setting the hours of debate, "there is not a number in the universe that would be sufficient." I say two years is more than sufficient.

I yield the floor.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I welcome the opportunity to address the issue about the qualifications of Priscilla Owen to serve on the Fifth Circuit of the United States.

In considering this nominee, particularly in the wake of the recent comments of my friend from Texas, it is worthy to point out that there have been 119 nominations for the Federal bench, including the Court of Claims, either for the district or the circuit court, over the period of this President. We have had one, Mr. Pickering, who was defeated a year ago and who was renominated by the President. There is Priscilla Owen now before the Senate. But there has only been one, according to my calculations, Miguel Estrada, where sufficient questions have been raised as to his commitment to the core values of the Constitution, where that issue is still before the Senate.

That is an extraordinary response by the Senate in considering favorably the series of nominees by this President. I don't know the course of our history, but this certainly has to be one of the most favorable records, certainly of any recent times, of response by the Senate in approval of the President's nominees.

I listened to my friend and colleague talk about the importance of Priscilla Owen being able to finally get a vote on her nomination. I was thinking about the recent history of the time when my friend from Utah, Senator HATCH, was chairman of the Judiciary Committee. We had three nominees for the Fifth Circuit: H. Alston Johnson, Enrique Moreno, and Jorge Rangel. All three individuals were never given a vote under the Republican committee and the Republican Senate. These are truly outstanding individuals.

It is important to have some understanding of history in terms of who has permitted votes to take place and who has failed to permit even these well-qualified individuals, in this instance, just on the Fifth Circuit. I am not taking the time of the Senate to list them all. I know Senator LEAHY has done this at other times.

I also refer to the history of the Senate to provide some awareness of background. The claim that it is unprecedented to filibuster a court of appeals nomination is false and hypocritical. Since 1980, cloture motions have been filed on 14 court of appeals and district court nominations.

Recently, Republicans filibustered, in the year 2000, in an attempt to block the nomination of Richard Paez, a Hispanic, and Marcia Berzon, onto the Ninth Circuit. This is after Richard Paez had been waiting 4 years due to anonymous holds by Senate Republicans. Bob Smith openly declared he was leading a filibuster, and he described Senator SESSIONS as a member of his filibustering coalition. Even Senator FRIST was among those voting

against cloture on the Paez nomination.

So requiring cloture on judicial nominations is not an extraconstitutional event. The Senate has the role of advise and consent on judicial nominations, and the Constitution leaves it to the Senate to carry out its responsibility in accordance with its own rules. Requiring cloture to end debate on a nomination is permitted under Senate rule XXII. The right of Senators to speak on the floor at length is central to the Senate's role.

I ask the Senate to listen to the history of the Senate on nominations. In the first decade of the Senate's history, the Founders rejected a rule providing for a motion to close debate, and for the rest of our history, our rules have provided that debate, which is the lifeblood of our power, cannot easily be cut short. For 111 years, unanimous consent was required to end debate in the Senate. Until 1975, a two-thirds majority was required. Now it is only 60 votes that are required. Until 1949, debates on nominations could not be cut off at all.

It is interesting to note the history of the rules as they have applied to nominations historically when we are considering controversial nominees. I daresay if we look at the record today—it is my understanding that there is only one of President Bush's judicial nominations that we have so far blocked on the Senate Floor, and that is Mr. Estrada, which is because of the failure of the Administration to provide key documents from his time in the Solicitor General office so that we can be able to understand Mr. Estrada's commitments to the core values of the Constitution.

It was interesting as well that earlier in the day our leaders requested that there be an opportunity to consider Judge Edward Prado, a nominee to the Fifth Circuit, who is on the registrar, to see whether we could move ahead with that nominee. There was objection that was filed, as I understand it, by the Republicans. He is a Republican. We may not all agree with his views or his rulings, but in his time on the bench he has shown that he is committed to the rule of law and not to reshaping the law to fit a rightwing ideology. There is not a single letter of opposition against him, and he is ready to be voted on by the full Senate. Senator DASCHLE, Senator REID, and others have indicated—the Judiciary Committee on our side has indicated—they were prepared to vote on him earlier today. But an objection was raised. Nominees such as Judge Prado should get our full support, but nominees such as Priscilla Owen should not.

There is also Judge Cecilia Altonaga. She would be the first Cuban American woman on the Florida district court. I understand she could be considered favorably and passed as the first Cuban American woman to serve on the Florida district court. She had a unani-

mous vote of the Judiciary Committee. She could be approved this afternoon. That would bring the number up to 121.

Earlier today the Senate narrowly voted to confirm Jeffrey Sutton to a lifetime appointment on the Sixth Circuit. Like far too many of President Bush's nominees, he was opposed by a broad array of citizens from across the country because there were many attempts to roll back rights and protections for people with disabilities, women, minorities, and older workers.

The drumbeat goes on. This afternoon we begin debate on yet another extremely controversial nominee—Priscilla Owen. It is shameful and shocking that the administration is so bent on packing the courts with nominees such as Jeffrey Sutton and Priscilla Owen, who are so clearly hostile to the rights and protections that are so important to vast numbers of Americans.

Many well-qualified, fairminded nominees could easily be found by this administration if they were willing to give up their rightwing litmus test. I have mentioned two who are pending that we could be considering at this very moment.

Priscilla Owen, I don't believe should be favorably considered. Her record on the Texas Supreme Court is one of activism, unfairness, and hostility to fundamental rights. I am particularly concerned about her record on issues of major importance to workers, consumers, victims of racial discrimination or gender discrimination, and women exercising their constitutional right to choose.

Justice Owen is one of the most frequent dissenters on her court in Texas in cases involving workers, consumers, and victims of discrimination. That she dissents from this court so frequently is immensely troubling. This court is dominated by Republican appointees and is known for frequently ruling against plaintiffs. Yet when the court rules in favor of plaintiffs, only one member of the court, Justice Hecht, has dissented more often than Justice Owen.

In her dissents, Justice Owen raises new barriers to limit the role of juries in product liability cases, personal injury cases, and narrowly construes employment discrimination laws. She has limited the time period for minors to remedy medical malpractice. She has limited the ability of individuals to obtain relief when insurance companies unreasonably, and in bad faith, deny claims. Justice Owen's many dissents reveal a pattern of far-reaching decisions to limit remedies for workers, consumers, and victims of discrimination or personal injury.

What is also very striking is the level of criticism of Justice Owen's opinions by her colleagues on the court, and efforts to explain these criticisms away are unconvincing.

We all know judges are often critical of the reasoning of their colleagues, and occasionally these opinions can be

strongly worded. What stands out here are the frequent statements by her own colleagues on the court that Justice Owen puts her own views above the law, even when the law is crystal clear—she does this repeatedly in cases involving the rights of plaintiffs, or of young women seeking to exercise their right to choose.

Take Alberto Gonzales, her former colleague on the court, who is now President Bush's counsel in the White House. In one of her cases involving the interpretation of Texas' parental notification statute, Justice Gonzales accused Justice Owen of "an unconscionable act of judicial activism." In these parental notification cases, Justice Owen repeatedly grafts barriers to restrict a young woman's right to choose. She inserts new standards that are based on her own views and not on the clear language of the statute.

At her hearing, Justice Owen and some of my Republican colleagues suggested, for the first time, that Justice Gonzales was not referring to Justice Owen and the other dissenters when he accused Justice Owen of "unconscionable activism."

That isn't credible. Justice Gonzales wrote a separate concurring opinion specifically to defend the majority's opinion and to dispute the positions taken by the dissenters. He emphasized that the majority's opinion was based on the language of the Parental Notification Act as written by the Texas Legislature, and said:

[O]ur role as judges requires that we put aside our own personal views of what we might like to see enacted, and instead do our best to discern what the legislature actually intended.

Justice Gonzales went on to say that, contrary to the legislature's intent:

[T]he dissenting opinions suggest that the exceptions to the general rule of notification should be very rare and require a high standard of proof. I respectfully submit that these are policy decisions for the Legislature.

It is this narrow construction of the statute, put forward by the dissenters that Justice Gonzales criticizes as unconscionable activism. It is obvious—beyond any reasonable doubt—that Justice Gonzales is referring to the opinions of the dissenters, including Justice Owen.

Similar criticisms of Justice Owen appear repeatedly in other opinions of the Texas court.

A striking example of the lengths Justice Owen will take to narrow remedies for plaintiffs is found not in a dissent, but in a disturbing concurrence in a case called *GTE v. Bruce*.

In this case, three employees sued GTE for intentional infliction of emotional distress because of constant humiliating and abusive behavior of their supervisor. The supervisor harassed and intimidated employees, including through daily use of profanity; screaming and cursing at employees; charging at employees and physically threatening them; and humiliating employees by, for instance, making an

employee stand in front of him in his office for as long as 30 minutes while he stared at her. The employees suffered from severe emotional distress, tension, nervousness, anxiety, depression, loss of appetite, inability to sleep, crying spells and uncontrollable emotional outbursts as a result of his behavior. They sought medical and psychological help because of their distress.

GTE argued that the employees could not pursue an intentional infliction of emotional distress claim in court. They said that the employees' remedies were limited to worker's compensation. Eight justices on the Texas court agreed that the Worker's Compensation Act did not bar the plaintiffs' claims. These justices concluded that the actions of the supervisor when looked at as a whole were so extreme and outrageous as to support the jury's verdict of intentional infliction of emotional distress. Justice Owen, alone, wrote a separate opinion. While she agreed that there was more than a "scintilla of evidence" to support the jury's finding that the supervisor intentionally inflicted emotional distress on the plaintiffs, she declined to join the court's opinion because "most of the testimony that the court recounts is legally insufficient to support the verdict." Justice Owen then lists all the supervisor's behavior that is not a basis for sustaining a cause of action.

Justice Owen, alone among all the justices, felt the need to write separately to adopt as narrow a construction as possible of a plaintiff's right to recover for a supervisor's outrageous and harassing conduct. Justice Owen argued at her hearing last July, and again at her most recent hearing, that she wrote separately simply to make clear that no plaintiff could recover for any one of these individual actions standing alone. This is not, however, what Justice Owen's opinion says. Her opinion draws no such distinction. Furthermore, it is clear from the majority opinion that the standard is whether the supervisor's actions "taken as a whole" are sufficient to sustain a claim. Not only is Justice Owen's opinion troubling, but her answers to the concerns raised seem less than candid.

Justice Owen's record is particularly troubling given the range of important issues that come before the Fifth Circuit. The Fifth Circuit is one of the most racially diverse circuits, with a large number of Latinos and African-Americans. The States in the Fifth Circuit are also among the poorest. It is vital on this court in particular that a judge is fair to workers, victims of discrimination, and the personal injury victims that come before the court. Those who contend that we oppose Justice Owen simply because she is a Republican appointee miss the point. I oppose her because I believe she will put her own view above the law in cases regarding the basic and fundamental rights on which all Americans have come to rely, including the right to

privacy and equal protection under law.

Not long ago, the Fifth Circuit was hailed as a brave court for protecting civil rights. When Congress passed the Civil Rights Act in 1964 and the Voting Rights Act in 1965, many States and localities in the South resisted these measures. Federal judges such as Elbert Tuttle, Frank Johnson, and John Minor Wisdom, all Republican appointees, helped to make real the promise of legal equality that was contained in these important Federal statutes. It is particularly important that a judge appointed to this Court show a commitment to civil rights and to upholding constitutional safeguards for all Americans. I do not believe that Justice Owen is in that proud tradition of independence and fairness.

Justice Owen's nomination has incited a great deal of opposition from a broad range of citizens and groups in her home State of Texas. Those individuals who have observed her on the Texas court, who have been harmed by her rulings, have written to us in droves opposing her appointment to the Fifth Circuit. These include the Gray Panthers of Texas, the National Council of Jewish Women of Texas, the Texas AFL-CIO, the Texas Civil Rights Project, and the Texas Chapter of the National Organization for Women. At least 20 attorneys who practice in Texas have written expressing their opposition. A broad range of environmental groups also oppose her nomination.

The issues at stake with Justice Owen's nomination go beyond partisan games. This debate is about lifetime appointments of courts that decide cases that shape the lives of all American people. Our Federal courts have made real the fundamental rights guaranteed by the Constitution and by Federal laws. Federal courts are the backbone of our pluralistic democracy, helping to ensure that black children have the same access to education as white children, that a disabled woman has the appropriate workplace accommodation so that she can help provide for her family, and that our children can breathe clean air and drink clean water in their communities. Because the Supreme Court takes less than 100 cases, many of the cases most important to Americans are decided by lower court judges.

The basic values of our society—whether we will continue to be committed to equality, freedom of expression, and the right to privacy—are at issue in each of these controversial nominations. If the administration continues to nominate judges who would weaken the core values of our country and roll back the laws that have made our country a more inclusive democracy, the Senate should reject them.

No President has the unilateral right to remake the judiciary in his own image. The Constitution requires the Senate's advice and consent on judicial

nominations. It is clear that our duty is to be more than to rubber-stamp.

I urge my colleagues to vote against Priscilla Owen's nomination.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. TALENT). Without objection, it is so ordered.

Mr. MCCONNELL. Mr. President, earlier today Senator HATCH asked consent for a time certain for a vote on the pending Owen nomination. There was an objection from the other side of the aisle.

I make further inquiry of the assistant Democratic leader if there is still an objection to limiting debate on this nomination. I yield to him for a response.

Mr. REID. Mr. President, I say through you to the distinguished Senator from Kentucky, I don't think we can work out any time agreement. I have said so publicly. There have been a number of statements on the floor today. As I told Senator HATCH, there simply would be no time agreement ever on Priscilla Owen.

Mr. MCCONNELL. Mr. President, today we spent a good deal of time debating the nomination of Justice Priscilla Owen. Prior to today, we debated her nomination for 2 other days, so for 3 days of valuable legislative time our colleagues have had the opportunity to come to the floor and debate. We intend to continue this debate for another 2 days. But the debate must come to a reasonable end, so I am filing a cloture motion this evening so we can vote to close debate later this week.

I think we will be ready to vote. After all, Justice Owen was nominated by the President 2 years ago next week. She has had two hearings before the Judiciary Committee, over 30 editorials have been written about her nomination, and nearly all in support of her confirmation, including the Washington Post on three—three—separate occasions. There have been countless op-eds and news articles.

Senator SCHUMER asked earlier today if we on this side of the aisle expected the Senate to be a rubberstamp for the President's nominations. The answer, of course, is we do not. We do expect the Senate to do what the Constitution contemplates, and that is to vote; to vote yes or no but to vote.

We also expect the Senate to do the right thing by the Constitution, by this nominee, and by the President of the United States who nominated her.

CLOTURE MOTION

Mr. MCCONNELL. Mr. President, I send to the desk a cloture motion.

The PRESIDING OFFICER. The motion having been presented under rule XXII, the Chair directs the clerk to report the cloture motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the standing rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 86, the nomination of Priscilla R. Owen of Texas to be United States Circuit Judge for the Fifth Circuit.

Senators William Frist, Tom Hatch, Kay Bailey Hutchison, John Cornyn, Mitch McConnell, Jon Kyl, Wayne Allard, Sam Brownback, Jim Talent, Michael Crapo, Gordon Smith, Peter Fitzgerald, Jeff Sessions, Lindsey Graham, Lincoln Chafee, and Saxby Chambliss.

Mr. MCCONNELL. For the information of all Senators, this cloture vote will occur on Thursday of this week. I now ask unanimous consent the live quorum under rule XXII be waived.

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

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent the Senate proceed to a period of morning business.

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

HONORING OUR ARMED FORCES

Mrs. FEINSTEIN. Mr. President, with the dramatic and precipitous fall of many Iraqi cities, including Baghdad, the military conflict in Iraq is all but officially over.

Isolated pockets of resistance still exist and there is the looming threat of suicide bombings, as happened last Friday at an ammunition depot. But we can now proclaim that the barbarous regime of Saddam Hussein and his Ba'ath Party has finally come to an end.

As the military aspect subsides, the number of casualties—United States, coalition, and Iraqi—is also diminishing. And this, clearly, is wonderful news. Still, regrettably, there have been those over the last few weeks who have made the ultimate sacrifice, some of them with close ties to California. I would like to take a moment to honor these brave and selfless individuals.

Marine Cpl Jesus Medellin: On April 7, 21-year-old Jesus "Marty" Medellin was killed when an enemy artillery shell struck his vehicle. The second of four boys from a very close family from Fort Worth, TX, Medellin was remembered as a warm and relaxed family man who was active in local church.

As soon as he graduated from W.E. Boswell High School, in the year 2000, he went straight to Marine boot camp, having decided to do so when only 12 years old. "There's no prouder way of losing someone than through serving their country," said his father, Freddy Medellin, Sr., who was prevented from joining the military because of physical problems.

As part of the 3rd Assault Amphibian Battalion, First Marine Division, based in Camp Pendleton, CA, Cpl Jesus Medellin died doing what he had al-

ways dreamed of doing. Americans everywhere should be as proud of him as his family.

Marine Sgt Duane Rios: Remembered as a gentle giant, as a light-hearted person with an infectious laugh, 6-foot-3-inch Duane Rios was killed in combat on the outskirts of Baghdad, on Friday, April 4. He was a squad leader for the 1st Combat Engineer Battalion of the 1st Marine Division, from Camp Pendleton, CA.

Raised in Indiana by his grandmother, Rios graduated from Griffith High School in 1996. It was there that he met his future bride, Erica, who, upon hearing of her husband's death, told the San Diego Union Tribune that "there's no way he'd leave me behind knowing I couldn't take it. . . . He was a great guy, none better. . . . He did his job with pride because it was something that he felt was right."

She recalled how much they loved the view of the ocean at San Clemente, walking their dog on the beach, and watching the sunset. Her strength, along with her husband's sacrifice, should serve as an inspiration to us all.

Marine 1stSgt Edward C. Smith: A 38-year-old native of Chicago, Sgt Edward Smith had served in the U.S. Marine Corps for 20 years, and had served for 4 years as a reserve officer for the police department of Anaheim, CA. His hope was to retire from the Marines and become a full-time police officer. He died in Qatar, of combat injuries sustained in central Iraq, on April 5.

A veteran of Operations Desert Storm and Desert Shield, Sergeant Smith received many commendations, including the Navy Commendation Medal and two Navy Achievement Medals.

After graduating from the Palomar Police Academy with the "Top Cop" award, Sergeant Smith went on to receive such honors as the Rookie of the Year for the Anaheim Police Department and the Orange County Reserve Police Officer of the Year in 2001.

His coworkers in Anaheim remember Edward as a gentleman and a professional. He would send them e-mails and makeshift postcards made from empty MRE containers—one which promised that he would wear his SWAP cap into Baghdad.

Sergeant Smith leaves behind his wife Sandy and three young children, Nathan, Ryan, and Shelby. At a news conference held at the Anaheim police department, Ryan, an extraordinarily mature 10-year-old, talked about how their father was always there when they needed help.

"It made me feel so good," the boy said. "He was the best dad you could ever have. I miss him a lot."

Police Sgt. Rick Martinez, one of 100 colleagues who turned out to support the Smith family, noted that "we all fell in love with his children. Edward's got to be so proud right now."

And so America is so very proud of Sergeant Smith. Army Pvt. Devon D. Jones: Army Pvt. Devon Jones left for

boot camp just a few weeks after graduating from Lincoln High School, in San Diego, last June. He was just 19 years old.

It was only 3 years earlier that, after moving from one San Diego group home to another, the artillery specialist found a foster mother who he called mom.

"I'm honored to talk about him," his foster mother Evelyn Houston said. "He was a strong spirit. He was cool, but compassionate, and always concerned about everyone's well-being."

He joined the military in order to pay for his education—his goal was to be a writer and a teacher.

In a letter he sent to his family last month, Private Jones described his life in the desert. "Sometimes I just look into the sky at the stars and wonder what you all are doing, and smile.

"Hold on, be patient," he concluded, "and know there is a reason for everything."

GySgt. Jeffrey Bohr: 39-year-old Marine GySgt. Jeffrey Bohr, who was killed in downtown Baghdad during a 7-hour shootout outside a mosque, had been in the military his entire adult life. He joined the Army fresh of high school in Iowa, where he rode horses and played football, but switched to the Marine Corps 5 years later.

A large, broad-shouldered man known for his boundless energy—he could run all day with the younger Marines he commanded—Sergeant Bohr was also quiet and down-to-earth.

He lived with his wife Lori in San Clemente, CA, and loved reading history and John Grisham novels and taking his two boxers, Tank and Sea Czar, on 10-mile runs. He was also a diehard Oakland Raiders fan.

The last time Sergeant Bohr called Lori was a little over a month ago—he spoke of sandstorms and his belief that they would make good parents.

Lori's brother, Craig Clover, called Sergeant Bohr "a stand-up guy—do it by the rules. For a friend or family, he'd do anything . . . and he loved the military."

Marine LCpl Donald Cline Jr.: The same was true with 21 year-old LCpl Donald Cline, Jr., who was listed as missing in action just over 1 month ago, yet the Department of Defense confirmed last week that he had died in combat outside the city of Nasiriyah, in southern Iraq.

Born in Sierra Madre, CA, Corporal Cline moved to the town of La Crescenta, where he attended the public schools there until moving to Sparks, NV. It was there that he met his future wife Tina. They had two children together Dakota, 2, and Dylan, who is only 7 months old.

Sgt Troy Jenkins: On April 19, in an extraordinary act of heroic selflessness and sacrifice, 25-year-old Sgt Troy Jenkins threw himself on a cluster bomb just before it detonated. As a result, he saved the lives not only of several soldiers in his regiment—the 187th Infantry—but of a 7-year-old Iraqi girl.