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By order of the Joint Committee on Printing.

ROBERT W. NEY, Chairman.
to the distinguished chairman of the

confirmed by this time in their terms.

91 percent of their circuit court judges
nominated to the circuit court bench
ward without going through the proc-

say: No, it is not a 51-vote margin; it is

been here I have seen a vote that would

done that? That is the process for

ment. Have we had a vote on the floor

the process of a constitutional amend-

United States without going through

Estrada

Take my name off the list.

ber of votes to be confirmed for the DC

May of 2001, who got the requisite num-

Miguel Estrada, who sat here since

uated, again in the top of his class.

Harvard Law School, where he grad-

look at Miguel Estrada, who came to

asked to meet this higher standard.

Priscilla Owen is not sitting on the Fifth

Priscilla Owen is unqualifiedly the best

and attorney general of our State

CONGRESSIONAL RECORD

—

So I am going to turn the floor over

But I do not think that since I have

I can tell you, there are a whole raft

so that we will have a 60-vote requirement

Federals? Have we done that? That is the process for

the Constitution of the United States without going through

What are we going to do to the people

right because the bill is not the right sort of thing that we ought to do

The pattern of obstruction was set on

The presiding officer (Mr. SUNUNU). The senator from Utah.

Mr. HATCH. Mr. President, I have

for confirming Federal judges? Have we

the top people in the country to take

So, Mr. President, I do not think we

We have a vote on the floor that

practicable in time and space, both

Estrada—these two perfectly qualified

people, with great academic standing,

Every time they say: Well, they are

Why? Why have we set a higher bar

right because they think we ought to

But I do not think that since I have

I have seen a vote that would say: No, it is not a 51-vote margin; it is

60. No, Mr. President, we have not had

the amendment to the Constitution is being put for-

we have a whole raft of other factors that are going through the

Because we now have six people nominated to the circuit court bench

To date, our President, President

Bush, has had 62 percent of his nomi-

The previous three Presidents have had

So I am going to turn the floor over
to the distinguished chairman of the

I like I say, Priscilla Owen, who

has been here for 16 years, is the
top woman in the country. She

she won as the Alabama attorney

general before the Supreme Court.

So who is out of the mainstream? It cer-

Ballard, was the distinguished chair-

This is a constitutional issue, and

But we are standing here tonight be-

These are the people who have submitted

have been able to, with dignity, have a vote up or

time with the same standard that we

I have been listening to this debate and

the populist arguments being made by

Democrats who seem to think that

have been confirmed as Federal circuit judges, be

able to, with dignity, have a vote up or
down with the same standard that we
have had since 1789; and that is a 51-

vote margin.

Thank you, Mr. President; I yield the

floor.

The presiding officer (Mr. SUNUNU). The senator from Utah.

Mr. HATCH. Mr. President, I have

been listening to this debate and the

The process of a constitutional amend-

ment. Have we had a vote on the floor

of the Constitution of the United States?

We are going to take care of jobs if

We are going to take care of jobs if

but we could have a Federal bench that

the country may not amount to much if

we can get some cooperation from

We are going to take care of jobs if

But the taking care of jobs in the

world may not amount to much if

They passed no welfare reform. They

They passed no Medicare prescription drug

They have to pass. Medical liability

needed enforcement of a Homeland Secu-

It is this
dismal record of inaction that Democrats hope to repeat.

Now, we are committed to delivering the Healthy Forests bill and the CARE Act to the President’s desk. The Democrats are refusing to name conferees to the bill that passed with strong bipartisan support and could go without delay on any Democratic objection. But my friend from Nevada—it is kind of interesting to me that he would take 10 hours out of the Senate’s time on Monday to filibuster, when we all came here prepared to vote on appropriations bills.

I think it is pretty bad to come in here and say that we should not do what we should for judges, when they themselves have been filibustering not just judges but virtually everything else with a slow walk.

Mr. MCCONNELL. Will the Senator yield for a question?

Mr. HATCH. I am glad to yield, without losing my right to the floor.

Mr. MCCONNELL. I notice my friend’s voice from Utah is cracking a bit, and I thought I might give him a moment’s relief by asking him a question or two.

Mr. HATCH. Sure.

Mr. MCCONNELL. I would ask the chairman of the Senate Judiciary Committee, was it not the case that the current DC Circuit Judge John Roberts and nominee Miguel Estrada were nominated on the same day in May of 2001?

Mr. HATCH. That is correct.

Mr. MCCONNELL. I would ask my friend from Utah, is it not true that the rationale for defeating Miguel Estrada given by the other side was that either he or the Justice Department or both of them refused to turn over the working papers that he had produced during his period as a lawyer in the Solicitor’s Office of the Justice Department?

Mr. HATCH. That is correct. These are the most confidential private papers of the Solicitor General’s Office, the lawyer who represents all of the public.

Mr. MCCONNELL. Right. Was it also not the case, I ask my friend from Utah, that every single living Solicitor, who are either current or former Solicitors, the majority of which are Democrats, concurred with the Justice Department’s position that these working papers should not be turned over?

Mr. HATCH. That is correct. Four of the current Solicitors General were leading Democrats, who said that what the Democrats are doing is wrong.

Mr. MCCONNELL. People such as Seth Waxman and Archibald Cox?

Mr. HATCH. Right.

Mr. MCCONNELL. All concurred?

Mr. HATCH. Right.

Mr. MCCONNELL. All concurred that these types of working papers should not be turned over?

Mr. HATCH. That is right.

Mr. MCCONNELL. Is it not the case, I ask my friend from Utah, that both John Roberts and Miguel Estrada worked in the Solicitor’s Office?

Mr. HATCH. They both worked there. They both were excellent appellate lawyers. By the way, Estrada worked not only with the Bush administration but with the Clinton administration. And he had high marks.

Mr. MCCONNELL. Is it not the case that the same two gentlemen, who were nominated on the same day back in May of 2001, by President Bush, for the very same court?

Mr. HATCH. Right.

Mr. MCCONNELL. Nominated to the same court, the same experience in the Solicitor’s Office. And is it not the case, I say to my friend from Utah, that John Roberts was passed out of committee and subsequently confirmed on a voice vote in the Senate?

Mr. HATCH. A unanimous voice vote on the floor, but only after waiting 12 years through three nominations by two different Presidents.

Mr. MCCONNELL. He certainly had to wait one of the not?

Mr. HATCH. Right.

Mr. MCCONNELL. Is it not the case that you had two nominees nominated on the same day, to the same court, having had the same experience in the Solicitor’s Office, and one nominee was treated completely differently once the Judiciary Committee considered him. And I had to force them to consider him. Yet he passed this body by unanimous consent.

Mr. MCCONNELL. So the request was made for certain papers of one nominee and the precise same papers of the other nominee were not requested?

Mr. HATCH. That is exactly right. They treated Mr. Estrada differently from John Roberts.

Mr. MCCONNELL. Let me ask my friend from Utah, is there any conceivable basis for such disparate treatment for the very same court on the very same day, going through the very same judiciary Committee? Can the Senator from Utah think of any rational reason for this kind of disparate treatment?

Mr. HATCH. Not a legitimate reason. The only reason for it to be pro-life, I don’t know whether he is to this day because we do not ask those questions.

Mr. MCCONNELL. But the stated reason, I would say to my friend from Utah, you just confirmed a moment ago. The stated reason for not confirming Miguel Estrada was that he would not turn over these papers or the administration would not turn over these papers.

Mr. HATCH. The phony reason.

Mr. MCCONNELL. That was the stated reason.

Mr. HATCH. The phony reason they hid behind.

But let me make this point. Miguel Estrada, as great an attorney as he is, having argued 15 cases before the Supreme Court, having the highest recommendation of the American Bar Association, their gold standard, they did not want him to come through this process because they perceived, that he was on the fast track to become the first Hispanic on the Supreme Court and they just cannot tolerate having a conservative Hispanic on the Circuit Court of Appeals for the District of Columbia, let alone on the Supreme Court.

Mr. MCCONNELL. So I say to my friend from Utah, what we have is a situation where a white male nominee, to the very same court, with the very same experience, was treated one way and a Hispanic-American nominee, nominated to the very same court, on the very same day, was treated differently?

Mr. HATCH. That is absolutely right. But even Roberts had to go through a lot of pain to get there—12 years waiting, nominated three times by two different Presidents.

We put him out of the committee after a 12-hour hearing. You hardly have that much for Supreme Court nominees. There were two others on that list. They complained because there were three on one day’s hearing. They ignored the fact that Ted Kennedy, when he was chairman, had seven circuit nominees one day, and another four. We had at least 10 other times when we had three.

Then once we put him out of the committee, I had to bring him back in the committee so they could have another crack at him. They could not touch him. He was that good. So he had to go through an inordinate process to get there. But they knew they did not have anything on him. They know they didn’t have anything on Miguel Estrada.

Mr. MCCONNELL. It sounds to this Senator, I wonder if the chairman concurs, that there was a pernicious rule created and applied to Miguel Estrada—

Mr. HATCH. It was a double standard.

Mr. MCCONNELL. That was not applied to John Roberts, two nominees considered for the same court at the same time.

Mr. HATCH. Absolutely right. Roberts was treated like all other nominees during the Reagan years, Bush 1 years, and the Clinton years. He was not asked to give his opinions on future issues that might come before the Circuit Court for the District of Columbia.

Because Miguel Estrada answered the same way basically as all the other people who had passed in prior years, they held that against him. The big difference is the Solicitor General’s Office did not give the most privileged, private documents in that department without making that department unworkable.
Mr. MCCONNELL. Which is why, I say to my friend, they didn't ask for those papers on John Roberts.

Mr. HATCH. That is right. They did treat Roberts differently, no question about it. They gave him a rough time. The chairman did not treat his own in the way he was mistreated, but Roberts was mistreated, too. Roberts sits on the Circuit Court of Appeals for the District of Columbia after having been unanimously approved here.

Let's talk about how important that is. We have had 40 rollcall votes on the floor. You talk about delays. You talk about fouling up this body. We have had 40 rollcall votes on people who got unanimously confirmed. Can you imagine what it takes to go through 40 rollcall votes? It slows down the Senate like you can't believe, and muscles up the Senate like you can't believe. It is all a big game to try and make this President not successful. But Miguel Estrada had to go through that as well.

Mr. MCCONNELL. So I say to my friend from Utah, and I will conclude with this, the practical result of that is this nominee who came to the United States as a teenager, speaking broken English, realized the American dream, went to undergraduate and law school, was a star student, argued 15 cases before the Supreme Court, was denied an opportunity to get an up-or-down vote on the Senate floor by the creation of a standard that was not applied at the very same time to another nominee who was not a minority.

Mr. HATCH. And, by the way, was never applied to any nominee, to my knowledge, in the past. Miguel Estrada was singled out with a double standard for the sole purpose of defeating his nomination and getting him to withdraw.

Mr. MCCONNELL. They were having a hard time, I say to the chairman, trying to find some basis upon which to defeat this guy. He was unanimously well qualified by the ABA, right?

Mr. HATCH. Mr. Atwood standard.

Mr. MCCONNELL. He argued 15 cases before the Supreme Court.

Mr. HATCH. Very few people even argue one case.

Mr. MCCONNELL. He received outstanding recommendations from everyone with whom he worked. They were having a real struggle, weren't they, I say to my friend, the chairman, trying to find some basis upon which to reject this outstanding nominee.

Mr. HATCH. It shows the lengths they would go to on that side—at least the leaders on that side—to screw up a nomination of a very good person.

Take Janice Rogers Brown. She is a terrific jurist. She sits on the California Supreme Court. She wrote the majority of the majority opinions on that court last year, and yet they come here and say she is outside the mainstream. They are outside the mainstream when they make arguments such as that.

There is only one reason they are against Janice Rogers Brown and fillibuster her: because she is an African-American woman who is conservative and pro-life. For these inside-the-beltway groups, that is their single issue. I had friends on the other side tell me, when I asked, "Why are you doing this, sir?" I said, "I think of this as a vote, and then they will come against whoever votes that way in the next election." These guys don't have the guts to take on the groups.

Mr. MCCONNELL. Isn't it true, I ask my friend from Utah, in California where the justice to whom you just referred serves on the supreme court, you have to stand periodically for continuation?

Mr. HATCH. That is right.

Mr. MCCONNELL. You can be rejected. Is it not true she got three-fourths of the vote? It is better than that. She got 76 percent of the vote. She was the top vote-getter among four supreme court nominees.

Mr. MCCONNELL. This is in that bastion of conservatism, California.

Mr. HATCH. I think the Senator makes a very good point.

Mr. MCCONNELL. This nominee who was called outside the mainstream—outside the mainstream—gets a three-fourths vote in that bastion of conservatism—California—and the other side suggests she is somehow unacceptably conservative? That is absurd on its face, I argue to my friend. Mr. HATCH. It certainly is. I went to one of my friends on the other side—and I won't mention the name because I don't think that would be proper—and I said: What did you think of Janice Rogers Brown? His answer was: She's terrific—which she was in front of the committee. Yet every Democrat went against her in committee and I think cited horrendously bad arguments to do it.

They can point to 8 or 10 cases with which they didn't agree, but with which a lot of people do agree, and then they say she is outside the mainstream when she has tried hundreds of cases and decided over 100 opinions. As a Justice, a Justice of the Supreme Court, he has written, the most major opinions in that court last year and I think in prior years as well.

It is really unseemly, and that is why we are so upset here. Let me tell you, if I continue through this course, we are going to severely harm the Federal judiciary and get only people who really are not only outside the mainstream, but are Milquetoast, who can't make a decision to save their lives. Once you get to the Federal bench, you have to be able to make tough decisions.

Mr. MCCONNELL. Isn't it also true, I say to my friend, the chairman, that one of the arguments used on some of the nominees is because they have certain personal beliefs, that they won't uphold the law? Has that been an argument frequently made?

Mr. HATCH. That is a frequent argument. I think the best illustration of that has been Moore.

Mr. MCCONNELL. Which is what I was going to ask my friend, the chairman.

Mr. HATCH. They criticized him for cases he won before the Supreme Court, saying he is outside the mainstream because they disagreed with the cases. In fact, they think Rehnquist is out of the mainstream. They think Scalia is out of the mainstream. They think Thomas is out of the mainstream because they want a single approach, a minority approach to everything that has to be liberal, and if you are not liberal, you are outside the mainstream, even though some of the greatest judges ever to sit on the Federal and Supreme Court were conservatives. Some of the great ones were liberals, too, but understood the role of judges.

Mr. MCCONNELL. This is the same Bill Pryor who is currently standing up against the Alabama chief justice.

Mr. HATCH. Right.

Mr. MCCONNELL. Who has been defying a court order by refusing to remove the Ten Commandments from a public building. It is very unpopular in Alabama to be against that guy.

Mr. HATCH. Bill Pryor is getting savaged by the rightwing because he basically sued to have the chief justice removed for not following the rule of law.

Mr. MCCONNELL. A classic example of following the law and not his own personal beliefs; is that not correct?

Mr. HATCH. That is absolutely correct. I must fast forward to this week. As the Atlanta Journal Constitution article: Moore should be removed because "he intentionally engaged in misconduct and because he remains unrepentant for his behavior."

I could go on about Bill Pryor. During his hearing—a lengthy hearing—he was asked over and over by virtually every Democrat who showed up about his deeply held personal beliefs. He answered every question the way a judicial nominee should. Even though he had deeply held beliefs, he would obey the law.

The PRESIDING OFFICER. The time controlled by the majority has expired.

Mr. HATCH. I think the Senator for his excellent questions.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I ask the time of the half hour allotted to this side to divide between myself and Senator Dodd and that I may proceed for 15 minutes.

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

Mr. LEVIN. Mr. President, I believe what I wish to say tonight is consideration of legislation that addresses the loss of over 3 million jobs in this country during the last few
years, most of them manufacturing jobs.

What I wish the majority would be allowing us to do tonight is to consider legislation to extend the unemployment benefits to those Americans who have lost their jobs in this recession, the way we have extended unemployment benefits in previous downturns.

Those needs of the American people and a dozen other needs are what we ought to be spending our time on tonight and every day until those issues, and many other critical issues, are addressed.

Instead, those on the other side of the aisle decided to spend 30 hours rehashing the reasons that 4 out of the 172 of President Bush’s judicial nominees have not been confirmed by the Senate. That is their right, but it is wrong.

In my home State of Michigan, the unemployment rate is 7.4 percent. In fact, lost and continuing jobs to lose more manufacturing jobs than almost any other State in the Nation.

Mr. President, 2.5 million of the 3.3 million jobs which the U.S. economy has lost since January 1, 2001, were in manufacturing. We lost over 160,000 of those jobs in Michigan alone. Other States face large job losses, but what we should be doing is helping people who lost jobs, acting to stop the currency manipulation by China, Japan and other countries, and the one-way street trade policy that has been such a large part of the loss of jobs in this country.

The first act of this Congress last January was to extend unemployment benefits through the end of this year because Congress did not act last year. That made the 2002 holiday season mighty grim for those workers whose benefits had expired. Current law provides 13 weeks of additional Federal aid to laid-off workers who have exhausted their 26 weeks of regular State benefits. However, this administration has shown no interest in either extending the deadline for the program or authorizing new benefits. The trust fund that is to be used for unemployment benefits currently has over $20 billion in it. Why this administration balks at extending unemployment benefits is beyond me since that is what the money in that fund is for.

I, along with a number of our colleagues, propose we extend the December 31 deadline for another 6 months so newly unemployed workers can receive Federal assistance, but also making available an additional 13 weeks of Federal unemployment benefits for a total of 26 weeks. That is what we have done in prior recessions. We responded during the 1974 recession. Federal benefits were extended to 29 weeks.

In the 1981 recession, Congress extended benefits to 26 weeks. In the 1990 recession, 26 weeks were provided, 33 weeks to States with high unemployment.

While the unemployment numbers released last week were somewhat of an improvement, in terms of manufacturing jobs, that loss continues, and the long-term economic forecast continues to be pessimistic.

On this track, this administration will be the first administration to lose private sector jobs since Herbert Hoover.

In one moment I am going to propose a unanimous consent request that I know my Republican colleagues will want to hear, and I want to alert them of the fact I will be proposing that in a moment. I hope our Republican colleagues will give us consent to take up unemployment insurance extension legislation this evening. Perhaps then this 30-hour exercise will be fruitful.

I think I have alerted the Republicans that we would be making this unanimous consent request.

UNANIMOUS CONSENT REQUEST—S. 1853

I ask unanimous consent that the Senate proceed to legislative session; that the Finance Committee be discharged of further consideration of S. 1853, which is a bill to extend unemployment insurance benefits for displaced workers; that the Senate proceed to its immediate consideration; that the bill be read a third time and passed; and that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection?

Mr. McCONNELL. I object. The PRESIDING OFFICER. Objection is heard.

Mr. LEVIN. Mr. President, since the majority has now determined we will spend 30 hours of the time of the Senate rehashing 4 of the 172 judicial nominations that haven’t been confirmed, I want to address what is an even deeper issue than the majority’s effort to weaken and water down the role of the Senate in exercising its advice-and-consent responsibility.

That even more fundamental issue is our Nation’s historic and constitutional system of checks and balances. Those checks and balances are an integral part of the unique design of our founding document in restraining the potential excesses and extremes of the executive branch. We share the obligation and responsibility with the judicial branch.

Our rules in the Senate are aimed at restraining the potential abuse of the rights of the minority by the majority within the legislative branch itself.

In one of this year, Robert Caro, the eminent Pulitzer Prize winning historian and author of “Master of the Senate,” his great biography of former President and Senate majority leader Lyndon Johnson, wrote to our Senate Rules Committee addressing this subject and quoting from his book. Here is what he said:

... in creating this new nation, its Founding Fathers, the Framers of its Constitution, gave its legislature ... not only its own powers and duties, but also the powers designed to make the Congress independent of the President and to restrain and act as a check on his authority, [including the] power to approve his appointments, even the appointments he made within his own Administration ... and ... the power to appoint ambassadors, Supreme Court justices, and other officers of the United States, but only ‘with the advice and consent of the Senate.’

Robert Caro goes on to say:

The Framers wanted to check and restrain not only the people’s ruler, but also the possibility that the majority will be used in the words ‘‘the minority’’ . . . The Framers, he [Madison] said, established the Senate as the body ‘first to protect the people against their rulers, secondly to protect the people against the transient impressions into which they themselves might be led ... The use of the Senate is to consist in its proceeding with more coolness, with more system...

One of the historical tools for the protection of the minority which is developed in the Senate from its earliest days is the principle of extended debate. The exercise of this right of Senators has particularly been used to block actions which the majority fervently wishes to take, is embodied in our Senate rule that you must have a supermajority of 60 percent of the Senate on matters where there is strong opposition.

Filibusters have played an important role in moderating action in the Senate. It is widely recognized the Senate is a less partisan place—you may not be able to discern that tonight, but generally this is a less partisan place than the other branch of government or virtually any other democratically elected legislative body anywhere in the world.

As Senator BYRD said in his series of scholarly addresses on the floor of the Senate about Senate history: Arguments against filibusters have largely centered around the principle that the majority should rule in a democratic society. The very existence of the Senate, however, ensures an equally valid tenet in American democracy: the principle that minorities have rights.

Senator BYRD goes on to say in his study:

The most important argument supporting extended debate in the Senate, and even the right to filibuster, is the system of checks and balances. The Senate operates as the balance wheel in that system, because it provides the greatest check against an all powerful executive through the privilege that Senators have to discuss without hindrance what the President has said. Please for a long time. . . . Without the potential for filibusters, that power to check a Senate majority or an imperial presidency would be destroyed. It is a powerful too sacred to be trifled with. Lyndon Baines Johnson said in 1949:

If I should have the opportunity to send into the countries behind the iron curtain one freedom and only one, I know what my choice would be ... I would send those over the right of unlimited debate in their legislative chambers.

If we now, in haste and irritation, shut off this freedom, we shall be cutting off the checks and balances that minorities possess against the tyranny of momentary majorities.
In May of 1994, when the Republican minority blocked Senator Clinton's nomination of Sam Brown to be ambassador, one of our Republican colleagues said the following:

In considering the nomination of Mr. Samuel W. Brown, of Illinois, I have reflected on the latitude which ought to be accorded the President in making this decision for the ambassadorship, reflecting as well on the constitutional responsibility of the Senate for advice and consent as a check. . . . I am troubled by a situation where the only pressure point Republicans have on the President is the cloture. Once cloture is obtained, there are more than enough votes on the other side of the aisle to cover the day. While the House is not involved in this matter, the House is overwhelmingly Democratic; there is a Democrat in the White House. The only place Republicans can assert any effective, decisive action is by stopping somebody from coming up. We have 44 votes, and we have more than enough, if there is unity among the Republicans, to do that. I think Mr. Brown's nomination should be left to the Senate, and the Senate, with the conference on security and cooperation in Europe is sufficiently important to preclude his nomination.

The filibuster succeeded in blocking this nomination.

There are many reasons to at least consider modification to the Senate rules regarding the procedures for ending debate, the process we call cloture. Those rules have been modified a number of times before, but one of the reasons to consider modifying our rules is not the reason which is motivating our current majority in the Senate: irritation with the fact that only 98 percent of President Bush's judicial nominees have been confirmed by the Senate.

That irritation that a substantial minority of Senators would stand in the way of getting their way 100 percent of the time has led to this 30-hour talkathon and their apparent desire to amend the rules to let them get their way 100 percent of the time.

We find ourselves tonight debating not whether unemployment insurance should be extended for Americans who have lost their jobs, not how to create more jobs and increase the economy, not how to better provide for the education of our children, or to strengthen our homeland security, or reduce the cost and increase the availability of prescription drugs, but, rather, listening to the re-argument of the case for the 4 nominees out of 172 nominees the Senate has not confirmed.

They want a 100 percent confirmation success record, and they appear to be willing to throw over the very essence of the Senate and its check-and-balance role to accomplish it. The Constitution says the President shall nominate, and, by and with the consent of the Senate, shall appoint ambassadors and other public ministers and consuls.

William McIlay, one of the first two Senators from Pennsylvania, wrote the following:

Whoever attends strictly to the Constitution of the United States will readily observe that the Senate, the Senate, is an important one, no less than that of being the great check, the regulator and corrector, or, if I may so speak, the balance of this Government. . . . The approval of the Senate was certainly meant to guard against the mistakes of the President in his appointments to exercising power should be the same as the appointing power.

I thank the Chair, and I yield the floor to my friend from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I begin by thanking my colleague from Michigan for his comments. I intend to share some similar thoughts this evening.

First, I shall let me begin by stating my own views about this process this evening and note—some have chosen to use the word anger—but I rise more in sadness.

We are gathered to engage in this—I do not know what it is properly called—I guess a filibuster. It is unique in that the majority is conducting a filibuster. Normally, a filibuster, for those who are interested in how this works, is conducted by a minority within a minority, but we find ourselves this evening a few short days away from the end of this particular session without an unfinished business vote, we are spending the next 30 hours—or 26 hours, whatever is left—on this particular debate and discussion, which I suppose has some value in the mind of some. As far as this Member is concerned, I recognize the debate and discussion, which I suppose has some value in the mind of some. As far as this Member is concerned, I recognize the unique role to accomplish it. The Constitution says the President shall nominate, and, by and with the consent of the Senate, shall appoint ambassadors and other public ministers and consuls.

I am among we are diminishing dramatically the incredible historic role of this institution by this process. When I think of all of the matters that deserve our attention, when I think of all of the Herculean debates that have occurred in this Chamber throughout the 217-year history of our country, of some of the great debates deciding who we were as a society—I sat on that step over there and listened to the all-night debates on civil rights in the early 1960s. I listened to southerners argue vehemently on behalf of their position regarding States rights. They were incredible debates. Never once in all of that process that I watched as a child side by side there did I ever hear anyone suggest we ought to change the rules of the Senate.

Even among those who were outraged that there were those who were arguing about denying a substantial minority of their citizens the right to participate freely in the democratic institutions of America, never once did anyone suggest we ought to somehow curtail the right of a minority to be heard in debate, extended debate. Never once. Yet here we are tonight, having an extended debate over three or four judicial nominations. We may be asked on Friday to cast a ballot amending the rules of the Senate to fundamentally change what has been the central ingredient of why this institution has been celebrated and honored throughout the 217-year history of this country. That I find rather appalling, that we would gather at this hour with all of the other issues in front of us.

I spent 2 hours yesterday at Walter Reed Hospital. I took my 2-year-old daughter out to visit with the young men there, many of whom are missing limbs. I saw several of my colleagues out there. I went back yesterday afternoon and saw that they were out there. I went to spend a quiet couple of hours to express to these young men my great admiration for what they had done for their country.

I would like to think they might think something larger of this institution other than that we would engage in a discussion and debate tonight about three or four judicial nominations. Other of my colleagues have made comments about the numbers that have been approved and not approved. I am not a member of the Judiciary Committee. I have heard my colleagues extol the virtues of these nominees. I have heard others excoriate them. I will leave that debate for others.

The vote I am most worried about is the possible fourth vote that may occur on Friday, and that is whether we are going to change the nature of this institution because some of us are disappointed about some outcomes of votes. I would hope whatever else ensues over the next 30 or 40 hours that when it comes to that vote, maybe there will be those who will get up and defend this institution.

It is inappropriate for me to do so, but I will note the fact that there are those watching with Sam Brownback this evening in this Chamber who are of a younger generation. They are students, they are men there, many of whom are missing limbs. I went back yesterday afternoon and saw that they were out there. I went to spend a quiet couple of hours to express to these young men my great admiration for what they had done for their country.
we are a bicameral body, why it is there is down this corridor a House of Representatives at that end of the building and a Senate at this end. What are the fundamental distinctions between these two branches of one House, why are we different? Why do we exist? What did the Framers have in mind when they created this institution? It is this very debate that gives justice, gives rationale to the existence of the Senate.

One needs only to go back to the Federalist papers, and as I look around this Chamber there are the forebears of those who sit in these seats who made the most eloquent arguments on behalf of the notion, of having extended debate and the right and power to amend. These are the two central ingredients which make this institution so unique.

When we begin to erode those very powers, then the very justification for this institution begins to diminish. We end up creating more, potentially, than a mere image of the body that is at the other end of this hall. I gave some remarks going back a number of weeks ago in front of the Rules Committee. I am the ranking Dem from Michigan. The Rules Committee is not such, I bear a responsibility, along with my colleague from Mississippi, who is the chairman of the committee, to consider such matters. I have great respect for the majority leader, but I would hope, as we discuss the idea of amending rule XXII, that we would keep in mind what the Framers had in mind when it came to nominations, particularly nominations of a lifetime.

It is one thing to be talking about nominations during the duration of a given administration, but with judicial nominations it is for life. Depending on how young that person may be, an Federal judicial appointment can go on for decades. The Framers, I think, had the experience they had come through, with the tyranny of a king, desired to create a system whereby the third coequal branch of government would have powers delineated between the executive branch to appoint and the legislative branch to approve, to provide its advice and consent.

If the ability of this institution to thoroughly exercise that right of advice and consent is destroyed, then we run the risk of creating a judicial branch, a coequal, that becomes nothing more than the hand servant of the executive. That is what the Framers worried about. It is what Senator Rutledge of South Carolina argued for when he spoke eloquently about the importance of keeping an independent judiciary.

In fact, for many weeks, during the constitutional convention, they argued the President ought to have no rights when it came to judicial nominations. That right ought to be exclusively contained in the Senate of the United States. As a result of compromise, it was ultimately decided that the power to nominate individuals should reside in the executive, and the power to approve should remain here, thus guaranteeing, to the extent possible, an independent judiciary.

What is being suggested by the fourth nomination to cast on Friday is that we undermine that very principle which has survived for 217 years. I would hope with a resounding vote, both Democrats and Republicans, whatever strong feelings there may be about these three or four nominees, or whatever else is occurring between these two branches of government, that we not allow this institution to be diminished, caught up in the passions of these nominations.

History will not record nor remember those people who are, but if we undermine this institution’s ability to do what our Founders asked us to do, then history will record forever our short-sightedness.

I regret in a sense having to engage in this debate. I was stunned to learn that the debate on this 30 hours of “circusry” going on here, and the three votes that will occur on Friday, there may be a serious effort to vote on whether this institution should give up its right to be able to have extended debate and to provide more. The Senate and to be asked to vote on it with maybe 5 minutes of deliberation before that ballot is cast on Friday is incredible to this Member. It is incredible we would have to do this.

Does anyone care about being here? We are only temporary stewards. My colleagues and I are just guaranteed a short amount of time to be a part of this institution. We do not own this. We bear an historical responsibility to those who came before, but an even greater one to those who come after, to see to it we maintain the order and the ideals embodied in the creation of this institution. That we would relegate a fundamental change in the rules of the Senate to a debate occurring between 10 and 2 and 3 and 4 and 5 a.m. in the morning, with a vote to that may be cast on Friday without further deliberation, I find stunning in its dimensions.

This is a matter that deserves far more deliberation and thought, whatever one’s views may be on these nominations. To find ourselves, with all of these other issues that are in front of us, to have to defend the Senate in the wee hours of the morning about a rule that has sustained us as an institution, is something I regret deeply.

I hope my colleagues, whatever their passions may be about Miguel Estrada, Priscilla Owen, William Pryor, and Charles Pickering—I do not know these individuals personally, they are good people, whatever the differences we may have, as I am sure there have been people who have been nominated in previous administrations who are also good people who were rejected because the majority today disagreed with them. I am sorry that happens to people, but unfortunately, that is one of the aspects of a process such as we have, as imperfect as it is.

But the two central ingredients which are so wrapped up in these individuals that we are willing to squander the rules of the Senate is disturbing. We should always know that it may only be a short time before roles may be reversed. This party in the minority may be the party in the majority in the future. And in the future, the party of the President may, of course, be different. I would hope we would never suggest changing the rules of the Senate because we are momentarily disappointed that certain individuals, whatever contributions they may have made in their lives and to their communities, are so deserving that they warrant changing the rules of the Senate because they are not getting a position they seek. I hope we never come to that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I enjoyed the stirring remarks of my colleague. However, I think he ignores the fact that the filibuster rule did not even begin until 1917, and it did not come into fruition until the 1940s. Nevertheless, we have changed the rules in this body many times. But we are not asking for a change of the rules. We are not asking for a recognition. There is a difference between the Executive Calendar, where the precise meaning of the Constitution is advise and consent under section 2, clause 2 of the Constitution, and the legislative calendar where we do have a right to filibuster. So that distinction needs to be made.

I yield 5 minutes to the distinguished Senator from Pennsylvania, and then I will be happy to take questions on this subject.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I want to respond directly to the comments made by the Senator from Connecticut. I too sit on the Rules Committee and I take a responsibility here, being a steward, as the Senator from Connecticut said, a temporary steward of this place. One would think, if they listened to the comments of the Senator from Connecticut, that what the Republicans are trying to do is change the rules.

I have a chart of the last 11 Presidents since the “filibuster” rule has been around: 2,372 judicial nominations confirmed, zero filibustered. What is changing the rules? This is a wonderful world we have: That left is right, left is up, down, in is out.

The rules have not been changed by practice. They would hold us in check, 1894. This states 2,372 to nothing. Never been done. Walk through these Halls. Stand in this Chamber. If the walls could speak of the great debates, the intense,
partisan, vicious debates that occurred in this Chamber, fights that have occurred on the floor of the Senate because of the passions of the moment, so firmly believing that what you were fighting for was right.

But not once, not one time did they put that passion for that short-term partisan or political or policy game in front of the sacred constitutional process that governs this country.

What does that constitutional process do in time of crisis? What do we do in time of crisis? Look at the precedent my friends. Look at the precedent. No filibusters. Because the Constitution says that it is a majority vote. In spite of the rancor, in spite of the partisanship and the stakes so high so many times in our country’s history, they always had the perspective because, yes, I say to the Senator from Connecticut, they knew they were temporary stewards. They took that responsibility seriously so they did not corrupt the rules.

Are we changing the rules? Are we changing the rules? We are not trying to change the rules. We are trying to bring back the rules that have been in this country for 214 years. We are trying to change the rules? We are not being good temporary stewards? Do you protest too much. We are simply trying to set this Senate back to the days the Senator from Connecticut recalls as a boy, when giants did stroll this Senate, when big matters were at stake, but they put the integrity of the process, the integrity of the Senate because we are a country of laws and rules and constitutions. We do not twist them and corrupt them to meet the short-term political needs that some interest group off the Hill was pleading for you to do.

That is what is happening here. That is what occurs here, and will occur, unfortunately, if we do not have a change of heart by a number of people on the other side of the aisle again on Friday so that the motion that I see and the 168 to 4 will now be 168 to 6 and then 168 to 7 and then to 8 and then to who knows? Because once we corrupt the system, once we twist the rules to meet our partisan end, there is no end other than a complete debasement of what this Senate has stood for 2,372 times before.

I yield the floor. The PRESIDING OFFICER. Who yields the floor.

Mr. HATCH. I yield without losing my right to the floor a question of the Senator from——

Mr. REID. We cannot hear you.

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

Mr. ALLARD. I yield the floor.

Mr. HATCH. I yield the floor.

Mr. HATCH. I yield to the Senator from Utah.

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

Mr. ALLARD. I thank the fine Senator from Utah.

Mr. HATCH. I have laryngitis. What a time to have laryngitis. But that is the way it is. I apologize for my voice.

Mr. ALLARD. I thank the fine Senator from Utah for yielding.

Many papers in the State of Colorado have expressed a concern that we are not voting on judicial nominees, along with many papers throughout the country. I have three papers that expressed a view. I would like to have the chairman respond to the comments made in these three papers.

Many people from Colorado would like to know what the impact might be on having a filibuster and how that will affect the Federal judiciary. Many of them live in the great city of Pueblo. In fact, the Pueblo Chieftain observed, “some liberals are trying to create a second legislative body,” referring to the judiciary, “that will pass measures which they cannot get passed because they’re often opposed by a majority of Americans.” The paper fears this will lead to “a serious erosion of the separation of powers.”

Does the Senator from Utah share those concerns?

Mr. HATCH. I sure do. The paper got it just right. I have seen three major editorials from the Chieftain and from the Rocky Mountain News calling the Democratic filibuster an irresponsible escalation of the judicial nominating war.

I agree with both. The Denver Post said “a change in Senate procedure is long overdue.” The Boulder Daily Camera said “it is not enough for any good reason to oppose a supermajority of the Senate that was not contemplated in the Constitution.” They got it just right.

Mr. ALLARD. That is correct. I thank the Senator for responding to those comments made in those three major papers in the State of Colorado.

We do need to move on for a vote. They express the view of many in Colorado. I thank the chairman for giving me an opportunity to ask the question.

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

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. I wish the Senator from Virginia, Mr. LEVIN, were still on the floor. In his arguments, he cited a quote from Lyndon Baines Johnson as to what would be the best gift that could be given, I believe he said, to the Soviet Union or those behind the Iron Curtain. He thought the best gift would be unlimited debate.

I could think of a lot of other things you would want to give people who are repressed than unlimited debate. Maybe the freedom of speech, freedom of expression, freedom of religious beliefs, private property rights, due process, equal protection of the law, maybe even the right to bear arms so they can overthrow the dictatorship.

Unlimited debate—that does not strike me as what is needed in a democracy. What one wants is adherence to the Constitution, accountability and responsible action by those who are elected by the people. And we want fairness, which we are being denied here, without potential for filibustering.

This is what Senator LEVIN said that President Johnson said: “If I should have the opportunity to send into countries behind the iron curtain one freedom, and only one, my choice would be to send those nations the right of unlimited debate in their legislative chambers.”

I expect they could have had all sorts of unlimited debate but what one wants is adherence to our U.S. Constitution.

Let me share with our distinguished chairman of the Judiciary Committee, Senator HATCH, some words that have been said recently: Judgeships are currently vacant, causing undue delays in justice for citizens served by the court. The candidates for these vacancies deserve to have an up-or-down vote on their nominations. The Senate should not be playing politics with the Federal judiciary.


Then Senator LEVIN said, on October 3, 2000, in the CONGRESSIONAL RECORD: I believe the Nation as a whole deserves to have these nominees and other nominees awaiting hearings and votes acted on by this Senate, as well. I believe it is also unfair. Perhaps this is the most important of all to the people who await justice in their courts.

Senator LEVIN said that on October 3, 2000.

Then Senator LEVIN also said that leadership had a responsibility to advise and at least vote on judicial nominees.

And parallel to the debates we are having on several of the judges this evening that will go on through tomorrow and into the morning on Friday, he said: Two of the women who we are focusing on today are from Michigan. They are nominees for the court of appeals. The truth of the matter is that the leadership of the Senate has the responsibility to do what the Constitution says we should do which is to advise and at least vote on whether or not to consent to the nomination of nominees for these courts.

That was September 14, 2000. Two years ago I wish that Senator LEVIN were still on the floor so I could ask him whether he was right in 2000, saying the Constitution demanded and required Senators to act and vote on nominees. Or does he really believe that the most important responsibility is for endless debate?

I say to the Senator from Utah, Mr. HATCH, what we have seen is stalling and more stalling and more stalling. They can debate endlessly, but at the end of every debate, at the end of every examination, of everyone’s qualifications and capabilities, and whether Miguel Estrada, Priscilla Owen, or any other of the nominees, ultimately the responsibility is, as Senator LEVIN said 3 years ago, it is our responsibility to act, to vote. The Constitution demands that our leadership and our constituencies, and our respective States demands it.

And fairness should not continue to be denied to these many nominees because
of the obstruction and also the very inconsistent statements that have been made this year compared to past years. I ask the chairman of the Judiciary Committee, would you find these statements to be prior inconsistent statements? I ask the question for the desirability of having endless debates in the Senate or in the committee, especially after the committee has decided on a majority vote to report out, favorably, a judicial nominee?

Mr. HATCH. That is a good question because some of our friends on the other side forget when they were in the majority and they had the Presidency and they all wanted votes up and down and all of a sudden they do not.

The Senator is right in pointing out these disparities. All of a sudden when the worm is turned, they do not want to live up to their own words. I am not sure that Senator LEVIN does not want to live up to his own words, but if he does want to live up to his own words, then he should not be voting with the Democrats. He should be voting for closure.

Mr. ALLEN. I have a follow up question. In view of our friend from the Commonwealth of Pennsylvania and his articulate passionate statement, Senator SANTORUM, out of the thousands and thousands of nominations, how many have been filibustered? Zero, is that not correct?

Mr. HATCH. Zero. Until this.

Mr. SCHUMER. Will the Senator yield?

Mr. HATCH. I will yield to the distinguished Senator from Virginia for a question and then I will yield to the distinguished Senator from Minnesota without losing my right to the floor.

Mr. WARNER. Mr. President, first, may I thank the distinguished chairman of the Judiciary Committee.

Mr. SCHUMER. Will the Senator yield?

The PRESIDING OFFICER. The Senator from Utah has yielded to the Senator from Virginia for the purposes of asking a question.

Mr. HATCH. The Senator will have his half hour in about 15 or 20 minutes.

Mr. WARNER. I thank the Presiding Officer and I thank the distinguished chairman of our Judiciary Committee.

I say to my colleague from Virginia how proud we are to be from the Commonwealth of Virginia from whence so many framers of the Constitution came. I compliment you on your remarks tonight. I am privileged to serve with you because you represent, in my judgment, all the fine things about the Commonwealth. I try, in my humble way these 25 years, to do the same.

The Senator referred to this Constitution. The question I have to our distinguished chairman is very simple. I want to go back to the hot summer of 1787, when 55 individuals had gathered from the 13 states to frame the Constitution. It was a long, hot summer. Tireless trips from their homes to Philadelphia. As a consequence, today, our form of government is the oldest continuously functioning government on Earth today. I have been challenged on it. But almost every other government in existence at the time this Constitution was written have fallen into the dustbin of history. Someone challenged the idea of a republic and Napoleon crossed the Alps and ceased that government for a period of time. This is a government that has continued to function.

As the delegates emerged on the final day, September 17, Ben Franklin walked down the steps and was met by a reporter. I thought of that little history tonight when a reporter asked me, what is it that you are doing tonight in the Senate? Mr. Franklin answered that question on September 17, 1787. He said to that reporter: We have given you a Republic, if you can keep it.

This Constitution explicitly gives to the President of the United States the power to appoint the judges. In Section 2 of Article II, it does not say to the Congress, but to the Senate, the responsibility of advice and consent.

Three coequal branches of the Government and the judiciary perform that critical function of keeping the power of each of the other two, executive and legislative, in balance. That is what we are doing tonight. I ask the distinguished chairman, are we not, in the immortal words of Ben Franklin, here tonight for one sole purpose, to keep our Republic?

Mr. HATCH. That is the way I view it. I have to say this is a very dangerous thing the Democrats are doing for the first time in history. It has caused a tremendous amount of angst on everyone’s part and awful partisanship because it has never been done before. It is time to move on.

I yield to the distinguished Senator from Minnesota.

Mr. COLEMAN. Mr. President, I thank the distinguished chair of the Judiciary Committee, the Senator from Utah, for yielding. I have a question.

Mr. HATCH. I am not going to yield at this time to the distinguished Senator. I will yield to the distinguished Senator from Tennessee.

Mr. COLEMAN. Will the Senator, if I could just follow up—so the record is clear—

Mr. HATCH. Yes.

Mr. COLEMAN. It is clear, in the history of this great Republic, the Senate has not denied a confirmation of a circuit court nominee by filibuster?

Mr. HATCH. That is right. In the history of the Senate. Absolutely. Will was right, because that same commentary was pointed out by Alexander Hamilton. He wrote in Federalist Paper 76 the Senate’s role is to refuse nominations only for “special and strong reasons” having to do with “unfit characters.” That is not that our colleagues are doing. What they are doing here is denying up-and-down votes to very qualified people, who by their own gold standard, the American Bar Association, are proven to be qualified.

I believe it is abysmal that has happened. I think Senators have pointed out here this evening this is a very important debate that has to occur.

The American people need to know a majority minority, 47 Democrats, basically, is thwarting the will of the majority and taking away the dignity of an up-and-down vote to qualified judicial nominees by this President, which has never happened, once they hit the filibuster, which has never happened before.

In the Clinton years, all 377 judges were confirmed—only one was rejected, but he got an up-and-down vote, which is more than our people are getting.

Mr. COLEMAN. I yield the floor to the Senator.

Mr. HATCH. I yield to the distinguished Senator from Tennessee, without losing my right to the floor.
Mr. ALEXANDER. Mr. President, if I could ask the Senator a question. Maybe he could help me understand something I have a difficult time understanding.

I had the privilege of serving as a law clerk in the 1960s to the Honorable John Minor Wisdom on the Fifth Circuit Court of Appeals. Judge Wisdom was among the four Republican-appointed judges who presided over the peaceful desegregation of the South. I have lived in the South and grown up in the South and know something about what those years were like.

I have been mystified, since I am not a member of the Judiciary Committee, by the treatment of Judge Pickering of Mississippi and Attorney General Bill Pryor of Alabama. I do not know Judge Pickering. I have met him briefly only twice. My staff and I studied his record. I have heard insinuations and words that were carefully chosen by the other side to suggest he was guilty of some act relating to racial relations. Yet when I looked into his record, I discovered, quite to the contrary. He had been living in Laurel, MS. In 1967, just to cite one example, he had testified in public against the leader of the White Knights of the Ku Klux Klan, which were the closest thing we had to terrorists in the United States of America in the last half century—an act of courage.

So here is a man who throughout his whole life was far out front on issues of race relations. He was living in an area where it was hard to do, and he had not been quiet, he had not been backward, he had been far out front of his neighbors on issues of race relations.

Then I learn about Mr. Pryor, the Attorney General of Alabama, and I realize in hearing Senator Sessions talk that he, too, was a law clerk to Judge Wisdom, the great civil rights judge in the South. I hear it said Mr. Pryor is somehow insensitive to racial and other matters.

Yet looking into his record, I learned he is at the moment seeking to oust the chief judge of Alabama in the case involving the chief judge’s failure to obey a Federal court order to remove the Ten Commandments from the State Supreme Court, that the State Attorney General of Alabama wrote all the football players and coaches in Alabama to say they could not pray before football games. He did not allow it, that he wrote to the district attorneys telling them they could not enforce a law against abortion, that he took a case all the way to the United States Supreme Court that was against the Republican party to which he belonged. It seemed to me here is a man who I recall Judge Wisdom talking about as a wonderfully talented young man. The judge was very proud of him.

Here he has this record of upholding the law when it would be enormously unpopular in Alabama and certainly must be against his own views.

What is it about these two southerners, the latter one, the editor in chief of the Tulane Law Review, a law clerk to Judge Wisdom, this distinguished person; and then Judge Pickering, who was a leader for civil rights, endorsed by former Governor William Winter, the Democrat, endorsed by Frank Johnson, the brother-in-law. What is it about the other side that will not allow us to have an up-or-down vote on those two southerners who have been nominated by the President to be a judge?

Mr. HATCH. Well, to be honest with you, it all comes down to abortion, according to some of my top Democrat friends. That has become a litmus test issue for Democrats because the inside-the-beltway groups the Democrats talk about do not want people on the courts who are pro-life, even though they are committed to upholding Roe v. Wade because that is the law of the land.

In the case of Judge Pickering, Judge Pickering was unanimously confirmed as a Federal district court judge in PR with only a question. He is one of the people who brought about racial conciliation in the State of Mississippi and was treated in a despicable fashion here.

In the case of Bill Pryor, I do not think anybody who looks at his record can say he will not uphold the law, no matter how much he disagrees with it, because that is what a judge will have to do.

Mr. ALEXANDER. May I ask the chairman, did he not, as Attorney General of Alabama, advise the local district attorneys they could not enforce a law passed by the Alabama State legislature?

Mr. HATCH. That is correct.

Mr. ALEXANDER. Because it would be in violation of a Supreme Court decision?

Mr. HATCH. That is right. If I recall it correctly, it had to do with partial-birth abortion, even though he hates partial-birth abortion as anybody who looks at it carefully. It is a barbaric practice, at the very least. He upheld the law.

I do not know you can ask anything more of anybody than that. Plus, this is a fellow who graduated No. 1 in his class from Tulane University School of Law, who is very bright and was very candid and open with the committee, and yet being filibustered for no good reason. It really is unseemly.

Mr. ALEXANDER. I wonder if the chairman, did he not, as Attorney General of Alabama, advise the local district attorneys they could not enforce a law against a Supreme Court decision?

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jobs in the private sector. I think that is fairly significant.

Also what we should be talking about is my next chart to show what the President of the United States and his administration have done to create jobs in America.

Here is what the President has done to create jobs. Can everyone see this chart? In fact, we can turn it around. It is the same on the other side, isn’t it? Let’s see what is on the other side, yes, the same thing. This is what the President has done to create jobs: nothing.

He has lost 3 million jobs. That is what we should be talking about here tonight, not that fact this is the first filibuster we have ever had in the history of the country. You can say it once, twice, 1,000 times—it is not true. Other judges have been filibustered and we have had attempts to invoke cloture. He makes a half a million dollars a year. I think we should be talking about those things that are going up, not the thing that is going down. We should be talking about the 44 million Americans who tonight will go to bed with no health insurance. That is what we should be talking about. We should also be concerned about the millions of Americans who are underinsured.

Mr. President, 44 million people have no health insurance, and we are here spending our time lamenting about the 4 people who want job increases; that is, they want to get better jobs. Miguel Estrada, let’s not shed too many tears for him. He makes a half a million dollars a year. I think we should be talking about those things that are going up, not the things that is going down. We should be talking about those people who are poor, those people who are poor in America have increased in numbers. The numbers have ballooned. We have the poor getting poorer and the rich getting richer, and we are squeezing the middle class so it is getting thinner and smaller. Wouldn’t it be nice if we talk about poor people? I recognize they do not have lobbyists. Maybe they do not have Gucci shoes and these big limousines, but they still deserve our time.

The poor are getting poorer and the rich are getting richer. Shouldn’t we spend part of this 30 hours talking about them? The unemployed: We have talked about that issue. I have talked about it tonight on more than one occasion. The American people are not going to recognize that during the administration of George Bush the unemployment rolls have gone up.

The national debt: What has happened to the national debt during the last 3 years? It has gone up, way up. It is interesting to note that during the last 3 years of the Clinton administration, we were spending less money than we were taking in. We were actually paying down the debt. We were being criticized for paying it down too fast: Be careful; you can’t do that.

Well, whoever heard that term really took it in spades because the fact of the matter is, we are now increasing the national deficit budget and the national deficit will be the highest in the history of our great country.

Everything that is going up we are not talking about. We are talking about people who have jobs, and they lost an opportunity to get a promotion.

I ask unanimous consent that the Senate now return to legislative session and proceed to the consideration of Calendar No. 3, S. 224, the bill to increase the minimum wage, that the bill is read a third time, passed, and the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection?

Mr. CORNYN. I object.

The PRESIDING OFFICER. The objection is heard.

Mr. REID. I am not surprised. I am not surprised. We have the audacity on this side of the aisle to ask that the minimum wage be increased from $5.15 to something more. Why, these people who draw minimum wage, think about it, if they work 40 hours a week, 52 weeks a year, and don’t get any time off for vacation, they can make the grand sum, working a whole year, of $10,700. What pigs. They want to get that much money.

I say we should recognize the people drawing minimum wage are not a bunch of high school kids working in a fast food chain. The fact of the matter is 60 percent of the people drawing minimum wage are women. For the majority of those women, that is the only money they get for them and their families. I cannot imagine that we have had such a difficult time bringing up something so important to the American people, the minimum wage, to increase it from $5.15 an hour, maybe increasing it $1, maybe increasing it $1.50.

I know that is pushing the envelope a lot to think this body would take up something as unimportant as people getting an increase in the minimum wage. No. What we should do is worry about four people, four people, one of whom makes a half a million dollars a year the minimum. Then we can also worry about other people, those other three who, between them, make about a half a million dollars.

I have no understanding in my heart how the majority can continually deny us the opportunity to do something about that.

Remember, the judicial vacancies are at their lowest level in almost 15 years. While we are here talking all night about judges, 44 million people, as I have indicated earlier, will go to sleep tonight with no health insurance, none, and millions of others have insurance that is not very good.

Nine million, almost 10 million people are going to bed tonight wondering if tomorrow they will finally be able to find a job—recognizing that the average person who loses a job in America today is out of work for 5 months. That is the average, 5 months. And it does not matter. It does not matter what the President of the United States says. If we cannot take care of this, Americans have trouble finding jobs. The average is 5 months.

We have tried earlier today, through a unanimous consent request, to spend some of these 30 hours talking about having an extension of unemployment benefits. No.

We have asked tonight to increase the minimum wage, to debate that. No.

I think it pretty well describes what is going on here today.

Let’s see what is on the other side. Yes, I have an issue that people think if they talk about how unfair we are, that, yes, what we have done here is so bad—we have approved only 98 percent of the President’s requests to become judges. Only 98 percent. If we had it up to 99 percent, would we only be here for 15 hours?

I think this is a travesty. I say that without any question. Others have referred to it as a carnival and a circus. Whatever it is, the unemployed, those people who have no health insurance are not getting their time in the Senate. Who is getting time? Four people: Estrada, Owen, Pickering, and Pryor. That is not fair.

I yield to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. I thank the Chair. Mr. President, I listened to the debate here tonight and I would say basically, kindly, it is just a repetition of arguments we have heard over and over again. A little less kindly, sound and fury signifying nothing.

I tried to ask some questions of the other side a few minutes ago and was rebuffed. It is no wonder because we are not having a coming together here. We are not having an elucidation. What we are having is a rash of arguments we have heard over and over again. People who are not doing anything, I say to my colleagues. It is not going to change anything. There is only one way to change things, and that is for the President and the other side to follow the Constitution and take the words “advise and consent” seriously. If they think we can be bludgeoned, if they think more talk radio makes a difference, it is not going to make a difference. In fact, I would argue to my colleagues, this debate is helping us because the hard-right media, the talk show people and the others don’t mention this fact.

This chart is worth 30 hours of pa-
laver, of gibberish. The Wall Street
Mr. SCHUMER. I would like to ask the Senator from Pennsylvania or others to finally recognize that the President has the constitutional right to nominate judges, by and large, decided moderate judges. That is why the filibusters were not successful.

Our filibusters are successful, frankly, not because of any of us. It is because President Bush has decided to nominate judges from the hard right so that he gives us no choice. Nothing would please me more—and I am one of the leaders in this—nothing would please me more than for Counsel Gonzales to call some of us in and say: How do we come to some kind of complicity? Guess what, the same thing that happened in New York and a few other States will happen nationally.

Will most of the judges be far more conservative than me? Yes. Will most of the judges be far more conservative than the other side? Yes. Will most of the judges be far more conservative than I? Yes. Will most of the judges be far more conservative than the other side blocked and didn’t even get a vote in the Senate? Yes. But at least we will feel they will interpret the law, not defile it.

As my good friends know on the other side, the Constitution requires interpretation of the law, and ideologues, far left or far right—I don’t like far-left judges, either—want to make law because they feel they are so right and the country is so wrong, and so they won’t yield for a question. I give the Senator for a question?

Mr. CORNYN. Will the Senator yield?

Mr. SCHUMER. Let me finish—the one difference—and then I will be happy to yield for a question—is this. We succeeded. Do you know why we succeeded? I will tell you why. Because President Clinton made an effort to nominate moderate judges, by and large; because President Clinton did far more of the advise-and-consent process than President Bush, and President Clinton was able to persuade 15 or 20 Members from the other side to finally vote for these judges.

We had no advice, meaning consultation. I am consulted in New York, and we have filled every vacancy. On the other hand, when you filibuster, you tend to move to the middle. The prescription drug law was an example right now. But judges don’t have to move to the middle. Once they are appointed, they are there for life, and they have virtually absolute power. I will tell you why. All we have is the constraints within their own heads.

Mr. SCHUMER. Let me please answer my colleague’s question. The bottom line is the view on the other side that if they don’t get their whole way, they want to change the rules. If there had been 20 years prior to any of my colleagues who sat in those seats in 2000 and 2000 and 1994 and 1994 when there were filibusters, maybe we could feel there was some genuine feeling here, some genuine fidelity. Instead, I would argue most of those who study logic know that things can be made; that the weakest arguments are outcome determinent. In other words, you look for the outcome you want and then you make the argument. That, I would argue, with all due respect, is what my colleagues did.

The bottom line is filibusters were not an abomination to the Constitution when President Clinton nominated. And, by the way, in the inverse case, holding back judges from even getting a vote in the Senate of his Committee was perfectly OK. That didn’t unbalance the Constitution.

What my colleagues have done is taken the result they want, which is the legislative model theory. They pick an argument that all of a sudden filibusters are bad. Blocking judges can’t be bad because look at all these judges the other side blocked and didn’t even
allow to come up for a vote. So it can't be that blocking judges is wrong. But it also can't be that filibusters are wrong because they did them in recent history. They just didn't succeed.

Now they have this twisted logic that only one successful filibuster is bad. That doesn't make much sense. I am sure my good colleague from Alabama wishes his filibuster had succeeded. He felt it passionately. He felt Judge Berzon and Judge Paez were too far over, maybe.

Mr. SESSIONS. Will the Senator yield for a question?

Mr. SCHUMER. I will be happy to yield since I mentioned the Senator's name.

Mr. SESSIONS. Did the Senator know that although the Senator from Alabama strongly opposed Berzon and Paez and voted against both those nominees, that there were holds on those nominees, and the Republican leader, Trent Lott, moved for cloture toackBar nominations forward, and this Senator, as did Trent Lott, voted for cloture to bring an up-or-down vote and voted against the nomination although we—

Mr. SCHUMER. Let me reframe my time.

Mr. SESSIONS. That is not the kind of filibuster we have going on today.

Mr. SCHUMER. I simply say to my colleague—

The PRESIDING OFFICER. The Senator from New York controls the time.

Mr. SCHUMER. Thank you, Mr. President.

What I said before was, and I say it again, I did not hear an outcry about filibustering being wrong or being unconstitutional or being evil when these judges came up. I didn't see people get on the floor for 30 hours. There were four of them in the last 6 years. I didn't even hear people get on the floor for 3 hours and take up time to say why filibustering is bad.

Do you know why they say it is bad now? Because we have succeeded. Again, why have we succeeded? Because President Bush has changed the way people are appointed to the judiciary.

He has nominated judges through an ideological prism to a far greater extent than any President in history.

I say to my colleagues, do you want to get it to be 172 to 0? Tell the President to sit down with us, to advise, to come to some compromise, and then you will probably get 172 to 0. But as long as this process continues where there is no advice and consent, as long as this process continues where certain judges who believe decisions that have been discredited 50 and 100 years ago should be law, we have no alternative but to do what we are doing.

Mr. REID. Will the Senator yield for a question?

Mr. SCHUMER. I will be happy to yield to my political opposite for a question.

Mr. REID. Does my friend from New York support the unanimous consent requests—plural—that have been entered today on the record and rejected by the majority, first of all to extend employment benefits? Does the Senator from New York believe we would be better advised to go forward on something like that than on these four people who do have a job?

Mr. SCHUMER. I say to my colleague, most definitely, because, first, not only do these people have a job, but they shouldn't be on the bench.

Mr. REID. I ask another question. Does the Senator believe that rather than going through 30 hours of this—first of all, with all due respect, everybody, including me, everything that has been said so far tonight in these 5 hours has already been said.

Mr. SCHUMER. It's been said once. Mr. REID. And I am sure for the next 25 hours, there will still be nothing new. Having said that, I ask my friend from New York, does he think it would be a good idea that the unanimous consent requests I proffered where I asked to do something about the minimum wage right here on the Senate floor tonight, does the Senator think that would be a good idea to help the American people?

Mr. SCHUMER. I say to my colleague, it would be an excellent idea. This debate, as I mentioned earlier, is not going to accomplish a thing. In fact, if it accomplishes anything, since we are going to have two brute forces on our side the way the others have, it is going to help us; it is going to get this very fact out. Why not have a debate on something we haven't debated, such as minimum wage, such as health care, such as energy policy, instead of having two people decide energy policy. Nobody knows what the conference report will be. Let's have a debate about that.

Here we are repeating over and over again that arguments that have been made and made and made.

The bottom line, I say to my good colleagues from Nevada, is there are 100, 200, 300 better ways to spend 30 hours in the Senate than to redate these issues. If this is frustration on the other side because 4 of the 172 have been blocked, the solution is not to repeat the same arguments which we regard as spurious. The solution is to come to the middle and compromise and talk to us, as we have done in certain States.

I say this to my colleagues: Stop using outcome-determinative arguments. Filibusters are fine when you do them, only when they successfully are they no good. And blocking judges? That is just fine. You blocked so many more than we have. This argument is like trying to thread a needle: Blocking judges is OK; filibustering is OK; one successful filibustering is unconstitutional.

I doubt many legal scholars of any political persuasion would be able to sustain the contradictions in my friends' arguments from across the aisle.

The bottom line is simple: We believe advise and consent really means what it says.

The PRESIDING OFFICER (Mr. ENZ). The Senator has consumed his time.

Mr. SCHUMER. We believe keeping judges in the mainstream is within what the Founding Fathers wished us to do, and we will have more to say in the next hour.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, it is my understanding that there is a rough sense between the Democratic and Republican sides that the least on our schedule, had been designated, that the Republican time would take half an hour and the Democratic side half an hour. If there is a different point of view on that side, perhaps that could be expressed. Otherwise, we would go forward. If there is not, then what I would like to do at this time is yield 5 minutes to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I have spent a fair amount of time on the floor tonight listening. I am a fresh man on the Judiciary Committee. There are a great many things Senators can do. They can speak flamboyantly, they can speak artfully, they make history, but they cannot rewrite history.

I heard a few phrases tonight that were trying to rewrite a little of the Constitution. So I thought for a few moments I would read from a letter from the Senator who was there for the Abe Fortas debate, not a filibuster but a debate, a cloture vote. We are trying to say tonight that cloture votes are somehow filibusters. Well, my goodnessness, what an interesting term of art. Most importantly, what an interesting play of words.

Filibusters are nonstop speaking. Cloture votes are simply to gain the majority necessary, a supermajority, to move forward in the Senate. Now, those are the rules of the Senate.

Let me read a letter that came to us from Robert Griffin, Republican Senator from Michigan. He writes to the Honorable John Cornyn, chairman of the Subcommittee on the Constitution:

Dear Mr. Chairman: An Associated Press piece which appeared yesterday in many of the Sunday newspapers (copy attached) speculated that Chief Justice Rehnquist and/or J. C. O'Connor might retire this year or next, and concluded with this comment: Presidents have not had much success in appointing Supreme Court justices in election years. The last person to try it was Lyndon Johnson in 1968, when he failed to elevate Justice Abe Fortas to replace Chief Justice Earl Warren. Republicans filibustered the nomination and Johnson backed off. That is what the article in the paper said. Here are the facts from a Senator who was on the floor at the time debating the Abe Fortas nomination. He goes on:

Whether intended or not, the inference read by many would be: Since the Republicans filibustered to block Justice Fortas from becoming Chief Justice, it must be all
right for Democrats to filibuster to keep President Bush's nominees off the appellate courts. Having been on the scene in 1968, and having participated in the debate, I see a number of very important differences between what happened then and the situation that confronts the Senate today.

First of all, four days of debate on a nomination for Chief Justice is hardly a filibuster.

He goes on to speak of the remarks that he gave in closing out that debate.

When is a filibuster, Mr. President? . . . There have been no dilatory quorum calls or other dilatory tactics employed. The speakers who have taken the floor have addressed themselves to the subject before the Senate, and a most interesting and useful discussion has been recorded in the Congressional Record.

Those who are considering invocation of cloture at this early stage on such a controversial, complex matter should keep in mind that Senate debate last year on the investment tax credit bill last 5 weeks—

In other words, Senate leadership is now considering imposing a cloture vote on a bill that has gone on for 4 days. Nothing was said about a filibuster. So we go on, and he speaks about that. Then he says:

While a few Senators, individually, might have contemplated the use of the filibuster, there was no single Republican Party position that it should be employed. Indeed, Republican leader of the Senate, Everett Dirksen, publicly expressed his support for the Fortas nomination shortly after the President announced his choice. Opposition in 1968 to the Fortas nomination was not partisan. Some Republicans supported Fortas; and some Democrats opposed Fortas.

Then he goes on to speak about the cloture vote. There were 45 in favor of the motion and 43 against.

What happened the next day, when the President, a Democrat President, could see he simply did not have bipartisan support on the floor for a majority, 50 plus 1? He pulled the Abe Fortas nomination. There was no filibuster. There was simply a cloture vote.

Now, it is a term of art that is trying to be applied tonight and finely written. When is a filibuster a filibuster? When is a cloture a cloture? Well, my colleagues cannot use the Abe Fortas example as a filibuster because simply this Senator will never allow other Senators to rewrite history. History is what it is at the time it is recorded and the CONGRESSIONAL RECORD clearly demonstrates——

Mr. SCHUMER. Will my colleague yield for a question?

Mr. CRAIG. I will not yield at this time.

It is simply a fact recorded in the CONGRESSIONAL RECORD, so spoken by Robert P. Griffin, then the Senator from Michigan, who was there debating the cloture.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I yield 5 minutes to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Mr. President, I thank the Senator from Arizona. We have heard some comments about we ought to be talking about jobs and the economy. On this side of the aisle, we are always looking at ways to make our tax laws, our regulatory policies, and our legal system more conducive to more jobs and more investment in this country.

We have heard this evening all sorts of excuses and justifications for filibustering. For example, we heard mentioned earlier by the Senator from Michigan, Mr. Levin, a citation as justifications for the filibuster. He said: "If I should have the opportunity to send into countries behind the iron curtain one freedom and only one, my choice would be to send those nations the right of unlimited debate in their legislative chambers, to which my view was, gosh, there are a lot more important rights, such as freedom of expression, freedom of religion, property rights, due process under the rule of law."

When we get to the rule of law and how important that is for the credibility in this country, whether it is people in this country or outside of America to take a risk and invest in this country, the fair adjudication and administration of laws is very important, that we have judges on the courts so that if there are contractual disputes, or if property is being taken, or if there is a dispute, it is as expeditiously handled and decided rather than being delayed because of political tactics.

In many of these circuits, we have judicial emergencies. In fact, it is a fundamental principle of the American judicial system that justice should be blind, that people can get a fair hearing regardless of who they are, where they come from, or what they look like. Surely, nominees to the Federal bench deserve the same rights to a fair hearing as any of us.

Our sense of what is right for the country tells us that the most political among us realize that it is imperative that our courts are in working order. Common sense tells us that many of America's highest courtrooms do not have judges to run them and as a result the legal system cannot function.

When it is said that the economy is somehow not doing as well as it should, all of us, on this side of the aisle, President Bush and his Cabinet, are working to make sure that our economy gets stronger and new jobs are created. In fact, the gross domestic product is the best in nearly 20 years. We had negative growth in 2001, obviously because of a variety of factors, including, of course, the terrorist attacks. The gross domestic product has grown every quarter since the passage of the Economic Growth and Tax Relief Reconciliation Act of June 1 of 2001.

It grew our economy by a 7.2-percent annual rate the third quarter of this year—the fastest pace of growth since 1984, almost 20 years ago. Employment continues to make gains. Payrolls increased by 126,000 new jobs, net new jobs, in October. The stock market continues to grow. That means more money for people's nest eggs, for their security and retirement.

Business is reacting favorably to tax relief and corresponding economic growth, where businesses are growing, they are providing more jobs. We also find an increase in disposable household income, where mothers and fathers have more money so they are spending it on their children, which is great for those who are selling whatever products or services in this country. People are purchasing, as well as whoever is packaging, transporting, fabricating, assembling, or manufacturing what they are purchasing.

Dividend relief also is leading to billions of new dividends distributed to shareholders. All of this is going on now. It also is important, though, that we have judges and the fair administration of the rule of law in the laws that we have.

We cannot have activist judges. Activist judges create uncertainty. Businesses want to know what the laws will be so they can make those strategic long-term decisions. To have judges working or providing the courts, whether confirming circuit court nominees is important.

The people of California almost had their constitution gutted by a three-judge panel in the Ninth Circuit only to have a larger panel of the same circuit reinstate their constitutionally authorized gubernatorial recall elections. I think it is pretty important who sits on the Ninth Circuit.

I am sure those in circuits where, for example, schoolchildren in Montana, Nevada, Arizona, and Idaho, who cannot keep up with actions of new laws that were not written or adopted by the legislative branch is dangerous for security, jobs, and investment in this country.

To put a fine point on judges, look at the Ninth Circuit Court of Appeals. Ask those affected every day by the decisions by our Federal appellate courts whether confirming circuit court nominees is important.

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They matter in our everyday lives. They matter in our schools. They matter in our businesses. Let's put in judges who will interpret the law, not invent it.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I thank the gentleman for his comments, both on the status of our economy and the great economic growth that we are now experiencing, but also the point about the importance of confirming judges.

I hope people around America are watching tonight so they will understand why we are talking about the importance of confirming judges nominated by the President to the Federal bench.

We have all heard the phrase, "justice delayed is justice denied."
reason that is a common phrase is because there is a lot of truth to it. What we are seeing around the country today is delay in justice because the Senate is denying the President a mere up-or-down vote on some of his nominees to the bench.

While it is possible for minority members, along with some in the majority, to defeat a judge on an up-or-down vote, that has only happened one time, a few years ago, since I have been in the Senate. A minority member who is being denied confirmation would all pass with a majority vote, but the minority is holding them up through the mechanism of the filibuster, I will have more to say about that mechanism in a moment.

The key point the Senator from Virginia made was that it is important we confirm these judges, as important as many of our other functions.

Let us reflect for a moment. The Senate is the way the Constitution foresees for every one of those circuits. Democrats are obstructing nominees for every one of those circuits. For all three of the nominations who have already been filibustered—Priscilla Owen, nominated to fill one of the two Fifth Circuit judicial emergencies; Charles Pickering to fill one of the Fifth Circuit judicial emergencies; and Bill Pryor, nominated to fill an Eleventh Circuit judicial emergency—in each case, the filibuster is preventing us from filling a seat which has been declared a judicial emergency.

This is not some theoretical exercise. This is a problem that has to be dealt with, and the Senate is falling down in its responsibility to fill these emergencies.

Democrats have also threatened to filibuster other nominees who have been named to fill judicial emergencies in other circuits, by name, Carolyn Kuhl, who I would like to speak about a little later; nominated to fill a Ninth Circuit judicial emergency, Henry Saad for the Sixth Circuit, Susan Neilson for the Sixth Circuit, Richard Griffin for the Sixth Circuit, David McKeague for the Sixth Circuit, and Claude Allen to fill a judicial emergency in the Fourth Circuit.

The cost of judicial vacancies to litigants in civil rights cases is not being able to vindicate their civil rights in commercial disputes, in contract disputes. If every court had its caseload, including Federal regulations, in every kind of case one can mention, there are cases languishing and litigants who are not being given their rights because there are not sufficient judges to hear their cases.

I mentioned the Ninth Circuit. That is the circuit in which my home State of Arizona is located. I am very familiar with the delays in that circuit. It is hurting the economies of our States. It is hurting the rights of litigants in our States. I will mention a couple of details to make the point.

The Ninth Circuit is the largest circuit in the country. It hears appeals from California, Arizona, Idaho, Montana, Nevada, Oregon, Washington, Oregon, Alaska, and Hawaii. There are over 5,200 cases pending in the Ninth Circuit. It has the largest civil docket in the Nation, more than 1,500 cases. Since early 2003, the Ninth Circuit has had a judicial emergency.

Perhaps the clearest way to make this point is to note that it is only fair to provide an up-or-down vote. We could talk to the President. We could talk to the majority, to defeat a judge on an up-or-down vote. We could talk to the Senate. We could talk to the Judiciary Committee. We could talk to the Senate. We could talk to the Judiciary Committee about the activity of the Judiciary Committee. Among those unique responsibilities by the Framers of our Constitution are the ability to ratify treaties and confirm nominations of the President. Advice and consent of the Senate is the way the Constitution refers to it.

The most obvious way the Senate is the way the Constitution foresees for every one of those circuits. Democrats have also threatened to filibuster other nominees who have been named to fill judicial emergencies in other circuits, by name, Carolyn Kuhl, who I would like to speak about a little later; nominated to fill a Ninth Circuit judicial emergency, Henry Saad for the Sixth Circuit, Susan Neilson for the Sixth Circuit, Richard Griffin for the Sixth Circuit, David McKeague for the Sixth Circuit, and Claude Allen to fill a judicial emergency in the Fourth Circuit.

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That is the rule that applies on the legislative calendar. Up until now one thought it would be a rule that would be abused with respect to the Executive Calendar, the calendar on which the judicial nominees are considered.

The Democrats have decided to seek to apply that 60-vote rule so if more than 40 of them vote no to take a vote, we would not have the 60 votes necessary to take that vote and the majority never be permitted to prevail. That is the way it has been for the last several months. We have taken a cloture vote several times and each time there are 44, 45 Democrats who vote against cloture. They vote against taking the final vote. That means there may be 55 or 56 on the other side with some Democrat support, obviously, willing to take the vote. But we cannot get that number up to 60.

Up until now, in the interpretation that has prevailed, we cannot take the final vote and pass on all of these nominees; 51 votes would be secured for every one of the nominees that have been filibustered. That is why we cannot make someone talk all night. If our colleagues on the Demo- crat side wished, they could have one person on the floor all night tonight and simply object to our request to go to these votes. But they would not have to talk if they did not want to.

I am pleased they are joining in this debate, I actually welcome the discussion about these candidates. In that sense, I guess we have forced an all-night discussion. It is a discussion that should have occurred a long time ago. It is a useful discussion, but it is not a discussion at the end of the day that I suspect will change any of their minds, as a result of which, as long as we adhere to the 60-vote rule that has always been the rule in the past, we cannot get to a vote where the majority would be able to prevail. That is what the Senate rules are.

On Friday, we will have a vote to change the rules. That vote requires a two-thirds majority to pass. It is unlikely that will occur, either.

That is the state of play right now. That is why, to answer the question, “Can you make somebody talk all night,” the answer is no, not if they have 40 friends, because if they have 40 friends, all they have to do is vote no “no” to a cloture vote and you cannot go on to your final vote. That rule maybe sound arcane, but I also say on legislative matters, it has been used by both parties to defeat legislation that did not have a 60-vote majority. It is a right Senators have always felt they have for important legislation to require 60 votes. To pass a treaty, it takes two-thirds. The Constitution explicitly spells that out. But to confirm a judge, the Constitution has no super-majority requirement.

There are a lot of people who believe the real intent of the Framers was that a simple majority should apply. Perhaps one day that issue will be tested. Until then, we are with the proposition that as long as any Senator objects, it takes 60 votes to get to a final vote in which a simple majority would prevail. As of right now, that is what is being applied in the case of these judicial nominees.

The important point for Americans to understand is the minority has thwarted the will of the majority; that the consequences are significant for the country; that emergency judicial vacancies are not being filled; and that the impact of them delaying the confirmation process is even more unfair to the American people because the judicial vacancies remain vacant.

It is a solemn responsibility of the Senate to act on the President’s nominees. We are not fulfilling that responsibility. It is for that reason the Republican majority decided to take this time tonight and tomorrow to try to bring this matter to the attention of the American people to urge our colleagues to reconsider their position in opposition to even taking a vote on these nominees so eventually we can get to the point where we can simply have an up-or-down vote on the nomi- nees. President Bush has made for these important positions.

I reserve the balance of the time allotted to the Republican side during this hour. If there is another Republican wishing to speak, I am happy to recognize that person. If not, I am happy to yield the cloture cloture cloture to colleagues on the Democratic side for whatever time is remaining and pick that up a little bit later.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I am happy to yield to my colleague.

Mrs. HUTCHISON. I am happy for the Senator to go forward and then we will come back at the end of the hour.

Mr. KYL. Mr. President, I inquire how much time remains of the half hour?

The PRESIDING OFFICER. Two and 1/2 minutes.

Mr. KYL. If either Democrat who is on the floor would like to speak, fine. Otherwise I will go ahead and use that time.

Mr. REID. Mr. President, it works better when we use our time and do not get mixed up so no one owes time.

Mr. KYL. If either Democrat who is on the floor would like to speak, fine. Otherwise I will go ahead and use that time.

Mr. REID. Mr. President, it works better when we use our time and do not get mixed up so no one owes time.

Mr. KYL. I am glad Senator Kyl brought up the Kuhl nomination because I will be talking a little bit about that nominee and her background and the number of people from all sides of the spectrum who oppose this nominee and the fact there is a very serious case involving a breast cancer patient who she ruled against in terms of her pri-

vacy rights. I will get into that. Judge Carolyn Kuhl, nominated to the Ninth Circuit Court of Appeals, a judge who would be sitting on an appellate court. She has been a judge in a State trial court in Los Angeles since 1995. The American Bar Association rated her "well qualified," their top rating for the Ninth Circuit Court of Appeals. She has served as a superior court judge in Los Angeles County in both the criminal and civil divisions and supervising judge of the civil division, the first woman to hold that position. Before that, she was a partner in an extra-ordinary bipartisan support. A bipartisan group of 23 women judges on the superior court who serve with Judge Kuhl have written to our judiciary Committee and said, “As sitting judges, we, more than anyone, appreciate the importance of an Independent, fair-minded and principled judiciary. We believe that Carolyn Kuhl represents the best values of such a judiciary.” That is from a bipartisan group of judges.

A bipartisan group of nearly 100 judges who serve with her said: We believe her elevation to the Ninth Circuit Court of Appeals will bring credit to all of us. As an appellate judge, she will be among the people of our country with distinction, as she has done as a trial judge.

There are a variety of other endorse- ments that have been made of this fine candidate. The bottom line is we re- view her record, we heard her testi- mony. She made a tremendous impres- sion on all of us on the committee. The worst a couple of people on the other side can say is they disagreed with a couple of her decisions. I daresay that was the test of every one of us as Senators, we would be in a sorry posi- tion because we cannot go very long without people disagreeing with us philosophically on positions.

Judge Carolyn Kuhl, it is plain, will follow the Constitution. She is one of the candidates we were supposed to act upon. I urge my colleagues to consider these remarks in consideration of her nomi- nation.

Mr. REID. Mr. President, the first 15 minutes will go to the Senator from California, Mrs. BOXER, and the second 15 minutes to the Senator from New York, Mr. SCHUMER.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I am glad Senator Kyl brought up the Kuhl nomination because I will be talking a little bit about that nominee and her background and the number of people from all sides of the spectrum who oppose this nominee and the fact there is a very serious case involving a breast cancer patient who she ruled against in terms of her pri-

vacy rights. I will get into that. Judge Kuhl was overturned immediately. I will get into that and why it is we have taken a stand on the number of these nominees; 51 votes would be se- cured for every one of the nominees; 51 votes would be secure-
the judges I wanted and only was turned down for 4. I would do what my mother said when I was a kid: “Honey, if you get 90 percent of what you want, say thank you, give the person a hug, and leave the room.”

Instead, why do we have? We do not have smiling, we do not have thank you’s. We have 30 hours of wasted time to hear people complain and whine about the fact they did not get four.

Somebody wrote a book once, called “All I Really Need to Know I Learned in Kindergarten.” I honestly think this is the most childish situation. The President gets 186 and does not get 4 and his party is up in arms.

How does that compare to President Clinton? Let’s take a look at that. President Clinton had 63 nominees blocked, or 20 percent of his nominees.

President Bush has, up to now, four—I suspect if we get these new two women we are talking about coming forward Friday, hopefully, there will be six, but there are four. Twenty percent, and we have complaining going on.

I do not get it. I feel like BARBARA in Wonderland. It makes absolutely no sense, I cannot figure it out. It is like the kid goes home from school and says to his dad, “Dad, I got 98 percent; aren’t you proud of me?” Dad says, “What happened to that other 2 percent?” What is it about? We all learn to be gracious when we win. When I win 98 percent, we should be grateful.

Here are the names of the Clinton nominees who were blocked. Fifteen more judicial nominees blocked than that of President Bush. Why were they blocked? The other side felt, for whatever reason, maybe they did not feel they came from the mainstream.

I remember speaking to Senator HATCH. He actually called me into his office. We had a very good talk. This is when he was chair of the Judiciary Committee and President Clinton was President. He said to me: “I just want you to know, BARBARA, if your side sends over from California liberal judges, they will never go anywhere. Do not send me liberal judges.”

I said, Orrin, I get it. I am a pragmatist. I have a committee advising me. I will so instruct them. We got almost all of our nominees through.

When President Bush was elected, I said to Senator HATCH: “I hope you are not going to send us rightwing nomi- nees, because they are out of the mainstream and this President promised us mainstream nominees.”

Remember the night the Court decided he had won the election? The President came out—I will never forget it—we needed healing, and he came to the mike. It was very healing. He said: “I will govern from the center. I am a uniter, not a divider.”

Yet 11 of these nominees who are coming down who are so far off to the right they are falling off the charts. I want to be clear. I want to say this unequivocally to my colleagues. I don’t deserve to be here if I don’t exercise the right given to me in the Constitution of the United States, which I revere. If I don’t exercise that right, I do not deserve to be here. If I don’t stand up and block some of these people, I do not deserve to be here. It is as simple as that. You can come to my State, you can call me every name in the book, it does not matter to me, because my constituents want me to stand up for what is right. What is right is that we have mainstream candidates for the judiciary and stand up to extremist nominees and those who are out of the mainstream. I have to do it. It is my job.

Do you want to come and talk about it for 30 hours when we could be doing other things? That is fine with me. I can talk about it for 630 hours. That is how strongly I feel in my heart about what we have done.

First I found out the Constitution say about our job? The Constitution says: The President—that means this one and every other one—must seek the Senate’s advice and consent. It does not say “sometimes.” It does not say “usually.” It says, “when you feel it like it.” It says very clearly, the President must seek the Senate’s advice and consent. That does not mean notifying Senators, This is who we are coming up with.” It means sitting down with us. It means talking to us. I have to say, this administration falls short.

When Carolyn Kuhl was nominated, I said to Alberto Gonzales, the President’s man down. Give me some time. I wanted to support a woman for this judgeship. Members know my record. I said, Let me get back to you. Lo and behold, what did I find out? I want to tell you what I found out.

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First I found out about this case. Think of yourself as the woman in this circumstance, perhaps as her husband or as a relative. A woman had a mastectomy. It is a brutal operation. She is frightened. She is sick. She is going to the doctor for a followup exam. She is in the office. The doctor has another person in the office, dressed in a white coat, and the exam takes place. This other gentleman is leaning over this woman in one of the most embarrassing moments, her most frightened moments, her most humilitating moments, and he is fanning her. He is involved in this. He is staring at her the whole time. When she leaves the doctor’s office, I want to say, something did not feel right to her. She asks the receptionist, “What doctor was that in the office with me?” The receptionist said, “That was no doctor; that was a drug salesman.”

The woman was appalled. A drug salesman had been in this room with her without her knowledge.

The bottom line of all of this, she sues the drug company. She sues the drug company. Judge Kuhl rules against this woman. The case is appealed and Carolyn Kuhl is a new judge in the State. Judge Kuhl rules against this woman. The case is appealed and Carolyn Kuhl is overturned.

Is this someone you think should be rewarded with a lifetime appointment? I say not.

Let’s see what the National Breast Cancer Coalition has written. This is a group that does not get involved in politics. It is a group that does not get involved. They were so upset, they said:

We cannot afford to have Judge Kuhl on the court of appeals where she will have a greater effect on women with and at risk of breast cancer and our family and friends.

The National Breast Cancer Coalition getting involved in a judicial nomination. I will tell you, if I did not stand up for the women across this country—how many of us get breast cancer? About one in nine. If I did not stand up for them, I do not deserve to be here.

So if you want to talk about it for 30 hours, for 40 hours, for 50 hours, count me in—count me in—because if I were to roll over and allow someone such as this to get on the bench, someone who is hostile to women, someone who is hostile to civil rights, someone who is hostile to prayer rights, someone who is off the deep far right end of the spectrum, I do not deserve to be here because I promised my constituents I would support mainstream judges. I have supported many judges, 50 percent of the judges President Bush has brought forward. But once in a while you have to take a stand.

Let’s look at the number of groups that are against Carolyn Kuhl’s nomination, which is going to be brought up on Friday. I cannot even read all of these to you. It would take too long. But I will give you a few: the AFL—CIO, the American Association of University Women, the American Federation of School Administrators, the Asian Pacific American Labor Alliance, Breast Cancer Action, the Breast Cancer Fund, the Women’s Law Center, Clean Water Action, Communication Workers of America, the Feminist Majority, the Foundation for a Smoke-Free America, Friends of the Earth, the International Federation of Professional Technical Engineers, Los Angeles County Federation of Labor, NARAL, Moveon.org, National Breast Cancer Coalition, National Center for Lesbian Rights, National Council of Jewish Women, National Employment Lawyers Association.

It goes on and on and on, and there are reasons why these groups have gotten involved. In any case, if you have to do is see the record of this woman and you understand why these groups are against her.

Office and Professional Employees International Union—Mrs. HUTCHISON. Mr. President, will the Senator yield?

Mrs. BOXER. No, I will not. People for the American Way, Physicians for Social Responsibility, Planned Parent- hood, the Progressive Jewish Alliance, the Sierra Club, Smoke Free Educational Services—this goes on—Taxpayers Against Fraud, United American Nurses. It goes on and on.
Mrs. BOXER. Was there an objection? Mr. SANTORUM. Mr. President, reserving the right to object.

Mr. REID. Mr. President, there was either an objection or no objection.

Mr. SANTORUM. I object.

The PRESIDING OFFICER. Objection is heard.

Mrs. BOXER. I just finishing up my minute, this proves my point that they want to complain about four judges who already have jobs. But they do not want to deal with the people who are unemployed and this terrible economic situation we have in our country today.

The PRESIDING OFFICER. The Senator’s time has expired.

Mrs. BOXER. I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Thank you, Mr. President.

First, I thank my colleague from California. She is feisty any time of the day but, not only feisty, on target. I very much appreciate her great work, particularly in bringing to our caucus’s attention the problems with Judge Kuhl.

Now, I would like to review the bidding so far. First, we have had a lot of talking, virtually none of it new. Second, there have been repeated referrals to go on to issues that we do not talk about, such as minimum wage, loss of jobs, trade, education, etc. Third, this debate is helping us because the right-wing radio and the rightwing groups have talked about their argument.

I mentioned the Wall Street Journal editorial that never mention this number, what anything fair would be. We are getting this number out: 168 to 4.

When I go to parades in upstate New York, conservative areas, they say: Why are you stopping the President’s judges? I say: It is 168 to 4. They say: What timeline are you going by? This debate is helping us because the right-wing radio and the right-wing groups have talked about their argument.

I mentioned the Wall Street Journal editorial that never mention this number, what anything fair would be. We are getting this number out: 168 to 4.

Mr. SANTORUM. Mr. President, reserving the right to object.

Mr. BOXER. So here we see the problems. We have lost jobs. You do not want to talk about that. I think right now I ought to ask unanimous consent that the Senate now return to legislative session and proceed to the consideration of Calendar No. 3, S. 224, the bill to increase the minimum wage, that the bill be read the third time and passed, and the motion to reconsider be laid upon the table.

Mr. HUSHHAM. I object.

The PRESIDING OFFICER. Is there objection?

Mr. SANTORUM. Mr. President, reserving the right to object.
ment, Richard Russell, and Republican Minority Leader Everett Dirksen would support Fortas, whose legal brilliance both men respected.

The president soon lost Russell’s support, however, because of administration delays in nominating the senator’s candidate to a Georgia federal judgeship. Johnson urged Senate Democrats not to move Fortas’ confirmation hearings. Responding to staff assurances of Dirksen’s continued support, Johnson told an aide, “I just take my word for it. I know [Dirksen]. I know the Senate. If they get this thing drug out very long, we’re going to get beat. Dirksen will leave us.”

Fortas became the first sitting associate justice, nominated for chief justice, to testify as his own confirmation hearing. Those hearings reinforced what some senators already knew about the nominee. As a sitting justice, he regularly attended White House staff meetings; he briefed the president on secret Court deliberations; and, on behalf of the president, he pressured senators who opposed the war in Vietnam. When the Judiciary Committee revealed that Fortas received a privately funded stipend, equivalent to 40 percent of his Court salary, to teach an American University summer course, Dirksen and others withdrew their support. Although the Senate Judiciary Committee recommended confirmation, floor consideration sparked the first filibuster in Senate history on a Supreme Court nomination.

On October 1, 1968, the Senate failed to invoke cloture. Johnson then withdrew the nomination, privately observing that if he had another term, “the Fortas appointment would have been different.”

Mr. SCHUMER. I thank you, Mr. President. So I guess I have caught a little of the feistiness of my friend from California.

Now, Senators, this is a serious issue. Many of my colleagues have done a great job of bringing up the issue of jobs and health care and all of that. I think we should do that because we have heard these arguments over and over and over again. We have not talked about the minimum wage once or for providing health care for the uninsured or many other issues. But so be it.

Let me again go over what our Constitution says. Does our Constitution say, “Do not filibuster”? It does not say that. In fact, our Constitution says the Senate ought to be the cooling saucer.

We all know the story. James Madison was explaining, I believe it was to Thomas Jefferson, why there was a Senate. Jefferson thought it looked too much like the House of Lords. He had been over in Paris. And he had not written the Constitution.

He came back and he goes over to James Madison’s house and Madison is pouring tea. He says: You see, he pours the boiling water into a cup, and he says: You see the boiling water in the cup? That is the House of Representatives, where the people’s passion bubbles over. Then he poured some of the water into the saucer, and he said: The Senate is this little bit of that cooling saucer. Our job, when the President goes too far, as he has with some of these nominees, is to be the cooling saucer.

Now, unfortunately, our being the cooling saucer gets some of the others on the other side very hot. But we are defending the Constitution. The idea that a successful filibuster is bad has nothing to do with the Constitution. That comes from a few of my colleagues’ view that they want to get every nominee. So let’s make an argument. Because if a successful filibuster is bad and an unsuccessful filibuster is OK—and we have been through that before—you cannot make any argument about a filibuster.

Again, I would like my colleagues to read this over and over and over again. There is nothing in there that says: No filibuster. There is nothing in the Constitution that says: A majority will decide judges, a 51-to-49 majority. It says the President must seek the Senate’s “Advice and Consent.”

Constitutional scholars will tell us that there is a constitutional rule in the Senate—limited debate, two-thirds to change the rules, the idea that 60 have to close off debate—is embodied in the spirit and rule of the Constitution.

Yes, my colleagues, we are the cooling saucer. When the President’s passion for hot rightwing judges who might make law rather than interpret law gets overwhelming, we will cool the President’s passion. That is what the Constitution is all about, and we all know it.

By the way, when, again, my colleagues thought President Clinton was nominating a few judges too far left, what did they do? What did you do over there? You filibustered. Paez and Berzon were very liberal, no question about it. But because President Clinton had, by and large, nominated moderate nominees, nominated moderate people, your filibuster could not last.

Let me go to my colleagues. We did not want to undertake a filibuster. Many of us on the Judiciary pleaded with Chairman Hatch to go to the White House and say: Meet with us. No. Many of us pleaded with Counsel Gonzales to come meet us a little bit of the way. No.

So we had no choice. Either we could be a rubberstamp or we could use the only means we had at our disposal to stop the President from getting every nominee, and that was the filibuster. Again, it is in keeping with the Constitution. We believe we are fulfilling our constitutional obligation. Again, I see my colleague from Pennsylvania brought up his chart: No successful filibusters. Did my colleague object to the unsuccessful filibusters of Barkett, Sarokin, Berzon, and Paez? Did my colleague say he wanted 30 hours on the floor because a filibuster was wrong?

Mr. WARNER. Mr. President, will the Senator yield for a question?

Mr. SCHUMER. I am happy to yield. I want to finish my point and then I will yield to my friend from Virginia, who is one of the most respected and erudite Members of this body, and I consider him a friend of mine.

I would simply say that the argument that filibusters are OK but successful filibusters are not OK just makes no sense. It is a whole other distant logic.

I yield to my colleague from Virginia.

Mr. WARNER. Mr. President, I have had the privilege of leaving the floor and talking with a number of visitors. It is remarkable how many people have come from all across the country to be here. They have asked me, in a very straightforward manner: Senator, we have followed this debate and we cannot understand how one side says there is no filibuster and the other side says there is a filibuster.

So, Mr. President, I would hope we could enter into a colloquy and allow my colleagues here—the former attorney general of Alabama, who is on the Judiciary Committee, and the distinguished Senator from Pennsylvania, who has taken such a leadership role—to see whether or not in colloquy we could comprise some sort of an agenda trying to follow this very important debate on this highly technical use of the word “filibuster.”

So I am just wondering if you would state what your understanding is, and then my colleagues on this side will state their understanding.

Mr. SCHUMER. I thank my colleague from Virginia for that excellent inter— I do not mean interruption—I mean it in the classical sense, trying to bring us together.

I will be happy to yield to either of my colleagues from Alabama or Pennsylvania and ask them, because I would like to have debate here instead of each of us getting up and making speeches. I asked a few times and my colleagues were not on the floor.

Mr. WARNER. Mr. President, you have your chance. So let’s go.

Mr. SCHUMER. Well, this is a good interjection by my friend from Virginia.

Why is it that a successful filibuster is wrong but an unsuccessful filibuster is OK? Because we have had them before, and many on your side participated in them. We did not hear any of these arguments about the Constitution or anything else. I would be happy to yield to my colleague from either Alabama or Pennsylvania for an answer. Maybe we can come to some meeting of the minds.

Mr. SESSIONS. Mr. President, maybe I would suggest, as we go forward here, the time be counted to each side. We are now in the next hour anyway. Is there any objection? The PRESIDING OFFICER. We are 15 seconds from the minority’s time running out.

Mr. SESSIONS. All right. So in the next time block we set aside perhaps we can count the time against each side if we speak.

Let me explain what happened. The Senator from New York was not here—
Mr. SESSIONS. I thank the Chair.
Mr. SANTORUM. Mr. President, I ask unanimous consent that, during this colloquy, whatever time is consumed by the majority be deemed "off the time of that hour of that side of the aisle."

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

Mr. REID. So we make sure we understand what is happening is whoever is talking, time will be taken off their side; is that right?

Mr. SANTORUM. That is correct.

Mr. SESSIONS. The Senator from New York was not here during the Clinton years in the Senate; he was in the House.

Mr. SCHUMER. Will my colleague yield? I was here the last 2 years of the Clinton years. I was here for Berzon and Paez.

Mr. SESSIONS. Let's talk, then, about Berzon and Paez and get this straight. That is real good to remember. I just assumed the Senator couldn't have been here or he might have understood a little differently.

Holds are placed on nominations by Senators. Holds are placed on nominees by Senators. One way to break that hold is to file for cloture which guarantees an up-or-down vote. Holds were placed on Berzon and Paez. President Clinton, the President of the United States. These were two of his most liberal nominations to the most liberal circuit in America; the one that struck down the death penalty, struck down the Pledge of Allegiance, struck down the one that struck down the civil rights of people of color.

In fact, I agree with the Senator from Alabama. I think the Ninth Circuit is a very liberal circuit. I voted for Jay Bybee, who is far to the right of me, because I thought the Ninth Circuit could use some balance. I don't have a problem with people saying Paez and Berzon were very liberal and we ought to try to block them.

Mr. SCHUMER. If I might finish. That is why the hold is able to hold things. There is nothing in the rules about one Senator can hold things up, but the way things work around here, you say: If you bring this to the floor at this point, I am going to keep talking and you are going to need 60 votes. I don't know it to be any different than a filibuster. It is certainly not a difference; it is a difference. One may call it a hold rather than a filibuster, but it is a filibuster.

Second, I say, in all due respect to my colleague, again, let's not get sanctimonious here. It is true that my good friend from Alabama opposed cloture. How many Senators voted for cloture? How many voted against? Thirty-one? I don't think there was a Democrat among them—maybe, maybe one. I don't recall if Senator Miller was here then. Thirteen voted against Judge Berzon.

But immediately after on the vote for Paez, my colleague from Alabama got up and made a motion to "indefinitely postpone the nomination."

Let's not get sanctimonious here. If you are indefinitely postponing the nomination, you are seeking to do what we are seeking to do, which is block a nomination you thought was ideologically incompatible.

Mr. SANTORUM. That is not a classic filibuster. The bottom line is this: I will make this argument and then yield—I defer to our great whip here—we have divided up all our time and I am taking somebody else's time; maybe my friend from Minnesota, and I don't know who the other Senator was—Senator BOXER. So I don't want to take too much of it.

I simply say, again, these arguments sort of, a little bit, contain a bit of sophistry. Blocking a judge is the go-to way to do what? When Founding Fathers wanted us to do, which is to be the cooling saucer. Sometimes it was successful, sometimes it wasn't, but it is not a difference that makes a difference, as the law professors used to say.

Mr. REID. Parliamentary inquiry, please: How much time remains on our side following the statement of the Senator from New York?

The PRESIDING OFFICER. Twenty-six and a half minutes.

Mrs. HUTCHISON. No, Mr. President, parliamentary inquiry: It is now the majority's time, as I understand it. The minority time has finished.

Mr. REID. I yield the floor.

Mr. SCHUMER. If I might make a parliamentary inquiry. The PRESIDING OFFICER. The majority has 26 minutes left and have a priority on that unless they wish to continue the agreement they had of having an open debate.

Mr. REID. Mr. President, we will go back to the original system we had.

Mr. SESSIONS. I object to the change, if he is making a point.

Mr. SCHUMER. If I might make a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, while the Senator from New York is here, and he is such a good advocate, as we say in Alabama, you make soup out of slop. A motion to postpone is not a filibuster. It is an up-or-down vote to delay.

We were in negotiations with the Senator from California and the White House to say we can let Berzon and Paez go but at least put more decent, more mainstream judges in California. We didn't get that agreement, and they moved forward with the vote. That was a filibuster.

I want it to be clear that the leadership on this side, the chairman of the Judiciary Committee, the majority leader, and this Member of the Senate vote to do what is called an extended debate but voted for cloture which would have guaranteed a vote and did guarantee a vote for them. That is not a classic filibuster.
Mr. GRAHAM of South Carolina. Will the Senator yield for a question?

Mr. SESSIONS. Yes.

Mr. GRAHAM of South Carolina. The Senator from Virginia made a good point. There are a lot of people confused, and the Senator put me in that category. I sat here and listened to this debate.

Is it true that the main difference between the example they are using and our problem is that these two people are the other side?

Mr. SESSIONS. That is certainly a distinct and obvious difference. Both of these nominees were moved forward by the action of TRENT LOTT, the Republican leader, to move a Clinton nominee for an up-or-down vote. He got the up-or-down vote. Both those nominees were confirmed. That is exactly correct.

And you want to talk about consistency, I ask the Senator from New York if he still stands by his statement he made that the issue of holding up judgeships is the issue before us, not the qualifications, which we can always debate; it is an example of Government not fulfilling its constitutional mandate because the President nominated and we are charged with voting on the nominees?

And PATRICK LEAHY, the chairman of the Judiciary Committee——

Mrs. HUTCHISON. Will the Senator yield?

Mr. SESSIONS. I will for a question. Mrs. HUTCHISON. I want to clarify a point because the Senator from New York tried to equate a filibuster with a hold. I was hoping the Senator from Alabama would show the difference between a hold and a filibuster. If we start calling a hold a filibuster, then we have really changed the rules around here because holds are used for a variety of purposes. They are used for negotiation, and they may or may not lead to a filibuster, and usually they don't.

To say that someone put a hold on someone and then there was an effort through extended debate to get those holds taken off is a filibuster in a misreading of the rules; would the Senator agree?

Mr. SESSIONS. I would certainly agree, and as the Senator from Georgia suggested, we do that a lot around here.

Mr. CHAMBLISS. Will the Senator yield for a question?

Mr. SESSIONS. I will.

Mr. CHAMBLISS. I noticed my friend, the Senator from New York, for whom I have great respect, made a comparison between a hold and a filibuster but yet at the same time he has shown this chart over and over again, showing where we have 168 approved and only 4 filibustered. But as the Senator well knows, the Senators from Michigan hold on the courts, and numbers of judges for months and months. So his number four, instead of being four, should be about eight, if he really believes a hold was equivalent to a filibuster. So his argument simply doesn't hold water, if I may pose that in the form of a question to the Senator.

Mr. SESSIONS. I agree, if a hold is a filibuster, then there are a lot more filibusters than have been suggested. I think there are four being held by Senator LEVIN.

Mr. SESSIONS. I yield for a question from the Senator from Virginia.

Mr. WARNER. In the nature of a question, first, I ask the Presiding Officer to inquire of the Parliamentarian if the word “filibuster” appears in any of the rules of the Senate. My understanding is that it does not.

The PRESIDING OFFICER. The Senator from Virginia is correct.

Mr. WARNER. So the word “filibuster” is not in the rules. I want to clarify that. I have done a lot of study on this question, and I think I can work our way through it. It is not in the rules. Let's go to Webster's Dictionary. It is rather interesting, the word has been used throughout history in many ways.

Filibuster—the first definition: “An irregular military adventurer, an American engaged in fomenting insurrections in Latin America in the mid-19th century.” But then we get to the last definition, and herein I think is some guidance: “a: the use of extreme dilatory tactics in an attempt to delay or prevent action, esp. in a legislative assembly. b: an instance of this practice.”

I think somewhere in between lies the truth. So perhaps with this background and the assurance it isn't in the rules, the Senator from Alabama can continue to educate the Senate as to his perspective, and the Senator from New York can continue to educate the Senate from his perspective, and let us hope we have brought some light on this issue.

Mr. SCHUMER. I thank the Senator.

Mr. WARRNER. Mr. President, if I can add one more thing, there is a very fine book issued by the Library of Congress. I ask the Presiding Officer the title of that book. The Parliamentarian knows of it.

The PRESIDING OFFICER. The title would be “The History of the Cloture Rule.”

Mr. WARNER. Yes, I have studied that, and it is issued by the Library of Congress, as Latin America in that?

The PRESIDING OFFICER. That is correct.

Mr. WARNER. For those who want to pursue this in great depth. I thank my colleague for this colloquy, and I hope perhaps we got some clarity to the issue.

Mr. SESSIONS. I thank the distinguished chairman of the Armed Services Committee, Senator WARNER. He has brought wisdom here and helped us to keep from going around in circles. There is an argument that can be made by the Senator from New York that holds that ended by cloture votes are filibusters, but they were not really filibusters in the sense we are facing them today. What we are seeing today is a sustained deliberate attempt by the leadership of the Democratic Party to block judges by having less than 50 votes to do so. They block judges by requiring through the procedure of the Senate that we have to have 60 votes to confirm a judge instead of 51.

We know that in each one of these nominees that have been held up that more than 50, usually as many as 55, 54, 53, we have the majority, but they have been blocked by a sustained filibuster led by the Democratic leadership and TOM DASCHLE and his team. That is what has brought us to this point. I think we have clarified that issue.

I say on the question of are we changing our views on this side, I reject that point. This side was principled during the Clinton years. This side did not resort to the filibuster as a tool of the opposition, as the Democrats have. There can be no debate about that. Their nominees were moved forward. We did not adopt this policy.

I see the Senator from Texas is here. So I think he thought she would like to share with us about a particular comment that was made about the nominee from California, Judge Kuhl. I yield time to her.

Mr. REID. Parliamentary inquiry: How much time is left on both sides?

The PRESIDING OFFICER. Seventeen minutes on the majority side; 25½ on the minority side.

Mr. REID. It would be, I think especially for the wee hours of the morning, better if we continue with what we started with so there is not a fight for who gets recognized. Does anybody have a problem with the way we have done it?

Mr. SESSIONS. I am not exactly sure of the way we have done it.

Mr. REID. What we have done since 6 o'clock; the majority would take the first half hour and we take the second half hour.

Mr. SESSIONS. En bloc.

Mr. REID. Yes. I hope we can go back to that arrangement. That is my request.

The PRESIDING OFFICER. I assume you mean during this hour the majority would get its 16 minutes——

Mr. REID. Absolutely, and we will get our 25.

The PRESIDING OFFICER. And the next hour would be half hour first for the majority and——

Mr. REID. Yes, starting at 1 a.m. going back to the regular system.

The PRESIDING OFFICER. Unless the Senator agrees to an alternate position, that would be the policy.

Mr. REID. That request is granted.

The PRESIDING OFFICER. That is then by unanimous consent was set up to begin with.

Mr. REID. Thank you, Mr. President.

Mr. SESSIONS. I yield 5 minutes to the Senator from Texas.
Mrs. HUTCHISON. Mr. President, I wanted to tell the rest of the story on Judge Carolyn Kuhl because I think a misimpression was left by the Senator from California regarding the case of the woman who was having a breast exam. She asked the patient to leave the office. She asked who the doctor was, and the rec

ceptionist said: That wasn’t a doctor, that was a pharmaceutical company representative.

When I first heard about that, I definitly wanted to hear more because that did not sound like the kind of judge I would want on the bench, a judge who would dismiss the case against the pharmaceutical company for having a person in the room when the patient was not even told this person was not a doctor or who this person was. I, in fact, did look at the rest of the story and I found a very different story. In fact, the plaintiff sued both the pharmaceutical company and the doctor. The doctor was sued for negligence in not informing the patient and asking the patient’s permission, or having the patient have the right to say, no, I do not want that person in the room. The plaintiff sued the doctor, the doctor’s firm, and the pharmaceutical company.

Judge Kuhl allowed the case to stay open, which she dismissed against the pharmaceutical company, because the case against the pharmaceutical company was common law intrusion upon seclusion, which was not settled law in California at the time, but she kept the case against the doctor for his failure to consent. The judge allowed the cause of action, the trial, to go forward against the doctor and the medical partnership for failure to obtain consent, and the plaintiff did recover. The plaintiff should have recovered, and the plaintiff did recover. Judge Kuhl allowed that to happen by keeping the lawsuit open against the doctor who was the person negligent in this case.

I think it is very important that we know the full story it shows Judge Kuhl, in fact, was very sensitive to this woman’s claim and allowed it to go forward. She made sure it went forward, and, in fact, the woman did settle for a full recovery.

I just wanted to set the record straight because I thought there was a misimpression in the record about Judge Carolyn Kuhl, and I would hope we would acknowledge she did let this case go forward and there was a recovery.

I think Judge Kuhl is an outstanding judge. After looking at her record very fully, I am very pleased to support her. I am very aware she is supported in a bipartisan way by many people in California, and most certainly when we talk about needing some balance on the Ninth Circuit Court of Appeals I think Judge Carolyn Kuhl would be an excellent choice to bring some balance to this circuit that is the most reversed circuit in the entire United States of America. Of all the circuit courts of appeal in the United States of America, the Ninth Circuit is the most reversed by the Supreme Court. I think that would tend to show we need some balance on this court, and I would hope Judge Carolyn Kuhl would get a fair vote, because if she does, she will get the majority in this body. They will look at her record in her circuit. They will see how qualified and balanced she is, and she will get confirmation if she has a fair shot.

I thank the Senator from Alabama for getting me to bring out the rest of the story, Paul, and the Senator from Texas so much for those comments. I remember when that came up in the Judiciary Committee. We heard these allegations that this woman, Carolyn Kuhl, was insensitive about the rights of women and she would have a big error in this case. What she said simply was, as the Senator mentioned, the doctor allowed this man to come into the room, and not the drug company who hired this gentleman. They did not even know it. I am not applauding it, but it was given by him, and if anyone committed a wrong, it was that doctor. She allowed the case to go forward, and under California law, the full recovery can come out of any one defendant who is liable, and the full recovery did come in fact from the doctor. It is an important matter to note.

I will just share, since the issue was raised, about this side not being principled and I pointed out during the 8 years of President Clinton’s administration, the leadership on this side of the aisle absolutely rejected filibusters. During that same time when President Clinton was seeking to get judges confirmed, the Democratic Senators also voted against filibusters and used a lot of language that would make that clear.

For example, Senator BOXER on May 14 of 1997 said: It is not the role of the Senate to obstruct the process and prevent a vote of highly qualified nominees from even being given the opportunity for a vote on the floor.

Senator FeINSTEIN said: A nominee is entitled to a vote. Vote them up, vote them down.

Senator DASCHLE, now the Democratic leader, said: I find it simply baffling that a Senator would vote against even voting on a judicial nomination.

Senator LEAHY, the chairman of the Judiciary Committee during the time of the Democratic majority, said: I think the Senate is entitled to a vote in this matter. I think the President is entitled for the Senate to vote—he is talking about President Clinton—and I think the country is entitled for the Senate to vote.

Now Senator LeAHY is leading the filibuster. So is Senator DASCHLE. They are completely changing their position, and this side did not do that.

Senator HATCH explained to us why filibusters were bad, so this side rejected that and did not go forward.

Senator KENNEDY said: It is true that some Senators have voiced concerns about these nominations, but that should not prevent a roll-call vote which gives every Senator the opportunity to say yes or no.

Mr. CHAMBLISS. Will the Senator yield?

Mr. SESSIONS. I would be pleased to yield to the Senator from Georgia.

Mr. CHAMBLISS. J ust like the Senator from Alabama, I was somewhat shocked by the comments of the Senator from California about the fact that if you get 90 percent you ought to be happy with what you get and go home. The fact of the matter is, never before in the history of the United States of America has any President gotten 98 percent. And the President, prior to the obstructionism coming from the other side of the aisle on these judicial nominees, has gotten 100 percent. It is zero and four filibusters out there right now.

I remind the Senator from California of her comment made back on March 9, 2000, as per the CONGRESSIONAL RECORD: I make an appeal, if we vote to indefinitely postpone a vote on these two nominees or one of these nominees, that is denying them an up-or-down vote, that would be such a twisting of what cloture really means in these cases. It has never been done before for a judge, as far as we know, ever.

The Senator from California agreed with us back in March 9 of 2000. Again, it would be in line with what Senator LOTT said when he said these people deserve an up-or-down vote. The thing about these votes is that if people disagree with them, if any Senator on the other side of the aisle or if any Senator on this side of the aisle disagrees any judicial nominee is qualified to serve on the Federal bench at the district level or on any circuit court, they should have the right to vote against them, but they are entitled to a vote.

I agree 100 percent with the Senator from California when she made her comment in March of 2000 that we ought to have an up-or-down vote; that it has never—and I repeat her statement—it has never been done before for a judge, as far as we know, ever. It has never been done.

When it comes to saying “has there not been a filibuster” or “has there not been a filibuster,” I agree with the Senator from California; there has never been a filibuster before of a circuit court nominee. There ought not be a filibuster that continues before these judges. We ought to have an up-or-down vote.

I yield back to the Senator from Alabama.

Mr. SESSIONS. Mr. President, how much time remains on our side? The PRESIDING OFFICER. The Senator from Alabama has 5 minutes 40 seconds.
Mr. SESSIONS. If the Senator from South Carolina wants to make a comment, I will yield to him.

Mr. GRAHAM of South Carolina. Just very briefly, I thank the Senator for yielding.

I think I thought in a 30-hour debate you would have to fight to get something to say. We may want to extend this thing.

It has been good to hear everybody’s perspective about what has gone on in the past. I am really more worried about the future. I am new to the Senate. This is my first year here. I do not know who shot John 5 years ago or 10 years ago, and who is still mad about what happened during Clinton, Bush 1, or George Washington. That is not my concern.

My concern is I am in the Senate at a time when I know that if this continues, we are going to destroy the judicial nominating process as I have understood it to be since law school. We are going to drive good men and women from wanting to serve because the nominees who are being filibustered—I have been on the Judiciary Committee—have had a hatchet job done on them. They have had an opinion here and an opinion opinion there taken out of context. They are all well qualified by the American Bar Association. They all come highly recommended by the people who know them best.

For nominees, they used a hatchet he and his wife wrote to his diocese about Christian marriage. Mr. Pryor from Arkansas was asked about whether or not he chose to take his kids to Disney World during Gay Pride Day. You are asking people questions I feel are unbearably uncomfortable asking anybody as to whether they are qualified to be a judge.

This process is broken. The past has its abuses on both sides, but this process is broken. There is no precedent for what is going on. I may be wrong, and if I am wrong somebody correct me, but it is my understanding, in the history of this country, over 200 and something years of following the Constitution, we have never had an occasion where somebody came out of the Judiciary Committee, was voted out of the committee, and was unable to get a vote on the floor, until now.

If that is the case, then we are doing something different that is really bad, in my opinion, because it will be answered in kind down the road. If this is successful, to expect the Republican Party to sit on the sidelines if there is a Democratic President and not answer in kind is probably the optimistic.

If that happens, you are taking the Senate in a death spiral of where 40 percent of what they want. They have been on the Judiciary Committee, 55 votes for cloture to stop debate, than a majority, stopped by a minor- ity, 35 votes for cloture to stop debate, can be defeated by 45 senators who vote contrary to that, is a filibuster, as has been admitted by the senators on the other side.

I think we have been playing some games with words, but the bottom line is what has been done is unprecedented. It is a systematic, organized filibuster by the Democratic leader, Tom Daschle, and his team and the assistant leader and most of the Members on the other side—but not all—but on these now six nominees to date we have not had 60 votes to shut off debate.

That is what we are talking about. You can call a hold a filibuster if you choose. Maybe you could justify that. But in action or a matter, it is a success, continually by a minority of the Senate to stop the majority from bringing a matter to a vote. A cloture, more than a majority, stopped by a minority, 35 votes for cloture to stop debate, can be defeated by 45 senators who vote contrary to that, is a filibuster, as has been admitted by the senators on the other side.

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That is what we are talking about. You can call a hold a filibuster if you choose. Maybe you could justify that. But in action or a matter, it is a success.

The PRESIDING OFFICER. The majority’s time has expired.

Mr. REID. We will divide the time on this equally between the Senator from California and the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, how many minutes do I have?

The PRESIDING OFFICER. The Senator has 2 minutes.

Mrs. BOXER. Well, here we go, more of complaining and more upset from the other side. They just did not get 100 percent of what they want. They only got 98 percent. The score is 168 to 4. Other charts can be printed, but here is the truth. Do my colleagues want to see it another way? Here are the names of the people we have confirmed to the Federal bench for George Bush, 168 strong, and there are 4 we believe are the mainstays who believe would actually hurt the rights of our people to privacy, to dignity, to fairness, to justice, and we have stood up and we have said, no. The other side cannot believe they did not get 100 percent of what they wanted in their life they get 100 percent of what they want. Most of us do not. Most of us work hard for what we believe and we are happy to get maybe close to what we want.

We have more complaining and more bickering, more upset, 30 hours taken away from other issues. This is where we are. We even had Senator Graham stand up and throw out this fact: No one is going to apply for judgeships. No one is going to apply for judgeships that pay a lot of money because Democrats stood up and said 4 did not meet the test of fairness, 4 were outside the mainstream and, yes, 168 were fine. Now people are not going to apply for judgeships anymore. Well, if I spoke to someone who said, do you think I ought to apply for a judgeship, the first thing I would say is, well, your odds are pretty good, 168, and only 4 did not make it. So I would say your chances are pretty good.

Then we hear all this talk about we Democrats are doing something different, we have never filibustered, never, even though on the Senate Web site itself there is discussion that there have been filibusters, and Chuck Schumer put that in the record.

Let me read something much more recent than that one. This is just a couple of years ago, when we had the Berzon and the Paez nominations. The other side today is saying those were not filibusters. They launched a filibuster.

I wish my colleagues would listen, but it is okay, their minds are made up. He said: It is no secret that I have filibustered these two nominees.

Let me say that again. A couple of years ago, when we had the Berzon and the Paez nominations, the other side today is saying those were not filibusters. They launched a filibuster.

The issue is, why are we here? What is the role of the Senate in judicial nominations? The Constitution gives the Senate the advise-and-consent role. We are supposed to advise the President and consent if we think the judge should be put on the court.

Republican Bob Smith, who led the filibuster against two Californians, goes on to say—do I remember it? It is written in my mind. He said: These were two terrific people who were held up, one for 4 years and one for 2 years, and then we finally got them to the floor and Bob Smith launched a filibuster.
saying a filibuster in the Senate has a purpose. It is not simply to delay for the sake of delay. It is to take the time to debate, to find out about what judges' thoughts are, et cetera.

Can we please not have a debate over whether we have ever launched a filibuster? They admitted it. I ask unanimous consent that this be printed in the RECORD at this time.

There being no objection, the material referred to were requested to be printed in the RECORD, as follows:

THE PÆZ FÍLÍBUSTÈR

So that the record on this point, this dramatic reversal in positions, is clear, I feel constrained to mention that the 15 Senators who voted to continue the Paez nomination and to, in fact, postpone it indefinitely, (voting both against cloture and for indefinite postponement) were Senators Frist, Bob Smith, Jessie Helms, Wayne Allard, Larry Craig, Michael Enzi, Phil Gramm, Asa Hutchinson, James Inhofe, Frank Keating, Ben Nighthorse Campbell, Sam Brownback, Jim Bunning, Mike DeWine, and Richard Shelby.

How many of the current Senators among these have you seen on this Senate floor claiming that Bush's judicial nominees have been entitled to an up or down vote and that delaying or filibustering is wrong? I have seen some of them. It is their right to change their minds, but at least acknowledge their past efforts to block President Clinton's nominees, which kept many seats for this President to try to pack.

I will mention the words of the Senators who filibustered Clinton nominees speak for themselves. For example, in 2000, just three years ago, Senator Smith noted during the filibuster of Judge Paez and Martha Barnett, a Ninth Circuit nominee: "[I]t is no secret that I have been the person who voted against these two nominees, Judge Berzon and Judge Paez. The issue is, why are we here? What is the role of the Senate in judicial nominations? The Constitution gave the Senate the advise-and-consent role. We are supposed to advise the President and consent if we think the judge should be put on the bench. We must put the President on notice that filibustering in the Senate has a purpose. It is not simply to delay for the sake of delay. It is to get information. It is to take the time to debate and to find out about what a judge's thoughts are and how he or she might act once they are placed on the court.

So, those who came before the Senate and said no Republican ever filibustered a Clinton nominee were dead wrong. Senator Smith went on to explain: "As far as the issue of going down a dangerous path and a dangerous precedent, that we somehow have never gone before, as I pointed out yesterday and I reiterate this morning, since 1968, 13 judges have been filibustered by both political parties appointed by Presidents of both political parties, starting in Fortas and coming all the way forth to these two judges today.

It is not a new path to argue and to discuss information about these judges. In fact, Mr. President, William Rehnquist, when he was nominated to the Court, he was filibustered twice.

Then, after he was on the Court, he was filibustered again when asked to become the chief justice. In that filibuster, it is interesting to note, things that happened prior to him sitting on the court were regurgitated and discussed. So I do not want to hear that I am going down some trail the Senate has gone down before by talking about these judges. It is simply not true.

This straight-forward Republican from New Hampshire proclaimed:

"Don't pontificate on the floor and tell me that somehow I am violating the Constitution ... by blocking a judge or filibustering a judge that I don't think deserves to be on the court. That is my responsibility. That is my advise-and-consent role, and I intend to exercise it."

Thus, the Republicans' claim that Democrats are taking "unprecedented" action, like the White House claim that our request for Mr. Estrada's work while paid by taxpayers was "unprecedented," is simply untrue. Republicans' desire to rewrite their own history, while understandable, is just wrong. They should come clean and tell the truth to the American people about their past practices.

They cannot change the plain facts to fit their current argument and purposes. It is also noteworthy that, before the debate on Bush nominations this year, the distinguished chairman of the Judiciary Committee, my good friend from Utah, admitted that the Republicans had filibustered Judge Paez's nomination in 2000. After cloture was invoked in Paez's nomination, Senator Sessions made a motion to indefinitely postpone a vote on the nomination; this motion failed by a vote of 49 to 51. Senator Hatch then admitted there had been a filibuster: "I have to say, I have served a number of years in the Senate. I have never seen a 'motion to postpone indefinitely' that was brought to delay the consideration of a judicial nomination post-cloture. I think that is somewhat baffled that, after a filibuster is cut off by cloture, the Senate could still delay a final vote on a nomination. A parliamentary ruling to this effect means that, if the Republicans had filibustered Judge Paez's nomination, Senator Sessions served a number of years in the Senate, and he must confess to us that his motion was brought to delay the consideration of a judicial nomination post-cloture. Indeed, Senator Sessions must confess to us that this has never happened before"—despite the fact it has and make it sound as if we are being unfair when we are not. We are just doing our job. But there we are.

Look at what we could be doing. We have lost almost 3 million jobs in this country. This President has the worst unemployment record of any President since Herbert Hoover on private-sector employment. Why don't we spend 30 hours talking about that? Why don't we pass the 6-year highway bill? We got it out of our committee thanks to Senator Reid and Senator Inouye today. Why not bring that bill down, I say to my friend, Senator Reid? Let's vote on the 6-year highway bill. Do you know how many jobs we would create in this country? In my State, 80,000 jobs.

Let's pass a manufacturing jobs tax credit so that manufacturing stops leaving this country. Let's raise the minimum wage to over $5.15. We tried to do that by unanimous consent. The other side objected. They do not want to do that.

With our salary, we make the minimum wage for a year in just a couple of months here. But no, they are spending 30 hours talking about 4 people who already have jobs and they do not want to talk about the 3 million jobs that were lost. They do not want to protect overtime. As a matter of fact, they tried to take it away from workers. They do not want to extend unemployment insurance.

Nothing is getting done that really matters to people. That is a sad, sad situation.

Long-term unemployment: These are the people who have been out there and out there—2 million, plus. That is a terrible record. Long-term unemployment tripled since George Bush took over.

How about the tax cuts? Let's look at how fair they are. They are 80 times larger for millionaires than for middle

the National Breast Cancer Coalition—asking us to defeat Carolyn Kuhl? Not because Carolyn Kuhl was compassionate. But because of the opposite reason: She turned her back on a woman in need, on a sick woman. And Carolyn Kuhl was overturned in a unanimous vote by the court of appeals. For that, my friends want to promote her to this lifetime appointment.

I say if I caved in to that, again, I do not deserve to be here. Sometimes you have to stand up for people who need protection. Carolyn Kuhl had that chance. She took a bite. She ruled against this woman. This woman has been scarred in more ways than one from that experience.

Here we are. It is 12:45. We could be working on issues that really matter to people instead of rehashing these judgeships. They got almost everything they wanted. But they are going to push their first逞同 evidence thing over and over, "This has never happened before"—despite the fact it has and make it sound as if we are being unfair when we are not. We are just doing our job. But there we are.

Mrs. BOXER. Let me quickly say about Judge Kuhl, Senator Hutchison said, in fact, that Judge Kuhl showed a lack of compassion to this victim who went into a doctor's office and was subjected to the humiliation of having a drug salesman witness her exam without her permission. Senator Hutchison said she was very, very kind to this victim.

Let's see what the victim says about Judge Kuhl.

My name is Azucena Sanchez-Scott. I am a survivor of breast cancer and Judge Kuhl's courtroom. I stand before you now because I want to tell you what the other people will never have to relive it.

Nothing about my cancer is easy. Not the chemotherapy, not the fear, and certainly not the emotional pain of disfigurement. As a person battling cancer each visit to the doctor brings questions about my future and my health. That is where I was when my doctor and a stranger walked in. The doctor offered no introduction and proceeded to examine me and asked that I disrobe. It was my first oncology visit and I was confused. I immediately must confess to you I was somewhat baffled that, after a filibuster is cut off by cloture, the Senate could still delay a final vote on a nomination. A parliamentary ruling to this effect means that, if the Republicans had filibustered Judge Paez's nomination, Senator Sessions served a number of years in the Senate, and he must confess to us that his motion was brought to delay the consideration of a judicial nomination post-cloture. Indeed, Senator Sessions must confess to us that this has never happened before—despite the fact it has and make it sound as if we are being unfair when we are not. We are just doing our job. But there we are.

The bottom line, Carolyn Kuhl ruled against this woman. And when Senator Hutchinson said she allowed the case of Survivor of breast cancer and Judge Kuhl. The bottom line, Carolyn Kuhl ruled against this woman. And when Senator Hutchinson said she allowed the case of Survivor of breast cancer and Judge Kuhl. The bottom line, Carolyn Kuhl ruled against this woman. And when Senator Hutchinson said she allowed the case of Survivor of breast cancer and Judge Kuhl. The bottom line, Carolyn Kuhl ruled against this woman. And when Senator Hutchinson said she allowed the case of Survivor of breast cancer and Judge Kuhl. The bottom line, Carolyn Kuhl ruled against this woman. And when Senator Hutchinson said she allowed the case of Survivor of breast cancer and Judge Kuhl.
income households earning about $50,000 to $75,000.

The Bush economic record? The only administration going back to Eisenhower with a decline in manufacturing output—big manufacturing job losses. No. We cannot talk about that. We cannot have an action plan to get people back to work. And I have not even talked about school construction, which would really employ a lot of people. I visit some of my schools and the tiles are just peeling off the ceiling. No, we cannot talk about that. We do not have time. But we have time to discuss, for 30 hours, judgships that we have gone over and over. And they are winning. They got 168 through and they did not get 4. They are worried about 4 people; I am worried about 3 million people. I am worried about the unemployed in my State, the people without health insurance.

I will tell Members what else I am worried about. We have a President who does not follow environmental laws—I have them on a scroll and I cannot show them because it is not allowed by the Senate rules. But I will hold this up. If I took this scroll and I rolled it across the Chamber, it would go from one end to the other. It goes on and on and on. It is small print. It shows all of the environmental rollbacks of this administration.

Just 2 weeks ago they came up with an incredible idea. When there are PCBs on your land—PCBs are one of the most toxic chemicals there are; they are carcinogens—we always had a rule if you had PCBs on your land you had to have a plan to clean it up and EPA had to rollbacks of this administration.

Mr. DAYTON. Mr. President, I have learned politicians’ priorities can be measured by their passions. What do they care about? What ass their souls? For that reason, the exultation of my colleagues across the aisle about this session, their fervor, their apocalyptic predictions, their press announcements, other than tax cuts for the rich and the super-rich, I have not seen that much passion across the aisle in my 3 years in this Chamber. Frankly, it does not do that for me.

My passion tonight is what my colleague from California said: to work on other matters. We need to be far more talking about how to put Americans back to work, the over 3 million who have lost their jobs since this administration took office less than 3 years ago. Just last year, no jobs return to any jobs, but jobs that are the same as, as good as or preferably better than the jobs they held before. Not minimum wage jobs with no benefits, no health coverage for spouses and children, no pensions, no protections, no real future.

I would like us to talk about how we replace the 2.6 million manufacturing jobs lost in this country in the last 3 years, jobs moved offshore to someplace other than America. Many of them, I fear, are not coming back to America.

The majority of the Republican caucus leadership has the authority to decide the Senate’s agenda and has decided we will spend 30 minutes on 4 jobs. We have not spent 30 minutes on jobs for the other 3 million Americans out of work who are looking for jobs. We have not spent 3 minutes on jobs and the survival jobs for over 2 million Americans who cannot find jobs for so long that they have exhausted their unemployment benefits. Many are completely broke. If we do not provide them with some support soon, more will be completely broke.

Every time we have tried to bring up a bipartisan bill to extend unemployment benefits for Americans out looking for work, except one time last year, someone has objected across the aisle and we cannot proceed. No one has objected to spending 30 hours on 4 people, but we do not spend 30 seconds on most people affected by unemployment in this Nation.

I will press again. I ask unanimous consent that the Senate proceed to legislative session and the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment insurance benefits for displaced workers; that the Senate proceed to consider the bill; that the bill be read the third time and passed, and the motion to reconsider be laid on the table.

That would extend the basic program unemployment for 6 months. It would extend the long-term unemployment for an additional 13 weeks and would benefit 5 million Americans.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Mr. SESSIONS. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DAYTON. As I said, you can tell the priorities and what arouses people’s passions. I could get really passionate about the Senate’s whole last week and the disaster aid for Minnesota and elsewhere where crops have been devastated by the summer’s drought. Many of Minnesota’s farmers had their crops totally destroyed. I did not detect as much passion and priority or concern among Members of the caucus, combined, as in one of them tonight for the misfortune falling on thousands of Minnesotans.

I get passionate about learning about prescription drug coverage for seniors on Medicare, which went to the Republican-controlled conference committee last July and has not come out since. That is only half as good as the resources committed to the Members of the Senate in a way which is why I introduced my “taste of their own medicine” amendment which passed the Senate months ago by a vote of 93 to 3. It says that prescription drug benefits that Members of Congress receive can no better than what we vote for seniors and others under Medicare.

Over 17,000 Minnesotans were passionate enough about that principle that they signed a petition at the Minnesota State Fair in 12 days. That is what Minnesotans are passionate about.

I could get passionate about learning the truths about the present conditions in Iraq. After being told for weeks now how much they are improving and that they are getting better. I read today a CIA report disclosed by two people high up in the administration who cannot get their message through at that level any other way than going to the American people and saying, You do not know all the facts. You do not know even the right perspective on what is going on there.

We have sons and daughters and husbands and wives and children of Minnesotans who have given their lives, who are giving their bodies and well-being or giving their livelihoods, and we cannot find out the truth about when they are coming home or whether their stay of duty will be extended and for how long.

There are things that Minnesotans can get very passionate about. That is real life or death.

What is important to people? If we do not manifest it here, people will not care about the institutions such as the Senate. I do not question my colleagues’ right to have different views on policies and judges or any other matter. That is the
nature of our process. That is the strength of our process. That is the wisdom of our process.

I have been, in less than 3 years, in the parity, even, 50-50 Senate, with the Vice President, the tiebreaker, but in commerce, commerce committee is 60-40, and in the majority for a year and a half and this last year in the minority. The previous year and a half there were 69 cloture votes that the Democratic leader, the majority leader, the President pro tempore tried to get us to legislation, to consider legislation, voting on legislation, issues that were far more important and affected a far greater number of Minnesotans and other Americans than a particular judgeship: health care for senior citizens; benefits for our veterans; environmental protection. And now this year, the conditions have changed.

As somebody once said, how a minority reaching majority, seizing authority, hates the minority. So we have, as colleagues on the aisle noted, and I agree, seen a certain role reversal. But that is, in part, the different responsibilities of minority and majority cause, and it is particularly the difference of the responsibilities of those in the party other than the President and in the party the same as the President.

I don’t question the right of my colleagues, one of them or all of them, to support the President, whether he is right or wrong. Whether they believe he is right or wrong. Those are individual decisions of conscience and politics.

The Founders of this country—and this applies whether the President of the United States is Democrat or Republican, in which case the situation is reversed—understood that the incredible foresight and wisdom of the separation of powers, this coequal authority of the legislative branch, equal to that of the executive branch, was critical in every respect, critical to this country’s genuine freedom and preservation of our democracy.

Judge Brandeis, almost 100 years ago, said the separation of powers was adopted by the convention of 1787 not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was to avoid friction but, by means of the inevitable friction inherent in the distribution of government among the three branches, to save the people from autocracy, to save the people from despotism, from tyranny. That is what they were concerned about. That is the practice that has served us well in this Nation and in this institution of the Senate for 216 years.

So it concerns me, and I do not question anyone’s right to take whatever position they wish, but it concerns me as I read my colleagues on the other side. We have not been doing this debate, this forum, have a combined number of years of experience in the Senate that amounts to less than one half of 1 percent of the combined collective wisdom achieved by nearly 1,900 men and women who have served in this body in its 216-year history. Yet I hear members of this body who have been here less than a year saying emphatically this system is broken and it should be radically overhauled and that somehow the executive branch is one that ill serves our country and is even, they say, a violation of our Constitutional responsibilities. That is one of the most serious charges that anyone can make against a fellow Senator, because when we take this office, we stand, each of us, and recite the same pledge—

The PRESIDING OFFICER. The Senator’s time has expired.

Mr. DAYTON. To uphold the Constitution of the United States.

Mr. President, I ask unanimous consent for 1 minute to complete my thought.

The PRESIDING OFFICER. Under the time request—

Mr. REID. What was being asked?

Mr. DAYTON. A unanimous consent request for 1 minute to complete my thought.

Mr. REID. Well, we will just take that out of our time from the next half hour.

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

Mr. DAYTON. Thank you, Mr. President.

That is the most solemn oath I have ever taken, to uphold the Constitution of the United States. I do not question the commitment of anybody in this body to upholding that oath and carrying it out as he or she believes is right, which is the reason we are elected independently, to exercise that independent authority.

But when people put out releases saying these matters we are engaged in are dangerous and irresponsible, that we have no right to be doing this, that it is a perversion of one of our Constitutional duties, those are very serious accusations.

If anyone in this body believes what we are doing is unconstitutional, they should take that question to the proper court. If anyone believes what we are doing in this body is a violation of Senate rules and procedures, they should take that question to the Parliamentarian.

I was told earlier today that the Parliamentarian was not consulted. I believe the Parliamentarian, based on all the rules and precedents of the Senate—this book of 1,400 pages of precedents that have been adopted over 216 years—would find we are acting responsibly and within that authority which is our responsibility and our right.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The minority’s time has expired.

CRAIG. Mr. GRAHAM of South Carolina.

Thank you, Mr. President.

As we go into the 1 o’clock hour, Jimmy Buffett says it is 5 o’clock somewhere. But it is 1 o’clock here. We will try to reorient ourselves as to what was going on in the last hour. It is kind of an update, a CNN headline update.

The last hour was pretty interesting, I thought. We had examples used by our friends on the Democratic side to say basically that what we Republicans have done in the past we complain about now. I reiterate, as far as I am concerned, the past is the past, and I should not worry about that here. I have been here a year and all I have known since I have been here is fussing and fighting about everything, particularly judges. It has not been too pleasant to be on the Judiciary Committee. And it has not been too pleasant to be on the Judiciary Committee.

The example Senator SCHUMER used was two judges: Paez and Berzon. I hope I have their names right. They were two judges who had been appointed by President Clinton, and I think Senator Smith from New Hampshire tried to block their nominations, put a hold on it. There was a real contention about what was going on with those two judges. But the curious thing to me was there was an intervention in those cases, in those two nominations by the Republican leadership, as I understand it, that basically brought to a close the process of blocking those judges from having a vote after they came out of committee.

To me, that illustrates that in the past, when efforts were tried or were being used to basically hijack the constitutional requirement of a majority vote, once the nominee was presented to the Senate, there has been intervention to right the ship.

Since I have been here, the only intervention I have seen is the shut down what has been going on for 200 some years. Now, it is like a cricket match. It is 168 to 4. It is 168 to 16. Cricket goes on for 3 days. It is pretty interesting for the first hour or 2, but 3 days later I kind of get blurry-eyed watching cricket—same way here with these numbers.

The point is, there never has been in the history of the country a situation where somebody was reported out of the Judiciary Committee to come to the floor of the Senate to be voted on as a judicial nominee, that they were not eventually voted on—until now. There have been cloture motions made, but they were always made to bring about a vote.

There has been a concerted effort by the Democratic leadership to block judicial nominees in an unprecedented...
way. That is why we are all here tonight. Not only is it unprecedented, it is very dangerous. The reason I think it is dangerous is because it effectively changes the constitutional standard.

I am going to read, since we have 30 minutes here, where the Constitution way. That is why we are all here tonight.

That way of thinking has been replaced. I think the reason it has been replaced is because the political moment is so hot. We are a divided nation. That is exactly what is going on here in reverse. Instead of a two-thirds requirement to confirm a judge, like we have to throw somebody out of the House or the Senate, or to impeach the President, or to ratify a treaty—why two-thirds to ratify a treaty? The Founding Fathers were worried about a President making a deal with some foreign power that was not in the best interests of the country, so you had a high standard to ratify. You had a check over Presidential power.

They give the power in the Constitution for the President to veto legislation coming out of these bodies, to make sure we do not get off track. The only way we can override a Presidential veto is the two-thirds vote.

There was a lot of thought going into supermajority votes. It was not just by accident that the Constitution has six or seven provisions that require a majority vote, and I would argue strongly it is not by accident that the majority vote requirement applying to judges was put there on purpose.

Our job, as I see it, is not to say what we would do if we were President. Our job, as the Constitution lays out for us, is to advise and consent by a majority vote to make sure the President—whoever he or she might be—is not sending people who do not like their philosophy, and if you do not think they are qualified, vote against them, but do not change the constitutional standard because it would be bad for the country.

That is what is going on here, different from other years, is we have taken our political differences and our desire to make the court go one way versus the other and we have hijacked the Constitution for political reasons.

Our friends on the other side of the aisle lost badly in 2002. There was an article right after the election where the Concord publisher started inventorying: Why did we lose? There was a strain of thought on the Democratic side that they lost because they were too accommodating to the President, and the Democratic base was deflated; that you are working with someone you are helping him with homeland security, that you are doing this and that with President Bush. One thing you might want to do to fight back—and this is in the article; and I do not have it with me—is to go after his judges.

Well, that certainly gets people fired up. Republican and Democratic base voters very much follow issues such as this: who the President may pick for the Supreme Court, who the President may pick for court of appeals jobs right below the Supreme Court and they will pick a few out of the herd, and they will start saying awful things about them—I will talk about that in a moment—and they will wind up, after they come out of committee, not getting an up-or-down vote in the Senate—for the first time in history. I will talk about this later when I have more time.

There are dozens of quotes by Democratic colleagues that saying it is really an abuse of the Senate’s power not to allow somebody to be voted on up or down. They were right then. They were talking about a situation in President Clinton’s term where they thought the Republicans were denying people a chance to go through committee and they were latching on to the constitutional provision of a majority vote, the advise and consent vote, saying: The high road for the Senate to take is if you do not like these people, if you do not like their philosophy, and if you do not think they are qualified, vote against them, but do not change the constitutional standard.

I have a little experience with that article, that is a very high standard to achieve. And it should be a high standard to achieve. That is exactly what is going on here tonight.

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I used to be a prosecutor, and the old saying was: Follow the money. If you want to know what happened in the criminal enterprise, follow the money.

Well, let me tell you about an e-mail that was sent by a good friend of mine. Senator Corzine is a very nice person. His job is to retake the majority for the Democratic Party. He is in charge of the Democratic Senatorial Committee. Senator Allen, who sits right next to me, is in charge of the Republican Senatorial Committee. Their jobs are to go out and recruit candidates and raise money so the party will be effective in taking over the majority, if they win. If you are a Republican, say yes or no to that nominee.

What we have done is politicize this process in an unprecedented way, in a dangerous way. If you do not think down the road it will be answered in kind by the Republican Party, I think you are very naive. I hope I will have the courage not to go down that road as an individual Senator.

But the animosity being generated by this practice is red hot among both bases, and it will be almost impossible, in my opinion, for this not to become the norm. Payback is hell. That is a phrase with which we are all familiar. Payback, when you are messing with the Constitution. Political payback has to have boundaries.

I am sure the Supreme Court would have subverted the Constitution.

Here is what an e-mail said about the President: One thing you might want to do to fight back—and this is in the article; and I do not have it with me—is to go after his judges.

Well, that certainly gets people fired up. Republican and Democratic base voters very much follow issues such as this: who the President may pick for the Supreme Court, who the President may pick for court of appeals jobs right below the Supreme Court and they will pick a few out of the herd, and they will start saying awful things about them—I will talk about that in a moment—and they will wind up, after they come out of committee, not getting an up-or-down vote in the Senate—for the first time in history. I will talk about this later when I have more time.

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When you are messing with the constitutional standard about judges, I think you have gone too far.

The question is, is this really a filibuster in terms of these nominees because they have come out of committee and they cannot get a vote because our Democratic colleagues, behind their leadership, have united, with a few breaking away, to deny a vote. We have had hours of debate on all these nominees. They cannot come to the floor for an up-or-down vote. The Democratic Party has changed its whole opinion in a matter of minutes or days, a bad idea, and they have adopted a practice that no one has done before in the history of the country.

But we are having a hard time. It is 1:15 in the morning and we cannot get the other side to admit that their filibuster going on here is different than anything that has happened before.

I am a big fan of the Constitution, and I love the Constitution.
Senate Democrats have launched an unprecedented effort. By mounting filibusters against the Bush administration's most radical nominees, Senate Democrats have led the effort to stall their confirmations.

November 3, 2003, it was an e-mail to donors from Senator CORZINE. I would argue that when he said they are engaging in "an unprecedented effort... mounting filibusters against the Bush administration's most radical nominees" that he was not tricking people, that he was telling them: We are up here fighting by using the filibuster.

One of two things are true: The e-mail is accurate, which I think it is, and it is designed to get people to send in money; or he is tricking people and he ought to give their money back. Because if you listen to our Democratic friends on the other side, this e-mail is wrong, and these people deserve a refund. They are raising money on the wrong, and these people deserve a refund. They are trying to get people to open up their wallets to give their money because they are doing something that is unprecedented.

What is that something? We are "filibustering against the Bush administration's most radical nominees." There are a bunch of quotes out there.

Frankly, from my perspective, if people are off the charts on the right wing, I am not going to vote for them. I will not filibuster them. February 26, 2003.

One of the people being filibustered comes from California, Justice Brown.

Let me tell you a little bit about her, and then I will yield to my friend from Georgia.

Justice Brown sits on the California Supreme Court. She has been there since May of 1996. In California, people get to vote on who they want to be on the court. She received 76 percent of the vote in her last election.

Now, the last time I checked, California is not a hotbed of Republican conservatives. I do not know why we lose so badly; and we do. We have lost almost every national election in California since Ronald Reagan. But she received 76 percent of the vote from people who live in her State.

A little more about her: She is the daughter of a sharecropper, born in Greenville, AL. She attended segregated schools, grew up in South Carolina. The first African American I ever went to school with, I was in the 6th grade—not something to be proud of but a fact. She preceded me.

She has an academic record that if she were your daughter you would be unbelievably proud. She received a BA in economics from California State, her JD from the UCLA School of Law. She received an honorary degree from Pepperdine University. She has authored more majority opinions for the California Supreme Court than any other justice.

This is how nasty this has gotten. This is a cartoon from something called "The Black Commentator," September 4, 2003. This person is a racial stereotype. Your eyes can tell you better than I can. It says: "Welcome to the Federal bench, Ms. Clarence . . . I mean, Ms. Rogers Brown. You'll fit right in." And then it goes on to a caricature of Justice Thomas, Colin Powell, and Condeleezza Rice.

This is what people are having to go through. This is the way they are being characterized and being attacked. I think it is a low for the Senate. I am very sorry that this is going to go through it, but she is being filibustered after having come out of committee.

If you don't like Justice Brown, then you can vote against Justice Brown, but you don't have the right to take the Constitution and turn it upside down for petty politics, and that is exactly what is going on here.

I can tell my friends on the other side, if they think we are not going to fight back, they are dead wrong. They are going to have their hands as long as this goes on, and at the end of the day, the loser is going to be the American people if we don't find a way out of this mess because 40 people are a lot easier to gather up than 50 when it comes to politics. Sixty is really hard to get.

What is going to happen if this continues is that we are going to have special interest groups, whether it is environmentally driven, abortion driven, gun driven—just get a group for everything out there—that is going to be upset with a particular nominee, and they are going to try to get 40 Senators to jump on their side.

The people being empowered from this practice are special interest groups, and the big loser is the average, everyday American. The big loser is the 76 percent of the people voted for Justice Brown.

I yield to my friend and colleague from Georgia, Mr. Chambliss. I wish to talk for a minute about Carolyn Kuhl. Again, she was referenced by the Senator from California about her qualifications and her abilities to serve on the Ninth Circuit Court of Appeals.

Carolyn Kuhl is a very special lady. She has been a judge in California since 1995. But prior to that, Carolyn Kuhl had an exemplary record that includes service both as a committed advocate and as an impartial jurist. She has outstanding qualifications and bipartisan support.

Her qualifications include having graduated cum laude from one of those conservative universities called Princeton University and having graduated Order of the Coif at Duke University Law School. The Senator from South Carolina and I graduated from the University of South Carolina and the University of Tennessee, respectively.

Order of the Coif means you were in the top one or two, not percent, the top one or two in your class. Neither one of us was there. That is something special. She was a law clerk to then-judge Anthony Kennedy of the Ninth Circuit. She then worked in the Department of Justice as a Special Assistant to the Attorney General, Deputy Assistant to the Attorney General, and Deputy Solicitor General.

She was a partner in the very prestigious law firm of Munger, Tolles & Olson. She was the first female supervising judge of the civil division of the U.S. District Court of the Central District of California. She was the first female judge appointed to the Los Angeles County Superior Court. Carolyn Kuhl brings excellent, outstanding educational credentials to the bench.

There are a number of individuals who have registered their support for Judge Kuhl. There has been some indication that some members of the bar are upset with her over some of her decisions, and one decision in particular.
Let me show you what 23 members of the Los Angeles Superior Court, 23 women judges on the Los Angeles Superior Court bench said about Judge Kuhl, and this was a bipartisan group: Judge Kuhl approaches her job with respect for the political nature of a political judge. Judge Kuhl has been a mentor to new women judges. She has helped promote the careers of women, both Republicans and Democrats. Judges, we must have someone who can appreciate the importance of an independent, fair-minded and principled judiciary. We believe that Carolyn Kuhl represents and would serve as a role model of such a judge.

There was a case that, if you listened to the Senator from California, you would have thought that Judge Kuhl was the doctor in the office who was being sued, not the judge on the bench who was reviewing the case.

Let me tell you what the appellate court judge who wrote the opinion in the case, referenced by the Senator from California, said about Judge Kuhl and about that specific opinion that he reviewed.

On appeal, I was the author of the Sanchez-Scott opinion. . . . Judge Kuhl’s order sustaining the demuror without leave to amend was not an act of bias or insensitivity. In fact, the opposite can be made that she correctly assessed the competing societal interests the California Supreme Court requires of all jurists in this State to weigh in determining whether the tort of intrusion has occurred. With respect to those who have criticized Judge Kuhl as being insensitive or biased because of my opinion in Sanchez-Scott, they are simply incorrect.

Judge Kuhl brings impeccable credentials to the bench. She brings impeccable educational credentials, as well as jurist credentials, to the bench. She brings bipartisan support from the women, from the men, from the Republicans, and the Democrats in the State of California who know her best.

For us to have to go through the exercise here of, once again, contending with a filibuster from the folks on the other side, with respect to the nomination of Carolyn Kuhl, is truly an injustice and is one of those injustices that, as my friend from South Carolina has said, there will be a payback on. That is not the way we want to operate. It is not the way this body has operated for well over 200 years since we have been approving judges, and it is not the way we should operate in the future.

There is still time to correct the process that is going through, and based upon what we are doing here tonight, I hope the profile of this issue is going to be brought home to the household of every American and every voter, and that they will understand there is a group in the Senate who wants to move forward to make sure their lives are made better because good judges are going to be put on the bench, and good judges ought to be confirmed by the Senate; and that there is a group in the Senate who is being obstructionist and is doing everything within their power to prevent the President of the United States from having the judges that he thinks are the best qualified from being put on the Federal bench all across America.

Mr. President, I yield the floor.

THE PRESIDING OFFICER. The Senator from Nebraska.

Mr. RIEP. Mr. President, I yield you, Mr. President. On this half hour to which we are entitled, the two Senators from Arkansas are going to split the time, with Senator LINCOLN taking the first time, whatever time she may consume, leaving the remainder to the junior Senator from Arkansas.

THE PRESIDING OFFICER. The senior Senator from Arkansas.

Mrs. LINCOLN. I thank the Chair. Mr. President, I am proud to be here this morning to see that this age-old institution is acting as it should. We are looking at, reviewing, and exercising our constitutional responsibilities.

I am not, however, proud of the fingerpointing that is going on as we say to young children, I hope no one’s eyes get put out—and all the fingerpointing that goes on in these 30 hours of discussion and debate, the warnings we have just heard: There’s a payback on this back.

I do rise this morning, however, to express my extreme disappointment and dismay that we are expending such a large portion of our remaining time and energy on this unnecessary debate. We probably have only a few days left to deal with important issues on which we have not yet completed action this year. How many senators have my colleagues talked with in their travels back home to their States about the need for prescription drug coverage for our elderly?

How many of them have they talked with as they traveled with Meals on Wheels and other programs and talked with these seniors who are telling you that they are cutting their medications in half, that they are not going to be able to afford their heating bill this winter and their prescription drugs?

I implore my colleagues, how many have you talked with in your travels back home?

Looking at education funding, how many teachers have my colleagues spoken with as they traveled back home—teachers who are telling them they are going to have to spend their own money on supplies come February because they have enough glue and construction paper for their children or that they are having to spend an undue amount of time meeting demands that we have put on these school districts and yet have been unwilling to provide the resources for them to meet those demands?

How many of these single mothers who are working day and night to pull themselves up by their bootstraps, to leave the welfare rolls and bring dignity to their children, are not going to be able to afford to send their children to college, or to pay for their college?

I have already talked to a number of others who are telling me that even though they have had four or five judicial nominees, all of whom have been debated, generated significant opposition where they live and work. All have been given adequate review time, and all of whom, in my judgment, should not be promoted to a lifetime appointment on the Federal bench.

Instead of focusing so much time and attention trying to promote a lifetime position for these individuals who already have very good jobs, my wish would be that President Bush and the Republican leadership would focus more of our time on issues that truly impact the lives of all of our constituents, and particularly the lives of the Arkansans I represent—issues such as creating good paying jobs in Arkansas, improving public education and expanding access to affordable health care and prescription drugs for our seniors, and, yes, providing something we all live to you in Congress big difference in people’s lives: a refundable child tax credit, something that got overwhelming support in the Senate but is buried in a couple of conferences.
and here, there, and yonder because it is not a priority.

Those people in this country who make between $10,500 and $26,650 are not important enough for us to deal with. Somehow they don't work hard enough. They have to work 2 jobs to to bring home a paycheck, and they have to be raising children to be eligible for a refundable child tax credit. But for some reason, they are not a priority here anymore.

We have had that for months ago, but we didn't. Here we approach the holidays, people have been in school, a multitude of needs that families across this country have, and we fail once more to even look at the small ways we can be helpful.

There are any number of issues that merit careful and lengthy consideration in the Senate, but filling a handful of judgeships should not be given a priority given the backlog of pressing issues the Senate has yet to complete this year.

Unfortunately, this is a manufactured crisis to distract the American people from the very real crises that we are going through; the ones that we are facing, such as the fact that in the next 15 to 20 years, we are going to go from 41 million Americans over the age of 65 to over 70 million Americans over the age of 65. We as a nation are so completely underprepared for this crisis.

We have 126 medical schools in this country. Only three of them have a department in geriatrics. We are training less geriatricians, and we are training even less academic geriatricians who will teach those geriatricians who might be there to take care of me, and I am the youngest in this body.

We are so underprepared with health care, a reform in Medicare, and a prescription drug package to meet these unbelievable numbers that will cause a crisis in this country. We are here tonight, tomorrow, until midnight tomorrow talking about four small ways we might be there to take care of me, and I am the youngest in this body.

What about our children? What about educating our children to be prepared in the 21st century, to be competitive in a global economy, teaching our children the skills they are going to need to be competitive? They are the future of this country. They are our future workers. They are our future leaders.

We came up with a great bipartisan bill to educate our kids, and we do not have the guts to pay for it. Out of the $8 billion for the education plan for our kids, we are only funding $2 billion of it from the President's budget, a quarter. I have to say, that is a misspent priority there.

We have record deficits that are going to be heaped on the shoulders of our children. Sixty-six percent of that debt is going to be paid in 4 years. What happens to our constituents if all of a sudden somebody comes up and says, “Guess what, your debt is due and I want it on demand. No, you cannot re-

finance, no way. I am going to call that debt on you”? These are serious crises we should be addressing and we are spending our time pointing fingers and not addressing the issues of the American people. We are spending our time in Iraq that is taking the lives of American soldiers every day, and there is no end in sight. These are crises, not the fact that four people who wanted a job did not have the support of enough Senators and that is what we are spending all this time on.

Today, 95 percent of Federal judicial seats are filled. This is the lowest number of judicial vacancies in 13 years. This 5 percent vacancy rate is lower than the U.S. unemployment rate and the poverty rate, and I know because I represent a State that is very high in poverty. I come from one of the 20 highest poverty counties in the country.

Today there are more lifetime-appointed Federal judges serving than at any time in our Nation's history. Furthermore, since President Bush was elected, the Senate has confirmed 168 Federal judges and rejected only 4—2 percent of his nominees. By contrast, when Republicans controlled the Senate during President Clinton's administration, more than 60, or 20 percent, of his nominees never received a vote in the Senate.

Sadly, I think the President's record on this matter truly speaks for itself. I believe all executive and judicial nominations that come before the Senate are entitled to courtesy and respect, but I also believe the Senate's role of advice and consent is a very important check and balance our forefathers designed and instituted. It is an obligation I do not take lightly.

Senators are not elected to play a ceremonial role in the nomination process. This is not an issue of whether one likes the President or does not like the President. This is not an issue of whether one thinks these nominees are good people. They are all good people. Ours is not a ceremonial role in this nomination process. Instead, we have an obligation to carefully consider each nominee individually, to help ensure the judiciary is fair and balanced and to ensure the American public maintains faith in our judicial branch of Government. We have a responsibility to make sure these judicial nominees will not be partisan in their decisionmaking, that they will not be biased or partial to their own personal beliefs, but will institute the rule of law, the Constitution, and the precedent of the higher courts.

Given the undue attention that has been lavished on these four nominees, I certainly believe it is worth revisiting the plain meaning of statutory provisions before her as a judge on the Texas Supreme Court. Likewise, we look at the case of Alabama's Attorney General William Poyr. He is one of the most strident and outspoken nominees we have seen. After reviewing some of the statements Governor Poyr holds on smacking Supreme Court Justices and the decisions of that Court, I am concerned that he does not possess the necessary judgment and temperament to be a Federal judge, to oversee that element of the judiciary.

JUDGE Pickering of Mississippi, who I do think is a good man, has also been invoked in this debate and his record does bring me concern. His record raises serious questions about his ethical conduct on the bench. His repeated contacts with the Justice Department in an attempt to obtain a lesser prison sentence for a convicted defendant, and his solicitations of letters of commendation from lawyers in Mississippi who had cases before him are well-known examples.

Finally, consider the case of Miguel Estrada, who withdrew himself from consideration earlier this year. By many accounts, Mr. Estrada was a distinguished attorney with a very talented legal mind. However, when we in the Senate attempted to verify this assessment by asking Mr. Estrada to come before the Judiciary Committee to answer additional questions and submit all of the relevant information that was necessary, and the burden of proof was in his court—we asked the same of President Clinton's nominees—Mr. Estrada indicated he would rather not. To me, and many of my colleagues, Mr. Estrada's response simply was not acceptable.

It is important to note there are good, solid reasons as to why these people were not confirmed. These reasons had nothing to do with any personal beliefs or characteristics. They had nothing to do with the partisanship. They had nothing to do with working against the President. I opposed these nominees because I am not convinced they meet the requirements of what is expected of those who receive a lifetime appointment to the Federal bench. That is my job.

Again, these are 4 nominees. Out of 172, 4 have not been confirmed. Do 4
nominees constitute any sort of judicial crisis? Of course not. Of course they do not. If we do math, the Senate has confirmed 98 percent of President Bush’s nominees. I do not know about you, but you are right in that we do not want to waste any time. We want to see 100 percent, but let me tell you 98 percent is pretty good. It is not 100 percent, but that makes me think about my kids. If they come home from school after they make 98 on their test, am I going to send them to their room? Am I going to punish them for that? Am I going to say, well, I cannot believe you did not do 100? No.

What I am going to do for my children is what we should be doing. I am going to sit down with them and I am going to help them reach 100 percent. I am going to work with them. That last 2 percent may be the most difficult, but the most difficult is worth working towards. When we work together, we can get our acts together. We can work together. We can reach that. But the administration does not want to do that. No, telling them they had not done good enough is not what I would do. I would work hard with them to get to where we needed to be.

The time is here. I have a sincere belief if President Bush would make a good-faith effort to work with Democrats in a spirit of cooperation, all of his nominees would be confirmed, with little or no controversy. Unfortunately, it has become apparent the President is more interested in staging a fight and casting blame, which is really a recipe for gridlock. In gridlock, the only ones who get hurt are the American people. It is disappointing the President and the Senate leadership are expending so much time and energy to secure jobs for four people who already have good jobs, particularly considering the millions of people who are out of work and finding it increasingly difficult to make ends meet. The people who are put out in this fictional crisis are the American people. Tying up the Senate for 30 hours on 4 judicial nominees means we are not talking about the issues that matter most to the people we represent. It means we are not talking about how we are going to finish that prescription drug bill in order to help seniors cope with the rapidly rising cost of those prescription drugs. It means we are not spending our time focused on improving our schools, in educating our children, so they can get the best possible start towards competing in that global marketplace. It means we are not doing all we can to create jobs and move our economy forward. It is not as if we are not building that infrastructure that is so necessary in rural America and elsewhere across this country.

Just this week, I learned that Arkansas has experienced its highest rate of unemployment in a decade. While my colleagues on the other side of the aisle may be behind us, I can assure them that for most people in Arkansas those numbers are just abstractions. They want to see jobs, and they want to see real action in the Senate to get things done on behalf of the voters who sent us here.

Unfortunately, I think we have taken this time and used it most unproductively. Many Members have come to the floor tonight to talk about the past. I have heard some very eloquent speeches, times as pages and debates they have heard, many quoting history from centuries ago. I think the most important thing we can talk about tonight is the future. I think we must talk about the future. I think we must work about all of these crisis issues we are faced with, and I think we must come back to our children and let that be our focal point. All of us in this body are so blessed. I started out speaking about how blessed I feel to even be in this body, to be in this place tonight, to be a part of an institution that is so incredible that it has lasted over 200 years. We are all blessed in many things, and for whatever reason, we are not finding it in our Government, I believe, and I think the American people believe, we still live in the greatest country on the face of this Earth.

Tonight I looked at one of my greatest blessings, my children, I put them in bed before I came over. I tucked them in. I thought about what we were going to talk about tonight. I thought about this great country we live in. I thought about the conflict in Iraq. There were mothers putting their children to bed tonight whose husbands may be stationed abroad. There were children who were being put in bed tonight tucked in by their grandparents because their parents had been called up and were in a strange and dangerous land. I thought about the fact my children are so blessed to live in this country under a rule of law that separates us from the rest, a rule of law that, when it is administered without the interjection of political issues or personal views, can create security and safety. It creates freedom. It creates a life I want my children to have.

I look in the eyes of mothers across the globe who do not put their children to bed in a nice, warm home, who have not been fed. They live in violence and terrorism. They live in a land that is stricken with famine because there is no rule of law or protection. Without the interjection of political issues or personal views, can create security and safety. It creates freedom. It creates a life I want my children to have.

Do I have any time remaining?

Do I have any time remaining?
The President. The time of the minority has expired.

The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I am very proud of the State I represent. The State of Georgia is, in my opinion, the greatest State in our Union because that is where I come from, and I am very blessed to represent that State. A number of great individuals from our State have served in this very august body. We have had a tradition of strong leaders in the Senate from Georgia, the Walter Georges, the Richard Russell, the Sam Nunn, the Paul Coverdell.

Outside of the Senate, we also have had a history of strong leadership coming from our State. For the past 30 years the man who has epitomized political leadership and strength in our State is now our senior Senator. It has been a great privilege and pleasure for me to have the opportunity, No. 1, to know this man over the past 35 years or so, and an opportunity to serve with him in the Senate and for him to be my senior Senator has truly been a great honor to me.

It is with great pride, and I consider it a great privilege, to be able to yield the floor to Senator Chambliss, a man who has been a great honor to me. He is a man who has served his country, not only in the Senate but for 35 years the man who has epitomized political leadership and strength in our State. It is a document that has stood the test of time. It is a document that is revered throughout the world. As a history professor, I have read it many times. But I need to know tonight where in the U.S. Constitution does it say the President’s nominees for the judiciary must have a supermajority to be confirmed? Where does it say that? I have searched high and low for that clause and that provision. I cannot find the words that are the three-year-old eyes are getting kind of dim. Perhaps I need a magnifying glass.

I seek the Senator from Georgia.

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class at the University of Mississippi, served in elective office for 12 years, practiced law for 30 years, and has served this country ably on the U.S. District Court since 1990. Yet the Democrats in this Senate refuse to give Judge Charles Pickering a full up-or-down vote. There is Priscilla Owen, who grew up on a farm in rural Texas and later rose to win election to the Supreme Court of Texas. Along the way she graduated in the top of her class at Baylor University and practiced law for 17 years. In her successful reelection bid to the Supreme Court in 2000, every major newspaper in Texas endorsed her. Yet in this Senate, this woman cannot get an up-or-down vote. Finally, there is Janice Rogers Brown. I have spent a lot of time with this woman. I have read dozens of her speeches. I love and admire her. The daughter of an Alabama sharecropper who rose to serve on the California Supreme Court, she attended several different schools until she was in high school and decided to become a lawyer after seeing African-American attorneys in the civil rights movement praised for their courage. In 1998, 76 percent of Californians voted to retain Janice Rogers Brown, an approval rating most of us can only dream of. Yet this African-American woman will not be given an up-or-down vote because the Democrats in this Chamber refuse to let her do it. They are standing in the doorway and they have a sign: Conservative Af-

ican-American women need not apply, and if you have the temerity to do so, your reputation will be shattered and your dignity will be shredded. Gal, you will be lynched.

These are the faces of America, men and women who pulled themselves up, who worked hard, who played by the rules, and excelled in the field of law, and through hard work and success has landed them in the doorway of the Senate, and each one of them is having that door slammed in their faces. The very least they deserve, the very least they deserve is an up-or-down vote in the name of what is fair and reasonable, surely, in the name of James Madison, surely in the United States of America in 2003, that is not too much to ask, just an up-or-down vote, just an up-or-down vote, just an up-or-down vote.

The majority of this Senate deserves to have its voice heard.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLESS. Mr. President, I thank my colleague from Georgia for his always direct, forthright, from-the-heart statement. He knows he and I share an awful lot with respect to this issue and so many others. Again, it has been a pleasure for me to serve with him.

I want to talk about one of the men he just mentioned who is one of the faces on that map and is one of the individ-

uals who is being filibustered. That is Judge Charles Pickering.

What an injustice to an individual is being carried out with respect to the filibuster of the nomination of Judge Charles Pickering to the Fifth Circuit Court of Appeals. I feel a very special relationship to the Fifth Circuit because when I began practicing law in 1969, I was a member of the Fifth Circuit. And that part of the state where I grew up was a part of the Fifth Circuit.

Then I believe it was 1979 or 1980, we split off. We became the Eleventh Circuit and the Fifth Circuit became the circuit that handled cases from Texas, Louisiana, and Mississippi.

This man, Charles Pickering, grew up in Mississippi. It has been said by his critics on the other side of the aisle— and I quote because I was in the chair presiding Monday when this statement was made by one of the individuals from the other side of the aisle on the floor, in talking about his record on race, “He has a bad record.”

Nothing could be further from the truth. Judge Pickering has been a strong and active supporter of civil rights movements since the very early days of his career. Judge Pickering was one who came through a very difficult time in the history of our country, particularly coming from the South. Those of us who grew up in that same South, during those days, know the difficult times we faced and how far we have come since then. We are still not where we need to be. But boy, what strides we have made. It is only because of men like Judge Charles Pickering that we have made those strides.

So for anybody to say this man has a bad record on race is simply not just incorrect, but it does a grave injustice to a man who worked so hard to make sure civil rights did come to his part of Mississippi.

Judge Pickering, in 1967—you have to think back. In rural Mississippi, a part of Mississippi where the Ku Klux Klan, which today we would brand as terror-

ists—after much time, they were very active in that part of Mississippi. Judge Pickering stood face to face, eye to eye with the Ku Klux Klan. He went to court and testified against the Imperial Wizard of the Ku Klux Klan in Mis-

sissippi. For those who had not lived through that time, you cannot have a real appreciation for what he did, how brave, how courageous, and how much integ-

rity this man showed by doing this. He testified against the Imperial Wizard and a grand jury. Another time, the Imperial Wizard of the Ku Klux Klan was charged with the murder of a man named Vernon Dahmer.

Unfortunately, although Judge Pickering did that, now on the floor of this Senate it is said he has a bad record when it comes to civil rights. Judge Pickering is a strong, religious man. He has a very strong faith. He believed there ought to be equality among chil-

dren in schools. For that reason, he made sure his children went to inte-

grated schools. When his children were of age, they were of age, they were eligible to go to school.

Again, for those of us who grew up in the South during those days when inte-

gration began, this was not a very pop-

ular thing to do in the white commu-

nity, to say the least. But Judge Pick-

ering, again, stared racial injustice in the eye and he said we have to do the right thing and we have to make sure all our children have an equal oppor-

tunity, so he sent his children to the same schools as the African-American community sent their children to dur-

ing, again, this very difficult time.

The list goes on and on about what Judge Pickering has done with respect to race relationships, from organizing state-

wide committees dealing with the issue of racial justice in the State of Mis-

issippi.

Judge Pickering served on the Fed-

eral bench in the district court where he lived for several years. He has been criticized for having a bad judicial record. Well, let me tell you about his judicial record. Some 99.5 percent of his cases have neither been affirmed or not appealed, and 99.5 percent. Those either have been affirmed or not appealed. Of those appealed, Judge Pickering has only had a reversal rate of 7.9 percent, which is 20 percent lower than the U.S. Department of Justice’s national aver-

age, which is 11 percent lower than the average district court judge under the Fifth Circuit Court of Ap-

peals.

Judge Charles Pickering is not just a good man, Judge Charles Pickering is an outstanding judge. This kind of man the folks on the other side of the aisle are being obstructionist about and are not allowing an up-or-down vote with respect to his confirmation on the floor of the Senate. It is wrong, it is unjust, and it ought not to con-

inue.

I want to talk to you about one other individual very quickly, and that is Miguel Estrada. Miguel Estrada has withdrawn his nomination, after being under consideration. He decided he was not going to put his fam-

ily through this any longer and he de-

ecided the best thing to do was with-

draw his nomination and move on.

Miguel Estrada came to the United States as a teen from Honduras. He spoke very little English. He made sure he learned English quickly enough to enter school and he graduated cum laude from undergraduate school and went to Harvard Law School, where he graduated with honors and was a mem-

ber of the Harvard Law Review. He has given his life to public service. Most re-

cently, his public service included being in the office of the Solicitor Gen-

eral of the United States of America under both a Republican President, President George H.W. Bush, and a Democratic President, Bill Clint-

on. In both instances, he served under a Solicitor General who has now come forward and said this man is a good man, an outstanding lawyer, and this man deserves to be confirmed to the DC Circuit Court of Appeals.

Obstruction came from the other side of the aisle, and they would not even...
give Miguel Estrada an up-or-down vote to confirm his nomination to the DC Circuit Court of Appeals.

I want to spend the last part of my time here talking about this issue of cloture. The Senate has operated under various rules on cloture, which is the ability of the Senate body to terminate debate on a pending matter. From 1789 until 1917, the Senate cloture rule allowed debate to be shut off by a simple majority vote. For 17 years after the country began operating under a Constitution, the Senate rules provided a simple majority vote was all that was needed to cut off debate.

In 1917, the Senate filibustered a proposal supported by President Woodrow Wilson to arm American ships against German submarines, prior to America's entry into World War I. This filibuster was rather controversial and led to support for the Senate approving the first version of today's cloture rule, which is rule XXII. That required a vote of two-thirds present and voting to end debate on "pending measures." Rule XXII was amended in 1949 to extend cloture to any measure, motion, or other matter, but cloture became inapplicable to any rule change, making it more difficult to change the rules again. Part of this 1949 rule change raised the required number of Senators for cloture from two-thirds of those present and voting to two-thirds of all Senators.

Ten years later, in 1959, rule XXII was extended to rule changes, but the number of required Senators was moved back to two-thirds of those present and voting. In 1975, our esteemed senior Senator from West Virginia, Senator Byrd, championed another amendment to rule XXII that changed the required number of Senators for cloture to two-thirds of Senators duly sworn and chosen—indeed words, a hard 60 Senators, without regard to how many are present and voting. The 1975 rule change left the cloture requirement for rule changes at two-thirds of Senators present and voting.

In 1979, Senator Byrd again proposed another amendment to rule XXII. This time, the amendment imposed a 100-hour limit on post-cloture debate. This was reduced to 30 hours in 1986.

We started off in 1979 with the cloture rule that closed off debate by a simple majority vote. The original rule was clearly constitutional because it didn't impose more than a simple majority vote. We don't have to delve into the question of an up-or-down vote on the President's nominees. Now it is interesting, and I think very telling, that the Framers of the Constitution set out only five instances where they thought the Senate needed more than a simple majority vote to act. That is what is referred to as a supermajority, such as three-fifths, two-thirds, and such—anything but a simple majority. The Constitution, in fact, requires a supermajority to impeach, expel a Senator, the override of a Presidential veto, ratification of a treaty, and adoption of a constitutional amendment.

I ask unanimous consent that I be allowed to continue and that my time be taken off of the next hour, same as we have been doing.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. I have no objection.

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

Mr. CHAMBLISS. I thank the minority leader.

In contrast, the approval of Federal judges should occur frequently. I would go so far as to say 100 percent of all qualified nominees should be approved by the Senate. This is why there is no requirement in the Constitution for more than a simple majority to confirm Senate judicial nominees. The Constitution charges this body with the responsibility of advice and consent on the President's nominations.

With this in mind, when the Senate began operations, it required only a minority to end a filibuster. We have come a long way in the last 214 years. As you have just heard, we have tinkered with the cloture rule on a number of occasions. I am of a mind that the number of cloture rules we have had since the original rule were, or are, unconstitutional, including the present rule XXII, where they are applied to prevent a majority of Senators from confirming the President's judicial nominees. But that has never happened before this year. We have a history of the Senate having a minority of Senators try to prevent a vote on the President's nominees under the guise of rule XXII.

By acting in this way, a minority of Senators has found a way to make the cloture rule unconstitutional in practice. The Framers of the Constitution knew the situations where they wanted more than a simple majority for the Senate to act. Confirmation of the President's nominees was not one of these instances, and the Framers had no reason to believe the Constitution was not constitutional in such a case.

If you look at the text of article II, section 2, in the second paragraph, you see in the very same sentence where the Framers require two-thirds of Senators present to ratify a treaty, they change that posture with responsibility for advice and consent without a word said about a supermajority requirement; just a simple majority is clearly all they thought was needed to advise the President.

With respect to the Senate's consideration of nominees, I think the only constitutional cloture rule we have ever had was the first one, which stood for the first 17 years the Senate was in operation. We have tolerated a number of different accommodations over the years, including the absence of any cloture rule for over 100 years, where we could only end debate by unanimous consent and a lot of other compromise cloture rules along the way. Ultimately, the question that is constitutional is whether 51 Senators say it is constitutional.

We have another proposal offered this year to resolve the impasse that has prevented the Senate from discharging its constitutional duty. It is a bipartisan concept from people on both sides of the aisle for a needed change to the cloture rule. Now is the time to come together and make it happen. We can end this filibuster by cooperation in a bipartisan fashion, or we will have to decide whether to consent to the President's nominee. While respecting that the filibuster has a historic role in the Senate, this bill assures that, ultimately, the will of the majority will prevail. Over the past few years, cloture measures similar to S. Res. 138 have received bipartisan support at various times.

We have a history of support of this concept from people on both sides of the aisle for a needed change to the cloture rule. Now is the time to come together and make it happen. We can end this filibuster by cooperation in a bipartisan fashion, or we will have to decide whether to consent to the President's nominee. While respecting that the filibuster has a historic role in the Senate, this bill assures that, ultimately, the will of the majority will prevail. Over the past few years, cloture measures similar to S. Res. 138 have received bipartisan support at various times.

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addressed the issue of unlimited debate, which is the essence of this institution. Having unlimited debate means an opportunity for Senators to be heard for whatever length of time, but it also means an opportunity to protect the minority. It is important to understand that whatever the case may be, whether it is a political minority, ethnic minority, minority on a given issue, regardless. That was really the essence of what the Founding Fathers saw with regard to the delegation of this authority to the Senate to write its rules with an expectation that filibusters, this extended debate, would be part of the deliberative spirit and soul of this body.

But my colleague from Georgia fails to recognize, and certainly others have ignored the number of times our Republican friends have used the rules of the Senate, the filibuster, to advance their position. There have been a number of occasions over the course of the last 20 years where cloture votes have been cast. There were 63 occasions where nominees from the Clinton administration did not even reach the floor because of an effective filibuster within the committee. It would say that we have not allowed this nominee to go forward. That assertion was respected and, ultimately, 63 of the Clinton nominees never got out of committee because of a Republican filibuster. That has not happened, curiously, during the administration— as I said, on 63 occasions. The Republicans have moved their nominees at will, and the only option we have available to us, of course, is to vote either against or for the nominee in committee, and then on cloture as some of these nominees with whom we have grave concern come to the Senate floor.

No. 1, this is not unprecedented. No. 2, it was used to a far greater degree by our Republican colleagues during the 8 years of the Clinton administration— as I said, on 63 occasions. That issue should not be debated. It is not even arguable. I don't think this debate should be about 4 jobs, which, by the way, are generating incomes of over $100,000. It is our view that the debate tonight should be about the 3 million jobs that have been lost under this administration and the 9 million jobs which are lost and for whom people are attempting to find some way to survive financially. Those 3 million jobs have been lost, in our view, because of a mismanaged economy that needs to be addressed if indeed we are going to bring this economy back. All one has to do is look at the performance created 22 million jobs in 8 years. The Clinton administration to gain some understanding of the degree of difference between the Democratic approach and the Republican approach to the economy. The Clinton administration has had a 3.7 percent unemployment rate, and the Bush administration has lost 3 million jobs in 3 years. Our view is, if we are ever going to turn this around, it is important we do three things.

First and foremost, we address the concerns of those who are unemployed today by providing unemployment compensation beyond the limits that have now been put in place. There are too many people who have, through no fault of their own, been unable to get back to work. If people wish to claim unemployment benefits, we need to address that. I hope the Senate will do so before we leave this year.

The second thing we need to do is to ensure those who are employed have the kind of incomes they deserve. That means, in some cases, increasing the minimum wage for the first time in over 15 years and addressing the fact that at minimum wage we are at the lowest purchasing power in the history of minimum wage. It also means we protect people's overtime. Contrary to what the administration would like to do, we need to ensure those 8 million people who could see their overtime lost are provided the opportunity they deserve. That means, in some cases, increasing the minimum wage for the first time in almost 7 years and addressing the fact that at minimum wage we are at the lowest purchasing power in the history of minimum wage.

Finally, I think it is critical we understand that we have a premium on health care costs, and we have some relief for the extraordinary costs our working people especially are facing with regard to health care. Health insurance costs have skyrocketed— some 16 percent a year.

There are a number of ways with which to create jobs— the highway bill, the manufacturing job tax credit. We offered tonight unanimous consent requests with the hope our colleagues might join us in at least allowing this legislation to go forward. Obviously, they have objected. But that is the first thing we need to do— create the jobs for those 3 million people who have lost their jobs in this administration.

Second, we need to ensure the incomes of those who are working are protected.

Third, I hope we can recognize that, even with incomes, they can't afford their health insurance today unless we help them to find ways in which to bring its cost down.

There is a lot more to talk about with regard to jobs and this economy, but as I said, the distinguished Senator from Arkansas has been waiting. He has done an extraordinary job of representing this caucus on the Senate floor and I yield the floor now for his remarks.

The PRESIDING OFFICER (Mr. Chafee). The Senator from Arkansas.

The PRESIDENT. Mr. President, I would like to acknowledge and thank my colleagues from South Dakota, who has done such an outstanding job tonight, and always.

Tonight I would like to read a portion of a letter that won the Pulitzer Prize recently. It is called "Master of the Senate." It is about Lyndon Baines Johnson as a Senator, not as President. It was written by Robert Caro. It is 1,040 pages. I assure you I am not going to read all thousand pages tonight. I am just going to read a few excerpts from chapter one. Chapter one is entitled "The Desks of the Senate." I am only going to read a small portion of that letter. I will refer you to page 3. But I think it is important for us to put this in context and remember what the Senate is all about and how it works and how it is designed to function within our constitutional system. So, if I may start midway down, on page 3.

When a person stood on the floor of the Senate Chamber, however—in the well below the dais—the dais was, suddenly, not plain at all. Up close, its marble was a deep, dark lustfully veined with grays and greens . . .

In fact, on this pilaster behind me you can see those colors Mr. Caro is referring to here.

We have a number of people in the gallery tonight.

Almost invisible from the galleries, but up close, richly glinting, were two bronze laurel wreaths like the wreaths that the Senate bestowed on Rome bestow on those whom it was pleased, when Rome ruled the known world—and the Senate ruled Rome.

From the well, the columns and pilasters behind the dais were suddenly, tall and stately and topped with scrolls, like the columns of the Roman Senate's chamber, the columns before which Cato spoke and Caesar fell, and above the columns, carved in cream-colored marble, were eagles, for Rome's regions marched behind eagles. From the well, there was, embroidered onto each pale damask panel, an ornamental pale color and all but invisible from above—a shield—and there were cream-colored marble shields, and swords and arrows, above the doors. And the doors—those seven pairs of double doors, each flanked by its tall columns and pilasters—were tall, too, and their grillwork, hardly noticeable from above, was intricate and made of alternating windows. And that was framed by heavy, squared bronze coils. The vice presidential busts were, all at once, very high above you; set into deep, arched niches and flanked by two bronze figures, their marble faces, thoughtful, stern, encircled the Chamber like a somber evocation of the Roman Senate, and the Senate ruled Rome.

Let me pause here because these desks have a lot of history. In fact, I think it is safe to say almost all of American history in some way or another has flowed through the Senate. I don't think that is an overstatement.

The desks of the Senate rise in four shallow tiers, one above the other, in a deep half circle. Small and spindly individually, from a distance, those seven pairs of desks become four sweeping, glowing arcs. To stand in the well of the Senate is to stand among these four long arcs that rise around and above you, that stretch away from you, gleaming richly in the gloom: powerful, majestic. To someone else, reading this letter, it is not even visible from above—far away, in the well below the dais—its cavernous drabness, is only a setting for those desks—for those desks, and for the history that was made at them.
burned five years before. When, in 1859, the Senate moved into this Chamber, those desks moved with them, and when, as the Union grew, more desks were added, they were arranged in rows, a change that was made, as will be seen, for reasons of convenience and the easy reach of the desks for Senators—until the Revolution's exigencies were past. Then, in September 1789, the Senate moved into its house in this building. And for 163 years, its history was hammered out among those desks.

Daniel Webster's hand rested on one of those desks on January 20, 1830. He rose to reply again to Robert Hayne. I am not going to go into that story because it should be known by most people who follow Senate history, one of the more famous exchanges in the history of this Chamber. Let me go on to page 7 and talk about what I really think is important for us to consider this morning.

The long struggle of the colonies that were now become states against a King and the King's representatives—the royal governors and proprietary officials in each colony—had made the colonists distrust and fear the possibilities for tyranny inherent in executive authority, an American President could rulers could enter into a treaty on their own ties the legislative portion of the power of ending war, the Framers gave the power to Congress to the Senate alone; a President could nominate and collect Taxes . . . To borrow Money on the credit of the United States . . . To coin Money and to raise Armies . . . To declare War, grant Letters of Marque and Reprisal . . . To raise and support Armies . . . To provide and maintain a Navy . . .) but also protect the executive from making the President and to restrain and act as a check on his authority: power to approve his appointments, even the appointments he made within his own Administration, even appointments he made to his own Cabinet; power to remove his appointees through impeachment—to remove him through impeachment, should it prove necessary; power to override his vetoes of their Acts. And the most potent of these restraining powers the Framers gave to the Senate. While the President, as Madison said, was given the "sole power of Impeachment," the Senate was given the "sole power to try all Impeachments" ("And no person shall be convicted of an Impeachment, by the united vote of two thirds of the Members present"). The House could accuse; only the Senate could judge, only the Senate convict. The power to approve presidential appointments and treaties was vested in the Senate alone; a President could nominate and appoint ambassadors, Supreme Court justices, and all other officers of the United States, but only "by and with the Advice and Consent of the Senate." Determined to deny the President the prerogative most European monarchs enjoyed of declaring war, and the power to tax as a whole, to House as well as Senate, but the legislative portion of the power of ending war by treaties, of preventing war by treaties—the power to do everything that can be done by treaties between nations—was vested in the Senate alone; while most European rulers could enter into a treaty on their own authority, the Framers designed to make the Congress a continuous body, with a continuation of good measures is inconsistent with every rule of prudence and every prospect of success.

What good is the rule of law if "no man ..."

Guarding against "mutable policy," he pointed out, requires "the necessity of some stable institution in the government." Edmund Randolph, as usual, was more blunt. "The object of this second branch is to control the democratic branch," he said. "It it not a firm body, the other branch being more popular and more directly controlled by the people, over will overwhelm it." Senators, he said, should "hold their offices for a term sufficient to insure their independency." The term sufficient, the Farmers decided, would be six years.

Now I'm going to skip to page 11.

The coat of constitutional mail bolted around the Senate was sturdy indeed—by design. Under the new Constitution, the power of the executive and the power of the people would not be very strong. The Senate would stand against these powers—to stand against them for centuries to come—the framers of the Constitution made the Senate very strong. Wanting to make sure the people against their rulers but the people against themselves, they bolted around it armor so thick they hoped nothing could pierce it.

And for many years the Senate made use of its great powers. It created much of the federal Judiciary—the Constitution established only the Supreme Court. Congress to "constitute tribunals inferior," and it was a three-man Senate committee that wrote the judiciary Act of 1789, an Act that has been called "all about the Constitution." The judiciary Act established the system of federal and district courts, and the jurisdictional lines between them, that exist today, and established as well the principle, not mentioned in the Constitution, that state laws were subject to review by federal courts. And when, sixteen years later, a new creation was threatened by a concatenation of the very forces the Framers had feared—presidential power and public opinion—the Senate saved the judiciary. In the end, the President signed it.

Now I'm going to skip to page 10.

Senators would also be armored against the popular will by the length of their terms, the Framers decided. Frequent elections mean frequent changes in the membership of a body, and, Madison said, from a "change of men must proceed a change of opinions; and from a change of opinions, a change of meas-
as protector of the judiciary in our system of government.

The desks (there were thirty-four of them by 1805) had been removed for this occasion, and the Old Senate Chamber had been arranged—i.e., it were a tribunal. In the center of one wall stood the chair of the presiding officer, Vice President Aaron Burr, as if he were ready to conduct the trial. The desks and chairs to his right and left were high-backed, crimson-covered benches, on which the senators sat, in a long row, judges in a court from which there was no appeal.

Mr. Caro goes on to explain the impeachment trial of Supreme Court Justice Samuel Chase; here again, the rule of law and the fact we are a nation of laws and not men built up by the Senate. It is the Senate's tradition to stand up for our liberty and for our law.

I wanted to bring this to the Senate's attention. I know my time is drawing to an end. At this point, I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, thank you.

The Democratic leader came to the floor and spoke, as many have on that side of the aisle, attempting to change the subject on the issue of jobs.

The number keeps coming up about 3 million jobs being lost in this administration since this administration took office. I want to share with you a chart that we made of the survey of the U.S. employment level. This includes everybody. The numbers that the Democratic leader referred to do not include everyone. It was a different survey of jobs. This is the most comprehensive one. You can see from this comprehensive survey, here we are: the most jobs in the history of the United States.

If these include all the jobs, whose jobs does the Democratic leader say don't count? What jobs don't count, according to the Democrats? If you are self-employed, if you are an individual doing work, you don't count. The Democratic leader is not going to count you as someone who is working.

If you are a domestic worker or you work for a private household, you don't count—you are not a worker; you don't have a job. If you are self-employed, if you are a domestic worker for a private household, you don't count. If you work on a farm, you don't count. If you are someone who works—it is probably some work that is done in this country—on a farm, according to the Democratic leader, your job doesn't count. If you work in a family-run business part time, you don't count. In fact, there are 8 million workers on the family businesses, households and self-employed, under the Democratic leader's survey, who don't count. We believe you do.

By the way, when it comes to paying taxes, the Democratic leader counts your taxes, but he does not collect your taxes. But, as far as being employed or not, for political purposes, you don't count. It is 136 million, a record and growing.

Why are they coming up here and talking about this? Because they want to criticize the President's plan for turning this economy around. It probably says they do not have a plan.

Mr. COLEMAN. Mr. President, will the distinguished Senator from the Commonwealth of Pennsylvania yield for a question? I want to talk about judges in a second.

Mr. SANTORUM. I am happy to yield.

Mr. COLEMAN. Is the distinguished Senator familiar with some of the statistics that came out recently regarding jobs and growth in the economy?

Mr. SANTORUM. I have seen some of them. In fact, they were revised a couple of months prior to the most recent report—I believe it was August and September—the net new jobs created on the original projection was 16,000. They have revised them up to almost I think 150,000.

Mr. COLEMAN. I believe about 50,000 double to over 100,000. As the distinguished Senator from the Commonwealth of Pennsylvania is aware, that payroll employment increased by 125,000 jobs in October.

Mr. SANTORUM. If you look at the last 3 months, almost 300,000 new jobs, net new jobs were created in this economy.

Mr. COLEMAN. Is the distinguished Senator from the Commonwealth of Pennsylvania aware that the gross domestic product—the way we measure growth in this economy—increased at a 7.2 percent annual rate?

Mr. SANTORUM. I believe that is the highest rate of growth in almost 20 years.

Mr. COLEMAN. Is the Senator from Pennsylvania aware of the actions that this Senate has tried to take to grow jobs? One of the things we attempted to do was to pass a bill regarding class action reform. Does the distinguished Senator from the Commonwealth of Pennsylvania believe that class action reform, if it were passed, would help grow jobs?

Mr. SANTORUM. I don't think there is any question that the drain on this economy is one of the major impediments to creating jobs, increasing the standard of living in America and giving a better quality of life for the average American.

Mr. COLEMAN. I ask the Senator from Pennsylvania, on the issue of malpractice litigation regarding doctors and the impact that has on the cost of health care, and the impact the cost of health care has on small business and growing jobs, does he see a correlation between the increased litigation costs and the impact it has on the condition of the economy?

Mr. SANTORUM. The No. 1 crisis in my State with regard to health care is medical lawsuit abuses.

Mr. COLEMAN. Would it be fair to say that our friends on the other side of the aisle have obstructed our efforts to pass malpractice reform?

Mr. SANTORUM. They have blocked every form of reasonable and balanced litigation reform that balances the interests of those who rightfully have a plea before a court for compensation and the right of society not to have outrageous awards, which make us uncompetitive, which raises the cost of health care, and which limits the availability of health care to all Americans.

Mr. COLEMAN. If the Senator will yield the floor—and I would very respectfully disagree with his last assertion that our colleagues on the other side of the aisle have no plan; they have a plan. The plan is to roll back the President's tax cuts. Listen to the candidates. They want to roll back that tax cut. The lowering of the tax rates has generated more income in the pockets of Americans.

Mr. SANTORUM. They want to roll back the reductions that the President put in place. They do not like the dividend proposal. The stock market has added $2 trillion in value. What does that mean to the millions of Americans who now participate in the market? You are talking about real wealth. You are talking about retirement security for millions of Americans. What is the economic plan of this administration passed by the Senate? And they would like to roll that back. I guess they do not like markets going up. I guess they do not like employment going up. I guess they do not like economic activity and job creation.

Mr. COLEMAN. Has my colleague from the Commonwealth of Pennsylvania talked to small business owners about the impact of accelerated depreciation?

Mr. SANTORUM. We saw in just the last few quarters the business community—which has really been lagging, and which is an indicator in all of the economy—as a result of the accelerated depreciation, they are increasing productivity which means higher wages for workers. It is a little bit of a challenge. If productivity goes up, that means higher quality jobs. They do not like employment going up. I guess they do not like economic activity and job creation.

Mr. COLEMAN. Has the distinguished Senator from Pennsylvania aware of the actions that this Senate has taken to increase the tax cut for families and businesses? That tax cut has generated more income in the pockets of Americans.

Mr. SANTORUM. They have put in place the dividend proposal. They do not like the dividend proposal. They want to roll back the reductions that the President put in place. They do not like the tax cut. The lowering of the tax rates has generated more income in the pockets of Americans.

Mr. COLEMAN. They want to roll back the reductions that the President put in place. They do not like the dividend proposal. They want to roll back the reductions that the President put in place. They do not like the tax cut. The lowering of the tax rates has generated more income in the pockets of Americans.

Mr. SANTORUM. They want to roll back the reductions that the President put in place. They do not like the dividend proposal. They want to roll back the reductions that the President put in place. They do not like the tax cut. The lowering of the tax rates has generated more income in the pockets of Americans.

Mr. COLEMAN. Has my colleague from the Commonwealth of Pennsylvania talked to small business owners about the impact of accelerated depreciation?
our friends on the other side of the aisle have a plan. The plan is to roll back the tax cuts. Again, look at the statistics. Look at what is happening in the economy. Any American being out of work is a terrible thing. I am a former mayor. I always understood the importance of the best welfare program, the best housing program, and the best health care is jobs. But you have to plan a vision. The Bible said people without a vision will perish. This bill has a vision, and that vision is producing results. We are seeing it. There is an increase in consumer spending as a result of tax cuts.

Mr. SANTORUM. I thank the Senator from Minnesota for his questions. I think we settled this issue pretty clearly as to the importance that we have put on jobs and the response of the Republicans in the Senate and this President to grow the economy as a result of a recession which started in the Clinton administration and which was exacerbated by 9/11. The President responded with certainty and with a dynamic plan, with an innovative plan, and it is working in our economy. Now we turn to another area where the Democrats have obstructed; the issue of judicial nominees. We are spending the evening here tonight on a bill that won't pass. We are going to ask for votes. We should be able to get 20 hours of debate equal to the vote on the nomination, and it is working in our economy.

I ask unanimous consent that I read be on the floor that we are going to ask for votes. We should be able to get votes—up-or-down votes.

Mr. PRYOR. I object, Mr. President. The PRESIDING OFFICER. Objection is heard.

Mr. SANTORUM. I have just asked that a justice who was elected in the State of California by 76 percent of the people in the State in this country, who was elected by 76 percent of the people in the State of California, who is now being assailed as not being within the mainstream. How will she be able to adjudicate in the mainstream? This is the stream that 24 percent of Californians are in compared to the rest of America? That is not mainstream? That is extreme. We are not talking about the mainstream judges. We are talking about putting on extreme judges. This is a travesty. If this woman were nominated 10 years ago, we wouldn't even have had a vote on the floor of the Senate; or 5 years ago, she wouldn't have even been voted on. We would have confirmed her with a voice vote, and everybody in this Chamber knows it.

This body was once a place where sense of history and duty and responsibility meant something, to be a steward of this famed institution. It used to mean something to be a Senator to uphold the tradition of this body.

That is why for 214 years no one put their partisan whim, their short-term interest groups around Washington, DC now carry much more weight than the Constitution. This is a humbling experience to describe the feeling that I have, elected just this year to the Senate, to these hallowed halls. I listened to the reading from my friend and colleague from Arkansas. I was humbled. It is a humbling honor to be part of this body, to be part of the flow of history, a flow that has helped develop the greatest nation in the world. We got there due to divinely inspired guidance from the Founders of this great Republic who gave us a Constitution that provides a sense of clarity of our roles and responsibility. If we decide to only abide by it 98 percent of the time and the folks who follow us decide to abide by it 98 percent of the time, we are in trouble. My colleagues across the aisle have a sign that says 168 to 4. They are proud of that. I am absolutely stunned. If the airline I flew back and forth to Minneapolis would advertise 98 percent of the time they would get me there safely, I wouldn't fly. My amendment to the Constitution: Right to bear arms.

In Minnesota, we bear arms. A lot of folks were out deer hunting last weekend there. If I were to tell a group of 172 Minnesotans that 168 of you have the right to bear arms, but not 4, 98 percent, I don't think they would be very happy Americans.

I could go through every amendment. Third amendment: no soldier shall in a time of peace be quartered in any house without the consent of owner, nor in time of war but in a manner prescribed by law, the third amendment to the Constitution. If I went to a group of homeowners and said, you are going to quarter soldiers, 2 percent of you are, they wouldn't be very happy, and they shouldn't be.

We took a solemn oath to preserve and defend and abide by the Constitution of the United States. That is how we got here. That is our obligation and once we got here, it wasn't partial, it wasn't an almost thing. It wasn't a but-for thing, and it wasn't a 98 percent thing. It was to preserve the Constitution.
The fifth amendment to the Constitution: Individuals cannot be compelled to testify against themselves. Can you imagine if we said that applies 98 percent of the time? It doesn't work that way. It should not work that way. That is why. You just have to think about this. Again my colleague read the history of the Senate. It is a magnificent history. But the public out there has to ask the question: Why in the over 200 years of this Republic has there been no and will now a partisan filibuster that has stopped judges from being confirmed.

Yes, we have the right to advise and consent. The Constitution gives the President the opportunity to appoint judges. We are then to advise and consent. He nominates. We advise and consent. But we do it by a simple majority. We cast our vote. If you don't agree, you vote them down. If you agree, you vote them up. But for the history of this Republic, we have a process which we abide by, the Constitution. That was reflected in the readings from my colleague from Arkansas, Treaties, as he noted in his comments, the Constitution a supermajority, but not judges.

Mr. TALENT. I wonder if the Senator from Minnesota will yield for a question.

Mr. COLEMAN. I yield.

Mr. TALENT. I wonder if the Senator knows how many court of appeals appointments Presidents on average have gotten over a 4-year term since Jimmy Carter was in office. I went back and looked. Does the Senator know how many court of appeals judges the other side has filibustered or will filibuster by Friday? It is six. 113 Does the Senator know how many more they have threatened to filibuster or will filibuster by Friday? It is another six. I wonder if the Senator is aware of the fact that out of 40 court of appeals judges President Bush figures to get in a 4-year term, the other side has filibustered or threatened to filibuster is not four out of 168. It is 12 out of 40, or 30 percent. I don't know how the Senator feels about that. I wonder if he doesn't think that is a more relevant figure that maybe we should be using.

Mr. COLEMAN. Even if it was 2 percent, we don't disregard the Constitution. Certainly if you are looking at 30 percent, that is outrageous. That is outrageous. One of the things that troubles me as a new Senator, as is my colleague from Missouri, as is my colleague from Arkansas—I think we still have this great kind of sense of awe, but one of the things that troubles me—and I haven't been here, but I have heard so much of the debate—they say, they say it is the past. Let the record be very clear.

Of the past 11 Presidents' judicial nominees, there were 2,372 confirmed. None were stopped by a filibuster. This whole thing about a reason why you did to us in the past, of course, now we are doing to you. Then what will those who follow us do? What are the consequences of that?

I will tell you. I will stand on the floor of the Senate and say I will apply the same standard to judges with a Republican President that I will if there were ever to be a Democratic President and I am serving in this institution. Are they competent? Are they committed to upholding the Constitution? That is what the judges we are talking about have said. You have to get right to it. They are being opposed because there are special interest groups who don't like their position or their philosophy, probably abortion. J. Judge Pickering, by way of example, is somebody. When I ran for the Senate, I had a debate with the former Vice President of the United States, Walter Mondale, a magnificent American, a great public servant, who I simply disagreed with on certain issues. But in the debate that came up, I talked about it at that time, saying: We can't obstruct. The PRESIDENT OF THE UNITED STATES. The time of the Senator has expired.

Who seeks recognition? The Senator from New Jersey.

Mr. CORZINE. Mr. President, I would like to start with a little bit of perspective on this issue, and I would like to respond a bit to the economic arguments I heard discussed over the last 30 minutes which are sort of not in touch with reality, certainly not in touch with the reality of those folks who live and work in New Jersey and those across the country.

Let's start with a simple proposition that there are 172 nominations before the Senate. The commonsense reality is, 168 have been confirmed, 4 have been held up. I hear this view that people should not have the ability to express their point of view about judicial philosophy, temperament, the perspective of the individual judges. But I don't know what we are here for if we are not supposed to exercise our judgment and work within the rules as established. One hundred sixty-eight to four seems to be a pretty favorable ratio by most human standards anywhere across America, when you look at judgments about the quality of folks you would interview for a job. It is sort of common sense.

In my own State of New Jersey, we are six for six, including a circuit court judge. We worked very carefully with the folks at the White House about what is most appropriate in that particular sense. That has not happened across all of America. That is what people are arguing is now the case with the four who are on this board. There is a legitimate right to debate one's judicial philosophy. The rules of the Senate are very simple and have been used many other times:

This idea that there have been no filibusters is blatantly false. We can go back to the Abe Fortas situation, and then there were 20 people who were opposed it may not have been the entire game but it was certainly the starting point for holding back, going forward with judicial nominations. There are a number of them. I am sure these have been identified here on the floor, whether it was the Fortas nomination for Chief Justice; Rosemary Barkett, a judicial nominee, had a similar situation; Supreme Court Justice Steven Breyer, Judge Page, Lee Sarokin, and Marsha Blackburn. It has been argued and researched that 63 judicial nominees of the committee and 6 judicial nominees on the floor have been filibustered in the past. It is not something that is new. But we are really by this view, I don't think we are focused on a technique that has been used to stop four judges many of us on this side of the aisle find extremely pertinent, when 55 Clinton nominees were not given hearings to be even discussed, 55. I could read the list of them. That is about, if my mathematics are correct, relative to the number, 30 percent stopped, cold dead stopped, without even having an opportunity to be reviewed, 55 Clinton nominees against 4 Bush nominees.

I don't know that it serves a useful purpose to say, we did this and we did that. The fact is we need to have a serious review of judges, and people ought to be able to express their opinions. We ought to work within the rules and whether they think they are qualified on the basis of standards that are generally accepted: Judicial philosophy, whether they will uphold the Constitution, settled law, all those kinds of issues.

The fact is in another time or another place, people primarily used the committee process to keep judicial nominees from even being reviewed. What is the result? I want to reconfirm that 98 percent of those nominees President Bush has put forward have been confirmed. Only 2 percent have not. Again, that is an overwhelming commitment to moving judges through this process and significantly better than has occurred in previous administrations.

Again, the filibuster has been used as well. I just don't think we are reciting facts properly and history right.

There is another very fundamental situation here. Contrary to the claims we hear, we think there is some kind of vacancy crisis in our Federal courts. I would like to have 100 percent myself, but 95 percent of Federal judicial appointments are now filled. When we had a change of administration, before that, that 55 against the process that went through, it was only 75 percent. There was a distinct process of holding back, pushing back with regard to what the folks on the other side were prepared to do when working with another President. That is why when people talk about 168 to 4, that perspective is not being brought to the discussion. It is very simple: 55 folks stopped in the last 4 years, and there has been 4. People can argue that somehow from their perspective this is not outside the mainstream. Some were not brought up for discussion in the committee. But the process we are using here is to make sure the debate on the
floor brings out these extreme views, operating within the rules. I think we have facilitated a significant improvement in the ability of the courts to fulfill their function. That is what is the practical element. Those 168 are real because we are dealing with real issues the American public has to deal with. Our court system is actually functioning better than it has because we have been very facile in making sure judicial appointments have gone through. It is just a matter of perspective.

Mr. TALENT. Will my friend from New Jersey yield for a question?

Mr. CORZINE. Certainly.

Mr. TALENT. Are you aware with regard to any of those committee actions or inactions to which you refer, was there ever a case where a majority of the committee expressed a desire to vote up or down on those nominees?

Mr. CORZINE. The Senator from Missouri may have reviewed all the transcripts from those committees. I have not. I do not know the President of the United States sent nominations here and in most instances they were. The 55 that I have, and there are a number that have not been reviewed, there was an attempt to try to get a number of those before the committee, and they were not allowed to be debated. It never got started. I can't speak to all 55. I have not reviewed all of the documentation.

Mr. TALENT. I am not going to intrude on the Senator's time. He referred to a lack of respect. I think the reason is because I don't believe there has been a situation where a majority of the committee or body wanted to vote up or down on a nominee when they didn't have that chance. I thank the Senator for yielding.

Mr. CORZINE. I appreciate the discussion with the Senator from Missouri.

What we have here, in my view, at 20 minutes of 4 on a Thursday morning, is a view that there were different techniques used by the folks on the other side of the aisle to restrict a President from having the judicial appointments that we want to take those holes and want to take away fundamental purposes of how that works in this world. That is outside the mainstream. That is difficult for me to understand. Therefore, I think it is perfectly reasonable to question whether that is an appropriate appointment to one of our most important appeals courts.

So, again, one of those four—or maybe it will be six, as the Senator talks about, by the time we get to whatever hour in the morning we vote on this stuff on Friday; maybe that will be six. I think it is important as we review the record and, within the rules, use our judgment to decide whether someone is in the mainstream of judicial philosophy. Apparently, that was happening in previous administrations for 55 folks; they were just using a different technique as opposed to this particular one.

Again, I go back to the fundamental issue. It left a gaping hole in the ability of our courts to deal with the American public. What is the Federal courts—the 75 percent fill ratio, or 25 percent vacancy ratio. Now we have a 42 percent vacancy ratio. I think, ultimately, somebody is going to say what is going on here? Are we actually dealing with the people's need, which is having the judicial system that actually works.

I have to talk a bit about the economy because I heard some other questions, and we talked about payroll employment and unemployment measures. Frankly, I don't know a single serious economist in America who doesn't say we measure the standard job performance of this economy, this country, by looking at payroll employment. It is accepted as the base standard by economists across the country. The kinds of comparisons to other standards, those are all well and good. I think they reflect, frankly, the growth in the population.

We are not creating jobs rapidly enough to actually reduce the level of unemployment. That is why payrolls have always been used as a basic issue, because it takes into account the growth of the population as well, which, by the way, we are at about the lowest—I think we had a little uptick, a minor uptick in the last 2 months in the percentage of Americans who are working out of the total population. The fact is we have lost something approximately 9 million Americans are unemployed. That is the real deal. It is not whether it is growing—certainly, it is a painful experience for those who lost jobs, but there are 9 million unemployed Americans who want to work and cannot do it. It is up by 3 million since this administration. What is more important is to get to the basic fact, which is 9 million Americans are unemployed. That is the real deal. It is not whether it is growing—certainly, it is a painful experience for those who lost jobs, but there are 9 million unemployed Americans who want to work and cannot do it. It is up by 3 million since this administration took hold. Nobody is pulling that number out of the air. That is why we are trying to talk about those jobs versus those tools within the perspective I tried to relate.

When you have 95 percent of the positions filled in the judiciary, I think somebody is doing their job filling those holes. But we are not doing the right things about creating jobs for Americans. That is just fact. It is not hyperventilation. Nine million Americans are looking for work and they have extended unemployment in America. That is why I think it is important to get to the basic fact: nine million employable Americans are looking for work. We are not spending any time talking about how we are going to create jobs here, except we are going to
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have tax cuts every hour on the hour between now and the next decade, which will put debt on my kids and then their kids to follow. We may get some job growth as a function of doing this, but was it efficiently provided to the needy by people? I think that is very hard to say.

UNANIMOUS CONSENT REQUEST—S. 224

Mr. President, I ask unanimous consent that the Senate return to legislative session and proceed to the consideration of calendar No. 3, S. 224, a bill to increase the minimum wage, that it be read a third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. COLEMAN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. CORZINE. Again, I think we have our priorities mixed up here. There are a whole bunch of folks in this country who benefit enormously from the minimum wage. When they go out and buy things, that will stimulate the economy. One of the great opportunities for us is to deal with some of these economic issues that we are instead of haranguing. I think, unfortunately, about these four folks, about whom I think there is legitimate reason to have a debate—where they stand on judicial philosophy, and how their history is, or how their writings fit with settled law and from a constitutional perspective.

Again, we have put 98 percent of the nominees to work. We have not done anything about the 9 million Americans who don’t have a job, who want to work. There are a whole bunch more who have dropped out of the system—I think about 4 million, if memory serves me correctly. It strikes me we have our priorities mixed up. I don’t understand it. By the way, I will go through some other statistics, that is actually mind-boggling to me that we are spending so much time on four people, when the unemployment rate is 6 percent, and 9 million folks are without jobs. That is up from 4.1 percent 3 years ago. The poverty rate is up from 11.3 percent to 12.1 percent; I think that is 4 million people. The percentage of uninsured has gone up from 14.2 percent to 15.2 percent. About 2 million people have lost their health insurance in the last 3 years. The deficit has gone from a $236 billion surplus to a $304 billion deficit.

If somebody was running my company and they had a negative cash flow of 500 some odd billion dollars, I think I would find a new CEO. The national debt went from $5.6 trillion to $6.8 trillion. I guess that is for my grandkids to worry about, and it will be explosive. And judicial vacancies have gone down from about 10 percent to 4.6 percent. What is this picture? I just don’t know what the priorities are in the scheme of things. We are talking about four people and we have 9 million Americans and a whole bunch who haven’t had an increase in the minimum wage in 7 years. We cannot even get a vote on it and haven’t been able to get a vote on it. They are not interested. Does that make any sense? I don’t get it.

This is the right priority where I come from, or for most Americans. I would rather fight like crazy for the 9 million people who want to work than just four judicial nominees out of the 168 judges who have already been approved. It is very important, in my view, to have proper prioritization and perspective on what is going on here, particularly when you look at it in the context of other techniques being used to hold up a whole bunch of judges at another period of time. We are talking about four here. I am no great legal constitutional scholar, but 168 to 4 is a pretty real number, and 55 folks left out by the other side is a real number.

I see my very good friend from Arkansas. It looks like he is chomping to go to work here. I would very much appreciate it if he has a comment on either of the things I have said, or I am sure he has more brilliant remarks to make.

I yield the floor to my friend from Arkansas.

Mr. PRYOR. Mr. President, I am not sure we have anybody in this Chamber or in this body who is more knowledgeable about the economy and economic principles than our colleague from New Jersey. He has proven himself on the field of battle on these economic issues.

How much time do I have left?

The PRESIDING OFFICER. Seven minutes 15 seconds.

Mr. PRYOR. I want to spend the next few minutes talking about a man who was one of President Bush’s nominees for a judicial post in the Eastern District of Arkansas. He is from Arkansas. I got out of Judiciary on May 1—over 6 months ago. He got out of Justice and he has been languishing on the Executive Calendar ever since. In fact, today I sent a letter to the Senate majority leader, BILL FRIST, and the judiciary chairman, ORRIN HATCH, inquiring about the status of Leon Holmes’ nomination, asking them to bring his nomination forward. If I may, I would like to read a portion of this letter into the Record. It says:

The letter goes on basically asking the majority leader and chairman of the Judiciary Committee to bring his nomination to an up-or-down vote. There is no effort on the Democratic side to filibuster Mr. Holmes’ nomination, even though I have no doubt a number of my Democratic colleagues will vote against him. I remain perplexed as to why he has not come to the floor yet.

I am puzzled why the Republican leadership has yet to bring up his nomination. I hope I will receive a response to the letter soon. So as Paul Harvey says, that is the rest of the story.

One reason I wanted to tell this story is because I receive phone calls in our office from Arkansas and around the country asking me to vote for certain of President Bush’s nominations. Our staff will tell them: Senator Pryor already voted for 67 of President Bush’s judicial nominations, and their response is: ‘no, he hasn’t.’

Well, sure I have. See, the rest of the story is not being told. I think a lot of people around the country perceive we are blocking every single judicial nomination that comes through this place, but that is not true. As Senator Corzine mentioned a few minutes ago, the 168 nominations is a historically high number, just like the 96 percentage number is a historically high percentage for approved judicial nominations. I think you need to read that and repeat in American history.

We need to keep this in context. Here I am from Arkansas, and I support one
of the President's nominees, but I cannot get him to the floor. There is no obstruction on Mr. Holmes, and there is not going to be a filibuster. I have talked to many Senators on our side and on the Republican side. Yet he has not come out yet, and I believe he will not filibuster two more on Friday.

There is one other thing I want to mention in the time I have remaining, and that is, back in April, I signed a letter with a number of my Republican colleagues, freshman colleagues, about this judicial nomination process. I asked the leadership, Senator Frist and Senator Daschle, to try to work together with the White House to try to make sure we don't get to this point where we are this morning—that is, gridlock over some of these nominations.

There is enough blame to go around, and the last thing I want is a 30-hour blame-a-thon. I don't want to participate in that. But I do think we need to revisit what we are doing. I think we need to ask ourselves the question, have we not been consulted? Have they made the effort to consult and, in fact, they have been deliberately shut out of the process. I think we need to work with the White House to try to make this better.

I think the White House has a responsibility. We all have some responsibility. I think if we work hard, we can make this process work much better.

How much time do we have on our side?

The PRESIDING OFFICER. The Senator's time has expired.

Mr. TALENT. Mr. President, I wish I could say it is a pleasure to be here with you at 4 o'clock in the morning. It is certainly always enjoyable to see you. This is a subject that is certainly worth discussing and it is extremely important. I have not been all that involved in it before. There are a number of outstanding issues on which I have been working.

I am here this evening because, when I look at the qualifications of the four nominees we are considering, Judge Owen, General Pryor, Judge Kuhl, and Justice Brown, those qualifications to me seem so outstanding that it seems that, had these nominees come up in the past, they would not only have been voted on but they would have been approved, and not only approved but approved by an overwhelming majority. Now the Senator from Pennsylvania said a little while ago, approved by a voice vote. Now they are being filibustered.

For the first time in the Nation's history, court of appeals nominations by the President of the United States are being stopped on the Senate floor by a minority using the filibuster. It never happened before. They filibustered four out of the past 78 nominations, and for the past year, they will not filibuster two more on Friday.

I understand there are six other nominations the President has made to the court of appeals for whom there is a threat of filibuster. So it is quite possible that by the end of the year a minority of this body will have filibustered and stopped on the Senate floor, 12 court of appeals nominations, and that has never happened, not even once in the history of the United States.

There are some who stand here and say this is nothing new. It is not only new, it is unprecedented. It is not only unprecedented, it is action on a scale that has never been taken. It is certainly always enjoyable to see people who know people who have integrity and a reputation for integrity. They look for people who they know or people who they know, know. In other words, if you want to be nominated to a judgeship, you try to talk to people in the White House, and they try to talk to people who know people in the administration. So you contact your Senator or you contact somebody in the Department of Justice, just like applying for any other job. If you know somebody, you contact him and he will get down here. And then the Senate votes to confirm.

How has the Senate done that in the past? The Senate has acted as a kind of check. The Senate looks at these nominees to radke sur in they have the positive qualifications that the President has said they have. The Senate looks at nominees to make certain they have minimum achievements and experience so that a lawyer, looking at a nominee, would say yes, that is what a person ought to have to be on the Federal court bench.

The nominee may have been a law professor. They may have been a practicing lawyer or a public official. Have they been out of law school long enough, received awards, published in their fields, litigated enough cases? The Senate looks at that for a minimum. We don't want to confirm someone where the Senate and the country would look at that person and say, no, they haven't been out of law school long enough to serve on the Federal bench.

Then, of course, the Senate looks at integrity. That is really a negative check: to make certain what they don't have. To make certain that they don't have stains on their record such that they should not serve on the Federal bench. They didn't cheat in law school. They have not been found guilty of ethics violations in the practice of law. There are not any notorious examples of incompetence in their background.

I love my friend, the senior Senator from New York. Nobody from Missouri had a chance to vote for him. We have one President. He makes the nominations. The Senate's job is to vote to confirm. How has that job been conducted by the Senate through these years? Has it been a gridlock or has it been a confirmation of the President's nominees?

When the President nominates, what do Presidents traditionally look at? What do you think? They look, first, at personal integrity. They want to nominate people who have integrity and a responsibility there.

And, of course, Presidents look at qualifications. They look at the achievements of prospective nominees in particular fields and then they look at biographical information. They look for relevant biographical information that may be specific to that appointment. Perhaps they are looking for a particular ethnic diversity or geographic consideration. Then the President and Department of Justice put all this together and they pick a person. They pick a person and they send him down here. And then the Senate votes to confirm.

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That is what the Senate has looked at in the past: where nominees have met those qualifications; had that minimum that the Senate looks for; have not had the negative things the Senate wants to make certain they have not had. In the past, those nominees got a hearing. Those nominees were confirmed by overwhelming majorities, even by Senators who were of a different party, who disagreed with their jurisprudence. That is what has happened in the past and we have had a tremendous break from that precedent and that tradition in this Senate.

Of that action in the past—some here have said that the Senate should not be a rubberstamp. Was the Senate a rubberstamp for 200 years? No, it was not. What the Senate did was show a respect for the institutional separation of powers, which a minority of this Senate now refuses to show.

Let’s suppose families have, in their own way, constitutional arrangements just as this country does. Let’s suppose that a typical American family, the husband and wife have talked about who is going to handle the finances. They have decided that because the wife is maybe better at those things, or better able to handle those things, that the wife is going to handle the finances. If this is beginning to sound like my family, the analogy is pretty apt. So the wife in this specific family makes decisions regarding investments, and then goes to the husband and says: What do you think, I would like to put some money in this? Or I would like to invest in this thing.

The wife gives him the benefit of the doubt. Is that a rubberstamp? That is a recognition, then, of the tradition of that marriage in that case. That has traditionally done this because that is how it is set up. It is not a rubberstamp; it is giving the benefit of the doubt, when appropriate, according to the arrangements that have traditionally prevailed in that family. That is what the Senate did for 200 years and that is what the minority is not doing now. That is why we are losing perspective about it.

I will say this to my good friend from New Jersey, who is accusing us of losing perspective. Yes, we are losing perspective because about a quarter of the President’s nominees to the court of appeals have been filibustered or threatened to be filibustered; because the Members who are filibustering want to be consulted. They want to be the ones who make the nominations when nobody has a chance to vote for them for President. That is enough to cause us to lose perspective.

Why has it changed? What is causing this, then? Open.

My friend from Pennsylvania asked that: Why? Why are we doing this? It’s disrupting this body, it’s dividing us, and it’s an injustice to these people. I am going to get to that at the end if I have time. The worst thing about it is these people, who should be confirmed, or would have been confirmed 10 years ago, deserve to serve. They worked hard and millions of people around the country have heard the kind of thought that we have. They worked hard and they are not wrong with them because we can’t even get a vote. It is not right. Why has it happened?

I hear different things. I don’t know. I talked to lots of people. I hear things like that members on the other side at some point went to a retreat and a bunch of law professors met with them and told them if they didn’t do something like this there would be an imbalance in the Federal courts. If that is true—I hear this, I don’t know—I can immediately see a basic part of the problem, because we have law professors giving advice about something besides the law. I have a rule that when law professors give advice about some other issue, it is almost always wrong. I say this as a person who used to be a kind of law professor. I never actually made it. I was a fellow, an adjunct professor. And they are brilliant and you get them out of their field and it is risky to take their advice about anything.

Let’s go back to imbalance. Going back through the Carter Presidency, which is about 26 years—the last generation in the modern era. In the last generation, the Republican President 14 years, a Democratic President 12 years. By the way, I am going to give overall figures for district court and court of appeals numbers but they don’t vary. If you break them out and separate them, they don’t vary that much.

President Carter had confirmed 265 nominees to the bench; President Clinton, 377, for a total of 644, which is about 33 confirmed per year. President Reagan confirmed 348 for 8 years. The first President Bush had 195. Up to this point the current President Bush has had 168, for 747 over 14 years which is, Mr. President, about 53 per year.

Where is the imbalance? That a Republican President for 14 years, Democratic President for 12 years, each got about 53 per year and it is the same basically whether you break it out for court of appeals. They each got basically 10 court of appeals judges per year. There is no imbalance.

We have had balance for the last 200 years, and the reason it has worked pretty well, is that the people have elected Presidents from different philosophies and different parties. That is how you get balance. The only way you get imbalance is if you have Presidents of one particular philosophy or one particular party elected year after year, term after term after term, and that has happened and there is a technical term; called representative government.

Yes, if you lose a lot of Presidential elections in a row, there is going to be an imbalance on the Federal bench. That is the way it happens. The only time it has happened in the 20th century, by the way, is when the Democrats had the White House more than 20 years in a row, through President Clinton, and then through the only President ever from Missouri, our great Harry Truman. I don’t recall hearing Republicans filibustering and claiming imbalance at that time.

How much time do I have left?

Mr. TALENT. I have 16 minutes.

What is the other argument I hear over and over? This is why I think it is really working, and I respect this because it reflects a sincere philosophical conviction. I respect that. One of the things I tell people as I travel around and talk about the Senate and about the Congress is that I am not an institutionalist; I don’t stand up and wax on and on about how great the Senate is, although it is a great honor to be here. But I will say about my colleagues, that most people who believe out there in the country who have convictions are wrong. That is why we are here at 4 in the morning. That is the one thing that unites us. We are here because we have convictions. We all have other places we could be—in bed. We are here because we have convictions.

The other reason, which is what I really think is working here, is out of conviction, the sense that these nominees they are filibustering or threatening to filibuster are extreme. We all know what they mean when they say that. We use codes here. It means they are too extreme on social issues. Those who are filibustering disagree with these nominees on the social issues, and particularly, let’s say it, that one big social issue: abortion. They disagree with them on that. So they are too extreme to be confirmed, too extreme to vote for, too extreme even to have a vote, let’s say. They disagree with them on the social issues.

I have to say, because I have convictions on this, too, that we ought to look at what a definition of extreme is here. A lot of folks who are saying this voted against the ban on partial-birth abortion. I respect their conviction and their views deserve not to be disqualified, because they are honest people, and their views deserve respect. People who hold those views deserve not to be disqualified, held as unfit for office under the Constitution of the United States, just because we disagree with them.

My wife and her law firm visited Washington over the weekend so I
Mr. TALENT. Ten minutes left to introduce.

Mr. SANTORUM. Ten minutes left to introduce.

Mr. SANTORUM. I want to focus on the human element a little bit. How much time do I have left?

Mr. TALENT. The PRESIDING OFFICER. Ten minutes.

Mr. TALENT. Ten minutes left to inflect myself on the Senate at 4:20 p.m. I think I will talk a little bit about Judge Kuhl. I have gone over her background. It is really extraordinary. I am a lawyer. I actually clerked on the court of appeals in a great judge, a good man, Richard Posner of the Seventh Circuit. I know something about Federal judges and how they get there. I don’t mean any disrespect. I am trained well enough as a lawyer not to do that. I guess we are protected by the speech and debate clause here. They couldn’t come after me if I didn’t respect that. I respect Federal judges. I wish they all had the qualifications these people do.

There are some of them who got on the court of appeals because they knew somebody; in some cases, because they knew somebody in this body. People have been nominated to the Ninth Circuit. She has been a judge since 1995; before that, for 9 years she was a partner in a prestigious Los Angeles law firm. She was a litigator. We can forgive her that. From 1981 to 1986, she served in the Department of Justice as Deputy Solicitor Attorney, as Deputy Assistant Attorney General, and as Special Assistant to Attorney General William F. French Smith. She argued cases before the Supreme Court and supervised work of other attorneys. She clerked for Judge Anthony Kennedy, then a judge in the Ninth Circuit and now a member of the Supreme Court. In 1977, she graduated from Duke Law School. She has extraordinary bipartisan support. Listen to what people say about her.

Vilm Martinez, former Director of the Mexican American Legal Defense and Educational Fund, said:

I’m a lifelong Democrat. . . . Even though I don’t share the same political views, necessarily, I consider her mainstream. . . . She’s careful and she’s thoughtful. She’s been an excellent [state court] judge, and I think she’s a superb 9th Circuit judge, one who will approach that job the way I think that job should be approached: with great care and deference.

I wish everybody in this body had the broadmindedness of Vilm Martinez. Congratulations, Judge Martinez.

Twenty-three women judges on the Superior Court of Los Angeles say:

I judge Kuhl is seen by us and by members of the Bar whether as a fair, careful and thoughtful judge who applies the law without bias. She can’t get a vote. Don’t tell me the Senate has operated this way. It simply can’t operate the way it has in the past. They have filibustered, or they are threatening to filibuster, about a quarter of President Bush’s nominees to the circuit court of appeals. Not one ever before successfully filibustered on this floor; not only now before the support of the leader of either party. It isn’t right.

Mr. SANTORUM. Will the Senator yield? Mr. TALENT. I will yield, and the Senator is probably doing the Senate a favor by getting me to yield.

Mr. SANTORUM. I want to review what the Senator talked about. See this chart: 168, but that 168 includes district court. Mr. TALENT. Absolutely.

Mr. SANTORUM. Explain the difference between a district court judge and a circuit court judge when it comes to matters of law and the impact of those decisions.

Mr. TALENT. I am happy to comment on that. Everybody knows what is going on here. They are filibustering the court of appeals judges because, yes, they are appellate judges. They are the more important ones. They are letting the little fish go. They are filibustering, or threatening to filibuster, about a quarter of the court of appeals judges. Another reason is they think some of these people might get nominated to the Supreme Court.

Mr. SANTORUM. At the District of Columbia level are there more judges, or judges who basically preside over trials and the circuit court or appeals courts decide matters of law that apply across the circuit, and it can have an influence in other circuits? Is that correct? Mr. TALENT. That is absolutely correct.

Mr. SANTORUM. Most decisions that are appealed from the trial court go to the appellate court, or the circuit court, but very few go up to the Supreme Court. Is it not true the appellate court makes the final decision in a lot of these cases?

Mr. TALENT. I have read about a group of law professors concerned about the imbalance of the court of appeals. That imbalance just doesn’t exist. The same statistics I read before show Presidents back through Jimmy Carter have had around 10 court of appeals appointments per year. It is a little bit more for the Republican Presidents; a little over 10, and a little under 10 for the Democrats, but there is no real difference. That is why it is very balanced, and we are just coming to a little bit more for the Republicans and the Democrats. The next election is probably going to be close. I think that is probably what is working here. I hope my friends on the other side of the aisle who are filibustering don’t continue to compare apples to oranges. Let us at least be fair. If you want to talk about how many were filibustered, it isn’t 4 out of 168. If they follow through on this threat, it will be 12 out of 46, which is about a quarter of them. That isn’t a high point, even though that is just about a quarter. That means that only around 75 percent of them are going to be given an up-or-down vote.

My friend from Arkansas and I work on a lot of things together. She is a great Senator. She was saying if her kids brought home 98 percent in math, she would be pretty pleased about it. I would, too, if my kids brought grade home. I have three kids. If they brought home 98 percent in math, I would be a little bit concerned, particularly when in the past it has been 100 percent.

Mr. SANTORUM. I think the analogy of the Senator from Minnesota—he is a Senator from Minnesota, he says if we are forcing what the Constitution requires 98 percent of the time, or much worse, 75 percent of the time, I think the American public would have a right to throw us out on our ears. I think the concept that the Senate to enforce the Constitution 100 percent of the time. Anything less than 100 percent is an abdication of that oath we walked over
there right there on those steps before the Vice President and took. The oath has something to do with defending the Constitution—not 98 percent of the time, not 75 percent of the time, 100 percent of the time. That is not what is going on.

Mr. TALENT. I certainly thank the Senator from Pennsylvania.

How much time do I have left, if any? The PRESIDING OFFICER (Mr. BURNS). The Senator has 2 minutes 22 seconds remaining.

Mr. TALENT. I thank the Senator for his clarification. I think that it is very important.

In the remaining time, I will just close by reading a little bit more about Judge Kuhl. These are real people who are getting unjustly treated in this body which is supposed to be about justice.

Here is what Gretchen Nelson said. She is the officer of the Litigation Section of the Maricopa County Bar Association and a prominent plaintiff's attorney. She probably gave money to my opponent in the last election. Here is what she said:

I am a life-long Democrat. I am also a plaintiff whose political views are and always have been liberal. I firmly agree with U.S. Supreme Court's opinion in Roe v. Wade, and I trust that the decision will remain viable. I am opposed to the appointment of any judicial nominee who is incapable of ruling based upon a considered and impartial analysis of all the facts and legal issues; that any woman can in any matter. Judge Kuhl is not such a nominee and she is well-deserving of appointment to the Ninth Circuit.

That is what Senators would have said 5 years ago on this floor. Don't say it hasn't changed.

Anne Egerton, former law partner of Judge Kuhl:

I understand some have raised concerns about Judge Kuhl's commitment to gender equality and reproductive rights. I don't share those concerns.

Anne Egerton goes through her background with the Arizona Women's Political Caucus.

I have been a registered Democrat for 30 years, and I have supported Democratic legislator. I have no reservations in recommending Judge Carolyn Kuhl for appointment to the Ninth Circuit. I know her to be committed to the rule of law and the application of the constitution to the area of reproductive freedom; that precedent, of course, includes Roe v. Wade and the many cases which have applied.

I don't think there is anything more to be done. I wish we could get consent to vote on these nominees and then we could go on to other business of the Senate. This is important.

What is happening to these people is wrong. What is happening to the Senate is unfortunate and bad for the country. That is why I am here and that is why we are all here at 4:30 in the morning.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Rhode Island.

Mr. REED. Mr. President, we are here this morning to discuss the status of judges. My colleagues on the other side of the aisle have been rather adamant in claiming they may have been mistreated. I think there is a contradiction in their argument. Frankly, what I witnessed here as a Member of Congress over this period is the Clinton administration was a process of systematically denying the nominees of President Clinton—qualified, indeed, very qualified nominees in their positions on the Federal bench—doing it not on the floor as we are doing here by the pocket filibuster, what I would describe as a pocket filibuster. We are all aware of the notion of a pocket veto. The Constitution allows the President a certain number of days to exercise his veto, but at the end of a session he doesn't have to exercise that. He simply has to put the bill in his pocket and it will not become law. That is essentially what the Republican majority did here to so many President Clinton's nominees. They refused to give these individuals hearings. They refused to take up nominations or to seriously allow a process for the committee to deliberate and to consider and to recommend them for an up or down vote.

Today, for the majority to come and claim that they are being mistreated and that the Constitution is being violated is to me a profound contradiction because they have very determinedly and consistently denied even a hearing to so many well-qualified individuals who were nominated by President Clinton. That is not to suggest we are in any way trying to match their conduct. The fact we are here on the floor exercising our rights under the rules of the Senate and the Constitution of the United States to make a statement about judges, to make a statement about individuals who we feel for many reasons lack either the qualifications or the judicial temperament to serve successfully on the Federal bench, makes the point quite clear. That is in contrast to the pocket filibuster.

We have been very active and cooperative in moving 168 judges through the committee process to the floor of the Senate and to ultimate confirmation by the Senate. It is a remarkable record.

In the last year alone, I believe we have confirmed more judges than were confirmed under President Reagan's tenure with the Senate at the time. This is not a record of evasion of our constitutional responsibilities. This is a record of meeting our constitutional responsibilities, one of which is to exercise our individual judgment as Senators as to the qualification of anyone to serve on the Federal bench. But as I mentioned before, what we saw so consistently and so persistently under the previous President was a Republican strategy of blocking judges by a pocket filibuster; not here on the floor, but off the floor, denying them right to a hearing.

Let me suggest this has a very pernicious effect on so many women who were nominated by President Clinton. This is a report of some of the judges nominated by President Clinton for consideration by this Senate:

Kathleen McCree-Lewis for the Sixth Circuit—again, my colleagues have made an issue of the importance of the circuit judges. They are important. What happened when President Clinton nominated Kathleen McCree-Lewis to the Sixth Circuit? She never got a vote; never got around to the process of hearing a debate in committee, a recommendation to the floor of the Senate; never got through to us for a vote. Helene White to the Sixth Circuit, never got a vote; Elena Kagan to the D.C. Circuit, never got a vote.

By the way, Ms. Kagan is today dean of the Harvard Law School. Is there anyone who would suggest she was not qualified to be a Federal judge? I think that would be quite an extreme statement. She was more than qualified to be a Federal judge, but she never got a vote.

Elizabeth Gibson to the Fourth Circuit, never got a vote; Christine Arguello to the Tenth Circuit, never got a vote; Bonnie Campbell to the Eighth Circuit, never got a vote; Patricia Coan to the District of Colorado, never got a vote; Valerie Couch to the District of Oklahoma, never got a vote; Rhonda Fields to the District Court for the District of Columbia, never got a vote; Holly GASPER to the Central District of California, never got a vote; Marian Johnston to the Eastern District of California, never got a vote; Sue Myerscough to the Central District of Illinois, never got a vote; Lynette Norton to the Western District of Pennsylvania, never got a vote; Linda Riegle to the District of Nevada, never got a vote; cherry WATTLEY to the Northern District of Texas, never got a vote; Lynne Lasry to the Southern District of California, never got a vote; Wenda Whitfield to the Southern District of Illinois, never got a vote; and Anabelle Rodriguez to the District of Puerto Rico, never got a vote.

That is the record of the pocket filibuster; nominated by the President of the United States; qualified; and, indeed one of these individuals I point out is now the dean of the Harvard Law School, but they never got a vote of any kind.

Here is what we saw: The rules of the Senate being used by the majority to frustrate the nominees of the President of the United States. Then to come to this floor and claim this is now unprecedented and a usurpation of the Constitution of the United States when we are simply exercising our right on the floor under the rules of the Senate to express our opinion as to the quality and qualifications of nominees to the Federal bench is I think certainly a contradiction.

Respect to some of these judges, I think the key issue here is judicial temperament. Indeed, there is a certain degree of sensitivity about judicial
temperament as one goes from the district court to the court of appeals. It is often the case that a district court judge is younger and the thought is that person will mature on the bench and maybe in future days will be of such experience and demonstrated judicial temperament that she or he would be promoted to the circuit court of appeals, and then there are direct nominees to the circuit court. But again, you have to look at someone’s breadth of experience, maturity, and intellect, and that is not something you can see in a day or a week.

The nominees who have been identified and have been questioned by Democrats are individuals by and large whose judicial temperament is quite questionable. Priscilla Owen has had a long history of putting her own personal opinion above the law, of injecting political ideology into the law, rather than following precedent.

One of the things about a circuit court judge you wish to have follow precedent. The Senate can try to create law, but a circuit court must follow precedents of the Supreme Court. In case after case after case, there were such situations in which she just did not follow. There is a case of medical malpractice, Weiner v. Watson, when one of our colleagues, the junior Senator from Texas, was on the Texas Supreme Court. And, he unequivocally rejected Judge Owen’s arguments and said it was contrary to the Texas State Constitution.

Are we going to put people on courts of the United States who have a predilection to not follow the Constitution? I think not. That is one example. You can see the same with Justice Brown who is a justice of the California courts. She has been criticized on the bench for injecting her own personal views and not following precedent. On a number of occasions, Republican colleagues have criticized her dissenting opinions for their judicial activism. In one case, Brown was ‘chastized for imposing a personal theory of political economy on the bench contrary to established precedent.’

In another, she was chastized for refusing to accept acknowledged previous judicial precedent. That charge is extremely serious when you are dealing with a judge who is charged with following the precedent, following the Constitution, and not judicial temperament.

The same may be said about Judge Kuhl; again, ideology rather than legal temperament and legal reasoning seems to be her forte.

There is case after case after case. There are reasons, solid reasons to question these nominees. Our job as Senators is to raise those questions.

There have been 168 judges confirmed by the Senate for President Bush, a record number, a remarkable number. In fact, very few of these federal judges are the youngest they have been in recent memory. It is because we have been working together. But that does not mean we surrender our obligation to question and challenge those judges who do not meet the test of judicial temperament, nonpartisan application of the law, and nonideological application of the law. And there are those whose nominations have failed.

That is why the Founding Fathers envisioned when they created a system of advise and consent. It is not advise and approve. It is advise and consent. The Senate plays an active role. There is no group of people who played a more active role. We are considering the nominees, certainly of President Clinton, than the Republican majority today. They did it persistently. They did it deliberately. They did it consciously. We are exercising constitutional power.

One of the examples that was used and one of the judges who was an eminent jurist in California, nominated for the Ninth Circuit, is Judge Richard Paez. He was subject to cloture votes. He was subject to situations in which he would have been confirmed. But you had to do that. In fact, Judge Paez waited 1,500 days even to get a vote. That is not the case with these nominees. There were 1,500 days in which he was nominated to the Ninth Circuit. Finally, there was a vote and people rose up. Some supported a motion for cloture; others rejected it. So this notion that it is unprecedented to challenge a nominee for the Federal judiciary is totally without merit. It is unfounded. It has happened very recently. It happened with Judge Paez.

He is not the only one. Sixty-four of President Clinton’s nominees never received a floor vote. One nominee, Ronnie White, was defeated on a floor vote. We have a situation where the deeds and actions are not wrapped in the dim mist of history. These nominations were before the Senate 2 or 3 years ago. The deeds don’t match the words we are denying today. We are denying a vote about the constitutional challenge and crisis. That outrage was certainly not manifested a few years ago when Judge Paez was waiting 1,500 days for a hearing and then was subject to a cloture vote just as these nominees are being subject to cloture votes.

That is one point. But there is a larger point. We are spending hours and hours to demonstrate a supposed crisis, the fact that 4 individuals cannot obstruct the Senate. One of the nominees by this Senate, when in fact there are much greater problems facing this Nation. We have an unemployment rate that continues to hover around 6 percent, a budget deficit that is exploding and inhibiting appropriate action by this Senate on so many important issues—education reform, worker training, dealing with issues both large and small.

We have a crisis internationally that is reflected in the line of our soldiers and military personnel and billions of dollars from our Treasury. We are spending all night, long, precious hours conducting a demonstration, when we should be working on appropriations bills and we should be dealing with the issues that confront the families of America. I think it is really a demonstration of listen to what I say, don’t watch what I do. Because when we watch what the Republicans do, the record is remarkable. The number of President Bush’s judicial nominees who have gone through. It is extraordinary compared to the treatment President Clinton received.

I would hope when we finish this exercise, we can in fact go forth and deal with the issues which are essential and should be dealt with. We have a minimum wage that has been stuck for years now. It should be increased. We have a host of other issues that need addressing. I hope we can.

I yield to my colleague, Senator CORZINE.

Mr. SANTORUM. Will the Senator yield for a question?

Mr. REED. I am happy to yield.

Mr. SANTORUM. The Senator from Rhode Island has complained about how the Clinton nominations were treated. Does the Senator from Rhode Island know there were 42 judges who were not brought forward out of committee? But at the end of the Bush presidency, Bush I, there were 54 judges not brought forward out of committee? Under a Democratic Senate, President Bush I had 54 that were not considered. Under a Republican Senate, President Clinton never got a vote. These nominees. I would just suggest the record by the Republican Senate was actually better than the last Democratic Senate.

Mr. REED. Let me reclaim my time.

I would simply say regardless of the residue of judges in the Bush administration versus the end of the Clinton administration, the point I am making is there was apparently a very consistent effort on the part of the Republican Senate to deny votes of judges, I think 64 of President Clinton’s nominees never got a vote, never got to the floor. I have the time. I think what it amounts to is a very deliberate protest, which the majority has the power to do, of using the committee process to deny hearings and to deny votes.

It is a contradiction then to come to the floor and say: We can use the rules of the Senate. We can use these rules and we can deny judges, but if the Democrats choose to use the rules of the Senate to challenge a judicial nominee of the President, Bush or otherwise, that represents a violation of the Constitution.

That is my point. The point is borne out regarding the residue of judges of either administration. The record today, this Senate and the Senate under the leadership of Tom Daschle, shows we have done a remarkable job in confirming this President’s nominees. That was not suggested in the treatment of President Clinton’s nominees.

I yield to my colleague from New Jersey.
Mr. CORZINE. I appreciate the discussion my colleague from Rhode Island brought up. I wanted to clarify one point of questions about an individual. Did you suggest Elena Kagan is now the dean of the Harvard Law School?

Mr. REED. I suggested it because that is my understanding, that she was nominated for the District of Columbia circuit and she is now the dean of the Harvard Law School. She is a remarkable dean. I am somewhat prejudiced since I graduated from Harvard Law School, but she is a remarkable personality.

Mr. CORZINE. Was she unable to get a hearing in the Judiciary Committee when President Clinton nominated her for circuit court?

Mr. REED. Let me just say my recollection is she was not given a vote after being nominated to the court.

Mr. CORZINE. So she suffered from what you were suggesting, a pocket veto.

Mr. SANTORUM. Will the Senator yield for a question?

Mr. CORZINE. Yes.

Mr. SANTORUM. Do you know when the last time you had a confirmed nominee who was not appointed in August, 2 months before the election?

Mr. CORZINE. As the Senator from Pennsylvania knows, I was just inquiring myself to try to find out more about this. This is not one of those I was going to look at. We have a whole list of folks who waited 1,454 days, 1,000 days for a hearing, 602 days. If somebody looked at one of those nominees who was not allowed to come to the floor of the Senate for a vote, at least a broad group of folks who review the qualifications of an individual, you are qualified enough to be the dean of Harvard Law School but somehow not qualified to have a vote on the floor of the Senate.

Mr. SANTORUM. If the Senator will yield for a point of information.

Mr. CORZINE. Certainly.

Mr. SANTORUM. My understanding is the nominee you are referring to was nominated in August, 2 months before the election.

Mr. CORZINE. If the distinguished Senator from Pennsylvania would allow, I don't know what elections have to do with confirming nominees, if they have gone before the Judiciary Committee and they are qualified. That seems disingenuous in the context of, we have qualified folks. They ought to be dealing with the circumstance of having an opportunity to be reviewed and brought to the floor. What we are debating is what is the technique that has been used at different times in our history—to deal with a very simple question that some people want to understand the judicial philosophy and actions, how an individual whom we deal on the court?

Sometimes when Republicans are not controlling the White House, they are willing to use the committee system to make that happen. Some of us on our side of the aisle sort of wouldn't mind debating folks on the floor, using the rules to make sure we bring out extremists' points of view. I point out, 168 to 4. I will go through the circuit courts in a minute.

Mr. REED. What is the Senator yield?

Mr. CORZINE. Yes.

Mr. REED. A question has come up about Elena Kagan's nomination. I have some information. Ms. Kagan was nominated in June of 1999. For 18 months, there was no hearing on her nomination. I believe her nomination was certainly available for action by the committee and by the relevant bodies of the Senate for 18 months, yet she never received a hearing and there was no floor vote.

Mr. CORZINE. I appreciate the Senator from Rhode Island helping me respond to the Senator from Pennsylvania's question: 18 months, not 2 months; no hearing; no floor vote; somebody who look at legal capacity and qualifications thought enough of, after she was not reviewed by the Senate either with a hearing or floor vote, to become the dean of the Harvard Law School.

Again, my point seems to be talking out of a sort of surreal context. One hundred sixty-eight to four is on the face of it an important statement of how there has been cooperation. I went through in New Jersey five for confirmation of a federal judge and one circuit court judge. When people work together, you can get the positive results in this whole process.

The 168 to 4 shows we can have a positive result. Ninety-five percent of all judicial positions are filled. That, by the way, is in contrast with only 75 percent at the end of the Clinton administration, because there had been such a limited number of folks who had been able to actually get a hearing and ultimately a floor vote.

There is also the statement that we are somehow or another being far more restrictive. I do want to review that it is 10 times the number of nominees blocked by the technique of not giving hearings or allowing for nominations to be reported to the floor that occurred in the Clinton administration. It was 63 nominees blocked in the 1995-to-2000 period, against 2 percent so far in the 2001-to-2003 period of Bush nominees. There is something about the raw number of folks who make sense and wouldn't to anyone if they actually focused on them in a commonsensical way.

I want to get to the circuit court judge issue. If you look back to the Carter administration through, we heard it is roughly 10 circuit court judges a year per individual. This is sort of like figuring out when the best rate of return in the market is over the last 50 years. You can pick certain sectors, you may do wonderful. We heard it is roughly 10 circuit court judges a year per individual. This is sort of like figuring out when the best rate of return in the market is over the last 50 years. You can pick certain sectors, you may do wonderful.
The other thing I will segue off into is the issue the Senator from Rhode Island talked about. What is really hard about this is there is an incredible agenda for America to be discussing. I think we could afford to spend 30 hours talking about the loss of 9 million American back to work. I think it is pretty hard to understand how we got the priorities. We have 168 positive elements with regard to our judicial nominations accepted and only 4 turned down, but we have had 3 million lost in manufacturing jobs. We have had the deficit go from a $236 billion surplus to a $304 billion deficit. We have seen a $500 billion plus negative cashflow because we are managing the economy poorly. We have seen it hurt and bite real individual, 9 million. Two million people have been unemployed longer than their unemployment benefits would allow; 4 million people have dropped off the rolls.

It is an incredible misprioritization, in my view, that we are talking about four judges when there are 9 million people that we ought to be figuring out how to get back to work.

The PRESIDENT OFFICER. The Senator's time has expired.

Mr. SANTORUM. I thank the Chair, We will be back.

The PRESIDENT OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Mr. President, I want to respond to what the Senator from New Jersey has said. I think I put it to the proper context, the Senator from New Jersey is talking about people who were nominated by President Clinton who didn't get hearings. Most of the people who didn't get hearings had blue-slip problems. Democrats, right now, are holding members of their States in committee—right now—with blue slips. That has been done.

In fact, there are a whole bunch from Michigan being held by the Senators from Michigan for the circuit court, by blue slips. Democrats are holding up judges right now. So the idea that we are going to compare that, which has been a historical right of Senators, to the home State being consulted on nominations for the district court—speaking as a Senator from Pennsylvania, I can certainly suggest to the President who I would like him to look at for the circuit court from my State. But I don't get a right to tell him what to do. It is, in my view, has not been that way. The Senators from Michigan are blue-slipping these nominees and they have blue-slip others.

Some of the nominees pointed out by the Senator from New Jersey, he said by the Clinton administration, were actually pulled by the Clinton administration. The number that were actually not pulled because of FBI problems were 42; not 63; 42 did not receive a hearing. Some of them had blue-slip problems.

Members were not properly consulted from the States. Some were Democrats and some were Republicans. This has been a practice throughout Senate history. The question is not whether that practice should be changed. Some suggest—and, in fact, there has been a movement by several people to try to change that process. But this is something that is not consistent with the advice and consent of the Senate, which has been a prerogative of home State Senators throughout the tradition of the Senate. It is one that I think most Members would say is probably a good thing.

Home State Senators are consulted by the President before people from their State are nominated. They should have some advice and consent into the process. When they don't, some Senators get very upset about that and they sign a negative blue slip.

So let's talk about apples to apples. We have 42 Clinton nominees not acted upon for a variety of different reasons; some the committee didn't like, some were blue-slip, some were submitted late in the process for some reason. So there were 42 after 8 years. There were 377 confirmed nominees and 1 was defeated on the Senate floor.

Under President Bush 41, there were 54 nominees not considered by the Democratic Senate Judiciary Committee—more than President Bush, substantially less number of nominees confirmed by the Senate.

Now, we don't know how many George W. Bush nominees are not going to be confirmed by the end of this year or next year, but there will be some. Some will be nominated late in the process, and we are going to take a whole for the process to work. There will always be some in the pipeline. That is the way the process works. So the idea that we are going to take the normal process of processing judges here and say we have not considered every one of them and that sort of makes everything all equal, no it does not.

The issue here is that, once the Judiciary Committee has done their job, just as every committee here does their job—lots of these have nominations. It is their job to scrub them and find out whether they are qualified and capable to do the job and report them to the Senate floor if they think they are.

I was on the Armed Services Committee. We reviewed thousands of nominations; some we didn't report out because we didn't think they were proper for promotion or appointment. That is the obligation of the committee.

We get lots of bills in these committees. Is every bill that we don't report out somehow as a result of a filibuster in the Senate? I don't think so. That is the job of a committee. Since the committee makes the determination and the majority of the committee—whatever it is, Democrat or Republican, or a combination—reports a nominee out, reports a bill out, the question is what happens on the floor of the Senate?

With respect to nominations, since the filibuster rule was put into place, 2,372 nominations have come to the floor of the Senate, and not 1 has ever been stopped from an up-or-down vote. Not one. All of them received up-or-down votes.

This idea that 168 to 4—we keep hearing there is a good percentage, is it? Is it a good percentage when the four are subjected to a process that has never been done before? It is soon to be 6, promises to be 12. All of a sudden, 4, 6, 12—exponential growth here. Why? Because we are going through a very twisted and tortured path, with the logic that is being followed by the minority in the Senate. What is happening here has never happened in the history of the Senate.

This is a great body. Incredible debates have occurred here in the past. This is the greatest deliberative body in the world. It should be. We should talk about these issues. It is great that we are here all through the night talking about this. But in the end, our responsibility under the advise and consent clause of the Constitution is to consider judicial nominations and give them a vote up or down. That is what every Senate leader, every Senator who had the opportunity to have an impact on this process—they all came down with the decision that that is what this constitutional provision meant—until this year.

Some have suggested, well, these judges are so far out of the mainstream; they are so bad; there have never been judges this bad; these guys are really bad; they are not just bad, they are really bad, worse than we have ever seen in 214 years; nobody has ever been this bad; therefore, we have to change the rules.

Let's talk about a couple of judges. One who I voted against—I will use one of them—was Judge Paez, who was referred to on the other side. I voted against Judge Paez. But I voted for cloture. I thought Judge Paez would be one of the worst judges this country would ever see. I didn't want him to be a judge. He was already a judge in district court, but I would loathe to put him on the Ninth Circuit because I thought he would absolutely take the Constitution and throw it into the trash can and do whatever he pleases. That is pretty much what they are saying. Well, let's look at Judge Pickering and Judge Paez and see what they did with two similar cases. Judge Paez and Judge Pickering both had cases before them having to do with sentencing guidelines. Judge Pickering didn't like the sentencing guidelines that were before him in a case. The other side has used this case
as their principal reason—one of them—of opposing Judge Pickering. They didn’t like the way he dealt with this case because he didn’t like the sentencing guidelines. So what did Judge Pickering do that they really don’t like? The explorable conduct that this judge would do this. Something he did—what was it? He complained about it. He complained about it. That is it. Judge Pickering complained about it.

What did Judge Paez do? He struck it down and said it was unconstitutional. Now, the judge that is striking the Constitution in the trash can? What was the provision that Judge Paez struck down and said was unconstitutional? The three strikes and you are out provision, which was voted in by the people of California. What happened to Judge Paez? His decision was overturned by the U.S. Supreme Court.

Who is the mainstream and who is the extreme? Every time you hear mainstream over there, put an X in front of it. It has nothing to do with mainstream. It is extreme. It is dangerous.

Let’s talk about some of other Judge Paez’s decisions. He was one who tried to strike down the Constitution case and said “Under God” should not be in the pledge. Oh, it is very mainstream, the kind of guy we really want. The Senator from New York said tonight, “I think he is in the mainstream.” Understand, folks, what mainstream is: “Under God” not allowed in the pledge, the three strikes and you are out law is unconstitutional. California election is unconstitutional. If I don’t like it, it is unconstitutional. That is mainstream?

A government of men, not of laws is mainstream? This is very dangerous, folks.

People ask me all the time: Senator, why should this matter to us, what is going on here? Why does this matter? What do judges have to do with my life? Well, the answer to that question should be not much. That is what the answer should be—not much. Unless you get into trouble one way or another, it should not matter that much to you at all.

What a judge should do is as little as possible. They should try to make decisions based on the narrowest law possible, not try to make pronouncements and change the law from the bench or amend the Constitution from the bench. They should do as little as possible.

See, that bores a lot of my colleagues on the other side of the aisle. They don’t want judges who will do as little as possible. What they are concerned about with Judge Pickering is not that he did too little—but too much. They are concerned he will do as little as possible, that he will make decisions based on the narrowest grounds, not broad, sweeping grounds, the grounds that change laws and create new rights or responsibilities. No, they want someone who will put their world view in the law that they cannot accomplish through the legislative process. They want judges who will do it through the judicial process. That is what they are after. They don’t want anybody who will say we are going to stop doing that.

That is not what the Founders wanted us to do. If they wanted us to respect the legislative branch and pretend that what they pass is constitutional—if in fact it is not, we have problems—then decide the issue on the narrowest grounds. That is what we want. That is not what they want. I am really troubled. I am really troubled by what I see going on in the Senate of people who are willing—for what? For what cause? Are they willing to take the Constitution of the United States, when it comes to the confirmation of judicial nominees, which has been upheld by every Congress in history, and turn it on its ear to accomplish some goal?

My question is—and I asked it earlier—in 24 years, no group of Senators ever said what they cared about, with respect to the courts, that it was so important that they were willing to go against the Constitution, which says a simple majority for advise and consent. It did not require that the reasons they were going to go against the Constitution and raise the bar. No Senate in history said we were going to raise the bar and require a supermajority vote, given all of the incredible issues that we had to deal with in the Senate; no Senate has ever said the issue today is so important that we need to raise this bar, that it is best for our country to do that. Why? Because most Senators always felt, as I deeply feel, that we are a Nation of laws, and this Nation of laws and constitutional law is important to preserve. We should not just throw it over for an immediate political whim, or policy whim, because once the process is corrupt, once the law is violated, once the procedures are changed, you cannot put the genie back into the bottle.

What this debate tonight is all about, this process we are going through is is a plea. Someone suggested it is not a very effective plea because the chances of getting through a circuit court is not very high. Yet it is a plea. It is a plea to those who have done something unprecedented in the history of this Chamber to stop. If they stop and they admit this was wrong, that this was not the way to deal with judicial nominations, that this is not a precedent they want to set—not 4 times, or 6 times, or 12 times but probably many times after that—and that this is not the right way to handle judicial nominations in the time we are bringing some civility back to this process. Maybe we can say to the people who want to serve this country in one of the most honorable ways they can—to be a judge—a very important function in our society, maybe we will be able to attract the best and brightest to come here and offer up their services and not feel they are going to be put through a washing machine or, worse yet, maybe somebody who cares about the family, the basic social structure of the family, the basic social structure of our country. It is corroding and eroding who we are. But I forgot one, it is now corroding and eroding the Senate. Mr. HATCH: Will the Senator yield for a question?

Mr. SANTORUM: I am happy to yield.

Mr. HATCH. I would like to ask the distinguished Senator, we have seen this poster they have over there: 168, and only 4 stopped. But isn’t it true that there are at least 12 circuit court of appeals nominees, ones who correct lower courts who many times make mistakes, who are being held up in filibusters here—not just four? Mr. SANTORUM. I ask the Senator from Utah, the chairman of the Judiciary Committee, there have been 28 or 29 circuit court judges confirmed. Out of that 168, there are 29.

Mr. HATCH. Right.

Mr. SANTORUM: So as the Senator from Missouri said further, the little fish they let go through the nets but they catch the big fish, the folks who rule on the law, who have the ability to influence the character of the law in this country, the appellate level. They catch the big fish in the net. They have let 29 go through. But 29 to 12, that is about a third of the nominees that the President has put up for the circuit court who have been caught.

I ask the Senator from Utah if he knows what is the usual percentage of circuit court—by the way, let me state this. Never have circuit court judges ever been filibustered, ever. But let’s set aside the unconstitutioinal filibuster right now, the unprecedented abuse of the Senate rules that is occurring here right now. Let’s go back as if this were being done on an up-or-down vote.
What percentage of Presidential nominees for the circuit court get through and are approved in a normal course?

Mr. HATCH. Normally in the Reagan-Bush I-Clinton years, 80 to 85 percent—85 to 90 percent.

Mr. SANTORUM. So 85 percent are approved; the rest are held in the committee.

Mr. HATCH. By the end of the third year.

Mr. SANTORUM. By the end of the term. Can you recall, let’s say, what is the percentage in the first 2 years of an administration? What was the percentage in the last few years under Clinton, under Bush I, and under Reagan?

Mr. HATCH. Well, in the case of Bill Clinton, President Clinton, 91 percent, if I recall correctly.

Mr. SANTORUM. It was 91 percent.

Mr. HATCH. People don’t realize how important these circuit courts of appeals are. We have shown in this chart that they have is not only inaccurate, it is a bold-faced lie. Because they can’t really come out here with a straight face and admit they are going to filibuster at least 12 circuit judges and some district judges.

Mr. SANTORUM. I ask the chairman, my understanding is they are only putting four up so they are suggesting they are not filibustering Janice Rogers Brown and they are not filibustering Carolyn Kuhl.

UNANIMOUS CONSENT REQUEST

I ask unanimous consent that the Senate now proceed to consideration of Calendar No. 455, the nomination of Janice Brown to a United States Circuit Court for the District of Columbia Circuit, provided further that there be—pick a number—50 hours of debate equally divided for the consideration of the nomination, provided further that following the debate the Senate proceed to a vote on the confirmation of the nomination with no further intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. BINGAMAN. I object.

Mr. SANTORUM. So that is 168 to 5. Let’s go to the next.

UNANIMOUS CONSENT REQUEST

I ask unanimous consent that the Senate now proceed to consideration of Calendar No. 169, Carolyn Kuhl to be a United States Circuit Court for the Ninth Circuit, provided further that there be 100 hours of debate equally divided for the consideration of the nomination, provided further that following the debate the Senate proceed to a vote on the confirmation of the nomination with no further intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. BINGAMAN. I object.

Mr. SANTORUM. So that is 168 to 5. Let’s go to the next.

Mr. BINGAMAN. Will the Senator yield for a question?

Mr. HATCH. It is a total misrepresentation of what it is.

Mr. BINGAMAN. Will the Senator yield for a question?

Mr. SANTORUM. I will be happy to yield for a question.

Mr. BINGAMAN. Will the Senator concede that there is a difference between a Senator objecting to a unanimous consent request which had not been presented before on the Senate floor and the stage of a filibuster?

Mr. SANTORUM. I say to the Senator that in normal cases I would say that may be the case. But it is clear we are gearing up to get cloture vote on Friday on this nominee. It is abundantly apparent to everyone who has been listening to these proceedings that the chances of the two gentlemens from California, Ms. Kuhl and Ms. Brown, being given the rec—30 days to defeat cloture, or to get cloture, is highly unlikely. So we are not going to be able to get cloture. That is at least what we have been hearing from the other side. We are not going to get cloture. We can’t get unanimous consent. It sounds like a filibuster to me.

So I agree in part getting a unanimous consent is not in and of itself a grounds for saying it is being filibustered but voting against cloture certainly is. Only two Senators from Georgia, that has seemed to be the order of the day on that side of the aisle.

I am a very optimistic person so I am hopeful I am wrong.

Mr. ALLEN. Will the Senator from Pennsylvania yield?

Mr. SANTORUM. I am happy to yield.

Mr. ALLEN. When my colleague from the land of Pennsylvania talks about what makes this different for the Democrats, the difference is really about 3 years and a different President. I have looked at previous statements made by Senators on these issues, though I was not a Member of the Senate back then and I am listening to all of these arguments being made now. I was earlier in the day quoting—much earlier in this day—

Mr. SANTORUM. Yesterday.

Mr. ALLEN. Yesterday. Time really passes when you are having fun—I feel as if I should be singing like Faron Young: “Hello Walls.”

As I was saying, Senator LEVIN is quoted as saying in 2000:

We should not be playing politics with the Federal judiciary. Candidates for these vacancies deserve to have an up-or-down vote on their nominations.

Earlier this morning, I listened to Mr. REED, the Senator from Rhode Island and the Providence Plantation. But in 2000 he said:

I ask my colleagues to take their constitutional duties seriously and vote for these nominees on the basis of their objective qualifications, not on the basis of petty politics.

Another quote from Senator REED of Rhode Island, this is from the March 9, 2000 CONGRESSIONAL RECORD. He said that there is “considerable attention” being paid to various nominations

... especially among members of the Latino community because the Senate is not doing its job. This is troubling. In regards to nominations the public rightly expects us to judiciously and expeditiously act without regard to politics.

Those are the prior statements. The statements we hear from our Democratic colleagues on this floor—whether late last night or early this morning, are inconsistent with previous statements. It is a double standard within their own ranks.

Mr. SANTORUM. I say to the Senator from Virginia that he is absolutely right. The Senator from the Commonwealth of Virginia is right. But I will tell you who has been consistent. Senate Republicans have been consistent. We said all along we are not going to put on a hold—on a hold—on a hold any nominations—hold any nominations. We are going to do nominations. We are going to get up-or-down votes. We are not going—we are going to have cloture. We are going to get the people’s business done.

The PRESIDING OFFICER. The time of the Senator has expired. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, let me speak for a few minutes on this issue that brings us here at this early hour and then also talk about another issue that I think also deserves some serious attention by the Senate; that is, the health care crisis that we face in the country. But let me first talk about this process for nominating and confirming Federal judges.

The obvious question is, How is the system intended to work under our Constitution, under article II of our Constitution?

As I understand it, based on my reading of article II of the Constitution, the President has the authority to nominate judges and it is fairly clear from the language of that document that the intent is that he will consult with the Senate, that he will make a nomination based on that consultation, that the Senate will review the nominee and confirm or not that nominee—then either go forward or not with that nomination.

In fact, with regard to most nominees I would say the system works very well. In fact, it has worked with previous Presidents. It is working with this President.

Yesterday I was present at a hearing of the Judiciary Committee where we had a nominee from New Mexico who has been nominated for our district court, Federal district court there. I
support that nomination, the nomination of Judith Herrera for that position. Senator DOMENICI strongly supports that nomination. He recommended her to the President for that position.

I am aware that the White House consulted with me—consulted, I am sure, with Senator DOMENICI but consulted with me as well—and asked if I would support this nomination.

I had the chance to meet with the nominee, to talk with her, and of course I have known her for many years, and I was very glad to support her nomination. That is essentially the process we have followed with regard to all of the nominees for Federal district court positions in my State of New Mexico and with regard to the court of appeals position which is reserved for our State, New Mexico, on the Tenth Circuit Court of Appeals.

There again, the President and Senator DOMENICI both consulted with me, before the nomination was sent forward. I had a chance to review the nominee and concluded that I would strongly support that nominee.

So the system, in fact, generally works the way it is intended to work. We get very good people serving on our Federal courts as a result of that.

But for some reason as regards some of these judges we are arguing about, the President has chosen not to follow this approach. In some cases the President has chosen to nominate people without consulting with the Senators from the States those individuals hail from and has done so in many cases over the strenuous objection of Senators from those States.

There is strong opposition from the States, for example, to the two nominees I was hearing about a few minutes ago from the Senator from Pennsylvania, Judge Kuhl and the other is Judge Brown, from California. In both cases, as I understand it, the President has determined to go ahead with nominations. He has nominated those individuals and he has done so over the strenuous objection of both Senators from the State from which those two nominees come. To my mind, it is somewhat unprecedented in the Senate that both Senators from a State would object strenuously to a particular nominee and the President would say, that's your problem; we're going to go ahead and nominate them anyway.

What's more, the Judiciary Committee would go ahead and confirm or recommend those two nominees for confirmation over the strenuous objection of the two Senators from the State I involved—to me that is unprecedented. We have all this talk about a blue-slip procedure. That is out the window as far as I can tell. The blue-slip procedure used to mean that unless you got a blue slip signed by each Senator from that State, there would not even be a hearing on the nominee. That was the system that prevailed.

Not only are we to the point where, even if the Senators from the State where the nominees come from do not return a blue slip would they be voted out, they can even affirmatively object to those nominees and the Judiciary Committee would go ahead and vote them out at any rate. They put them on the Senate floor and they file a cloture motion and they say we are going to have a vote on the Senate floor on these individuals; we could care less what the votes of the individual Senators think about these nominees. That, to me, is an unprecedented procedure. I am not familiar with that.

I think about my own situation. As I have indicated, I have been pleased with the courtesy and consideration I have received from the White House and, of course, from my colleague, Senator DOMENICI, with regard to nominees by this President for Federal judicial positions. I have always been consulted before the nomination was sent forward. I have been given a chance to meet with those nominees and have been given a chance to get back and say: Yes, these are people I would support.

I have assumed in going through that process that, if I had come to a different conclusion, if I had determined that I had a strong objection to one or more of these nominees, that would also be honored and that the President would find someone else who was acceptable to, of course, the President but to the two Senators from the State as well before going forward with the nomination. And I assumed that. But I still assert that. But that has not happened in the case of some of these nominations.

As I understand it, tomorrow we are going to have a vote on a cloture motion on the two judges I mentioned. You can argue about the merits of the positions that these judges have taken, but the thing that sticks in my craw, the issue that I want to focus on is the President's right to vote in favor of going forward to confirm a judge when I know the two Senators from the State that the judge comes from strenuously object to that judge being confirmed.

If the shoe were on the other foot, if in fact I was the Senator who was objecting, I would hope my colleagues in the Senate would support my right to object and to keep that person from being confirmed as a Federal judge. I don't think the President would do that, but sure I do. I would certainly request they do that. That is exactly the request we have received from the two Senators from California, one of whom serves on the Judiciary Committee and both of whom have had to spend time looking into the records of these two judges. Why in the world are we not willing to defer to their view on this and hold up on confirming these two judges? It seems to me that is the tradition of the Senate and we ought to adhere to that tradition. I think the President ought to adhere to that position.

We are talking here about what might be wrong with the process for confirming judges.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. BINGAMAN. I am glad to yield.

Mr. ALLEN. If I may question the Senator, using the criteria which he set forth insofar as the two judges being opposed and which we are now debating. My colleague said that the reason or a rationale for him to vote against them is because the two Senators from California are opposed to these two nominees? In the case of Priscilla Owen, both Senators CORNYN and Senator HUTCHISON are strongly in favor of Justice Owen. Does that mean that when we get to a vote on Justice Owen the Senator from New Mexico will then vote to move forward to at least allow a fair up-or-down vote on Judge Owen since both Texas Senators are strongly in favor of her?

Mr. BINGAMAN. Mr. President, let me first say I think that is a very good question. The answer is, no, I would not vote to move forward with a vote on Judge Owen because of the other problems that have surfaced with regard to her views and judicial record. But I think as I approach this issue we have a threshold question. The threshold question is: Do the Senators from the State that is affected support these nominees? If they don't, the President should not put them there. And the Judiciary Committee should not report their nomination to the Senate floor. If they do support these nominees, there is still an obligation on each Member of the Senate to review the nominee and to determine whether in fact we believe that nominee should be confirmed for a Federal judgeship.

I would say I do not think just getting the support of the Senators from a particular State entitles a person to a lifetime appointment to the Federal bench, but I do think that absent the support and in the face of strong opposition from the Senators from the State that is affected, the Senate should not be considering the nominees under these circumstances.

To criticize those of us who do not want to move ahead with an up-or-down vote on that on the theory we know how an up-or-down vote will come down on these issues, the President has very good ability to line up Republican Senators to vote for virtually anything, so far as I can tell—not just on judicial nominations, but virtually anything he opposes around here. I am amazed, frankly, at some of the willingness of some of my colleagues on the Republican side of the aisle to march down to the Senate well and cast a vote in favor of positions the President is advocating regardless of how well these issues affect our constituents.

We know what the outcome will be if we go to an up-or-down vote. I think it would be a disservice to the Senators from the States affected for us to go...
ahead and confirm these individuals over their strenuous objections.

I hope when we get these votes on cloture tomorrow on these particular judges we have talked about that we will not move ahead and invoke cloture.

I do not think, as far as I know, based on the information I have, none of them are individuals I would favor promoting to the positions they have been nominated for.

I know my colleagues are here and may wish to speak as well. I don’t want to use all of our time.

Let me just talk for a minute about another issue. In many ways, this is a very unusual process we have gotten into here with a 30-hour diversion from the other business we could be pursuing here in the final weeks of this legislative session. There is other important business. Frankly, when I go home to my State of New Mexico, it is difficult for me to explain to people in my State why I am not dealing with some of the issues that directly affect them in their daily lives. Instead, we are here talking through the night about judicial nominees in many cases who are strongly opposed by the Senators from the States they come from.

I want to speak for just a few minutes about the health care crisis in the country. Earlier this year, I introduced the first part of a series of proposals to try to address the Administration’s health care safety net. That bill is entitled Strengthening Our States, or the SOS Program. That is a program that is under severe stress and pressure.

The report of the National Coalition on Health Care says the confluence of powerful economic forces fueled by terrorist attacks of September 11 have unleashed a perfect storm that increases dramatically the number of uninsured in the United States with as many as 6 million people in total losing their coverage.

In light of this, I just make the point again it is somewhat shocking to me that we are spending 30 hours—essentially that means this whole week. The work that get work done this week has been substantially impaired by the decision of the majority here in the Senate to devote 30 hours to talking about this handful of judicial nominees that would like to have confirmed. This is political posturing in spite of the serious problems that have been found with regard to that program.

The number of people in our country who need health care is staggering. New Mexico ranks second only to Texas in the percentage of its citizens who are uninsured. In New Mexico, we are the only State in the country with less than half of our population currently covered by private health insurance. Forty-two percent of the Hispanic population has employer-based coverage; that is, nationwide. That is not in New Mexico. That is in comparison to 67 percent of non-Hispanic whites who have employer-based coverage. To address the growing crisis, we have been working with the American College of Physicians since last fall on a legislative proposal we are calling the Health Coverage Affordability Responsibility and Equity Act of 2003. This legislation does a variety of things which I want to educate my colleagues on at some time when we have more opportunity to do so.

Our colleague from New Jersey wishes to speak again on the issue that brings us here at this early hour, so I will yield to him, but I think the course we are following with regard to judges is not a course any of us would choose. Nearly 44 million people are without any coverage. Once the future of Medicaid is assured and protected, we also need to take some additional steps to confront the fact this nearly 44 million people—or 15.2 percent of the population—is without health insurance for the entire year of 2002. That is an increase of nearly 4 million people over those who were uninsured in the year 2000. The numbers for 2003 undoubtedly have gotten even worse.

The President brought up the two Senators from California opposing two judges for the Ninth Circuit Court of Appeals as if the Ninth Circuit Court of Appeals is just in California. That court of appeals covers many States—I believe even the State which the President is from, Nevada, but also Idaho, Oregon, Washington, Hawaii, Montana Arizona and Alaska. It is not just the Senators from one State that are affected when you have a circuit as large as that. This is the same court that almost hijacked the Constitution of California. Three of the judges that the President appointed to that until they were all overruled so they could go forward with the California recall election. It is not just one State that is affected when you are talking about a circuit.

Let us talk about the District of Columbia Court of Appeals. There are no Senators from the District. I will not get into that debate on this issue.

Who is the President to consult in the case of the D.C. Circuit Court of Appeals? The President consulted many people and put forth a person of impeccable credentials, Miguel Estrada, who is actually a resident of Virginia. Senator WARNER and I presented him to the Senate. We did not speak about that wonderful day at this time. The President looked for people from all across the country and presented Miguel Estrada’s nomination to the Senate. Seven times we tried to get an up or down vote on Miguel Estrada. The reason we are still fighting this right now is because the minority is denying me, as a Senator, and other Senators, the ability to advise and consent and fair up or down vote. I am not sure people have heard about a particular judge. But we all have a responsibility to vote. From the perspective of the President from New Mexico, who is the President supposed to consult for the District of Columbia Court of Appeals when he put forward a superbly qualified and exemplary individual who was held up for over 2 years and finally could not continue with the years of delay and obstruction? If President, re-claiming my time, it is a very good question. My own view would be we clearly have in the Senate for well over a century now delegated the initial responsibility for reviewing judges to the members of the judiciary committee. I would suggest the President should be consulting with members of the judiciary committee, both Republicans and Democrats, and if he determines he can’t get a single Democrat on the judiciary committee to support his nominee, that should be a signal to him he should find a nominee who could be supported by Democrats, as well as Republicans.

and we would not have the difficulty and confrontation which has been required as a result of nominations so far this session.

Mr. ALLEN, Mr. President, will the Senator yield?

Mr. BINGAMAN. I am glad to yield.

Mr. ALLEN. The Senator brought up the two Senators from California opposing two judges for the Ninth Circuit Court of Appeals as if the Ninth Circuit Court of Appeals is just in California. That court of appeals covers many States—I believe even the State which the President is from, Nevada, but also Idaho, Oregon, Washington, Hawaii, Montana Arizona and Alaska. It is not just the Senators from one State that are affected when you have a circuit as large as that. This is the same court that almost hijacked the Constitution of California. Three of the judges that the President appointed to that until they were all overruled so they could go forward with the California recall election. It is not just one State that is affected when you are talking about a circuit.
It is true the Democrats are in the minority at this point. But a great many Members of this body are Democrats and a great many members of the Judiciary Committee are Democrats. If to a person they are opposed to the nominee after we learn the qualifications and the positions taken by the nominee, I think that is a signal to the President he should find someone else. Clearly, that is not the course he has chosen to follow.

I see my colleague from New Jersey. Let me yield the balance of my time to him.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. Mr. President, I thank the Senator from New Mexico for what I think is a very appropriate underscoring of the unprecedented nature of not working with the Senators from the State which the judge has been nominated.

I concur with the Senator from New Mexico. In New Jersey's case, we are 5 for 5 on district court judges because there has been strong cooperation back and forth between the White House and Senators from New Jersey. We are one for one on the circuit court judges where we try to work together to try to move things. That is how we ended up, frankly, in general with 168 to 4 because this process has worked a lot more smoothly than I think this 30-hour talkathon has indicated.

I want to use the last few minutes of my time this morning to talk about priorities.

One hundred sixty-eight to four—scratch that and make that six, if you want. The fact is that is about 97½ percent if it were 6 of all of the judges who want. The fact is that is about 97¼ percent of the American people who want. The fact is that is about 97½ percent of the Senators from New Jersey. We are one for one on district court judges because this process has worked a lot more smoothly than I think this 30-hour talkathon has indicated.

I want to place this in context. It is really more important in how it plays off of what the Senator from New Mexico said.

We have real issues in this country right now. The fact is we have 9 million American unemployed. We can spend 30 hours here talking about four or six judges when we have 9 million people unemployed.

By the way, the statistics going down in national terms don't seem to fit New Jersey. The latest statistics we have show we have had 11,800 jobs lost in the last reported period. Unemployment has grown by about 258,000 since the year 2000. New Jersey has brought 55,000 manufacturing jobs in the Nation.

These are real people. At least when I go back to the streets of communities I represent, people are more interested in what is going on with their jobs and what is going on with the economy than whether we have a difference of opinion about four judges or five judges when we have confirmed 168.

It seems to me we have our priorities all messed up here when there are 9 million Americans left out of the economic system.

It is hard for me to understand why poverty is growing in this country. The number is up almost 1 percent—from 11.3 to 12.1 percent. In New Jersey, that is 69,000 people who have gone onto the poverty rolls who weren't there before the current administration's economic policies were put in place, and 148,000 New Jerseyans have gone off the rolls of those who have health care. These are real issues. These are the things that impact people's lives.

These 4 judges out of 172—it is pretty hard to understand why we are spending all night and all day talking about that when we ought to be doing something about health care in this country; when we ought to be doing something about prescription drugs, while we have been waiting for somebody in the dark of night to try to put together a bill. It doesn't make sense that we have the focus on something that is so far up in the air in the context of actual reality because we are actually filling those jobs. But we are not doing anything about the 9 million Americans who are losing jobs.

We can't get by, the way, an increase in the minimum wage. It has been 7 years since we increased the minimum wage around here. We can't get a debate on that.

UNANIMOUS CONSENT REQUEST

I ask unanimous consent that the Senate now return to legislative session to proceed to the consideration of calendar No. 3, S. 224, the bill to increase the minimum wage, that the bill be read a third time and passed, and the motion to reconsider be laid upon the table.

Mr. ALLEN. Objection.

The PRESIDING OFFICER. Objection is heard.

The time has expired. Who yields time?

The PRESIDING OFFICER (Mr. THOMAS). The Senator's time has expired. The Senator from Virginia.

Mr. ALLEN. Mr. President, we are now entering the 12th hour of this debate. The reason it has taken so long has been because we have denied a fair up-or-down vote on many nominees. The sun is rising, of course, along the eastern seaboard from Miami and Jacksonville. It is rising in Charlotte and Myrtle Beach and Virginia Beach, all the way up to Maine. I am sure there are truck drivers from Bangor, Maine to Bakersfield, California who have been listening very intently to what is going on with the economy. It is rising in Charlotte and Myrtle Beach and Virginia Beach, all the way up to Maine. I am sure there are truck drivers from Bangor, Maine to Bakersfield, California who have been listening very intently to what is going on with the economy.

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We can't get by, the way, an increase in the minimum wage. It has been 7 years since we increased the minimum wage around here. We can't get a debate on that.

Earlier the Senator from New Jersey was talking about economic matters. I clearly want to say, for all those who are bright eyed and listening this morning, the number one goal of us on this side is that America is competitive—so as a nation we make sure those who have troubles or those who are unemployed have access to the courts, while helping to reduce frivolous lawsuits. Obviously, this is something that means a great deal for jobs.

What happened to the class action bill that was going to help create jobs and defend against junk lawsuits? We had obstruction on that. We were able to get 59 votes, but we had to get 60. This reform is important for jobs and the retention of jobs. We want to pass an asbestos bill, an energy bill, a bill that will help create 500,000 new American jobs with clean coal technology, advancements in hydrogen fuel cells as well as hopefully development of our domestic reserves of oil and gas. We want to create more jobs by passing an asbestos bill that ensures that people who have asbestosis or asbestos-related diseases can actually get compensated as opposed to the lawyers.

We successfully passed the Small Business Administration bill that will help create 3 million jobs. We want to make sure we get homeland investment or repatriation of profits to come back into this country. We have to pass a
There is no accountability. There is no fairness.

For over 214 years, the President has had the responsibility of nominating persons to vacant positions on federal courts. That is spelled out in the Constitution. The President is responsible for maintaining the constitutional framework of a separation of powers.

Five years ago, the New York Times said the Senate should "rise to the occasion and address the institutional responsibilities of the Senate rather than surrendering to the petty tactics of the blocking few." This was in 1998. On this rare occasion, I agreed with the New York Times.

I would say to my colleagues, if you do not like Judge Janice Rogers Brown, Judge Carolyn Kuhl, Justice Priscilla Owen, or any other judicial nominee for whatever reason that may be, whether I consider it justified or not, vote against their nominations, but vote. Take a stand up or down. Your vote is what the Senate votes. Your vote counts. Where you stand. Don't hide behind the arcane procedural maneuvers of the Senate.

What we have here is justice being delayed and being denied. It is beyond belief that two years ago, Senators continued to practice blatant political maneuvering at the expense of these well-qualified, respectable nominees, when the administration of justice is so important to our country. They cannot continue to use these nomination and procedural rules to perpetuate this obstructionist agenda. I believe Americans are astute. They can see these arguments being made to avoid an up-or-down vote. They are not based on reason but rather petty partisan politics.

It is not just the people's work and business that is being made a victim when the other side denies these nominees a fair up-or-down vote. It is justice in our courtrooms that is also a victim of this obstructionism. Justice is the just demand. It means cases that need to be litigated are delayed longer. It means in criminal cases, it may take a longer period of time for cases to be heard and decisions to be made. It affects victims of crime, as caseloads back up. Access to our courts for legal disputes and an expeditious decision making process by the courts are both important.

Let's consider Miguel Estrada. This is a gentleman I feel very passionately about because I got to know him in the midst of his consideration before the Senate. Miguel Estrada now lives in Virginia. He came to this country as a teenager, unable to speak English. He applied himself. He worked hard. He is the modern day Horatio Alger story and exactly the model we tell our children about. If you work hard, apply yourself, do well in school, get a good education, then you can have great opportunities in life. That is what Miguel Estrada did when he came from Honduras as a teenager.

He worked hard, learned English, and ended up going to Ivy League schools. He clerked for a Federal judge. The American Bar Association, after looking at his record when working in the Solicitor General's office and a variety of other positions, gave him their highest unsurmounting rating. Indeed, he argued 15 cases before the Supreme Court of the United States, winning most of them.

I remember that hearing in the Judiciary Committee, as my good friend and colleague John Warner and I presented him. His sister was there. His mother was there. My wife was there. I was so proud of Miguel. I was thinking, this is just a wonderful day in America to see that dream of America, the land of opportunity for people of qualifications and performance, is still there. I remember speaking for all Virginians, congratulating Miguel Estrada.

Then to see what happened to him, the injustice of holding it up, not just for consideration for 3 months, not consideration for 6 months, 1 year, but over 2 years, with repeated efforts to deprive him of a fair vote on the Senate floor—not once, not twice, not three times, four times, five times or six, but seven times. Finally after 2 years, this wonderful gentleman decided that he had to get on with his life and that the patriotic process was successful to him and to his family. Undoubtedly you could understand why being held up this way in such an unfair and unjust matter that he finally decided that he had to go on with his life.

Let me say that that was a very sad day in the history of the Senate. It does not reflect on the views of the majority of the Senators because we had a majority of Senators for Miguel Estrada. We just didn't have 60. To me that is an injustice.

Some of my colleagues will talk from time to time about Miguel Estrada. I see that the Senator from New York, Senator Schumer, is here. Senator Schumer called Mr. Estrada "a fair and well qualified nominee who will drive the Nation's second most important court out of the mainstream."

Mr. President, we cannot allow the politics of personal destruction, evident by this statement by the Senator from New York, to continue to infiltrate our judicial nomination process. After 2 years of refusing to vote, that was enough injustice without these gross mischaracterizations.

I will tell you what Virginians across this Commonwealth are saying. The Fredericksburg Free Lance Star said that "the filibusters are abusing the Senate's advice and consent role under the Constitution" and that "Senate Democrats need to stop snacking on sour grapes and give this President his due."

The local newspaper in Staunton, Virginia, said: "Regarding filibustering engaged in by Democrats in the U.S. Senate to block Bush's judicial picks, it's time to let them up or vote them down, then live with the consequences. Filibustering is one of the least palatable tactics politicians can engage in, one which only serves to bolster the
public's lack of confidence in our elected representatives. It's no accident that the word “filibuster” derives from a Spanish term for pirate—“filibustero.” It's an apt description for a process whereby politicians seek to block and hijack the legislative process.

The Richmond Times Dispatch said: “According to the “gold standard,” each [of President Bush’s] candidate’s ability to serve on federal appellate courts is impeccable. Yet [Senator] LEAHY, outlining cohorts presume the judicial nominees’ perceived ideology to be more important than their ability—and have resorted to stall tactics perfected decades ago on the Carolina hardwood.” That is basketball terminology for those who don’t remember the four corners.

From the same newspaper:

Miguel Estrada did not deserve such shabby treatment. No one does.

The Manassas Journal Messenger argues:

The worst part about the Democrats’ continued stonewalling on Federal judicial nominations is the legacy that it leaves.

The Winchester Star, a newspaper owned by a former Senator who served as a Democrat and an independent, Harry Byrd, Jr., predicted that: “The precedent set here is ghastly. If this threat continues to go unchallenged, advice and consent in the future will be tantamount to obstruct and destroy.”

And just last month that same paper said:

The constitutional prescription of a simple majority for confirmation no longer applies. A 60-vote supermajority... is now standard operating procedure in a process held hostage by a minority.

They went on to call the Democrats’ actions “lamentable” and “reprehensible.”

Mr. CORNYN. Will the Senator yield for a question? Mr. ALLEN. I yield to the Senator from Texas.

Mr. CORNYN. The Senator has talked about Miguel Estrada and his admirable qualities, the fact he emigrated here as a young man at 17, barely spoke the English language, and yet rose to the top of his profession and, indeed, represented the United States Government before the highest Court in the land in 15 cases, which is a remarkable professional accomplishment. You also alluded to the comments made by our colleague from New York, and you gave us some quotes about the nature of President Bush’s judicial nominees. I believe at another time I wanted the Senator to yield, I was not aware of that, I say to the Senator that my very characterization? Do you have an explanation for what is happening here? Mr. ALLEN. There is no justifiable explanation. Miguel Estrada is a person of very calm demeanor. He is very mild mannered and soft spoken. He is one who believed the nomination process, was willing to subject himself to whatever written interrogatories submitted to him by Senators. He was willing to do and did meet one on one with Senators. So that characterization is not accurate.

Mr. CORNYN. What do you know what that characterization is? It is pure politics. It doesn’t matter what the truth is because they have not justified it. What is unfortunate about statements such as that is that it is the politics of personal destruction. We should rise above that.

I say to the Senator that my very first speech on the Senate floor was about judges. I said that I care about treating people as individuals rather than partisans. I spoke about Roger Gregory. President Clinton had appointed him as an recess appointment. This had many Republicans, understandably, infuriated. I examined and talked to Roger Gregory to determine his judicial philosophy. I studied his concordances and concluded he was a realist, that his temperament, and all of the attributes judges who are appointed for life should have. You have to be sure you are not going to end up with some judge who is a radical one way or the other, an activist, rather than one who interprets the law and applies the facts of the case, rather than inventing or creating laws. My first speech was to say, “Let’s rise above that and to be statesmen.”

I found Roger Gregory to be very qualified. The first thing I said to President Bush when he asked me my thoughts on this nomination was that I had interviewed judges for various positions when I was Governor and that one was Roger Gregory. I had considered his temperament, and all of the attributes judges who are appointed for life should have. You have to be sure you are not going to end up with some judge who is a radical one way or the other, an activist, rather than one who interprets the law and applies the facts of the case, rather than inventing or creating laws. My first speech was to say, “Let’s rise above that and to be statesmen.”

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That is an example of rising above partisanship, rising above this picky, partisan process in the Senate, which denies an opportunity for me, as a Senator, to vote up or down. But it also denies the American people the accountability and responsibility they expect for their Senators.

Mr. CORNYN. Will the Senator yield for another question?

Mr. ALLEN. Yes.

Mr. CORNYN. The Senator has characterized what he thinks is happening here in terms of these attacks on qualified nominees, such as Miguel Estrada. I just wish to ask the Senator this. We all know, in order to get to the Senate, we have to run for election; and I just wonder what he reaction is, or whether he would include this in the category of petty partisan politics that he just described in terms of the way Miguel Estrada has been attacked.

Most recently, in a fundraising electronic newsletter to potential donors, the chairman of the Democratic Senatorial Campaign Committee, our colleague from New Jersey, recently acknowledged—he boasted that the current time we see the filibusters is “unprecedented.” But the context in which he used that is to raise money for Democratic candidates to the Senate and the statement we are hearing on the floor regarding the figure 168 to 4, that they have only blockaded 4. But at the same time we see the filibusters to block the highly qualified nominees of the President. Is that what you would characterize as a political use of this obstructionism of President Bush’s nominees?

Mr. ALLEN. It is worse than that. I was not aware of that, I say to the Senator from Texas. That is more than just petty partisan politics. That is disgusting. This will lead to a continual governmental paralysis of our constitutional responsibilities. You can say you are against a judicial nominee, but to use it to brag and to admit that it is unprecedented in an attempt to raise money—to me, that is the sort of retaliate for our constitutional rights. It is very clear what it says. It is very clear what it says. It says advise and consent. It is a very important process.

The reason I wanted the Senator to yield is you have been justly talking about the qualities of Miguel Estrada. I have met him, too. He is such a humble man. When you hear the horrible things said about him, it makes you cry inside. There was one thing that all of these nominees the President nominated have in common, and that is they are also eminently qualified. You have asked about his qualifications. Besides that, he worked in both the Bush and Clinton administrations.

Mr. CORNYN. The Senator has characterized what he thinks is happening here in terms of these attacks on qualified nominees, such as Miguel Estrada. I just wish to ask the Senator this. We all know, in order to get to the Senate, we have to run for election; and I just wonder what he reaction is, or whether he would include this in the category of petty partisan politics that he just described in terms of the way Miguel Estrada has been attacked.

Also, look at the rest of the nominees. William Pryor is the youngest at the American Bar Association. Priscilla Owen has the highest ranking of the ABA. In 2000, she won 84 percent of the vote. She was supported by three of the American Bar Association. Princess Hassett also won 84 percent of the vote in the American Bar Association. Pris-
Texas Supreme Court. Judge Pickering—99.5 percent of his cases were affirmed and not appealed. I think we are talking about people who the President has done such a great job of singling out and finding, the people who were qualified people. I wanted to ask you that question isn’t it true that everything you have said about Miguel Estrada and his qualifications is true about all these nominees? Mr. ALLEN. It is. I very much agree with the Senator from Oklahoma. Miguel Estrada, Priscilla Owen, Judge Pryor, Judge Brown, and Judge Kuhl—they all have impeccable records. They have different experiences but great experience, and they are highly recommended by the people who know them best. This is a great way of judging their capabilities. Nonetheless, the facts don’t seem to matter.

I close and say we need to act in accordance with the Constitution. The Constitution is important. Accountability, Fairness, and Justice are important. As a matter of principle, our judicial nominees deserve a fair and simple up-or-down vote. These nominees are individuals who are important for the function of justice in these various courts. And it is not just these three; there are others being obstructed.

I ask my colleagues to show some guts. Stand up and vote yes or vote no. Act responsibly. Since I started off with a Charlie Pride admiration and, unfortunately, we have not been able to “Kiss an Angel Good Morning” here on the Senate floor, why don’t we follow Aaron Tippin’s advice that “you got to stand for something?” Why don’t you stand. Vote yes or no on these judges but vote.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The majority’s time has expired. Who wishes to proceed?

The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, let me first compliment my colleague from Virginia for his vast knowledge of western song lyrics. I think he has reciprocated several of his favorite lyrics. I always preferred the famous western song “Who Drank My Beer While I Was in the Rear?” That always seemed to be one that isn’t played near enough. I am sure that is part of the Senator’s repertoire.

Let me comment on a few of the things the Senator said. First, he said that justice delayed is justice denied; that is true of every State in the Union. If one of those individuals, for some reason, is not the appropriate choice and Senators from the State involved determine that, then the President should take that into consideration.

My colleague from Virginia talked about being consulted by the President about Roger Gregory before the President made a decision on that appointment. That is entirely appropriate. That is the way the system ought to work. The President and his legal counsel should be consulting Senators about the appropriateness of various candidates for judicial office before the nominations are sent to the Senate for confirmation.

I think the reason we are here tonight, the reason there is angst about this issue about these four judges who have not been confirmed, the 2 percent, that perhaps this other chart is something that we have not have that consultation. The members of the Judiciary Committee, the ranking member of the Judiciary Committee, Senator LEAHY, the other members of the Judiciary Committee on the Democratic side, did not have that opportunity to be consulted, and nominations were sent forward that, in fact, were not acceptable, were not strongly supported, had no support, and had strong opposition to them. Accordingly, we have agreed not to move forward with these nominations, which I think is entirely appropriate.

The notion that the Senate should have the right to consent—and that is contained in article II, section 2 of our Constitution—implies in it the idea that the Senate has the right to withhold its consent, and that, in fact, we have exercised that right with regard to 4 of the 172 nominees who have come to the Senate floor so far for consideration. That is a pretty good record for this President. I think this President has done much, much better than the previous President in getting his nominees confirmed.

There was great frustration on the part of many of us in the prior administration, and it has been expressed here on the floor, that very good nominees were being sent forward by President Clinton and were not afforded a hearing. It was not as though there were objections that would be expected. There were no objections. It is just that they would not be given a hearing because of some view by some Member that the person should not be entitled to a hearing before the committee.

That practice has not been followed with regard to President Bush’s nominees. We did not follow that when the Democrats were in the majority in the Senate, since President Bush has been in office, and, of course, it is not being followed at this time.

Let me put this in a larger context, which is something we have tried to do here during the recent hours; that is, the context that we have major issues facing our country today. There is significant work undone work—still crying out for attention in the Senate before this session of Congress is over. The majority leader tells us we will adjourn on November 21. That is a week from tomorrow. I don’t know if we will have that deadline. We have had other deadlines that have not been made. But that is the schedule as we now know it. We will adjourn a week from tomorrow, and we are essentially...
wasting this week talking about a set of issues that have been talked about and talked about and talked about during recent months.

I hope that before we leave this year, we will not only finish the appropriations clearly needed to be done to keep the Government functioning; I hope we will also conclude work on a Medicare prescription drug bill, which will preserve the Medicare system but which will provide a genuine Medicare prescription drug benefit. I am informed that some time—perhaps by the end of the week—we will have some better indication as to what resolution is finally coming out with regard to those issues that have been in conference.

I hope, also, we get a decent Energy bill. I have complained repeatedly about the process that has been followed with regard to the Energy bill because Democrats have been excluded from those conference meetings. But I still hold out hope that the final product, which we have been assured we will be able to see 48 hours before the final meeting of the conference—I am informed—I still hold out hope that final product will be something that will hold up here that the country and, on balance, will be a step forward. I don’t know that that is the case. Until we see the bill, we will not know that is the case. We don’t know what is being put in the bill that was not in the Senate-passed bill. We don’t know what is being put in the bill that was not in the House-passed bill. But clearly there is important work the Senate needs to be doing.

I have very few days in which to accomplish that work. I regret that we are spending so much time on this single issue. Frankly, in my State, if I go around New Mexico and ask people what do they think we ought to be having all-night sessions to resolve here in the Congress? It would be a very insignificant item on the list of priorities. I think the first priority would probably be, Why don’t you do something significant on the health care crisis? Why don’t you do something about the 44 million people who have no health care coverage in this country? That number continues to rise. I have served in the Senate now for a little over 20 years, and that number has risen during most of that time. We have not effectively or deliberately to deal with that health care crisis and, accordingly, we have a great many people in my State who do not have access to quality health care, do not have access to affordable health care. We need to do something about the cost of health care. We need to do something about the availability of health care.

Of course, we need to do some things to try to maintain our job base, the jobs about which we all are concerned. We hear about that which clearly needs to be done since this President came into office. I am glad to see we are finally, now, in the last month, beginning to see some jobs created on a net basis. We created more jobs last month than we lost. I hope that will continue. It is going to have to continue for some period before we are at a break-even point. But I hope we are at a break-even point in the near future because, clearly, there are a lot of people looking for jobs, looking for opportunities, and we see too many of those jobs going overseas, too many of our better paying jobs, particularly manufacturing jobs, leaving for other parts of the world.

My colleague from New York is here. He is a member of the Judiciary Committee and has been intimately involved in these issues related to judicial nominations. I know he spoke last night. He is ready to speak again and give his views on this issue, so I will yield the remainder of my time to him.

Mr. SCHUMER. Mr. President, I thank my colleague from New Mexico for, as usual, his thoughtful, balanced, and fair remarks. We have, I guess, now been debating 13 hours 45 minutes here. I don’t think too many new arguments have come out. I don’t think we have accomplished anything. But let’s proceed, although I think I am one of my colleagues that we could have devoted some of this time to speaking about issues we have not debated on the floor at length—jobs, the yearning of the average American to have a secure and good paying job; health care; millions more who are not covered and millions more who are covered and cannot afford health care; even a debate on the war in Iraq, where we are going and what we should be doing. It would be far more instructive and illuminating to the American people than what we have done here.

But we are here, and I think we should be talking about the judicial nominations. One point I make, just before I go back to the other side. We have heard some paeans to Miguel Estrada; Horatio Alger, we heard. He is a bright man of accomplishment, but let’s be fair here. His father was a banker in Honduras. He came from a privileged background. America welcomes people of all backgrounds. That is wonderful. But the bottom line is he was not typical of an American immigrant. His father was a banker, they were part of the Honduran elite. The Senator from Virginia—he said he didn’t speak English when he came here. We think he probably did.

But Horatio Alger? No. Horatio Alger was somebody who started off poor. There are indeed, I would like to inform my colleagues from Virginia, millions of immigrants, who came here poor as church mice and struggled and worked their way up. It is sort of interesting that the hero to those on the other side is a wealthy Honduran who became a wealthy American—that is the modern-day Horatio Alger story. So let’s be straightforward.

Miguel Estrada, to be fair, is a very bright man. But just because he is bright and just because he came from a good background doesn’t give him carte blanche to become a judge. He didn’t answer any of our questions. How many Americans would get a job if they told the boss: I refuse to fill out the questionnaire. I don’t want to answer that question?

These were not esoteric questions; these were not demeaning questions; they were very simple questions: What is your view of the first amendment about how expansive it ought to be? What is your view on the commerce clause? The very things on which he would opine as a judge.

These have been regarded as legitimate questions from the day of the founding of the Republic. Let me say, why are my colleagues so appalled that we would ask such questions? I will tell you why. It is very simple. Because this President, George Bush, despite his wanting his image to be moderate, on the issue of judicial nominations the case for the Administration is the most hard right President we have seen. His nominees are not mainstream, many of them.

People on this side of the aisle have voted for many of them with whom we do not agree. But when some go so far, as my colleagues have gone, to say the most important us to question them thoroughly, and to block them if necessary.

Again, this chart, I would say to the American people, says more than all the words and rhetoric and name calling we have heard from the other side: 168 to 4.

Is the process broken down? No. Is the process so much so that a reasonable judge can’t get through? Obviously not, unless you think George Bush is not nominating any reasonable judges.

What has happened here? There is such anger on the hard right that they can’t get every single judge they are possible. That is what the other side, against their own will, to engage in performances like we have seen over the last 14 hours. We want every single judge approved. That is their goal. That is the goal. And then we come up with the arguments.

So we went through this last night. Filibusters are OK, as long as they fail. It makes no sense. We have had filibusters in the past. We have had six of them, four by the Congresses in the 1990s and 2000. If a filibuster is wrong, it should be wrong whether it passes or it fails.

But then look at the other argument. Over 50 judges were blocked by the other side. We didn’t hear any speeches about Constitution in crisis. They were not even giving hearings.

The logic defies me: It is OK to block judges by not giving them hearings, and it is OK to filibuster as long as you fail; the only thing that is wrong is to have filibusters succeed and that brings the Constitution in crisis and brings the Republic to its knees.

My colleagues, that argument does not hold up in first year law school. It
is just totally hypocritical and contradiictory. It is saying, I want my results so I am making whatever argument it takes. Sort of like the judges we don't want. A little like Justice Brown's way of arguing—of deciding cases not bad because they blocked 50 of them and there was no outcry. Filibusters aren't bad because they filibustered six of them, or four of them, and that was just fine.

So let's be honest here. For some reaason, not anger among a small, narrow group of people that they can't get every judge. Again, I welcomed—I don't think this serves our time well—but I welcome it, in the sense that all of those talk shows and all of those radio programs and all of those editorial boards leave out the one overwhelming fact, which is 168 to 4.

I will march in parades in conservaative parts of my State and once in a blue moon; it was in the last decade about this issue, to be honest, compared to the things that make their lives better, compared to the relief American families want when they sit down at the dinner table on Friday night and try to pay their bills. But the occasional time somebody called out, "Why are you blocking the President's judges?" because they listen to the radio or read a biased article in the editorial pages, I would say: "We approved 168 to 4," whatever the number is, and they say, "Oh, OK.

You can do all the sophistic arguments you want, how many angels are on the head of a pin, say this way to block judges is is just totally hypocritical and contradiictory.

By the way, I would like one of my colleagues to defend, in the 30 hours we have, was it all right to block the 50 judges of President Clinton? Was that OK? Do we ignore that fact? It is not an ancien régime; it was in the last decade. Was that OK? I would ask any of my colleagues to answer that.

Then I would ask them to point out to me when Senators on the Republcan side of the aisle launched filibusters, who got up and complained and said the Constitution was being violeted?

No, no, no. The arguments here, again, are outcome determined. There is no internally consistent logic. It just says: We want all the judges; we will take whatever argument it takes. When they originally put forward Miguel Estrada, they said he was a rags-to-riches case, and then of course the fact that he was from Oklahoma. Now he is Horatio Alger: Honduran banker's son becomes successful American lawyer. I don't know if that is going to tug at the heartstrings of most Americans. Most, I think, would say Horatio Alger is the person who goes to Harvard, gets a job in a factory, who tried to struggle to provide for his family, who started a small business and struggled, the whole family worked in it and then they got a little money, and they got richer and God bless America. That is what is wonderful about this country.

But again, whatever argument fits. Is there a solution to this conundrum? Obviously, there is. There is. It is to follow the Constitution, not to come up with this idea that somehow, buried in the Constitution—by the way, that is not being literalist. When my colleagues say the Constitution says you can't filibuster a judge, they are reading words into the Constitution. I believe in a flexible Constitution. I think most people do in the 21st century. But if you want literal reading of the Constitution, find the word "filibuster." Find me the number 60. Find me the number 60. Find me the number 60 in the Constitution, in the Senate, should be supported by majority rule.

If majority rule were so important, then we should not have committees because when committees block judges, as they did, we don't even know what the majority thinks. The Senate has a very important function in this Republic. It has had for 200-some-odd years. It is to be, as Madison put it, the cooling saucer.

As mentioned last night, I didn't have qualms about some of my colleagues trying to stop J udges Paez and Berzon. The Ninth Circuit is a very liberal circuit. It is too liberal for my taste. To put more liberal judges on there given the interest in the balance. That is why this year I supported the nomination of Judge Bybee, Jay Bybee. I don't agree with him on almost anything, but on the Ninth Circuit to have a hard right conservative is probably a good thing.

My view is there ought to be moderaion on the courts. And probably it is great to have one Justice Scalia on the Supreme Court and one Justice Brennan. You should not have five of either. Judges should not be at the extremes because they are the ones who tend to make law.

We have a nominee coming up Friday, Justice Brown, who wants to go back and reratify the Lochner decision that has been in disrepute for 70 years. Is that justice, someone who is interpreting the law? Lochner, which said a State couldn't pass a law that said bakery workers could work only 60 hours a week? We have come a long way since then.

But it is true, there are some in America who say: We don't want the Government doing anything. If I am a businessman, I should be able to do whatever I want. I should be able to pollute the air or water per person. Or I should be able to take my property and do exactly what I want with it—no zoning.

That is a view, certainly a view that can be argued in this Chamber or anywhere else. It is not the view close to the mainstream of the American people.

So the bottom line is very simple one. We believe—it may drive some crazy, but we believe we are defending the Constitution. I take the view that the Constitution can be interpreted through whatever sophistry and sophistic arguments we hear that every one of the President's judges should be approved does not do justice to this wondful document, this living, breathing document, the Constitution. We believe that if the only way you were to reject a judge was because the judge didn't have enough grades in law school or because they smoked marijuana when they were in college, it would demorolize the process. We ask an important question. Do you want to ask questions about a judge's judicial philosophy—that is what is at the core of what makes a good judge. We believe that when a President brings ideology into the nominating process—we didn't do it, and he didn't want to do it. To his credit, he was honest. He said he is appointing judges in the mold of Scalia and Thomas. That wasn't about their law school grades or diversity; it was about a philosophy: Let's take the courts and change the way they view things.

We believe that our examination of these nominees and their views, and what they do as judges, is not only appropriate but obligatory.

I say this to the American people, to those of you who may be watching here at 7 in the morning. Judges have a tremendous effect on all of our lives. It is hard to see because it is not like a debate here in the Senate, this wonderful process of the Senate in the Senate, that is making a policy. It is done on a case-by-case basis. That is the beauty of this country. But that is can determine, if you are a woman or a minority or disabled, what kind of discrimination might be possible to exist against you. They can determine, if you are a worker, what kind of structure there is to protect your rights. The PRESIDING OFFICER: The time of the minority has expired.

Mr. SCHUMER. Thank you, Mr. President.

The PRESIDING OFFICER. Who seeks time?

The Senator from Texas. Mr. CORNYN. Mr. President, I have to give my colleague from New York credit. He is a determined, articulate advocate of his point of view. The problem is the facts just don't sustain that point of view. This has been refuted time and time again, but we see the same charts being trotted out time and time again that just are proven not true by the facts that we all know. I want to talk a little bit about those facts. I want to talk a little bit about what Democrats in the past have said about filibusters and their conviction that they should never occur and that they are, in fact, unconstitutional. In fact, those are the arguments we are making today, and we will use their own words to prove it.

My colleague from New York time and time again trots out a chart that claims that a number of judicial nominees have been filibustered by Republicans when in fact, those same nominees have been confirmed and are sitting on the Federal court. How can he claim that what a Demo-
Charles Pickering is somehow the same thing Republicans did in the past is just disingenuous at best.

He claims that Stephen Breyer was filibustered. The last time I checked, Stephen Breyer sits on the U.S. Supreme Court. He did not sign his name to his last position, and frankly, the chart is not worth the paper it is printed on.

Don't take my word for it. Listen to the words of Tom Daschle on January 30, 1995. The minority leader said:

The Constitution is straightforward about the few circumstances in which more than a majority of the Congress must vote: A veto override, a treaty, and a finding of guilt in an impeachment proceeding. Every other action by the Congress is taken by majority vote.

That is our position. They are denying those very words here today.

I just hope the American people are listening, even though the hour is early and even though we have been talking for a long time now.

My question is, should we believe you today or should we believe what you said in 1995, Senator Daschle, when you said, other than a veto override, a treaty, a finding of guilt in an impeachment proceeding, every other action by the Congress is taken by majority vote?

I believe he was correct then and because of the politics of the moment he is not correct today.

Senator Tom Harkin, in 1994, said:

I really believe that the filibuster rules are unconstitutional. I believe the Constitution sets out five times when you need majority or supermajority votes in the Senate for treaties, impeachment.

We could go down the list:

Lloyd Cutler, White House Counsel under President Carter and President Clinton; Senator Biden; Senator Boxer; Senator Feinstein; and Senator Kennedy.

Kennedy said: “Nominees deserve a vote.” He is not saying that here today. He is voting to obstruct a vote where a bipartisan majority of the Senate stands ready to confirm these nominees. Senator Kennedy said: “Nominees deserve a vote. If our colleagues do not like them, vote against them.”

I would prefer the Senator Kennedy of that era because I think he was right then. None of our colleagues on the other side of the aisle have made any explanation as to why they have changed their position on what the Constitution means. But yet we have heard from Senator Allen and others that the characterization we are hearing from the other side about these fine judicial nominees is nothing more than politics.

The Senator from New Jersey, Mr. Corzine, in a moment of stark candor, had this to say. This was an e-mail he sent to prospective donors to the Democratic Senatorial Campaign Committee. He said:

Senate Democrats have launched an unprecedented effort.

How could he call it unprecedented if, in fact, as Senator Schumer and others have said, it hasn’t happened in the past? Senator Corzine, I guess, is guilty of telling the truth here. He said:

Senate Democrats have launched an unprecedented effort by mounting filibusters against the most radical nominees. Senate Democrats have led the effort to save our courts.

Of course, we understand what is going on. This is about raising money. This is about stirring people up by throwing them some red meat. We all understand what is going on. The American people understand what is going on, that this is about politics. This is not about politics as usual, this is about politics at its worst.

The reason I say that is not because it is unusual for us to disagree in this body. In fact, that is one of the things I love about this body—that any Senator can stand up and talk about what they truly believe to be in the best interests of this country. We know many times there are disagreements. But then ultimately we have a vote because we believe in majority rule in this country. That, in fact, is what distinguishes this form of government from anything else that has been going on, after we have talked—and we have talked about some of these nominees for 2½ years or more—but sooner or later, we vote. Sooner or later, we vote. That is what democracy is about. That is not what is happening with regard to these filibusters, and it is also wrong.

The thing that really concerns me—there are a lot of things that concern me about this process. I believe it is not simply in need of tinkering. I think the system is broken down completely and we need a fresh start.

Together, myself along with my colleagues who are new Members of this body who have been here now for just about a year, we sent a letter to the majority leader and the minority leader, chairman and ranking member of the Judiciary Committee, and said: We are really not interested in this game of tit for tat or retribution, pointing to the past and saying we were entitled to treat President Bush’s nominees today badly because we believe you treated President Clinton’s nominees badly. Frankly, I wasn’t here then. I don’t endorse treating any nominee badly. These are honorable men and women who have been chosen by the President to serve in positions of important public service, and they deserve to be treated better than the nominees we are talking about today have been treated. Perhaps there were excesses in the past. I regret that. Unfortunately, I was here to do anything about it. But I am here today.

What I believe is that we need a fresh start. We need to agree among ourselves what has happened in the past in terms of the way judicial nominees are confirmed and what has happened in the present. There is no democracy in the retracing. Where I come from, you are going to attack someone and call them names, you at least give them a chance to meet with you and sit down and talk face to face. Yet obstructionists have the time and time again refused to even meet with these nominees. Any Member of the Senate who would like to meet with these nominees and talk about their concerns and to see if they are justified, to listen to the response, has that right, and indeed every Senator has had that opportunity, but many have turned it down rather than take advantage of that opportunity and reach understandings and then vote.

We have even had this process sink to a new low when it comes to embracing the idea that traditional views on religious issues should play a role in determining whether or not they are fit to serve as a judge.

I strongly disagree with that concept, and I think all of us should reject with honor, it is wrong to treat them as common criminals. It is wrong to treat them as a caricature of their true selves. It is wrong to call them names. We can disagree with them. We can have a great debate. But ultimately, we need to treat them respectfully.

That doesn’t mean a Senator has to vote for them. Every Senator has a clear right to vote their conscience—to vote up or down. That is really all we are asking for today and last night and for the remainder of this day, and as long as it takes to make clear that what is happening is unconstitutional, as Democrat leaders have said in the past—a fact which they have apparently forgotten, to put it charitably.

But I think the thing that really concerns me more than anything else—and as I have said, there is a lot to be concerned about—is the tactics used against some of these nominees, and the way they are treated after they have volunteered to offer their services to the American people on the bench.

We have seen charts that say 168 to 4. As we pointed out before, the real number is zero to 4 zero being the number of filibusters against judicial nominees from 1789 to 2002. That is right. It never happened before—never in the history of the United States of America. It has never happened before until this year. This year we have seen four filibusters. What has changed? Has the Constitution somehow changed? For those Senators who decried filibusters in the past and who now embrace them, what has changed to cause their change of opinion and change of view? I think we know what has happened.

That is why the number should be zero to 4—zero filibusters since 1789 until 2002 and 2004 in this last year, in an attempt to block President Bush’s highly qualified nominees.

But as I was saying, when I come from New York I don’t treat someone’s names, you at least give them a chance to meet with you and sit down and talk face to face. Yet obstructionists have the time and time again refused to even meet with these nominees. Any Member of the Senate who would like to meet with these nominees and talk about their concerns and to see if they are justified, to listen to the response, has that right, and indeed every Senator has had that opportunity, but many have turned it down rather than take advantage of that opportunity and reach understandings and then vote.

We have even had this process sink to a new low when it comes to embracing the idea that traditional views on religious issues should play a role in determining whether or not they are fit to serve as a judge.

I strongly disagree with that concept, and I think all of us should reject
it. I believe that when a nominee’s personal theological beliefs become a legitimate course of debate before the judiciary and before the Senate, when we insert ourselves somehow between the relationship between an individual and their God, we violate both our conscience and our Constitution.

I have sensed in the Judiciary Committee that some of my colleagues are genuinely alarmed and uncomfortable when they speak about their or her faith in honest terms in the public arena. Indeed, it is so rare today where people feel free to talk about things that are most important to them.

I would like to read a comment that.uni...and some of these folks, who are uncomfortable with such frank and honest discussions.

We are inspired by a faith that goes back through all the years to the first chapter of the Book of Genesis. God created man in his own image. We on our side are striving to be true to that divine heritage. We are fighting, as our fathers have fought, to uphold the doctrine that all men are equal in the eyes of God. There never has been, there never can be, a successful compromise between good and evil. Only total victory can reward the champions of tolerance and decency and freedom and faith.

This was not the comments or the testimony of a nominee to the Federal bench. These were the words of President Franklin Delano Roosevelt. I seriously doubt that anyone in this body at this point of view, criticized the appointment of Janice Rogers Brown before the Judiciary Committee, President Roosevelt was certainly within his rights to say that in 1942, and it is just as right and proper that our nominees today express their deeply held personal religious beliefs. President Roosevelt was certainly within his rights to say that in 1942, and it is just as right and proper that our nominees today express their deeply held personal religious beliefs.

We have most recently witnessed the strident animus directed toward Judge Carolyn Kuhl and Attorney General Bill Pryor who have faced challenges over their religious beliefs, particularly concerning the matter of abortion. Both nominees have, from a legal scholar’s point of view, criticized the legal analysis used to support the Roe v. Wade decision. These nominees per- sonally hold beliefs that are absolutely concerning the matter of abortion. These nominees per- sonally hold beliefs that are absolutely concerning the matter of abortion.

I would point out that these nominees are hardly alone in criticizing the Roe decision as a legal matter. Numerous legal scholars and jurists across the political spectrum who call them- selves pro-choice and pro-life have publicly criticized the legal analysis in Roe, and indeed that is what lawyers do and judge us do. They parse words. They call lawyers to try to sharpen legal thinking. But Supreme Court Justice Ruth Bader Ginsberg, who was overwhelmingly approved by the Senate, has described Roe as a heavy-handed judicial intervention that was “activist.” Allan Dershowitz, a law professor from the Harvard Law School, described Roe as a “case of judicial activism more appropriately left to the political process.” Edward Lazarus, former law clerk to Justice Blackmun, the author of Roe, said that “Roe borders on the indefensible as a decision and, at its worst, is disingenuous and results ori- ented.”

I read these quotes not for any other reason except to show that there has been over time serious scholarly concern about the legal justification for that decision.

But perhaps more to the point, even though Attorney General Pryor and Judge Kuhl have criticized the reasoning of Roe, they recognize that Roe v. Wade is the law of the land. Indeed, one of the things I admire most about Attorney General Bill Pryor, as the Senator from Tennessee noted in his remarks last evening, is that he has said: “No matter what my personal beliefs are, I believe in the morality of enforcing the law.”

Indeed, I believe as a public servant, as attorney general, as a judge, it is the obligation of a judge to interpret the law as written, not as I would have it be. Indeed, some of the problem we have had is judges who have elevated their personal beliefs, their political agenda above the law. I submit that a judge who is a lawmaker is, in fact, a law breaker.

We understand in this country what was settled well over 200 years ago at the Constitutional Convention in Philadelphia; that is, we have three branches of Government. We have the Congress or legislative branch, which everyone understands. That is the reason we run for election, tell people what we believe, and then we are either elected or rejected by the public before we take an oath to uphold the law of our state. We have the executive branch, whose job it is to execute the laws that Congress has written. Indeed, they are servants of the law as well because we recognize they, too, must comply with the law and that no President is above the law, that we are a nation of laws, not of men.

Then there is the judicial branch of Government. The Federalist Papers speak of the judiciary as the “least dangerous branch.” I wonder whether James Madison and Alexander Hamilton are spinning in their graves today when they see what the Federal judiciary has become in too many in- stances, where judges have assumed the role of lawmaker, something that was anathema to the Framers.

My point is simply this: People such as Priscilla Owen, with whom I served as a law clerk on the Supreme Court, understand that no matter what their personal beliefs are, when they put their hand on the Bible and they take an oath to uphold the law of their State and of the United States of America, they are obligated to enforce the law not to elevate their personal views above the law. Indeed, the judicial philos- ophy we should all embrace is that of a judge who interprets the law and not makes law.

As I said earlier, a judge who is a lawmaker is indeed a law breaker because they violate the fundamental commitment that all of us have made to enforce and uphold the law, includ- ing true to our oath that dictates those respective roles for the various branches of Government.

When I see people such as Priscilla Owen, who received 84 percent of the vote in her last election by the people of Texas and who was overwhelmingly approved by the Senate, has described Judge Kuhl as a “case of judicial activism more appropriately left to the political process.” Edward Lazarus, former law clerk to Justice Blackmun, the author of Roe, said that “Roe borders on the indefensible as a decision and, at its worst, is disingenuous and results oriented.”

I would like to read a comment that one of the things I admire most about Attorney General Bill Pryor, as the Senator from Tennessee noted in his remarks last evening, is that he has said: “No matter what my personal beliefs are, I believe in the morality of enforcing the law.”

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on the California Supreme Court. I had the honor to introduce her to the committee because her two home State Senators refused to do so. But it was my honor to do so.

This is the kind of scurrilous, mean attack that is launched by some to oppose these nominees. I know it is not necessarily easy to see, but this depicts a caricature of President Bush, a picture of Janice Rogers Brown in the most extreme sort of racial stereotype you can imagine, Justice Clarence Thomas of State Colin Powell, and Condoleezza Rice, National Security Adviser to the President. The President is saying: "Welcome to the Federal bench, Ms. Clarence … I mean, Ms. Rogers Brown. You’ll fit right in."

Our colleagues on the other side would do well to disavow this kind of support for the obstruction of these judicial nominees. Indeed, I would think every fairminded and decent human being, no matter what sort of vial and loathsome tactics. We can disagree. We can have different points of view. Indeed, I think that is what makes this body so unique and so important. But we should agree to maintain a certain minimum level of civility in our discourse and, indeed, when there are those who inject this sort of scurrilous attack on President Bush’s nominees, or anyone else for that matter, we ought to stand up and say: Unfair, unjustified, and we repudiate it.

Frankly, I have not heard the kinds of repudiation that I would expect for those who are joining in this obstruction against Janice Rogers Brown and denying her the right to a vote.

That is all we are asking for, an up-or-down vote.

The PRESIDING OFFICER (Mr. BENNETT). The Senator from Florida.

Mr. NELSON of Florida. Mr. President, 172 judges have come to the Senate to advise and withhold consent for 1 of those 172. But the notion that that is the kind of approach we are taking is incorrect.

I am delighted to be here with my colleague from Oregon today and to share the floor with my friend, Senator Wyden. I thank my friend. I think he has made a number of important points about judges. The fact is, when I vote on 172 judges, and 3 of those 172 don’t meet my test, in the Senate, I am going to listen to the facts, and apply the law. That is what the security and sanctity of this judicial system is based on: Fair and equal justice for all.

That means that a judge ought to have judicial temperament to open their mind and not have all the answers as they approach the bench.

So for this Senator, it is pretty clear, when I vote on 172 judges, and 3 of those 172 don’t meet my test, and in the Senate, 3 of those 172 don’t meet the test, it seems to me that is a fairly reasonable point of view. That is inserting the check and balance of the constitutional system that is so unique to our system of government. We maintain a legislative branch offsets, and checks and balances the executive branch, and so, too, a judicial branch offsets and checks and balances the other two branches.

I am delighted to be here with my colleague from Oregon today and to share the floor as we give some of our ideas about this all-night session. It was quite a challenge getting here. There is a real wind storm in Washington today. Fortunately, since the power went out at my residence, my stopwatch and also alarm clock wrist-watch went off, and I had to stumble around in the dark with a flashlight and race over here. But I am delighted to be here and to join with my colleague from Oregon.

Yet the Senate isn’t tackling the kind of issue because, in effect, things have ground to a halt over exactly the kind of polarization the Senator from Florida has talked about.

I would hope that as we wrap this up, we understand that nothing important is going to get accomplished in the Senate unless there is an effort to work in a bipartisan kind of fashion.

Mr. NELSON of Florida. Will the Senator yield?

Mr. WYDEN. I am happy to yield.

Mr. NELSON of Florida. On that point, we have been fortunate to have a bipartisan approach in Florida with regard to the confirmation of judges as well. My senior colleague, Senator Graham, as Governor back in 1978 to 1986, was able to get the legislature to pass a series of panels called the Judicial Nominating Committee. This would be composed of lay people and members of the bar, leaders of the community who would receive applications for a vacant judgeship, and then that committee would screen them, interview them, look at their credentials, and nominate three, and then the Governor would select. That is still law today.

When Governor Graham was elected to the Senate in 1996, he started to institute a similar situation, but rather by custom instead of law, in the confirmation of nominees to the Federal bench. It has worked well, while there have been two Senators of the same party and, indeed, while Florida has had two Senators of both parties. Indeed, the judicial nominating commisions formed back in Florida nominate three for the vacancy. The Senators sit down and interview all three of those nominees and decide which system that they have worked out with the existing Governor of Florida that it will be six nominees for the vacancy.
Senator Grahm and I sit down and interview all six, and we make a recommendation to the White House if we have an objection.

Otherwise, the White House then goes about and selects which one they want. It is a process, working in a bipartisan fashion, with a bipartisan commission; and all of our judges have gotten through without controversy.

The fact is exactly what the Senator from Oregon says. If you put your mind to it and you go about to be bipartisan, you can have this process work, work efficiently, work effectively, and work timely in order to have good, fair, and open-minded judges.

Mr. Wyden. The Senator from Florida is being logical. Heaven forbid that logic break out sometimes in this area that is often called the "logic-free zone"—this area surrounding the Capitol. It just seems that in so many of these areas, the institution just takes leave of its senses because both of us have described a bipartisan way to deal with the issue of judges—an approach that works in Florida and has worked for Senator Smith and I in Oregon. I do not think the Senate has the time or luxury of focusing on this pettiness.

I mentioned the health care issue with Senator Hatch that I have felt strongly about since my days as co-director of the Oregon Grey Panthers. This demographic revolution is coming on us, and the prescription drug issue we lack now is vitally important. But if there is one thing the Senate has learned, health care is like an ecosystem. What you do in one area affects all other areas. Senator Hatch and I have pulled together an approach that has now gotten the support of the Chamber of Commerce and the AFL-CIO to get back on track for what, regrettably, was not finished back in the early 1990s. In the health care area, you see an alternative path.

I want to give additional time to my friend from Florida because of his schedule. I appreciate, particularly, his outlining, as we have tried to do in Oregon—Senator Smith and I working together—the kind of bipartisan approach that the Senator from Florida has described in his State for choosing judges.

Mr. Nelson of Florida. Mr. President, I will pick up on that theme the Senator from Oregon has mentioned. I must say this has been one of the most inspiring experiences, and most enjoyable, to get to know all of these Senators. I must say there is not one Senator here I do not personally like. I must also say that my degree of frustration—and usually if I am frustrated, it is with a smile because of enjoying my colleagues here so much; but my one frustration is this place is way too partisan. And, from time to time, this place is way too ideologically extreme. When you have a country as big as America and as broad and as diverse as ours, it is very difficult to govern this country when it becomes highly partisan and ideologically extreme. It makes it very difficult for the people who are in the political center trying to reach out and bring people together to build consensus when there is sharp, highly charged partisanship and ideological extremism. It is very hard to build that consensus.

Mr. Allen. Will the Senator from Florida yield?

Mr. Nelson of Florida. I would love to yield to my colleague, but it is my understanding that, under the rules, we are given, in each hour, one-half hour for the Senator from Oregon and me to make a presentation, and one-half hour is given to the Senator's colleagues to make their presentation. It would be my intention for Senator Wyden and I to continue our remarks, since we only have about 32 minutes left.

Mr. Allen. Mr. President, I thought it had been agreed that any speaking or questioning I may do would get charged against our time in the next hour.

Mr. Nelson of Florida. It is my understanding that I have the floor. I have some thoughts I want to express. Rather than have those interrupted, I prefer to just continue on.

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

Mr. Allen. Thank you, Mr. President.

Mr. Nelson of Florida. Mr. President, I thank the Senator from Virginia, who is one of my favorites here. I have the privilege of serving with him on a number of committees.

Back to what I was saying, if we would stop this excessive partisanship—you cannot get things done with this excessive partisanship, especially, you cannot get to a consensus in a Senate that is basically split down the middle, 50-50. I think it is 51-49 now. So if you are going to get anything done, we ought to be Americans first, not partisans first. That is what part of all this fight is. That is what part of this all-night session has been.

Do you know what. The folks out there in America—and I think all of you know this—don't like these partisan fights.

I would like the perspective of the Senator from Oregon on that.

Mr. Wyden. Mr. President, I think the Senator from Florida and I have tried to spend our half hour talking about specific ways in which the Senate can move forward. I think there is a bipartisan effort to come together to find common ground. Let me repeat them as we move to the end of our half hour. The Senator from Florida and I have talked about an alternative approach on judges, which works in the State of Florida and in the State of Oregon. I have talked about the health care issue, the issue that I feel the most passionate about, going back to my days when I worked with the elderly, and the wonderful help I have gotten from Orrin Hatch, trying to focus on the country ready for this huge set of population changes that is coming. I thought it was very fitting that the Senator from Virginia was here, Mr. Allen, who has worked with me on technology issues.

A fourth area—something that is fresh in the Senate's mind—is that just a few days ago, we got 80 Senators—far more than anyone could have imagined—to support a major natural resource bill dealing with the forest fire issue. This is something of enormous concern in my part of the country and, obviously, all Americans. Our hearts go out to the people in California where they have had this terrible tragedy. Senator Feinstein and Senator Cochran—I always wanted to work with Senator Cochran on an issue as chairman of the Agriculture Committee. I haven't had the opportunity until now. He could not have been more constructive and helpful. I think that is why the Senate got 80 votes for that forest rebuild.

So I think the Senator from Florida is setting the right tone and certainly, in our 20 minutes, on the question of judges, health care, technology, and on the question of forestry, the two of us have shown that there is an alternative to a lot of the smallness, a lot of the partisanship, the kind of smallness that we are seeing dominate this debate.

I thank my colleague for all of this extra time, and I believe the tone he is setting is one that will respond to what I hear the country talking about and certainly what I hear people of Oregon talking about at our 36 town meetings in every part of the State.

Mr. Nelson of Florida. If the Senator will yield, I want to discuss another subject where partisanship gets in the way, and that is putting our fiscal house in order.

The Senator will remember about 2½ years ago, the wonderful optimistic view that we had of the Federal budget,
where we were sitting on a budget surplus in the year 2001—something in excess of $250 billion in that 1 year, with a projected surplus over the next decade that was going to allow us to pay down and almost pay off the entire national debt, still have enough left to start new programs that were needed, such as the adequate funding of the bill that we ultimately passed but did not adequately fund—the No Child Left Behind education and modernizing Medicare with a substantial prescription drug benefit. We had the opportunity to do all of that and still be fiscally conservative and fiscally responsible in not invading the Social Security trust fund, letting that Social Security trust fund surplus pay off the national debt over the next decade.

Instead, 2½ years later, we are looking in this fiscal year at a budget deficit—not a surplus but a deficit—of a half trillion dollars. That means we are spending $500 billion more than we have coming in in tax revenue. What do we do? We go out and borrow it. Who do we borrow it from? We borrow it in part from the average American citizen when we float Treasury bonds. That means we are now borrowing it from countries such as China and Saudi Arabia.

If we are going to get out of this fiscal briar patch, it is going to take bipartisanSHIP. The excessive partisanship gets in the way, just like it has gotten in the way of having us in session all night for that side of the aisle to make their point of view, and our side of the aisle to say that we have taken up 172 judges and approved 188 of them.

This country has its challenges and we have not even talked about Iraq and Afghanistan and the war on terror. But it certainly has its challenges with this fiscal mess that we are in of bleeding this country's Treasury bonds, and I think what surprises people? We end up borrowing it from countries such as China and Saudi Arabia.

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Mr. BENNETT. Will the Senator yield for a question?

Mr. ALLEN. Yes, I will.

Mr. BENNETT. I am interested to hear the Senator make the point that an up-or-down vote is what we are asking for. The Senator was in the Chamber when the cartoon was displayed with highly offensive racial characteristics attributed to the judge from California. I ask the Senator if he is aware that this African-American woman, who in my opinion has been slandered, has been the subject of comment by Al Sharpton, one of the candidates for President. Al Sharpton said he disagrees with the woman and believes with the accountability of the Senators to the Constitution and to their constituents as well as fairness to these nominees, to give them the fairness of an up-or-down vote. Simply decide.

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Mr. BENNETT. Will the Senator yield for a question?

Ms. LANDRIEU. Just a question. I yield to the Senator from Utah.

Mr. ALLEN. I thank the Senator from Utah for bringing up, not only the Sun, but that enlightening view.

Ms. LANDRIEU. Will the Senator yield?

Mr. ALLEN. I yield at the sufferance of the Senator from Tennessee. I will yield, but it will be on your time.

Ms. LANDRIEU. I just a question. I am sorry the Senator from Utah left the floor. Perhaps if he hears this question, he might come back to respond.

Mr. ALLEN. I am wondering, since he raised the name of Al Sharpton, Rev. Al Sharpton, who asked for a vote on one nominee, supposedly. If Al Sharpton—I am sure he did, and others—asked for a vote on 60 of President Clinton's nominees, which represented 20 percent of the nominees sent up by a former President, would the Senator from Utah have agreed to a vote, if Rev. Al Sharpton had called him? I don't think so. He could come back to the floor and respond.

The issue is not single votes. The issue is whether the Senate of the United States, the Democrats, have a right to give advice and consent to the President. The facts speak for themselves. Does the Senate from Virginia allow them to do, consistent with the Constitution, their right to give advice and consent to the Constitution and to their constituents as well as fairness to these nominees, to give them the fairness of an up-or-down vote. Simply decide.

Mr. BENNETT. Mr. President, I will answer the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Utah?

Mr. BENNETT. I am unaware of how many nominees get held up by committee. I am unaware of what may have happened prior to a nomination coming to the floor. But I do know I would allow a vote on every nominee who comes to the floor, regardless of which party it may be or regardless of which President it may be. I would allow that nominee forward. And I would agree with Al Sharpton or anyone else who called for an up-or-down vote, without a filibuster, on any nominee, any judicial nominee who has come forward.

There is no question but nominees get lost in committees. There is no question nominees get held up by holds and other activities. But once a nominee has been cleared by a majority vote of the committee and placed on the floor, that nominee is entitled to an up-or-down vote. I have always held that position. I always will hold that position. It is for that reason I will support the Frist-Miller rule change that will make that position very clear.

I do not care who the President is, under the Constitution he or she has the right to make nominations. The Senate handles those nominations. I understand sometimes those nominations will be stopped in committee. But once the committee has voted by a majority vote to put the nomination on the floor, whether it is my President or someone else's President, I will always support and always have supported the notion that that individual is entitled to an up-or-down vote.

Mrs. LANDRIEU. Will the Senator from Virginia yield?

Mr. ALLEN. I will yield to the Senator from Tennessee.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Arizona.

Mr. KYL. Will the Chair advise me when I have spoken for 90 seconds? I simply want to make one point. That is the point that is before us on the other side is more than misleading. It is absolutely false. There are always judges who are not confirmed at the end of a Presidential term. There were
at the end of the Clinton term. There were at the end of the first Bush term. So it is wrong to say that, because there were judges who continue be confirmed because they were nominated late, they were rejected.

What this all means is that there have been four nominees rejected by filibuster without a fair trial, without an up-or-down vote. I have been trying to think of an analogy, watching people say: Look, it’s 168 to 4; we have only filibustered 4. Of course, there are a lot of folks in this town.

But here is an analogy that deals with the law: We only hanged 4 people without a trial. We gave the other 168 a fair trial. We had a vote in the jury. That is what is going on here. It is not a matter of defeating the judges. Judges are defeated by both parties very seldom, and there are some at the end of a President’s term who can’t be voted on just because of time constraints, and it is about the same number in both parties, if I go back in time. What is unprecedented is the filibuster where you don’t even allow them a vote. The analogy I came up with is the one I just mentioned—I think it is very apt—to say, Look, we only hanged 4 people without a fair trial; the others got a fair up-or-down vote.

That to me is wrong. That is what we are talking about here.

Mrs. LANDRIEU. Will the Senator yield for a clarification?

The PRESIDING OFFICER. Who seeks time?

Ms. LANDRIEU. Will the Senator yield for a clarification?

The PRESIDING OFFICER. Who seeks time?

Ms. LANDRIEU. The Senator from Arizona.

The PRESIDING OFFICER. Is the Senator from Arizona in control of the time?

Ms. LANDRIEU. I think I—

The PRESIDING OFFICER. The Senator from Tennessee is in control of the time. The Senator from Tennessee.

Mr. ALEXANDER. How much time does the majority have?

The PRESIDING OFFICER. The majority has 17 and a half minutes.

Ms. LANDRIEU. Parliamentary inquiry: How much time do the minority and majority have at this hour to be allocated?

The PRESIDING OFFICER. The majority has 17 minutes, the minority has 28 minutes.

Ms. LANDRIEU. Thank you.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, insofar as the Senator from Arizona’s comments are concerned, he said we gave 168 a fair trial and hanged 4 without a trial. He might have also said we had never done that before this year. That is what he meant.

Let me step back from this and try to put it in a little different framework. I am new to the Senate. I came here in January for the first time even though I worked here before, 35 years ago, for Senator Howard Baker.

A lot of people ask me, knowing I was a Governor for a while: What do you think of it? How do you like the U.S. Senate?

I suspect the reason they ask that is that some former Governors who have come here have not liked it. It is a very different sort of job. But this has been a great privilege for me. It is hard for me to think of a thing that has not been good about the last 10 or 11 months.

The Senator from Louisiana is here. One of the good things is she and I have worked together on issues that have to do with the environment and energy. So the opportunity to speak, the people with whom I work, the issues I deal with, all those things make serving in the Senate a great privilege.

The only real disappointment I have had is this issue of judges, of the treatment they do to Democratic side has given to President Bush’s appointment of judges. I have been puzzled by that. I have even said to some of my friends on the other side: Before this year, before I got here, the Republicans must have done something awfully bad to you to produce this kind of reaction because I really don’t understand it.

I know something about the appointment of judges. As Governor of Tennessee, I appointed about 50 judges. In fact, the Governor in Tennessee, while Attorney General, had to appoint the Chancellor for the University of Tennessee because the previous Governor had not appointed him. So the Attorney General, with the Senate’s confirmation, nominated him. He was appointed and confirmed. By the time I appointed him, I thought it was a political benefit for me, but it was not. He served for many years and added to the quality of the Chancellor for the University of Tennessee.

I checked to see if he was intelligent, fair, had good character, if he would respect people who came before him, and I appointed him and he has served with great distinction, as did the others.

I also worked for a great judge. The Senator from Louisiana certainly knows him well, or knew him well. His name was J. John Minor Wisdom. He was editor in chief of the Tulane Law Review. I am certain the Senator from Louisiana would agree that he was a great judge.

He and Judge Elbert Tuttle of Atlanta were extraordinary people. I know he never hired anyone who wasn’t fair. I know he would never tolerate anyone in his office who wasn’t committed to civil rights because he was one of the leading civil rights judges in the country. Yet on the other side of the aisle, the argument against Bill Pryor—this is no more than a racial smear—is that he is insensitive to civil rights because he was a white conservative from Alabama and, therefore, can’t be trusted, that is what the point is. But there is nothing in his background that would suggest that. That is made up out of whole cloth. That is not the reason the other side will not give Mr. Pryor an up-or-down vote, something that has never been done in the history of our country until this year with Federal nominees.

Let me just speak about what Mr. Pryor’s career has included. When he was appointed attorney general of Alabama, Bill Pryor. I want to mention first the attorney general of Alabama, Bill Pryor. I want to mention, second, the Federal judge from Mississippi, Charles Pickering.

Let’s talk about Bill Pryor. He is a young man who’s been around. He has done a lot of things. I had not really focused on him enough to know exactly who he is. He also was a law clerk to Judge Wisdom. He was editor in chief of the Tulane Law Review. I am certain the Senator from Louisiana would agree that he would never tolerate anyone in his office who wasn’t committed to civil rights. That is what is going on in the Senate today.

What is going on in the Senate today reminds me of the old mountain story about the lawyer who came up to the judge at the beginning of the case and said: Judge, may I make a few arguments on the law? May I tell you about this case?

The judge said: You don’t need to tell me about the case. I got a phone call last night. I pretty well know the facts. Just give me a few points on the law.

The importance of judgments in America is that we expect to be treated fairly. We don’t believe it is a political exercise. And we accept the results. That is why it is so inappropriate, it seems to me, for us suddenly to be rejecting President Bush’s appointments because of their permanent views when it is established by their long records that they are able to apply the law.

Let me especially speak about a couple of cases from the part of the country I know the best. The South. I want to mention first the attorney general of Alabama, Bill Pryor. I want to mention, second, the Federal judge from Mississippi, Charles Pickering.

Let’s talk about Bill Pryor. He is a young man who’s been around. He has done a lot of things. I had not really focused on him enough to know exactly who he is. He also was a law clerk to Judge Wisdom. He was editor in chief of the Tulane Law Review. I am certain the Senator from Louisiana would agree that he would never tolerate anyone in his office who wasn’t committed to civil rights because he was one of the leading civil rights judges in the country.

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Let me just speak about what Mr. Pryor’s career has included. When he was appointed attorney general of Alabama, he voluntarily said in his ceremonial remarks he criticized the State constitution for banning interracial marriage. He didn’t have to do that. He voluntarily said that.

What is he doing today? He is trying to oust the chief judge of the Alabama Supreme Court because the judge insists on keeping a copy of the Ten Commandments in the courthouse in the State of Alabama. It is not because Mr. Pryor doesn’t believe in the Ten Commandments. He believes in the law. He is able to put the law ahead of his own views.
He is a Republican. He took to the Supreme Court of the United States a reapportionment case that worked against the Republican Party in Alabama. He didn’t do it because he wanted to hurt the Republican Party, he did it because he wanted to put the law above his own political beliefs.

What else did he do? This may be the most serious and difficult act that an Alabama attorney general could do. I am surprised that he is still in office, I don’t believe that he should be. He wrote a letter to every superintendent in every school district in Alabama—to every superintendent in every school—telling them the football coach couldn’t lead a prayer before the football games because he doesn’t pray, not because he is not religious, but because he believes the law doesn’t permit it. He is a Roman Catholic. He said so in the hearing. He is pro-life. But on the issue of abortion, he wrote all the letters to all the Catholic parishes and told them they could not enforce an anti-abortion law passed by the State of Alabama because parts of it were unconstitutional. He put the law before his religious beliefs.

He was the person who was the editor in chief of the Tulane Law Review, a law clerk to the greatest civil rights judge of the last 30 years in the South, who has consistently put the law ahead of his own beliefs, and the other side won’t bring him up for a vote. Why would that be?

Let us go to Judge Pickering for a moment, another example in the South.

The suggestion has been made that he is not racially sensitive. Those are code words. That is to suggest that somehow Mr. Pickering is a bigot and is not fair to African Americans. We all know what the slur is, what the slander is, what the implication is. We all know what that means. But what do the facts show?

The facts show that Mr. Pickering was not on the sidelines, that he was not in the back yard, that he was right in the front during the great civil rights struggle of the 1960s and the 1970s. He lives in Laurel, MS. He lived at the center of the problems of racial desegregation. He lived in the same town as the head of the White Knights of the Ku Klux Klan, Sam Bowers. The White Knights were organized because they didn’t think the Klan was mean enough. The White Knights and Sam Bowers, according to the Baton Rouge Advocate, was the most dangerous, and the most violent racists, living in the 1960s. We hear a lot about terrorists today. The terrorists of the 1960s in the United States were the Klan members in Laurel, MS.

What did Charles Pickering do? He testified in public against Sam Bowers, in the courthouse, against the most violent living racist in America, according to the Baton Rouge Advocate. That is not something few people have to do. He has had a whole lifetime of commitment to racial progress. It seems as if almost everybody in Mississippi supports him, including most of the Democratic leaders.

William Winter, my friend with whom I served, former Democratic Governor, a beacon for racial progress in Mississippi, strongly supports Judge Pickering. Frank Hunger, who was a law clerk on the Fifth Circuit Court of Appeals where I was, Frank Hunger, is a Judge Circle, the Deputy Attorney General, he is Al Gore’s brother-in-law, and he strongly supports Judge Pickering.

Why in the world would the other side want to see Judge Pickering succeed and suggest that he is guilty of racial insensitivity when he stood up for desegregation? He might have been on the other side that opposed segregation, but he wouldn’t. He was out front risking his life, literally, and putting his own children in public schools when others were running off to segregated academies. When we bring him up before the Senate—after sticking his neck out and sticking up, in Mississippi, for desegregation—we cut his neck off in Washington, C.C.? I don’t think so. I am not sure. I know it is not right constitutionally.

The President nominates the judges. That has always been the way it was. Despite the rhetoric on the other side, this Senate has never used the filibuster to deny an up-or-down vote to a President’s nominee who has a clear majority in the Senate. The filibuster has been used for other purposes by the other side.

I was hearing a lot of talk last night about protecting the rights of the minorities. There were not a lot of African Americans in the South in the 1960s who felt really protected when a filibuster was being used by Senators to stop the most important piece of civil rights legislation that was offered here. So it is not that great a device to have.

Why are they doing this? I don’t know. One clue is to change the rules, which we have done, but the other clue is, is the election, which I guess is what I prefer.

In Senate races in Florida, in North Carolina, in South Carolina, in Arkansas, in Georgia, and all across this country, I hope this is an issue. I hope people say: Why was President Bush, for the first time in our history, not given a chance to have up-and-down votes on men such as Charles Pickering and Bill Pryor who were extraordinarily qualified, but the other side is the election, which I guess is what I prefer.

Please let me say for the Record that 4 judges out of 168, only 2 nominees of Presidents, were given hearings. The nominee from Texas, Priscilla Owen, 1 full day of hearing; the nominee from Alabama, Judge Pickering, 2 days of hearings, and 1 day was given after the anthrax. We who had anti-judges we would attack and we felt so strongly about providing a hearing the day after the attack that the nominee was given a hearing.
Mr. Estrada was given 1 day of hearing, and Mr. Pryor was given 1 day of hearing.

So the notion that these nominees have not been given their day in court, time to express their views and to answer questions, is absolutely false. That is in contrast to the 57 nominees of President Clinton’s nominees. Let me repeat: 57 out of 63 who didn’t get 1 minute of a hearing, not 1 minute.

These 4 we have blocked for reasons that I and my colleagues will go into—and Senator HARKIN will speak about in a minute—have been blocked for very good reasons. All of them got a hearing. I just wanted to make that clear.

I know the Senator from Tennessee will remember those hearings in those committees.

The third point I want to clarify is that the Senator from Utah said he would never give a nominee the opportunity for a vote. The Record will reflect that the Senator from Utah has voted seven times against cloture for giving a nominee—not a judicial nominee but appointee—a vote on the Senate floor.

I urge Senators to not use words such as “never” or “every” because the fact is, filibusters have been attempted before over the course of our history: In 1968, in 1980, in 1994, and in the year 2000, it hasn’t been successful.

This filibuster is successful for one reason and one reason only: The American people do not want these four nominees on the bench. They just do not want them on the bench, and they are expressing that through the Democrats here in the Senate. I will tell you why.

Let me talk about Mr. Pryor for just 1 second. I want my colleague from Tennessee to know, and my colleague from Alabama will know this. I know I am going to get some Democrats when I say this. But I was willing to vote for Judge Pryor, and I had basically told that to the Senator from Alabama, who is a good friend of mine, someone with whom I really enjoy working, who is much more conservative than I am on some issues. But I really do like him and I really do trust him in many ways. I talked with him and we talked about it. I was prepared to vote for Mr. Pryor until this ad appeared. Let me read it to you. J udicial Chamber: Pryor. While some in the Senate are playing with religion, Catholics need not apply.

I am a Catholic. When these ads appear, by right-wing groups that want to divide this country, Catholic against Protestant, Gentile against Jew, they haven’t been successful. When I say this, but I was willing to vote for Judge Pryor, and I had basically told that to the Senator from Alabama, who is a good friend of mine, someone with whom I really enjoy working, who is much more conservative than I am on some issues. But I really do like him and I really do trust him in many ways. I talked with him and we talked about it. I was prepared to vote for Mr. Pryor until this ad appeared. Let me read it to you. J udicial Chamber: Pryor.

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against Bonnie Campbell, but she never


told me that she was going to vote in the Senate floor on judges. However, I was listen-

ting to the words carefully. Evidently, it is correct for the Senate to hold up


cases, to try to stop them in committee. That is morally acceptable.


But it is morally acceptable for Republicans to hold up judicial nomi-


ees in committee. That is OK.


Please tell me where the moral demarcation line is on this. How absurd.


How reeking of hypocrisy. I remember 15 times more judicial nominees were

blocked by Republicans. But they did it in committee.


When this all started last night, I thought, this is so appropriate that this

theater, this hypocritical theater we are engaged in, is happening at night. It is so appropriate for this

event to take place at night because under cover of darkness is where this

majority likes to operate, in committee, not open on the floor. No, block

the nominees in committee. That is not a filibuster. That is a block. That is a hold. That is OK. Morally, that is acceptable. It doesn’t count. But don’t dare block them out in the open, on the Senate floor.

Three years ago, Bonnie Campbell, former attorney general of the State of

Iowa, head of the Violence against Women Office at the U.S. attorneys of-

fice here in Washington, did a great job, came before the committee. Presi-

dent Clinton had nominated her for judi-

cicial appointment to the Eighth Cir-


cuit. Both blue slips were turned in by


democratic senators of the Senate, ex-

pected to block a nominee on the floor? I hear it all the time. That seems to be a com-

mon refrain from the other side: I will never, never vote to block a nominee

using a filibuster.


My good friend from Utah said that.


But check the record. The Senator from Utah, who was recently in the

Chamber saying he would never vote against cloture, voted against cloture 8

times in the Clinton administration.


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havent been fooled. They know this is a waste of time to hide what the Majority cant or dont want to get done.

The PRESIDING OFFICER. The Senator's time has expired. For the information of our colleague, his time has expired.

The Senator from Tennessee has 2 minutes.

Mr. ALEXANDER. Mr. President, I have been listening to my friend from Iowa. One thing he said that I agree with: The quote from "Fiorell's Rain-" about making up the rules as they go along, who will not make up the law as they go along, who will enforce the law as they find it, as Attorney General Bill Pryor does in Alabama, as Judges pickering does in Mississippi.

The issue here, after all the charts are taken down and all the rhetoric is put aside, is very simply this: For the first time in our Nation's history, the Democrats are using the filibuster to keep from having an up-or-down vote on President Bush's nominees after they have gotten out of committee, after they have gotten to the floor, and after it is clear they have a majority of votes. That is the first time in our Nation's history.

Second, they are doing it extraor- dinarily well qualified women and men. I dont know whether that is grounds to change the rules of the Senate or not. But it surely is grounds for the party in the minority to do that thing. The other side, for the first time in 200 years, says: We are going to stop you from having an up-or-down vote on people who have the majority vote.

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

The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I ask unanimous consent that the Senate return to legislative session and proceed to the consideration of Calendar No. 3, S. 224, the bill to increase the minimum wage, that the bill be read the third time and passed, and the motion to reconsider be laid upon the table.

Mr. MCCONNELL. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCONNELL. Mr. President, parliamentary inquiry: The time is con- trolled how?

The PRESIDING OFFICER. Under the previous order, beginning at 9 a.m., the minority and majority each control 30 minutes.

Who yields time?

Mr. MC CON NELL. Mr. President, I rise today on behalf of my constituents in the Sixth Judicial Circuit to discuss the plight we confront in that circuit. That circuit is made up of Michigan, Ohio, Kentucky, and Tennessee. As you can see by this chart, the Sixth Circuit is currently 25 percent vacant. If you care a hoot about circuit of Kentucky, it takes you 6 months or longer to get your case decided than in any other circuit in America.

Why are we in this situation? We are in this situation because the two Michigan Senators will not allow the Senate to go forward on four nominees from their own State—the Michigan Four. So we languish with a 25 percent vacancy rate. Litigants have a 6-month or longer wait than anywhere in America. We are turning very slowly. Sometimes they are not turning at all. Cases are going unheard and grievances are going unheard and grievances are going unheard and grievances are going unheard.

The Sixth Circuit has the dubious honor of being the slowest circuit in the Nation—dead last. The blame for that is the Michigan Senators, who has had four well-qualified nominees pending before the Judiciary Committee for quite some time; the reason for that is the Michigan Senators' refusal to sign off on any of them, unless they get to tell the President whom to nominate.

Looking at it another way, if you are lucky to have to be in one of the other Senate has fallen down on the job. These nominees are from Michigan, and the Senate delegation from that State, as I said, has objected to the Senate considering them, even though the Sixth Circuit is in crisis. It is not even security that if nominees to be reported out of committee, they would join the ranks of the filibustered nominees we have been talking about since yesterday at 6 p.m.

But despite the President doing his job and trying to fill these seats, the
circuits, if you file your appeal by the beginning of the year, you may get a decision by Halloween. If you file at the same time in the Sixth Circuit, you will wait until Easter of the following year to get a decision. We have all heard that old saying that justice delayed is justice denied. So let’s put a human face on those statistics.

In the area of criminal justice, Ohio Attorney General Betty Montgomery has said that numerous death penalty appeals facing death row inmates are being held up in the Sixth Circuit. In the area of civil rights, Ohio’s Supreme Court Chief Justice Kenneth Dickens has said that cases are delayed in the Sixth Circuit. In both areas, the problem is caused by a lack of judges because vacancies have left many of the courts short of their authorized number of judges.

The Sixth Circuit is not alone in suffering from the judicial vacancies crisis. It is important to remember that Michigan doesn’t own these seats. They don’t belong to any particular State. Certainly, historically, at least in recent history, these four seats have belonged to Michigan. They belong to the people of the United States. If anybody has a particular claim, it is the people of the Sixth Circuit, all of whom are suffering because of this obstructionism. I know the people of Ohio, Kentucky, or Tennessee would be more than happy to have these judges if Michigan doesn’t want them. If the Michigan Senators don’t want Michigan judges on the Sixth Circuit, goodness, we would be happy to have a good Ohio, Kentucky, or Tennessee lawyer fill the vacancies. My people in Kentucky didn’t have anything to do with this spat up in Michigan. They are having to pay for it, as are the people of Ohio, Tennessee, and Michigan.

I said there are four vacancies in Michigan. Two of the four seats the Michigan Senators are blocking don’t have any connection to any prior intraelection dispute. There were two of the four judges who were involved in all of this dispute during the Clinton years, but there are four vacancies. All four of them being held up. President Clinton did not even nominate anyone. Let me repeat, President Clinton didn’t even nominate anyone for the seat to which Henry Saud has been nominated. Henry Saud, if confirmed, would be the first Arab American to sit on a circuit court in U.S. history. That is one of the nominations they are holding up. President Clinton didn’t even nominate anyone for the seat to which Henry Saud has been nominated to which David Mackey has been nominated didn’t even become vacant until the first year of the current President’s term. Two seats are being held up by the Michigan Senators, one of whom President Clinton nominated, and one didn’t become vacant until President Bush took office. These two vacancies had nothing to do with whatever the spat was that went on earlier, and all four seats remain vacant.

This is an unacceptable situation. The American people should be aware of what is going on. They should demand that this obstructionism cease. This outrage that is occurring in the sixth judicial circuit puts a human face on what has been going on around here this year.

Real litigants, real people, are paying the price for senatorial pique, for senatorial demands for something that is totally unreasonable—where Democratic Senators, in a Republican administration, get to pick circuit judges. In the meantime, the lawyers and litigants of the Sixth Circuit continue to suffer under this 25 percent vacancy crisis, this judicial crisis of the highest order, as a result of Senate obstructionism.

Let me also add, just a month ago, both houses of the Michigan Legislature passed resolutions that noted the President’s refusal to fill the vacancies on the Sixth Circuit, and urged the U.S. Senate in general, and Michigan Senators in particular, to act on the Michigan nominees. The Michigan Legislature is passing resolutions asking the Michigan Senators to let the nominations go forward. President, I urge you, Mr. Chair for the opportunity to address the crisis in the Sixth Circuit. It is a very serious crisis confronting my State. I see the Senator from Oklahoma here. I yield the floor. The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Oklahoma is recognized.

Mr. MCCONNELL. Mr. President, I yield the remainder of our time.

Mr. NICKLES. Mr. President, I will also be speaking later. I want to make a couple of comments after presiding and listening to some of the speeches already. I agree it is important to maybe judge the positions of the Senator.

I have had the pleasure of being in the Senate for 23 years. I plan on serving a few more years in the Senate. I have had a lot of great experiences, a lot of high points and low points. One of the lower points is the way judges have been treated in the last 2 years. In my previous 21 years, we never had a filibuster on a judge, and I never heard colleagues say, a minute a vote. President Clinton had nominees and they weren’t considered. Most of those who were on the list he nominated very late in the last year of his term of office. One of them was from Oklahoma, and the two Senators from Oklahoma were never even consulted. That name was on the list.

So there is a difference between being nominated, going through the process—particularly with district court judges—consulting the home State Senators. That is the tradition of the Senate.

One of the things that bothers me is we are breaking the tradition of the Senate by saying now you have to have a supermajority, particularly on the appellate court level. I don’t know that that has happened on district court, and I am glad. We have confirmed a lot of district court judges and I am glad. But when it comes to circuit court, the higher level, it may be a higher standard, and all of a sudden, the standard for those judges appears to be 60 votes. That is evident by the fact of four having been filibustered and there
Another of the traditions that has been trampled upon is what people are saying and how they are saying it. We have a tradition recently when the chairman mentioned two Senators by name and kept using the words “sanctimonious hypocrisy.” That is in violation, in the opinion of this Senator, of rule XIX of the Senate.

We have rules. And we have rules for a purpose. Those rules should be adhered to. When Senators violate the rules, I think they undermine maybe to some extent the dignity and esteem of the Senate.

These rules have a purpose. Rule XIX says:

No Senator in debate shall directly or indirectly by any form of words impute to another Senator or other Senators any conduct or motive unworthy or unbecoming of a Senator.

That rule is there for a purpose. It is gradually being ignored in debate, time and time again, by some Members—not by most Members, by an occasional Member.

I am giving a warning to Members, if they violate this rule, I am going to call it on them and I am going to ask the Parliamentarian if their comments are a violation of rule XIX. And if they are in violation, they will be seated. It will be for the Member to vote for them to be allowed to participate in debate again.

It is not right to be coming down mentioning Senators by name and using words such as “sanctimonious hypocrisy” and impugning a Senator’s motives. That is in violation of the rules. People ought to know the rules. Maybe if we would abide by the rules, we would have a higher level of debate, greater civility, and maybe greater understanding of some of the challenges we have before us today.

Let me just make one other comment about there were some judges who are maybe left in the queue. President Clinton had a bunch of judges left in the queue. I had a judge who was left in the queue at the end of Bush 1’s administration. His name was Frank Keating and he ran out of time. That is one of the traditions of the Senate. When people are nominated in the last year or the last few months of an administration, a lot of times they don’t get confirmed. That is not a filibuster. Some people were equating that to a filibuster. It is not. There has not been a filibuster of a judge in my term until this—

And he ran out of time. That is one of the filibusters. It is not. There has not been a filibuster of a judge in my term until this—

Another comment. My very good friend from Louisiana said her father is a pro-life Catholic—

I am grateful to my friend from Louisiana said her father is a pro-life Catholic, but if they happen to be pro-life Catholics—I don’t know if her dad is a pro-life Catholic or not. I hope he is. I don’t know. That is his business. I usually don’t ask the nominees I am recommending or the President is considering—I usually don’t ask them their position on that issue. But my guess is if someone is known to be a pro-life Catholic, they could get through the litmus test for appellate court judges that many are using today, and I think that is very regrettable. Maybe if they happen to be pro-life Southern Baptists or pro-life Mormons or pro-life Jews, I am not sure they can get through this new litmus test now being used by the Judiciary Committee and, unfortunately, by the minority in the Senate. I think that is very regrettable and we need to change that.

Our colleagues on the other side need to realize at some point, someday, they will regain the majority. They need to be thinking about what that means for the long term. I cannot imagine they assume we are going to have a 60-vote litmus test or a 60-vote margin of hurling the đang for confirmation judges for Democrats but that is not going to happen at some point when Democrats might occupy the White House.

I think this raising the bar to 60 votes—I happen to believe it probably is unconstitutional, but I also happen to believe they are setting a precedent that they likewise will regret.

So I hope maybe more mature minds will be thinking about this on the Democrat side and say, wait a minute, shouldn’t we really give somebody such as Miguel Estrada a vote?

Mr. MCCONNELL. Will the Senator from Oklahoma yield for just a moment? The Senator from Kentucky is here. I don’t know how much time we have remaining.

The PRESIDING OFFICER. The majority holds an additional 6 minutes on this side.

Mr. NICKLES. I will be happy to yield to my very good friend from Kentucky.

Mr. MCCONNELL. Thank you. I yield the remaining time on this side, during this hour, to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. BUNNING. I thank for yielding my good friend from Kentucky and my good friend from Oklahoma. I have a question for the senior Senator from Kentucky.

Mr. MCCONNELL. I thank my friend from Kentucky for pointing this out. It is an outrageous situation.

Mr. BUNNING. Mr. President, we have heard from many on this side of the aisle this morning and last night. They have made great points about President Bush’s judicial nominees and the bad situation they are in.

We started this year talking about Miguel Estrada. His nomination is no longer before the Senate because of the opposition party’s tactics and for the sale of his family.

Today marks 982 days after Miguel Estrada’s nomination. He has never received an up-or-down vote. That is unfair to him. President Bush, and the American people.

Miguel Estrada is a respected attorney here in Washington. He received a unanimous “well qualified” rating from the ABA which is the rating our Democrat colleagues call the gold standard for judges.

Our country has been the first Hispanic to sit on the prestigious DC Circuit. He was a clerk at the Supreme Court. He graduated with distinction from Harvard Law School and argued many
cases before the Supreme Court. He even served in the Clinton administration.

But that is not the most impressive part of Miguel Estrada’s story. He was born in Honduras and came to America at age 7, speaking little English. He overcame that hurdle and graduated from one of our most exclusive colleges and law schools.

He also overcame a speech disability. And this is no small hurdle to clear when your career depends on making successful oral arguments in court.

Miguel Estrada became a victim of politics in the Senate when some here said his views were unknown. They made unprecedented demands for documents every legal office in the country would object to releasing. They asked questions that countless Clinton nominees also declined to answer. And opponents said that was unacceptable.

The real issue here is what is known about Miguel Estrada.

He is a bright young Hispanic lawyer who follows the law and would make a great Supreme Court nominee.

The idea of the first Hispanic on the Supreme Court being a conservative is unacceptable to them. I hope his nomination comes before the Senate again some day and we can vote to confirm him.

And then there is Priscilla Owen.

Her nomination has been pending for 918 days. She has been a supreme court justice in Texas since 1995.

In her last election she received 84 percent of the vote. I’m not sure many here know what it feels like to receive that kind of percentage. But I bet we would all like to.

And just like Miguel Estrada, the ABA gave her a unanimous “well qualified” rating.

She graduated with honors from Baylor Law School where she was on the law review and she earned the highest score in Texas when she took the bar exam. Having suffered through several children taking the bar exam, I’ve heard what kind of challenge that can be.

But most telling is what her colleagues in Texas say about her.

Justice Owen has the support of three former Democrat justices on the Texas Supreme Court. Fifteen bipartisan past presidents of the Texas Bar endorsed her.

And running for re-election she was supported by every major Texas newspaper. We should all be so lucky to even get our hometown newspaper’s endorsement.

We’ve had three cloture votes on her and we will vote again on Friday.

Each time a majority signaled we should give her an up-or-down vote. But again the minority is preventing her from having her day in court.

What is her crime? Twice in the Texas Supreme Court, Justice Owen has said the court was wrong and that under Texas law the parents of a pregnant child had the right to be informed before their daughter had an abortion.

Several lower courts had already upheld these parental rights and that Texas law does not give parents the right to stop the abortion, but they did have the right to be informed.

But that precedent apparently doesn’t matter and she is being obstructed by a radical minority in this Senate that believes children have unlimited rights to abortions and parents should not be able to talk to their pregnant children.

I know the vast majority of Americans do not believe that. And it is well past time we give Justice Owen an up-or-down vote.

Alabama attorney general Pryor was the next judge to fall victim to special interest politics.

Bill Pryor was appointed Alabama attorney general in 1997 and re-elected twice, most recently with 99 percent of the vote.

He has argued before the U.S. Supreme Court, practiced at two law firms, and taught law school.

In law school, he was on the law review and graduated with honors. After law school he was a clerk at the Fifth Circuit where he worked for a judge who spent years working to desegregate schools in the South.

The Attorney General Pryor is supported by Republicans and Democrats in Alabama.

Newspapers praise the lack of partisanship in his office. He is known in Alabama for following the law. Ironically that is what his detractors say he won’t do.

Bill Pryor is an outspoken man who does not hide his beliefs but he has proven that his personal beliefs do not get in the way of following the law. He does not support abortion and has never apologized for it.

But he made sure his office followed Supreme Court precedent in enforcing the State’s sunset statute even though he disagreed with the decision, and most recently he acted against overwhelming public opinion in Alabama to enforce Federal court rulings ordering the Ten Commandments display in the Alabama Supreme Court to be removed.

Again a majority of this body has kept Attorney General Pryor from getting the up-or-down vote he deserves. He has proven without a doubt that he will follow the law even when he disagrees with it.

Twice a majority of the Senate has said he should get a vote. Next time I hope we give him an up-or-down vote.

Next up on the honor roll of filibustered judges is Judge Charles Pickering.

Judge Pickering was unanimously confirmed by the Senate in 1990 to be a Federal district judge in Mississippi. He graduated first in his law school class at the University of Mississippi.

He practiced in a law firm and was both a city and county prosecutor. He was a municipal court judge and elected to the Mississippi Senate.

Judge Pickering has spent his career as a leader in race relations in Mississippi.

His career has been dedicated to tearing down racial barriers against minorities in the South, and he was not very popular for it in Mississippi in the 1960s and 1970s, but it was the right thing to do.

In recent years Judge Pickering has served on race relations committees in Mississippi. He spent time working at the Brown Project.

In 1967 Judge Pickering was a prosecuting attorney in Jones County, MS. He took the witness stand to testify against a Klan leader in a trial for killing a Black civil rights activist. He was standing up for racial justice and, Judge Pickering put himself and his family in danger and lost his re-election. You can never really judge the character of a man until standing up for his beliefs costs him something. Judge Pickering’s willingness to stand up against racial violence cost him his job as a prosecutor. But that did not keep him from continuing to fight for racial justice.

Probably the most heated race issue in the 1960s and 1970s was integration of public schools. integration came to Judge Pickering’s town in 1973. The Black and White communities in Laurel were split and Charles Pickering worked to bring them together.

He created a plan to integrate schools. In the end many Whites still moved their kids to private schools to avoid integration. And Judge Pickering could have done the same. But instead, he believed in integration and kept his children in public school.

Many have said he has been soft on civil rights. But that does not sound like the story of a man who is soft on racial justice to me.

Again the special interests that have kept the Senate from voting on Miguel Estrada, Priscilla Owen, and Bill Pryor are preventing a vote on Judge Pickering.

A majority of the Senate again has said we should have a vote on Judge Pickering and the Senate must fulfill its constitutional responsibility and do so.

Now we come to the nominees who will soon be victims of special interest politics—Judge Carolyn Kuhl and Justice Janice Rogers Brown.

Judge Kuhl is a superior court judge in Los Angeles where she has worked on civil and criminal cases. Currently, she is the supervising judge of the civil division.

Judge Kuhl graduated from Duke Law School and clerked for the same
court she was nominated to. In the 1980's she worked at DOJ and the Solicitor General's Office where she argued before the Supreme Court.

The ABA says Judge Kuhl is "well qualified." Republicans and Democrats in California who worked for her attest to her fairness and competence. Fellow judges and attorneys who appear before her strongly support her nomination and urge an up-or-down vote.

Judge Kuhl's crime is that she represents an aspect of the southern California while working for the Reagan administration. One instance our colleagues on the other side of the aisle like to point to is when she helped prepare a document supporting President Reagan's views in an abortion case.

In other words, she was doing her job and representing her client.

One thing they forget to mention is the case was the first major abortion case to follow Roe v. Wade when the new rulings were quite uncertain.

They also forget to mention that it was her job to represent the position of the President and not her own views. They also forget to mention that three justices who worked for her on that case were Senate confirmed to positions after the case. Judge Kuhl has said she will follow the law regardless of her views. Her record proves it.

Finally, we get to Judge Janice Rogers Brown of the California Supreme Court. Judge Brown, who a minority of the Senate says is out of the mainstream, was recently re-elected with 76 percent of the vote.

She was born in rural Alabama to a family of sharecroppers. She grew up in segregated schools. She lived in an era where laws were written to prevent racial equality in the South. Yet Justice Brown succeeded in school and became the first black woman to sit on the California Civilian Court.

What do my colleagues say about Justice Brown is out of the mainstream?

Justice Brown voted to uphold a law saying parents have a right to consent before their daughter can get an abortion. How far is that out of the mainstream? Recent polls tell us well over three quarters of Americans think parents should be involved in the abortion decisions of their children.

What else do opponents say she has done that is out of the mainstream?

Her detractors say she wants to undo decades of Supreme Court precedent in property rights and government involvement in the economy. But none of them can point to any court opinions where she disregarded the law and substituted her personal views.

However, she is supported by a bipartisan mix of professors, judges, attorneys, and civil rights activists.

That does not sound out of the mainstream to me.

I am convinced these nominees are each qualified and would serve this Nation well on the courts they have been nominated to.

The Senate has a constitutional responsibility to advise and consent on nominations made by the President. But so far a minority of the Senate has prevented us from fulfilling that responsibility.

I am not asking my Democrat colleagues to vote for and support these nominees; I just ask that they give them the courtesy and right to an up-or-down vote.

If they do not believe the nominee is qualified then they should vote no. But by preventing a vote they are ignoring their constitutional duty. We should vote on these nominees and we vote on them soon.

The opponents of these nominees are not just playing around with these nominees' lives—they are also toying with the Constitution.

The PRESIDING OFFICER. The time for the majority has expired. The Senator from West Virginia.

Mr. ROCKEFELLER. I thank the distinguished Presiding Officer.

Mr. President, I recognize my colleagues on the other side of the aisle would like to use this debate time to focus on the employment status of four people, all of whom are employed. I would like to talk about a different subject: a million people who are not working. I think we owe it to the American people to discuss the millions of Americans who have lost their jobs under the economic plans of the sitting President.

In particular, I would like to focus on the millions of Americans who have lost good manufacturing jobs, and that is the subject of my discourse. I ask the Presiding Officer to cut me off in precisely 15 minutes if I have not finished. Since I will be back at 9 o'clock, I will finish at that point.

Let me draw your attention to a few very troubling statistics. Manufacturing employment in the United States has now fallen to the lowest level in 43 years. In the last 5 years, we have lost 16 percent of all of our factory jobs. In the last 2 years alone, we have lost more than 2.5 million manufacturing jobs. In my own State of West Virginia, we have lost 14,000 factory jobs since January 2003.

To me, these are frightening statistics. They ought to jolt every Member of the Senate and prompt an urgent call for action. A vibrant manufacturing base, in this Senator's opinion, is essential to our standard of living. For generations the United States has been the path to the middle class, providing good wages, health insurance, and pension benefits. Advances in manufacturing technology account for most of our economy's increased productivity. Every dollar we spend on a finished manufactured good is estimated to produce about $2.43 increased economic activity.

Simply put, we cannot become a service-only economy, in the judgment of this Senator, and at the same time expect to live on our high standard of living. We ought to act swiftly to ensure Americans will produce steel and computers and cars and pharmaceuticals and many of the other products which we generally refer to as manufacturing.

We ought not to be timid in the face of the devastating statistics I have cited. We can do something about them. The Senate is meant to be doing. And we certainly should not ignore these statistics and focus, instead, on the jobs of four judges who already have work. We would better serve Americans if we did our time today to debate ways to revitalize the manufacturing sector of our economy, and I am going to talk about it.

People may not want to hear about it, but I am going to talk about it because it affects all the people of the country, and my people in West Virginia very much.

At the end of September, I introduced legislation to provide some relief for American manufacturers on several crucial and disappointed the Senate has not yet debated this legislation. I am not surprised, but I am disappointed. The bill I introduced is called the SAFE Act, which stands for Securing America's Factory Employments.

I wish that topic were all we were discussing this morning, today, this week, this month. Saving our Nation's factory jobs is crucial. I will take a moment to discuss what my legislation does.

The SAFE Act would offer relief to American manufacturers in several ways.

First, the legislation would provide a tax deduction to any company that has manufacturing jobs in the United States.

Second, this bill would help companies cover the cost of providing health care for retirees—a huge subject. It is a mandate for insurance for many of our once-proud industries.

Third, I propose we strengthen our trade laws to ensure they offer the protections that in fact our domestic industries deserve. We need to eliminate legal trade practices practiced by others.

Let me take a moment to explain in greater detail how these proposals can help our domestic manufacturing base.

Congress is compelled to repeal the Foreign Sales Corporation Extraterritorial Income provisions of the U.S. Tax Code in order to avoid $4 billion in trade sanctions authorized by something called the World Trade Organization. It is in disregard of my opinion of the WTO decision in this matter. I recognize that to protect our economy from a trade war, we may need to update our Tax Code. We can do so and still encourage manufacturing by reducing the overall effective corporate income tax rate and eliminating mandates and regulations for ours.

The SAFE Act provides a 9 percent deduction for profits derived from the manufacturing activities in the United States. This is the equivalent, I would say, of lowering the corporate income tax rate from the current 35 percent to 32 percent of the portion of profits that can be directly linked to U.S. factories; also mining operations and the like.
This is a very straightforward tax break. It will lower the cost of doing business in the United States and will help companies that employ Americans to compete in the global marketplace.

In addition, my bill includes a tax credit to encourage employers to retain their retiree health insurance coverage—a huge problem nationwide. As my colleagues well know, employers know their health plan sponsors continue to restructure how they provide health care benefits for both workers and retirees. The health care system is the largest source of health care coverage in the country today, even with that diminution of the percentage.

The SAFE Act would provide employers with a tax credit to cover up to 75 percent of the cost associated with providing health care coverage to their retirees in order to protect existing coverage and reverse the current trend.

Finally, my legislation would strengthen our protection for antidumping and countervailing duties. So-called AD/CVD trade laws are often the first and last line of defense for U.S. industries injured by unfair labor or illegally traded imports.

These laws are absolutely essential for the survival of our manufacturing sector in an increasingly global market. But some of these provisions have become antiquated by recent changes in our global economy and the new structure of international trade. The American steel crisis is an example of this.

For example, the SAFE Act includes a provision that allows us to consider whether a new industry is vulnerable to the effects of imports in making antidumping and countervailing duty determinations. Another provision of this bill will make it tough for our trading partners to circumvent dumping or countervailing duties. I have a variety of examples I could give of that, but I will not for the moment.

They could do so by clarifying that such orders include products that have been changed in only a very minor respect. What do we mean by that? Sometime, companies will make a product in another country, send it to a third country, and then they will adjust a little tiny piece of something. Then that third country will export it into the United States and it will count as an export from the third country—not from the first country or the second country which actually produced the greatest mass of it—thus allowing them to have their trade surplus increased.

This will help prevent foreign nations from making slight alterations to products they are exporting to us in order to skirt existing antidumping or countervailing duties.

Another clear problem under our current trade law is that foreign producers and exporters of such merchandise may avoid AD/CVD duties by using complex schemes that mask payment of countervailing duties resulting in the underpayment of duty rates.

My legislation would restrict such practices by requiring the importer, if affiliated with the foreign producers or exporters of such merchandise, to provide evidence that the importer was in no way reimbursed for any AD/CVD duties that were paid.

There are certainly other changes we should consider to update our trade remedy laws and the provisions are by no means an exhaustive list, but we do need to get the debate started. I have offered this bill as a way to reenergize the debate. I have 15 minutes and I am using it to discuss something I think is useful.

Steel is a prime example of the need for strong trade laws, strong enforcement of the laws on the books, and strong considerations to toughen existing statutes.

As the Presiding Officer well knows, I have long been involved in the fight for the American steel industry. Currently, the industry, its workers, and steel communities around the country await a decision from the President of the United States on section 201 tariffs he imposed on steel imports in the face of an unprecedented flood of steel imports from foreign countries below price and below the cost of production in the home country.

Some of our foreign trading partners are lobbing the White House very hard to lift these tariffs. In fact, the European Union was in town just last week making irresponsible and illegal trade threats to try to sway the President's decision. I hope they fail. The administration has a very clear choice to make. It can either preserve good-paying and hard-working American jobs or caving in to the threats of our foreign trading partners.

All of the arguments made prior to the imposition of the tariffs about the potential damage and consequences of the 201 tariffs have been debunked.

This is important: We have something called the International Trade Commission. It is a nonpartisan quasi-judicial body. They found that the tariffs have done what they were meant to do—the tariffs on steel: give the American steel industry breathing room it needs to restructure. The International Trade Commission also found that the tariffs have not significantly impacted the U.S. economy in any other way.

If this administration is truly committed to the steel industry and, importantly, the communities built around it, the President will leave the tariffs just as they are and fulfill his promise to American workers. If not, we will see America's hard-won jobs being lost. And it may be the death knell for steel manufacturing in America—something I don't think we want to see.

I am extremely disappointed that rather than engaging in a serious debate, we are spending 30 hours talking about judicial nominees because some Senators believe it is an effective way to do whatever.

Instead of scoring political points, the SAFE Act addresses several very dire needs of our manufacturing companies. It improves our trade laws, helps with the burden of retiree health care costs, and effectively lowers the corporate tax rate on manufacturing activities. This package of reforms is an effective plan to stem the flow of manufacturing goods from overseas.

Finally, I would conclude by saying this: The fact that almost 9 million Americans are out of work, that is urgent; the fact that employment insurance is set to run out for many Americans who have been unemployed for a long time, that is very urgent; the fact that 43.6 million Americans lack health insurance and manufacturers and other employers are dropping health coverage to make ends meet, that is urgent; the fact that America has lost more than 3 million private sector jobs since our current President took office, that is urgent; the fact that the number of Americans living in poverty has increased by 3 million in 2 years, that is urgent; and the fact that 4.5 million Americans work part time because they cannot find full-time jobs, that is urgent.

I would simply like to suggest that the Senate return to the urgent business facing our Nation. We have appropriations bills to consider and pass. We have a comprehensive Energy bill to to pass. We have a budget bill to pass. We have much to do.

I thank the Presiding Officer, and I yield the floor.

The PRESIDING OFFICER. The assistant minority leader.

Mr. REID. Mr. President, yesterday at 6 o'clock we were working on S. 1594, a bill that funds the Departments of Veterans Affairs, Housing and Urban Development, and other agencies. It is a bill that has $122.7 billion. It includes $61 billion for the Department of Veterans Affairs, veterans benefits, all the health facilities, EPA, and NASA. It is an extremely important piece of legislation.

Therefore, for the veterans of America, I ask unanimous consent that at 6 o'clock tonight we would roll the bill back to the VA-HUD bill and complete it within 2 hours. The two managers of the bill, Senators Bond and Mikulski, said they could do that. It would be an
important part of our legislative agenda. I ask unanimous consent that that be the case.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Mr. President, receiving the right to object, and I will object, we hope to complete that bill, in the next few days. Therefore, for the moment, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCONNELL. Mr. President, let me suggest another consent agreement that might make more sense. I ask unanimous consent that the Senator modify his previous request so that just prior to proceeding as requested, the three cloture votes would be vitiated and then the Senate immediately proceed to three consecutive votes on the confirmation of the nominations with no intervening action or debate.

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

Who yields time?

The Senator from Florida.

Mr. GRAHAM of Florida. Mr. President, the two unanimous consent requests that have just been made I am afraid might have come out of my 15 minutes. I would like to ask unanimous consent if I could have an additional 3 minutes so that I will have my full 15 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. GRAHAM of Florida. Mr. President, I thank my colleague from Kentucky for his generosity. I intend to use no more than 15 minutes. I am talking about an issue that was discussed by my friend and colleague from West Virginia. But I would like to start with some comments on the subject which has been before us since 6 p.m. yesterday; that is, the issue of judicial confirmation.

This is a fundamental issue in our democracy. One of the great figures in the development of the structure of our Nation's Government stands over us every day we are in session in this Chamber; that is, the first Vice President of the United States, John Adams.

Concerned about the structure of government, preceding the War for Independence and anticipating there would soon be a new nation which would be striving to develop the appropriate structures to maintain its democracy, John Adams wrote a series of his thoughts on government. These became the essential ideas first for the constitutions of the newly independent Colonies and State constitutions, and then in Philadelphia the development of the U.S. Constitution.

One of the central points of John Adams's thoughts on government was the essential role which was played by an independent judiciary. He said, as quoted in the Pulitzer Prize-winning biography of John Adams by David McCollough:

Essential to the stability of government and to "enable an impartial administration of justice," Adams stressed the separation of judicial power from both the legislative and the executive. There must be an independent judiciary. "Men of experience in laws of examples, and men of patient, unvaried conduct and indefatigable application should be subservient to none and appointed for life."

There were a number of provisions placed in the U.S. Constitution in order to carry out that essential independence of the judiciary. Many of those occur after an individual assumes his or her judicial position, including life tenure, an annual salary which assures that Congress cannot reduce the salaries of a member of the Federal judiciary. Those are designed to protect Federal judges, both politically and economically, from undue interference.

But the issue of how you maintain impartiality in the selection of judges was one of the most contentious issues of the Constitutional Convention. Up until the very end of the Convention, the provision that was in the draft Constitution was for the Senate to appoint Federal judges. Even then there was concern that would put too much authority in the legislative branch, and thus the final compromise was to have the President make the nominations for judges but the Senate to confirm those nominations.

There was not intended to be a sub servant position for the Senate. Rather, it was to be a position of equality as a fundamental part, as John Adams said, of maintenance of the independence of the judiciary.

What we are debating today is the fundamental question of how should the Senate exercise its equal role in the designation of those persons who will become lifetime appointments to the Federal judiciary.

I believe that in this most serious of responsibilities we have, it is appropriate that the rules which apply to the general conduct of the Senate, the executive privilege granted by John Adams's successor, Thomas Jefferson, who also looks down upon us this morning—that those rules should apply in order to protect the interests of the minority. That is not just a political minority; it might also be an economic or a regional minority.

It has been the practice in this body that there be the provision for extended debate and that the termination of that extended debate require more than a majority of the Senate. Why should that procedure which applies to all other activities not apply to one of the most important, if not the most important, activities of the Senate, which is to play its equal role in the determination of who will be the judges of the Federal system of our Nation?

Let me suggest that maybe we need to look beyond the confines that have dominated much of this debate and ask how can we, within a system that is balanced between the President and the Senate, do a better job of selecting judges and avoid the kind of contention and delay we are currently experiencing.

Let me make three suggestions. Excuse my egocentric discussion of this first suggestion. But for 12 years, the two Senators from Florida were one Republican and one Democrat. Over that 12-year period, for one period of time both President Bush and then later a Democrat. During that 12-year period, Senator Connie Mack and I established a process. The process was to have a nonpartisan panel of citizens roughly divided between lawyers and lay people review the applications of nominees and propose two Federal judicial appointments. We refused to allow on any of the documentation an indication, direct or indirect, of what the party affiliation of the applicant was. Senator Mack and I refused in our interviews with those who were selected through this process to raise any questions of their partisan affiliation. This process proceeded with interviews of the applicants and a recommendation of generally three persons to Senator Mack and me, and we would select one of the three jointly and then submit that to the President.

I suggest to my colleagues and to the President that maybe a system analogous to this could be more broadly utilized at both the district court and the circuit court level in order to reduce the instances of the impasse in which we currently find ourselves.

A second recommendation: There are some scholars who are now looking at the issue of the judiciary and its relationship to the executive and legislative branches, and they are beginning to ask the question that if we should move away from a lifetime appointment of Federal judges at the district and circuit court levels—not at the Supreme Court level—and to establish a fixed term such as 12 years rather than the current lifetime appointments. That 12-year term would be nonrenewable. This would have the benefit of persons knowing that the person appointed, nominated, and confirmed to the Federal judiciary at other than the Supreme Court level would not be permanent at office. Therefore, some of the concerns particularly about the philosophical views would be reduced.

Finally, I think the President should be encouraged to reexamine what has become I think an unfortunate pattern and which has elevated the importance of the circuit courts, and it has elevated the attention given to the nominees for the circuit court, and that is the practice that the President of the United States now is being reviewed directly by the U.S. Supreme Court were nominated directly from their service in a circuit court.

In fact, every U.S. Supreme Court justice since
1990 came out of the circuit court. I think serving on the Federal circuit court is a perfectly appropriate preparation for the Supreme Court. What I disagree with is that the entire Supreme Court should be made up of persons with this background.

This Nation has been well served with Supreme Court Justices who had a variety of backgrounds, including people such as Hugo Black who had been a member of the Senate before he was appointed to the Supreme Court, Earl Warren, who was Governor of California before being appointed to the Supreme Court; persons who came from an academic background, such as Felix Franklin, or from the active practice of law, Louie Brandeis.

I encourage the President, when there is another opportunity to appoint a Supreme Court Justice, to look more broadly than has become the pattern at least since 1990.

With these comments I turn briefly to a discussion of the issue of the loss of manufacturing jobs and what we might do to put a tourniquet, to a degree, on that loss.

A very fundamental question facing our Nation is how can America maintain its standard of living substantially higher than the rest of the world, during a period of globalization of the economy where so much emphasis is going to what parts of the world can produce the lowest cost? There are some things that we need to do in order to revise our trade policy. Many of them were discussed by the Senator from West Virginia. I particularly emphasize the importance of having the context of trade, issues such as labor, human rights, and environmental protection, become part of the trade negotiation. I am not suggesting the way to do this is by writing all those provisions into each trade agreement; rather, that we look to organizations, external and international Congressional Organization, if not the oldest international organization in the world, an organization to which most countries belong and have accepted the labor protocols of, the International Labor Organization, to determine which of those protocols are appropriate to a specific trade agreement; include that, and then either through enhanced enforcement by the protocol itself, which I think is the preferable approach, but failing that, through mechanisms of the trade agreements, to see those standards become reality.

Beyond changes in our trade law, we need to look at what is going to be required in America to make us as competitive as possible. I particularly reference two things: One, we have to have the best educated, the most productive workforce in the world if we are going to be able to compete globally and maintain our standards of living. John Adams was instructive on this point as well. John Adams was instructive on this point. He said, "If we are to have the best educated, the most productive, the widest possible support for education: Laws for the liberal education of youth, especially for the lower class, of people, are so extremely wise and useful that to a humane and generous mind, no expense for this purpose would be thought extravagant."

I agree with that assessment of John Adams and add to it the importance of training for adults who are finding their current skills are less in demand and need to either enhance those skills or to add new skills to their capabilities.

Finally, before I conclude, we need to make a greater investment in our infrastructure. Our roads, bridges, water and sewer systems are critical to our economic productivity. They are deteriorating. This Congress will have an opportunity soon to deal both with adequate funding of education, particularly for retraining of adults and to enhance our capability to provide a modern set of support systems for our economy.

The PRESIDING OFFICER (Ms. Murkowski). The Senator from Kansas.

Mr. BROWNBACK. Thank you, Madam President. I am being joined by my colleague from Kansas, Senator Roberts, my colleague from Illinois, Senator Fitzgerald, and Senator Nickles will join us in our time period to talk about the judicial crisis we have in this country and the difficulties that have been created now by an unprecedented filibustering of circuit court judges. I will take a narrow look at this as an issue that has been building for the last 40 years, and what has happened during that 40-year period that the crisis in the court system has developed.

We stand on the shoulders of greatness. It was with courage and honor and convictions and convictions in religious beliefs that our forefathers formed this union of States we now call the United States of America. Indeed, this country is the product of the Declaration of Independence which was committed with an understanding that this is a union of States formed this union of States we now call the United States of America.

We stand on the shoulders of great and I will go into more those developments of circuit court judges. I will take a narrow look at this as an issue that has been building for the last 40 years, and what has happened during that 40-year period that the crisis in the court system has developed.

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problems that we have allowed to take place in this country.

Prior to the two major cases outlawing prayer in 1962 and 1963, our students enjoyed more stability. Since then, there has been more violence, sexual activities in schools, which have had corrosive effects on our culture.

For example, look at this chart showing suicides increased dramatically for teenagers between 1960 and today, nearly 50% to 12%. The age bracket of suicide for children in our schools. Similarly, drug use has gone up significantly since the 1960s. Alcohol use also went up among those between the ages of 12 and 17, as this chart shows.

Here are the trends of societal consequences since the 1960s. Since the passage of Roe v. Wade, legalizing abortions, abortions have increased dramatically. By the 1990s, abortions, private sources show, have more than doubled. By the 1990s, abortions, private sources show, have more than doubled and increased dramatically. By the 1990s, abortions, private sources show, have more than doubled, tripling of violent crimes taking place. By the 1990s, abortions, private sources show, have more than doubled, tripling of violent crimes taking place.

I yield the floor to my colleague from New York.

Now, intuitively the logic that a judicial selection should be based or influenced by a nominee’s ideology leads one to believe that judges should or will rely on their own personal beliefs rather than on the law when rendering their decisions. I find this remarkable and completely off the mark. I believe that if each of these nominees receive an up-or-down vote, each would be approved by a majority vote and they would vote according to the law. They said that over and over again.

My question is, How is justice served when justice is delayed? If you deliver solid and qualified judges to our court system, that is more important than litmus test politics. We are just simply not doing our job.

Let’s talk about trust. This continued delay does not foster the public’s trust in our government’s process to simply get the job done.

Let me talk about cost. Taxpayers spend $5.1 billion for the federal judiciary every year. The American people are paying for fully staffed courts and getting obstructionism and vacant benches. Reckless behavior such as this is irresponsible and a waste of taxpayer dollars.

Let’s talk about delay. Let’s really talk about delay. Court delays are becoming the norm. We all know that. We read about something egregious in the newspaper and wonder why you can’t get a court decision? At least some justice is out of the situation. All of the court circuits facing these judicial emergencies are averaging 4 to 5-month delays.

These delays are on top of a process that, from the original filing in district court to the final decision on appeal, takes 24 to 28 months—over 2 years. OK, let us talk about results. What does an overtaxed judiciary really mean to Americans? It means that cases take longer to resolve, lives are disrupted and inconvenienced further, and real people must wait indefinitely in limbo as justice in their cases remains undetermined.

In over two centuries of Senate history, why, judicial nominations have been both approved or refused. No filibuster was necessary to defeat a nomination. The reliance by those who oppose these nominations of this procedural, political tool to handicap the process is clearly unprecedented. The choice of the filibuster essentially strips the minority of meaningful and practical power, hence controlling which nominees will even be given the chance—just the chance—for an up-or-down vote, much less confirmed.

Now the Constitution explicitly states seven circumstances in which a supermajority vote is warranted by one or both Chambers of Congress. The advice and consent of Presidential nominations by the Senate is not one of these special circumstances. In fact, Hamilton was an statesman. Federalist 76 that the Senate’s role is to refuse nominations only for “special and strong reasons” having to do with unfit characters. At some point, after
The issues and merits of the nominee have been debated, we have an obligation to render a decision, whether it is yea or nay, and not let the matter hang in the balance unresolved and unfinished.

These competent, well-qualified judicial nominees deserve an up-or-down vote. The people of Kansas and the United States deserve a full—a full judicial bench.

I thank my colleague for yielding the time.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. I thank the Chair.

I now yield to the Senator from Illinois for 7 minutes.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. FITZGERALD. Madam President, I thank both my colleagues from Kansas. I appreciate the remarks that were just made by the chairman of the Intelligence Committee.

I would like to go back to some of the statistics that have been cited in this debate. I guess I have been very troubled to hear on the radio this morning, on call-in radio, the figures being hit over and over again that were offered last night on the other side of the aisle.

We kept hearing that they had only blocked four judges. Well, that is simply not true, and I think it is very important that the American people know that.

I have in my hands a chart that was prepared by the nonpartisan Congressional Research Service that shows that of the Presidents going back to Carter, in 1977, through August 1, 2003, the Senate has blocked a higher percentage and a higher number of judges who were nominated by President Bush than any other President in the Nation’s history—at least going back to 1977. And I am sure nothing was going on prior to 1977 like what is going on today.

The fact is, according to this survey, President Bush has nominated a total of 264 people to serve on the district and appellate courts in this country. As of August 1, 2003, only 144 of them have been confirmed. That is only 54 percent of the number of nominations made by President Bush.

Now we need to break that down. Of district court nominees, President Bush has a total of 148 nominees to the district court. Only 117 of them have been confirmed. That means the Senate has rejected or not acted on 68 of those district court nominees.

With respect to the appellate courts, as of August 1, the President had nominated 79 appellate court judges and the Senate, as of August 1, only confirmed 27 of them. That is only 34 percent of the total. So that means 52 of President Bush’s nominees to the appellate courts have been blocked by the Senate.

My friends on the other side of the aisle have done something very clever. They have just arbitrarily decided they are only going to talk about judicial nominees who have been filibustered and blocked on the floor of the Senate and they are not going to talk about those whose nominations have been blocked in other ways, such as in committee. Thus, they, they can claim people have been given a misleading impression overnight. They have been misled into thinking the Senate has only blocked four nominees for the appellate courts. Well, it has been far more than that.

As of August 1, it had been 52. I do not know what the figure would be right as of today, but I would have to tell you, if you compare it to the previous Presidents, the treatment of President Bush’s nominees has been deplorable.

Going back to President Carter, he nominated 61 appellate judges; 56 of them were confirmed. In other words, Carter, in 4 years, had five appellate court nominees confirmed. President Reagan, who was a Republican President, served while there was a Democratic Congress. He had 81 percent of his nominees confirmed. The first President Bush had 77.8 percent of his appellate court nominees confirmed. President Clinton had 56 percent of his appellate court nominees confirmed.

If you get down to this President, George Bush, he only has had, as of August 1, 34 percent of his appellate court nominees confirmed. I am very concerned about what this means for our country. It could mean that a minority in the Senate is usurping for itself the power to control the Federal judiciary.

Under our Constitution, the President is supposed to appoint the judges with the advice and consent of the Senate. We have some idea what the Constitution meant by that because Alexander Hamilton addressed the issue in Federalist Paper No. 76. He said the Senate’s role is to refuse nominations only for “special and strong reasons” having to do with “unfit characters.”

I do not even think anyone has made the argument that the nominees who have been blocked in the Senate in this Congress have been unfit. I think the arguments against their nominations have been more ideological; simply the other side does not agree with these people, suspects they may be conservative.

Many of President Bush’s nominees have been pro-life. I am concerned there may be a litmus test that is being applied on the other side, that they are simply not going to allow pro-life judges on our appellate courts. That is very troubling because that is upsetting our constitutional order that our Founding Fathers have made.

The key point is this: do not want the American people to come away with the impression that only four of President Bush’s nominees have been blocked. The number is far higher. It is probably a total of over 100. Probably about 120 have been blocked. As of August 1, 68 district court judges have been blocked and 52 appellate court judges. So this whole thing about just four judges having been blocked is really nonsense, and we ought to set the record straight.

The PRESIDING OFFICER. The Senator has used 7 minutes.

Mr. FITZGERALD. Thank you, Madam President. Having used up my time, I will now yield the floor to my distinguished colleague, Senator BROWNBACK from Kansas.

Mr. BROWNBACK. Thank you, Madam President. I thank the Senator from Illinois.

I wonder how much time remains on this side?

The PRESIDING OFFICER. Five minutes remain on the majority side.

Mr. BROWNBACK. Thank you very much.

I thank my colleague from Kansas and my colleague from Illinois for the comments they have made in this debate in which we have been engaged for some period of time and I think make both cogent and important points to put forward.

I want to double back around and finish on the comments I started on about this being a 40-year debate. For some of us, it might have been up for a while, it may seem like 40 years already since last night.

But this has been a 40-year debate, and we have engaged and embarked on a great debate about which these judges are front and center, and it is potentially a collision course, some may say, between those who believe in God and that He has a role to play in the cultural and moral fabric of this Nation and those who prefer to sanitize our public institutions of any reference to God.

We should at least allow the vast majority of Americans who believe in God to honor Him in public, as our Founders did, and not be forced to conceal Him from the public square.

The four nominees currently being filibustered all believe in God, as do 90 percent of the American public. Should they be excluded from the appellate courts because of their faith? Their deeply held convictions just happen to mirror those of George Washington, most of the Founding Fathers, as well as some of the greatest Americans in our history—Abraham Lincoln, Susan B. Anthony, Dwight Eisenhower, and Martin Luther King, Jr. Would any of them be able to get on this court today through this litmus test? I doubt it.

If the issue here is this body has not had sufficient opportunity to debate the merits of the candidates, then let’s go ahead and debate and move to a final vote.

Those who wrote the Constitution, which is the oldest working constitution in the world, remain the best guide to its clear meaning. America’s
Founding Fathers, by and large, did not believe government must be neutral toward religion. George Washington, in his Farewell Address, often quoted, gave the clear view, “Of all the dispositions and habits which lead to politeness and morality, religion and morality are indispensables.”

The Founders supported the public recognition of religion because religion and morality are, in Washington’s words, the “firmest props of the duties of governance.” When Washington addressed the new Nation for the first time as President, he led the country in public prayer, something we have never failed to do since, and yet removed 40 years ago from our public classrooms.

Therefore, I submit to you today that we should not stand idly on issues of judicial nominations. The Framers of the Constitution feared tyranny from the judiciary, so they divided power between the two branches. They placed deliberate limitations on the judiciary in order to ensure the integrity of the judicial system. As a result, the Federalist Papers reported that under their plan, “the Judicial Department is, of all others, the weakest of the three departments of power.... [and] the general liberty of the people can never be endangered from that quarter.”

Would that be an agreed-to statement today? I think not.

It is our duty to ensure the legislative integrity of our culture. Indeed, it is written in the Constitution that to do anything less is to walk away from our responsibility to this Nation, a responsibility that was recognized and affirmed by our Founding Fathers.

Madam President, as we conclude on this side of the aisle for this 30-minute section, I would just note to my colleagues on the other side of the aisle that this is going to continue to be an issue. We will get these judges through at some point in time, whether it is this session or we have to go back to the public and have another vote in the 2004 election cycle.

This will be a front and center issue. As the courts and the culture are becoming increasingly tied together with the difficulties we have had in this society, this will be taken to the public. I do not doubt that this will be, if not the top issue, one of the top three issues. They are going to be out in the public. I think this is a bad idea policywise, what is taking place in the blockage of these judges. I think it is bad politics.

But this is going to take place and this fight will continue. If we do not get it done now, we will continue to press forward, and it will be taken into the election and we will lose the American public look and see: Do they think this is the way judges should be handled by the Senate? As these calamities of judicial blockage keep mounting up, it will become clearer and clearer to the public what is taking place here.

This is a very important fight. It is one about which a lot of people care deeply. It is one that a lot of my—when people come up to me in Kansas and talk about issues, these are front and center issues they talk about. They are concerned about these issues and have been for some period of time. And they are asking you—what are you doing? What about this activist court? Why are you not getting these judges on through?

This is something that does touch the public. We can do it the way it should be done; we can get a clear vote up or down. We can do it before the general election to the public in the next election cycle. One way or the other, this is going to occur. And I would suggest that the best way for this society, the best way for this Government, the best way for this culture is for these to come forward here, be vigorously debated, and then voted on up or down. I think the public is now coming to a very strong point on this.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BROWNBACK. Thank you very much. I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The President from Nebraska.

UNANIMOUS CONSENT REQUEST

Mr. REID. Madam President, I ask unanimous consent that the Senate stand in recess from 4:15 to 5:15 today. This is so that all Senators can attend a closely related and secure vote. On No. S. 407, the briefing to the Iraqi envoy, Ambassador Bremer, the American administrator in Iraq.

Another American was killed today, along with 25 Italian peacekeepers in Iraq. The Senate Intelligence Committee is no longer functioning, so it is more important than ever for this body to review the direction of the American war in Iraq, especially in that we have appropriated in special funding this year some $163 billion. I so move.

The PRESIDING OFFICER. Is there objection?

Mr. BROWNBACK. I object.

The PRESIDING OFFICER. Objected to.

Mr. REID. Madam President, the Senator from Vermont is going to take 1 minute of the time of the two Senators from Washington. I would ask unanimous consent that following his statement, which would be 1 minute, the two Senators from Washington divide their time, and the first to be recognized is the junior Senator from Washington, followed by the senior Senator from Washington.

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

The Senator from Vermont.

Mr. LEAHY. Madam President, I agree, this can be an issue and probably should be an issue in the election, but let's make sure it is an issue on the facts. There is a discussion we heard on the floor this last hour or so of the great vacancies. That is balderdash.

The fact is, there are more Federal judges sitting right now than at any time in history. We have been told that we are blocking 130. There are only 40 vacancies, approximately 40 vacancies in the whole country. Let's get our numbers right. This number is right. We have confirmed 168; we have blocked 4. We confirmed 168; we blocked 4. That is the fact.

It is hard on the other side to hear that, after they blocked over 60 of President Clinton's nominees by one-person filibusters, but it is a fact. We confirmed 168; we stopped 4. They should do the same.

Thank you.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Madam President, thank you.

I rise to join my colleagues in what has been for now some many hours a very robust debate on our judicial nominees and the process by which this body should follow their advice and consent process for the President.

I think it is clear to the other side of the aisle—and it is very interesting that the two Senators from Washington are here with the two Senators from Kansas. I can imagine that we will rather talk about many other issues, particularly high unemployment in our states and how to get America moving again, and particularly in the aerospace manufacturing area. But the bottom line is, this body decided on a role on advice and consent.

And since the 1940s, the Senate rules have allowed cloture votes on nominations, and we have exercised that. So that is what this debate has been about.

My colleagues have continued to point out that these numbers reflect what that debate has produced as far as our working together in our constitutional role. I do want to say, though, that there is a very worthwhile point to this debate, and I would say to my colleagues on both sides of the aisle that perhaps if we wanted to extend this debate beyond the 30 hours, we should do so because what is really at question here is the nominees the President is putting before us and whether our country, at a critical time, is going to stand up and continue to protect the privacy rights of individuals who are being threatened, those privacy rights that exist in our Constitution and are actually being challenged by our own Government.

I believe that we are at a critical time in our country’s history, and that is why it is so important for the Senate to do its job. That job is to give the American people a judiciary that represents the mainstream views of America, that protects their constitutional rights, and that does not represent a clear threat to 30 years of settled law protecting a woman’s right to choose.

I believe the real issue that we should debate, because it is critical to the American people, is not the fact that we have confirmed 168 Bush judges; the issue is that this Administration has nominated 4 individuals.
who Senators believe fail the test. Over 40 Senators believe that they will not act to protect our constitutional rights and to uphold our Constitution.

Each of these nominees—Priscilla Owen, Charles Pickering, Miguel Estrada, and William Pryor—have records that indicate a determination to interpret the law not as it is but as they want it to be.

Over the next decade, Federal judges will be making critical decisions about the right to privacy and how both Government and business should respect that right to privacy. We are at the tip of the iceberg of an information age where businesses may have access to your personal information and are free to use and exploit that; where the health care industry has access to your most personal information; where Government has established a process of eavesdropping and tracking U.S. citizens without probable cause; and Government has essentially developed software that can track one’s use of Web sites and information on their personal computer without their consent or knowledge.

And of course, a woman’s right to privacy in her choices about her body, even after 30 years of established, settled law, continues to be threatened.

I voted against these four individuals, and I will continue to oppose them. I oppose them because I believe ensuring that our judiciary is independent and committed to protecting our constitutional rights is increasing in importance and that these four cannot—not that it is not increasing in importance because with one party in control of both the Congress and the Executive branch, and an independent and balanced judiciary is the only remaining check to ensure that our core constitutional protections are upheld.

America is a great democracy, but it is an even brighter beacon to the rest of the world because our citizens trust our judiciary to protect their rights.

One result of the PATRIOT Act, Government can obtain a warrant to search your home without your knowledge; can obtain a subpoena to track your use of the Internet without showing probable cause; and can obtain a secret wiretap to eavesdrop, the judiciary must serve as a check on that power.

I know some of my colleagues want to try to address some of these issues, and we will have many opportunities in the future to address some of this overstepping by those in our Federal Government. But in a September 2003 report, the Justice Department clearly acknowledged that new powers granted under the PATRIOT Act were not simply being used to fight terrorism and espionage.

The report “cites more than a dozen cases that are not directly related to terrorism in which Federal authorities have used these new powers [under the PATRIOT Act] to investigate individuals, initiate wiretaps and other surveillance and seize millions in tainted assets.”

The Government has already deprived two U.S. citizens of their constitutional rights and held them as enemy combatants subject to secret trial, and they can basically deprive legal immigrants protected by the Constitution of their arrest and detain them without charge.

Just yesterday, the New York Times reported that even in our intelligence reauthorization bill, there is language significantly expanding the role of the FBI to get information from car dealers, travel agencies, post offices, casinos, and others without going before a Federal judge.

I know it is easy to want to believe that these issues are all about fighting terrorism and are not hurting people. Madam President, I can tell you, I believe strongly in the war on terrorism. In my State, we have seen three important cases that have been successfully prosecuted. In 2000, agents apprehended Mahamed Ressam, an individual who had plans to attack a sewage tank on the west coast. Last year, the FBI in my region was also successful in tracking down individuals who wanted to build a terrorist training camp in Oregon. The lead individual in that case, James Ujaama, will be providing information that I hope will lead to the extradition of an extremist cleric based in London. And a group of men in Portland actually pleaded guilty to traveling to Afghanistan to fight against Americans after September 11.

I firmly believe it is possible to fight the war on terrorism and prosecute terrorists and still uphold the constitutional rights of Americans. But to make sure that balance is right, the Senate must do its job to ensure that nominees to the federal court will interpret the law, and not use their personal views to rewrite it.

Americans are genuinely concerned about the erosion of their rights. Earlier this week, we hosted a forum in which two individuals from my State, Nadin Hamoui and Mako Nakagawa, both testified about their experiences. Both described being awakened in the dead of night in their family homes by armed law enforcement who pointed guns at their parents, herded sisters and brothers into waiting vehicles and took them away for a long detention with no access to due process. The eerie part was that their story happened sixty years apart, in 1941 and 2001.

In Washington State, the echo of internment of Japanese Americans during World War II and the damage that it did is still very real, and hearing these two stories makes us aware of just how much our respect for liberty in this country can be overcome by fear.

It has never been more important to have a judiciary that vigorously protects our constitutional rights and prejudices. That is what we are talking about here; whether these nominees would live up to the demands of that independent judiciary.

These are good individuals. They are earnest. They are hard working. But there have been fundamental questions raised about the backgrounds and about whether they have impartially judged their cases.

Charles Pickering, we all know, has been involved in a case where he picked up the phone and intervened with the Department of Justice in an attempt to reduce a sentence mandated by Federal guidelines.

Priscilla Owen has been repeatedly had her opinions chastised by members of her own court who have called them “inflammatory rhetoric” and “an unconscionable act of judicial activism.” The San Antonio Express News actually called the nomination—or the renomination, I should say—of these two individuals, Owen and Pickering, a “misguided” and “major disappointment.”

Mr. Pryor, again, I am sure a well-meaning individual, sought to limit the Violence Against Women Act—and a fellow Republican attorney general had this to say about it: “I have great questions about whether Mr. Pryor has the ability to be nonpartisan. I would say he was probably the most doctrinaire and most partisan of any attorney general I dealt with in 8 years.”

Are these the individuals we want to trust with lifetime appointments to protect our constitutional rights and to uphold those rights? The PRESIDING OFFICER. The Senator’s time has expired.

Ms. CANTWELL. Madam President, how much time have I used?

The PRESIDING OFFICER. The Senator has used 11 minutes. There are less than 10 minutes remaining.

Ms. CANTWELL. If my colleague from Washington would allow, I would like to continue.

Mrs. MURRAY. How much more time does the Senator need?

Ms. CANTWELL. Three minutes.

Mrs. MURRAY. I yield 1 more minute to my colleague from Washington.

Ms. CANTWELL. I thank my colleague, Madam President, in voting against these individuals, the Senate is doing the job the American people expected us to do.

In order to continue to have this great democracy, we must ensure we have vital checks on this administration’s power. The American people are expecting their judiciary to be independent, to respect precedent, and not to prejudge the issues before them. The American people think we need a fair and balanced judiciary to counterbalance the executive and legislative branch, and we need to give them that.
These four individuals have demonstrated records of reaching beyond the law in order to reach their preferred ideological outcome. The Federal judiciary will not rise or fall on the fate of these four individuals, but in order to be a great democracy, in order to continue the world's brightest beacon for individual rights, we need to have an independent judiciary. Without the important check that this Senate provides by doing its job in advising and consent, President on these issues, that will not be possible.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Madam President, how much time do I have?

The PRESIDING OFFICER. Eight minutes.

Mrs. MURRAY. Madam President, the majority believes that the Senate should spend 30 hours talking about four judges who already have jobs, we are not helping the 3 million Americans who do not have jobs. This marathon is the type of political grandstanding that, frankly, makes Americans scratch their heads and conclude that politicians just don't get it. We should be spending our time on the urgent needs facing our citizens in employment, health care, transportation, and completing our work on putting this Federal budget together. But the majority has decided that this is the most important issue we can discuss for 2 days, and they control the floor.

I wish to talk about four things: The importance of the Senate in confirming judges, the progress we have made in confirming judges. That is a confirmation rate of 97.7 percent. We have confirmed 168 judges. Today, 95 percent of the Federal judicial seats are filled. That is the lowest number of vacancies in 13 years. There are now more Federal judges than ever before.

When it comes to circuit court judges, we have confirmed 29. That is more appeals judges than Clinton, the first President Bush, or Reagan had by this point in their administrations. Those judges have shown us that while the majority is complaining today about our 98-percent confirmation rate, it was a different story during the Clinton administration. Back then, Republicans used many different roadblocks to stop the confirmation of judges nominated by President Clinton.

During Clinton's second term, 175 of his nominees were confirmed and 55 were blocked from ever getting votes. During those years, the majority used the confirmation process to ensure nominees they disagreed with never came to a vote. Fifty-five nominations sent over by President Clinton never received consideration. So I think the Senate has a pretty impressive record at this time in confirming judges. That is clear in a 98-percent confirmation rate, and 95 percent of the Federal judicial seats are filled today. It is the lowest number of vacancies in 13 years.

I wish to talk for a minute about the process we use in Washington State to ensure Washington judges are nominated and confirmed even when different political parties hold Senate seats or control the White House. For many years, I have worked with a Republican Senator and a Democratic President to nominate and confirm Federal judges. Today, with a Republican President, I am working with a Democratic Senator from Washington State on a bipartisan process to recommend judicial candidates. We developed a bipartisan commission process to forward names to the White House, and it has worked very well. We have had two confirmation votes on the commission, and the commission interviews and vets those candidates.

It worked for Senator Gorton—a Republican—and when we were for President Clinton, and it is working for Senator CANTWELL and I as we both recommend names to President Bush.

I am proud that during President Clinton's first term, we confirmed two excellent judges through this bipartisan commission process. We confirmed Ron Leighton, a distinguished trial lawyer in Tacoma who is now a U.S. district court judge for the Western District of Washington. We have confirmed Lonny Sukso as a district court judge for the Eastern District of Washington. He is a distinguished lawyer and U.S. magistrate judge who has earned the respect of so many in his work on some of eastern Washington's most difficult cases.

Currently, we are in the process of getting a nomination hearing and confirmation of Magistrate Judge Ricardo Martinez for a vacancy in the U.S. District Court for the Western District of Washington.

For over 5 years, he has served as a magistrate judge for the United States. Before that, he was a superior court judge for 8 years, and he was also a King County prosecutor for 10 years. Judge Martinez has the impressive credential of being named the first drug court judge in Washington State and worked tirelessly to ensure the success of this program which uses treatment services as an alternative to incarceration.

I am looking forward to his hearing and confirmation fairly quickly. I am here to tell you that in Washington State, we are making real bipartisan progress in confirming judges. It is a process that I believe serves the people of Washington State well.

Mr. ALLARD. Will the Senator yield for a question?

Mrs. MURRAY. I have very little time left, and I want to finish my statement. I thank my colleague. The time we are spending discussing our 98-percent confirmation rate could be used to address much more pressing issues. The majority is spending 30 hours talking about four people who already have jobs. I think we should spend that time talking about the 3 million Americans who cannot find jobs.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator's time has expired.
Mrs. MURRAY. Mr. President, I conclude by saying in my home State of Washington, 70,000 people have been laid off. They want this Senate to deal with unemployment insurance extension, which we need to do before we adjourn.

The PRESIDING OFFICER. The Senator’s time has expired.

The Senator from Colorado.

Mr. ALLARD. I wonder if the Senator from Washington would yield for a question and we would divide the time again of each of us; time would go against her in responding to the question and my asking the question would go against the Republicans.

Mr. REID. At this stage I would object.

The PRESIDING OFFICER. The objection is heard.

Mr. REID. If the Senator wants to ask a question, use it on his time. He has people who have prepared all-night speeches and have been cut too short.

Mr. ALLARD. That was just a suggestion, but obviously she does not want to take my question.

Mr. President, today my colleagues and I are trying to put an end to the nomination logjam. All we are asking for is for a simple up-or-down vote on these highly qualified nominees now.

Carolyn Kuhl, Priscilla Owen, and Charles Pickering must receive a vote. Today, our Nation is facing a judicial crisis. Currently, there are 22 emergency judicial vacancies and 12 of these are on the court of appeals. It is simply irresponsible for us to ignore this growing crisis.

Sticking our heads in the sand like an ostrich and ignoring it, as some of my colleagues would like us to do, will not diminish the seriousness of this crisis and make it go away.

I have an article from the Washington Post written by George F. Will on February 28, 2003, entitled “A Crisis and Make It Go Away.” My colleagues would like us to do, will be an ostrich and ignoring it, as some of my colleagues would like us to do, will not diminish the seriousness of this crisis.

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

[Congressional Record: Paper 76 that the Senate unanimously gave Estrada its highest rating, with the American Bar Association’s highest rating in every category, in every rating period.

Given the cynicism and intellectual poverty of the opposition to Estrada, if the President and Senate leadership cannot bring his nomination to a vote, Republican “control” of the Senate will be risible. And if the President does not wage a fierce, protracted and well-financed fight for Estrada, the American Bar Association and Estrada’s supervisors in the solicitor general’s office gave him the highest possible rating in every category, in every rating period.

The point I am making is, how can we expect well qualified judges to
willing to serve on the Federal court if they have to go through a 2-year process and they have to put their careers on hold at the time.

Now tell me that this is not a double standard. Tell me that in a case where there is a court that has nomi- 

cinated, with the same rating by the ABA, there was not a double standard being imposed by Democrats on Miguel Estrada.

This double standard has been recognized in my home State of Colorado. On a recent front page the Denver Post from the Rocky Mountain News. The Denver Post said:

The key point—
Talking about Miguel Estrada—

is that there should be a vote. . . . A filibuster should play no part in the process.

The Rocky Mountain News says:

The Democrats have no excuse. . . . Keeping others from voting on their consciences on this particular matter is simply out of line.

I also have an editorial from the Chicago Tribune entitled “Squandering Miguel Estrada,” on September 7, 2004.

I ask unanimous consent that it be printed in the RECORD.

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

[From the Chicago Tribune, Sep. 7, 2003]

SQUANDERING MIGUEL ESTRADA

Presidents tend to nominate to important federal judgeships candidates who share their philosophical views, and those of the voters who elected them. So it comes as no surprise that many of President Bush’s judicial nominees have conservative back- 
grounds. Those nominees are evaluated by the Senate, which is supposed to approve or reject them.

Last week, though, Democratic senators who are slavishly devoted to a clutch of liberal judges groups succeeded in driving away a superb nominee, Miguel Estrada, a brilliant lawyer and native of Honduras who would have been the first Hispanic jurist on the most populous court in the country, the one based in Washington, D.C.

Faced with a Democratic filibuster that the Senate form voting yea or nay on his nomination, Estrada graciously asked the president to withdraw his name. Estrada has a family to raise and a career to manage. He can no longer wait for elemental fairness to suffice the United States Senate.

Estrada had received the highest possible rating from the American Bar Association. But he was a political thorn to the liberal judges groups. The knowledge that he someday would make a superb can- didate for a Supreme Court vacancy marked him as a nominee the liberal interest groups and the Staples in the Senate had to elimi-
nate by any means necessary. And so, for the first time in the history of the nation, a president’s nominee to a federal appellate court has been defeated not by a straight-

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nate by any means necessary. And so, for the first time in the history of the nation, a president’s nominee to a federal appellate court has been defeated not by a straight-
President is entitled to a vote. Whether the Republicans or the Democrats tried to filibuster a judge, both parties in the past have ultimately come together to stop that filibuster from preventing the intent of the Constitution from being accomplished.

Let us get a little bit of history on this. The cloture rule in the Senate has been applicable to nominations since 1949. Since that time, cloture has been filed on only 35 nominations, meaning all the nominations filibustered basically made it through, once they got to the floor of the Senate, to a final vote. Of those 35 times that cloture had to be filed, 17 of them were judicial nominations, 18 were other executive nominations.

Of those 17 times since 1949, when we had cloture on judicial nominations, cloture has been defeated on the first try in 11 of the 17 tries. Of all the other cases, cloture was defeated by the second vote.

Now, people need to understand what cloture is. Every time there is a cloture vote, it does not necessarily mean there is a filibustering. It simply means that at that point, the Senate is not ready to vote. It may be that they want to talk a little longer before a vote is taken. But when we see a cloture tried again and again and the announcement that as many times as it wants to be tried it is going to be stopped, that is a filibuster. We are seeing that now on four judges, with a threat of it on seven more.

Let us put up the other two charts. There has been a lot of talk about how the Republicans stopped more of President Clinton’s judges than the Democrats did of President Bush’s judges. This number is the number of President Clinton’s judicial nominations that reached the floor that were voted on and confirmed and the number that were filibustered. None of President Clinton’s nominations was filibustered.

There were some cloture votes. We can argue among ourselves whether or not that was a filibuster, but the point is that none of the efforts in the Senate against President Clinton was allowed to proceed to stop his judges from getting a vote. They all got a vote.

Let us look at the next chart. The next chart is the number of nominations of Presidents in the last 11 Presidencies where, when the committee got to that point, they denied an up-or-down vote. Out of 2,372 nominations that have come to the floor during the last 11 Presidents, zero were filibustered. Zero were stopped from having a vote once they got to the floor of the Senate.

In this Congress, we have seen that happen four times, and it is now being threatened on seven more judges. A new trend, a new precedent, in American history is being set in the Senate and it is one that can people need to pay attention to it. Because regardless of how one passes the numbers back and forth, the fact is that the precedent is now being set to require that not only does a nominee have to make it past the committee but they have to be subjected to the filibuster rule in contravention of the clear intent of the U.S. Constitution.

This is all leading up to a battle over a potential Supreme Court nomination. It will be very unfortunate for this country if the Senate, in this Congress, changes the history of our treatment of this critically important provision of our Constitution as we move forward in the analysis and handling of our responsibilities and duty to provide consent on judicial nominations.

Mr. ALLARD. Mr. President, I thank the Senator from Idaho for his comments.

I yield 10 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. I thank the Senator from Colorado for yielding to me.

Mr. President, I share an experience I had at 5:30 this morning. One has lots of experiences at 5:30 in the morning on the Senate floor and in observing what went on during the night. There was something that occurred to me that I want to share with you and I hope I can do it in this period of time.

There are two reasons this has been taking place, that they do not want to confirm these judges. One is ideology, philosophy. I hate to say it but unless one is pro-abortion unless they are anti-life, they do not want that person on the bench. But there is another reason we have not talked about, and that reason is just a reason of obstruction. We have been watching obstruction in all forms, but I want to share something and I hope people understand that this directly relates to the nominees for the judicial vacancies. I want to get the point across that it is happening to other nominees as well.

I chair the Environment and Public Works Committee. We had a person who was a nominee of this President, Gov. Michael Leavitt from Utah, one of the most highly regarded individuals in this country and certainly one of the most highly qualified ever to be nominated to a position of Administrator of the EPA.

We sat there and recognized how everybody loved this guy and yet they dragged it on and obstructed for days and weeks, just to drag it on. So it is happening with many of the nominees.

Now, Governor Leavitt is a very kind and decent person and I really believe the most qualified nominee to be Administrator of the EPA we have ever been able to vote on. The way he was treated was just absolutely shameful. It took 56 days to finally get the nomination, five times longer than those who preceded him as Administrator, even though he had overwhelming bipartisan support.

I do not think anyone has questioned that the motivation of the delay was partisan Presidential politics. They set a new standard, new precedent, for an EPA Administrator. They really were not talking so much about him as they were trying to talk about the environmental policies of this President.

If my colleagues will look at some of the people who supported him, we had 10 Republicans and one Democratic member, Senator Jeffords. He said it has nothing to do with qualifications of the Governor. At this time, I would say that qualifications really do not seem to be an issue on judicial nominations. It has been said over and over again, and later if I have time within my timeframe I am going to get into that, but this goes on and on about various Democrats praising Governor Leavitt for this nomination and yet they would not confirm him.

Senator Nelson, who is a former Governor of Nebraska, served with him as Governor. He said: I believe nearly everyone, if not everyone, with whom Governor Leavitt worked in the NGA—that is the National Governors Association—would state that they had a favorable impression of him. I wholeheartedly support Mike Leavitt to serve as EPA Administrator.

I heard the same from our old friend Bill Richardson with whom many of us served in the House of Representatives. He is currently Governor of New Mexico. He praises his virtues. He has worked effectively with other Governors of you don’t respect whether they are Republican or Democrat, and he went on to say he is probably the best nominee who has ever been put forth to be Administrator of the EPA.

So he is highly qualified and nobody would deny that, and what they do is turn this thing into trying to attack the President on his environmental record.

I have to quote from one person, Gregg Easterbrook. I have not quoted him on this floor before. He is a liberal Democrat. He is a senior editor of the liberal New Republic. He says in an op-ed piece in the Los Angeles Times: The Democrats are not as interested in Bush’s environmental record as they are in attacking President personally. He says: Most of the charges made against the White House are baloney—these are his words—and made for the purposes of partisan political bashing and fundraising. He also contends that environmental lobbyists raise money better in an atmosphere of panic. He goes on to explain the real reason this issue was going on. This man was subjected to a lot of things, including 100 prehearing questions, and later 400 questions prior to hearing. This has never been done before.

Then we had an experience that has never happened in the history of this Senate. We went back as far as Jennings Randolph in the middle sixties. It never happened in this committee. The Democrats boycotted the committee. They did not show up. We have 10 Republicans and Democrats. We have to have a majority there and two members of each party, and they are Republicans. So they boycotted and did not show up.

Time went on and we started looking at how long it took from the time of
the nomination, to the hearing, to the confirmation. In the case of William Riley, it was 13 days; the case of Carol Browner, 10 days; in the case of Governor Whitman, it was 13 days. Yet it took 56 days for this person to be confirmed, and they did confirm and the vote was 88 to 8.

I suggest today if we had the vote on Priscilla Owen, she would be sitting in the Fifth Circuit right now; and Miguel Estrada, the DC Court; William Pryor, the Eleventh Circuit; and Charles Pickering, the Fifth Circuit.

For a minute I will dwell, if the manager will give me a couple extra minutes, on Miguel Estrada. I saw something happening that I thought was significant. I will refer to something that happened to me February 26, 2003, a year ago, when we were talking about the confirmation process.

Mr. ALLARD. I am happy to extend an additional 2 minutes to the Senator from Oklahoma.

Mr. INHOFE. We had a group in Oklahoma at that time that was there from San Luis Potosi, a sister city in Mexico. We have a sizable Hispanic community in Oklahoma. I was mayor of Tulsa, and I recall how excited the people were each year when they saw people striving to achieve, Hispanics in this country.

I was standing before the crowd and said:

Como acálde de la ciudad de Tulsa, yo quiero decir, “Bien venidos, bien venidos a la ciudad. Creemos que la ciudad de San Luis Potosi, la ciudad hermana de todas las ciudades del mundo”.

(Translation)

As the mayor of the city of Tulsa, I want to say, “Welcome, welcome to the city. We believe the city of San Luis Potosi is the most beautiful city of all the cities in the world.”

I saw the looks on their faces, realizing we were participating in their culture. They are looking at Miguel Estrada saying, Why won’t they give him a chance to reach the top? Why is it that he does not get a chance for high office, he or any other Hispanic?

Mr. ALLARD. That is, he quoted that sentence saying, Why won’t they give me a couple extra minutes on the Fifth Circuit, only to have a larger panel of the same circuit reinstate their constitutionally authorized gubernatorial recall election, think it is pretty important who sits on the Ninth Circuit.

I had an experience this morning debating one of our fine Senators, Mr. Lautenberg. I said at that time this is about ideology. I don’t think anyone—after listening to all the debate that has gone on overnight—does not realize if you are not pro-abortion, if you are not anti-gun, you will be in opposition, and we will not get confirmation. It is wrong. All we want is an up-or-down vote on these fine nominees.

Mr. ALLARD. Mr. President, I will wrap things up on our side. Before I do that, there are a couple of questions I would like to pose to my colleagues who are now in the Senate. I understand they are going to take some time to speak on their side of the aisle. First, I pose a question to Senator Dorgan, who is the Senator from North Dakota. Senator Dorgan stated there would be no foot dragging on President Bush’s nominees.

The PRESIDING OFFICER. The Senator needs consent to pose questions to other Senators.

Mr. ALLARD. I am speaking under my own time.

The PRESIDING OFFICER. It still requires consent to pose a question to other Senators.

Mr. ALLARD. I have a question I would like to ask of Senator Dorgan, if I might.

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

Mr. ALLARD. That is, he quoted that we are moving expeditiously on the President’s nominees, refusing to return in kind the foot dragging delay of so many of President Clinton’s nominees.

I ask him to respond to that question under his own time.

I also have a question to pose to the Senator from Iowa and give him an opportunity to respond on his own time. That question is, What has happened to the DC Circuit?

The PRESIDING OFFICER. The point is we need to get these nominees to the circuit courts passed through the Senate. It is unprecedented. Never in the history of the Senate have we not moved forward on judicial nominees when we had the majority of the Senators supporting that nomination.

I yield the floor. The PRESIDING OFFICER. The Senator from Iowa.

UNANIMOUS CONSENT REQUEST—S. 224

Mr. HARKIN. I ask unanimous consent that the Senate proceed to legislative session and proceed to consider the bill to increase the minimum wage, Calendar No. 3, S. 224; that the bill be read a third time and passed; and the motion to reconsider be laid upon the table.

Mr. ALLARD. I ask unanimous consent that the Senator modify his request that that bill be read a third time and passed; and the motion to reconsider be laid upon the table.

Mr. HARKIN. I ask unanimous consent that the Senator modify his request that that bill be read a third time and passed; and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. The Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. I ask unanimous consent that the Senate proceed to legislative session and proceed to consider the bill to increase the minimum wage, Calendar No. 3, S. 224; that the bill be read a third time and passed; and the motion to reconsider be laid upon the table.

Mr. ALLARD. Then I object to his request.

The PRESIDING OFFICER. The objection is heard to the original request.
Mr. HARKIN. There again, I think we see what this is all about. We want to respond to the real needs of our people in America. We want to increase the minimum wage and the Republicans keep objecting to it. They will not let us bring it up. But they have to show they are willing to bring up four judges for lifetime appointments for a vote. So we see the difference.

We are trying to work on behalf of the American people to meet the real needs of people unemployed and people who are struggling in the minimum wage. The Republicans will not bring it up. That is the difference here.

Obviously, what we have, I called it the theater of the absurd earlier. There has been a play running for several years at the Kennedy Center called "Shear Madness." It has now come to the Senate floor and is playing here now, "Shear Madness." You can watch it free here. You do not have to pay to go to the Kennedy Center to see it.

First of all, we ask the police, the court reporters, other Capitol employees, who have had to spend long hours here through the night so that we can waste time, waste taxpayers' money, engaging in this ridiculous charade. I am told that the police out here are putting in 16-hour shifts, 16-hour shifts just so we can come out here for this ridiculous charade.

I am told our court reporters have to do 20-minute increments rather than the 10-minute increments they normally do. I am not a court reporter, but I think having that thing strapped around your shoulders and working for 20 minutes gets pretty tiring.

Does anyone on the other side think about these people? They have families. They have other things they need to do. How about our police working 16-hour shifts out there? Anyone on the other side of the aisle ever think about what is happening to them because of this charade we are putting on? We think about them.

I might say to the police and other people putting in all the overtime, while we are here with all this charade, do you know what is going on in the other part of the Capitol, downtown with the administration? They are trying to take away your overtime pay protection. Watch the little shell game with this hand on the judges, and with the other hand they are trying to take away your overtime pay protection. That is what this is all about. Tune in and watch this charade.

But do you know what else is going on in the other part of the Capitol? They are trying to take away your Social Security. They are trying to do away with your Medicare provisions. That is what is going on in another part of the Capitol.

Don't take my word for it. Here is something out of Congress Daily this morning for the support of the emerging Medicare prescription drug bill, and quotes a Republican from Virginia who said this new business coalition is absolutely critical in whipping Members just before a vote.

"They have been critical all along. It works from the ground up. It is all about winning elections. Everyone understands this is a political process."

This is on the Medicare prescription drug bill. He said the coalition that they are putting together is broader than the drug companies, and it includes representatives ranging from construction companies to Caterpillar. This is the coalition the Republicans are putting together to destroy Medicare as we know it. They are putting together a coalition of business, drug companies, construction companies, et cetera. Where are the seniors? Where are the elderly in their coalition? Not to be heard from. And they are going to do away with Medicare as we know it. They are going to privatize it.

Here is another one from November 6, Newhouse News Services, talking about Social Security. It quotes a Josh Bolton, Director of Bush's Office of Management and Budget: In the long run, Social Security cannot meet its commitments. Bolton would switch the Social Security system from government-guaranteed benefits to private investment accounts that would probably, but not positively, generate as good a benefit as Social Security now promises but can't deliver.

Now, the administration is saying that Social Security cannot survive. It is fact that the tax cuts passed by this Congress and signed by this President, most of which went to the wealthy in our society, if those amounts of money that go out to those tax cuts had instead been used for the Social Security system, Social Security would be solvent for the next 75 years. But now they are saying we do not have enough money for Social Security obligations. Of course not. They opened the gates through the Treasury and let all the money go to the wealthy in our country with that tax program they had.

That is what this is about. Get your mind off of that, and look at this charade we are putting on today.

I will respond to my friend from Colorado, and he is my friend. He is a great Senator who just quoted me a little while ago, remarks I made on the Senate floor a couple years ago about bringing up Bonnie Campbell. Here is a list of 63 judges who were blocked at that time, Clinton nominees, one of those being Bonnie Campbell from Iowa. I point out 63 here and only 4 we have blocked.

Here is the difference. The Republicans say they were stopped in committee. Yes, the Senator from Colorado quoted me accurately. I did ask unanimous consent to bring Bonnie Campbell to the floor. They objected. The Republicans objected. Now, Bonnie Campbell had a hearing. Nothing was raised about her. Nothing that was bad or anything in her background—nothing. She was absolutely qualified to serve as a circuit court judge, but Republicans would not even let her out of committee.

Here is what the Republicans say. It is wrong to stop someone in the Senate who wants to debate. They said this was wrong. That is wrong. But it is all right if we stop them in committee, which is exactly what they did.

So, yes, I asked unanimous consent to bring it out of committee, bring it to the floor. You bet I did. They objected.

Now, they are trying to say, why don't we do now what they were unwilling to do? Why should we change the rules, I ask my friend from Colorado? We will play by the same rules you played by. But, no, now you on the other side want to change the rules.

As I said this morning, my favorite line, a refrain from Finian's Rainbow that I bring up at times like this. It goes like this: Life is like cricket. We play by the rules the other side want to change the rules and have a different playing field.

Mr. ALLARD. Will the Senator yield?

Mr. HARKIN. Or someone mentioned the Social Security. Several people have mentioned Social Security. They are going to privatize it. They are going to put an end to this. It is a burden for the American people. We want to increase the minimum wage and the Republicans supported it. Zero. Zero. Not one amendment. Guess how many Republicans supported it? Zero. Zero. Not one Republican supported it.

Now what I hear they want to do is they want to change the rules to prevent cloture on judges, lifetime appointments. But on legislation—on legislation—no. They want to continue to be able to filibuster legislation. Well, come on. Give me a break. If you want to filibuster, filibuster for everything, not just for judges.

Now, my friend from Colorado, I know wants to ask me a question, and I do not know how much time I have, but I will be glad to yield for a question.

Mr. ALLARD. I will make it short. The question I have for the Senator from Iowa, my good friend—and we have worked together on many issues—is, will you now support the Frist-Milenko proposal of a bipartisan proposal, a step in the direction that you proposed several years back.

Mr. HARKIN. I say to my friend, if they would modify it to look like what

If you put that forward, you have got my vote. But, no, what you want to do on the floor, have it pertain to judges, and not to legislation.

No, I am sorry. If you want to end the filibuster, do it for everything, not just for what you think is right. Let’s do it for everything.

So I say to my friend—and he is my friend; he is a great Senator—I know we have a disagreement about this, but I am just saying, what I hear from the other side is they want to pick and choose. They want to be able to say, if you stop a judge in committee, that is fine, but you cannot stop him on the floor. And that is what they did. They stopped the judges in committee.

So when you hear Republicans come out here today or last night or however long this charade is going to go on—when they beat their breasts and say, oh, my goodness, I have never or I will never vote to filibuster a judge on the floor, check the record on that person and see what they did when they were held up in committee. Oh, it was all right on the floor. That was not a filibuster. That was a hold. Fancy words, different words—same result.

So what the rules have been in the past, the game, the rules we have played by in the Senate are good enough for today, and if you want to change the rules, change them for everything. Do not just pick and choose one little thing at a time. That is my point to my friend from Colorado.

I know the Senator from North Dakota wants to speak, and I am going to yield to him. But I just again point out that while this charade is going on here, the administration is at work trying to cut Social Security benefits. They are at work trying to come up with a prescription bill that benefits our drug companies and not our seniors. They are at work trying to take away overtime pay protection for 8 million working Americans. They are at work stopping any increase in an unemployment insurance extension. That is the game that is being played here.

I yield the floor to my esteemed colleague and friend from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota?

Mr. DORGAN. Mr. President, I have not had the opportunity to listen to all of this debate.

Mr. HARKIN. An opportunity?

Mr. DORGAN. I am not sure I would consider it an opportunity, had I had the time. I know people watching this, perhaps on C-SPAN, would take a look at all this and say: Well, this is a bunch of windbags in blue suits. They talk and they talk and they seem to disagree, but when they are done talking, they have not said very much.

There is some truth to the fact that much of what goes on in this Chamber is without great merit and without great consequence. There are times when we do things—and often when we do things together—that have significant impact on the future of this country and on the direction of this country. This is not one of those moments, I might say.

This 30 hours is 30 hours that are designed to make a point, a point without much validity. And I will explain why that is the case. But it is, in my judgment, of very little consequence.

My Dad used to say never buy something from somebody who is out of breath. Do you know something? There is a kind of breathlessness to my colleagues. My colleague from Colorado just asked me a question kind of breathlessly, and I have watched others sort of out of breath here coming to the floor of the Senate talking about how unfair this process has been, how we are blocking judges.

Look, may I say time for just a few facts—just a few. You have seen them before. This is not a memory test, but it will take very little time to commit to memory. Mr. President, 168 judges confirmed—168 confirmed—and 4 have been blocked. We do not apologize for blocking judges. We do not want to be on the Federal bench.

The Constitution says there are two steps to giving someone a lifetime appointment: One, the President shall nominate; and two, the Senate shall confirm. It is called advise and consent. The roles are equal. This is not a circumstance where the President has certain prerogatives that we do not have. The roles are equal. To put someone on the Federal bench for an entire lifetime, the President nominates and then we give our advice and consent. Mr. President, 168 times this Senate has said yes, and on 4 occasions it has said no.

Why are we here for 30 hours? Because the majority party is apoplectic. They are having apoplectic seizures about these four.

Do you know something? When my son was about 10 years old, he ordered from a magazine an ant farm. When he did it, I described it on the floor of the Senate one day. I had no idea what an ant farm was, but it was two pieces of glass hooked together on the ends, very narrow, and then you put sand in it. They also sent you a little vial with ants. And they said in the instructions that you put the ants in the refrigerator to slow them down a little bit, and then you take the cap off and you throw those things in that little glass container with sand. And then it said: just watch, and you will be entertained by this ant farm.

So we slowed them down. We put these old ants in the refrigerator. Then we poured them in this little glass with the sand, and then we watched—a day, 2 weeks, 2 weeks. It was fascinating. Every week, we would wake up and those old ants had been working. They took the sand from this side, and they would move it to this side. The next day you would wake up, and they moved the sand back. That about 2, 3 weeks and you realize there was a lot of activity going on but they were not going anywhere. Nothing was happening.

Is this all an empty exercise. And do you know what? At times the Senate reminds me of that, and especially in this 30-hour period it reminds me of that. We can move things back and forth, we can vent and breathe and sigh, and it does not change the facts.

The facts about judgeships are these: 168 we have supported, which means we have the lowest vacancy rate since the mid-1980s. Why do we have the lowest vacancy rate since the mid-1980s? Because we—yes, we have approved 168 judges, at a far higher rate than happened under the Clinton administration when the Republicans controlled this body. I am not and will not be apologetic to anybody under any circumstance for this record.

Now, with respect to these four, do we have a right to decide there are four people whom we do not want on the Federal bench? You do when we do—not only a right, but we have an obligation. If we decide this candidate or that candidate is not worthy of a lifetime appointment, we, in my judgment, have an obligation, and that obligation, under advise and consent, is to weigh in with our opinion.

Mr. ALLARD. Will the Senator from North Dakota yield?

Mr. DORGAN. I will not yield, and I will not yield so because the Senator from Colorado asked a question on his time and said he would not allow me to answer on his time, so I will not allow him to ask questions on our time.

I would be very happy, however, by consent, to spend a full hour with the Senator from Colorado or any other Senator, for that matter, just back and forth with two or three of us asking and answering questions. I would enjoy that opportunity.

But having said all that, let me explain that this 168 to 4 is, in my judgment, a lot of shadow boxing. It might be fun for some. I am sure it is not fun for those who have to spend their time for the next 30 hours—the doorkkeepers and the members of the police, and others, the security, and the folks at the desk, and the folks who do the service that is performed here to keep the records of the Senate—they have to be involved hours. If it feels better doing this, they have a right to do it. I will not complain about it. They have a perfect right to do this.

But let me tell you what I have a right to do as well. I have a right, at least as one Member of this Senate, to wish—to wish—just for a moment that I were in control of this agenda. And I will tell you what I would do today if I were in control of this agenda. I would bring something to the floor of the Senate that deals with the subject of jobs.

I know what I would want to talk about today. I would want to have
some legislation on the floor, and I will tell you what it would be about. Huffy bicycles.

Let me tell you about Huffy bicycles. Huffy bicycles have 20 percent of the market in this country for bicycles—20 percent. They used to be made in Celina, Ohio by 850 good workers, 850 union members in a plant in Ohio. They made $11 an hour in wages plus benefits. And they made a great bicycle, sold at Walmart, Sears, Kmart.

Do you know what they had on the front, right underneath the handlebar? It had a picture of an American flag on a decal, a decal for the Huffy bicycle—an American flag, American made. God bless them.

But then it became too expensive to make Huffy bicycles in America. Mr. President, $11 an hour was too much to pay workers. So do you know where these Huffy bicycles are made now? In China. Do you know why? Because they get it for 1 cent an hour. And do you know what they did when they moved the Huffy bicycles to China? They laid off all those workers in Ohio—850 of them—who now work 2 jobs, 3 jobs to make ends meet, and some do not work at all.

What they did, when they went to China and started producing these bicycles, was they took off that American flag decal right underneath the handlebar and they changed that American flag decal right underneath the handlebar to a globe. Well, God bless the globe. But I happen to care a great deal about jobs in Ohio—American workers who get up in the morning and say goodbye to their family because they are going to a job that they love: I make Huffy bicycles. No, I don't make a fortune; I make $11 an hour, but I work hard, and I do a good job. And then I am told one day my last job will be to replace the decal on the front of the bicycle from a flag to a globe before they fire me and move the jobs to China.

I want to talk about that. If I were running this place, we would be talking about legislation to address this question of whether American workers ought to be told: You must compete with 33-cent-an-hour labor. And if you can't, tough luck; you lose your job.

We are talking about four jobs this morning that my colleagues on the other side of the aisle are upset they were not advanced to the Federal bench. I am talking about 850 people in Ohio who used to make Huffy bicycles, and proud to do so, who discovered they were too expensive at $11 an hour. Huffy wanted to make bicycles for 33 cents an hour.

I would like to talk about that on the floor of the Senate and have policies dealing with international trade on the floor of the Senate. And that relates to jobs, not just relating to 850 people, but it relates to 3 million jobs. Three million people had to tell somebody in their family they lost a job in the last few years. These are people at the bottom of the economic ladder. These are people who know about secondhand, second-shift, second jobs. They are the ones who lose their jobs. We ought to talk about joblessness in this country and the fact that our economy is expanding but the job base is not.

Last month we had good news, and good for us, good economic growth. Do you know what happened? We lost manufacturing jobs again last month, 50,000 of them. If you wear a suit, it does not matter much, and if you serve in the Senate, you will not notice it much. But I guarantee you, if you were one of those last month who had a good manufacturing job, who had to come home and tell your spouse and your family: ‘I have just lost my job; no, not because I am a bad worker but because I cannot compete with 12-year-olds working 12 hours a day being paid 12 cents an hour’—and yes, that happens. Yes, that happens. And I can tell you, every job I lost, I showed you. So why would I talk about that. That is what I would have on the agenda.

While I am at it, while I am halfway irritated about what we are not doing, let me also talk, just for a moment, about embargoes yesterday. At 11 o'clock last night in a conference committee in the basement of this Capitol, I lost this issue, and I am a little irritated about that this morning.

This is a picture of a young woman, a young Christian woman from this country, and her name is Joni Scott. She came to see me 2 days ago. Do you know why? Because her Government has levied a $10,000 fine against her. Do you know why? Because the Government discovered she went to Cuba, and she went to Cuba in order to deliver free Bibles to the Cuban people with her church group.

So this young woman, named Joni Scott, took Bibles with her church group, went to Cuba, and distributed free Bibles in the country of Cuba. And when she came back to this country, do you know what her country said to her? We have got the Department of the Treasury, with an organization called OFAC, Office of Foreign Asset Control, and they sent her a notice and said: You are fined $10,000. You must pay a $10,000 fine. Why? Because you went to Cuba.

Mr. President, we ought to talk about that today. I had an amendment on the conference committee last night. The amendment passed the Senate. The amendment passed the House of Representatives. It was bipartisan. Republicans and Democrats voted for it in the Senate and the House, to say: Let's not do that to this travel ban against Cuba. It is not fair to the American people. That is an attempt to slap around Fidel Castro, and by doing that, we are injuring American people's right to travel. We left Cuba, but we went to conference last night, and this bipartisan approach—in both the Senate and the House—was kicked out. Why? Because the White House threatened to veto the bill if it was in it. This bill still stands. This young lady has a $10,000 fine. I have written to the Treasury Department saying: How dare you? How dare you?

But it is not just her. It is farmers from my State who want to sell farm products into Cuba. The Farm Bureau is denied a license to travel to Cuba to promote farm exports. It is about using food as a weapon. That is what the administration wants to do with Cuba; it is about embargoes. This does not make any sense.

So if I were running this place today—and I am not, unfortunately—I would be talking about that. I would be talking about the ability of our farmers to sell into that marketplace and, why on Earth will you not give a license to a farm group to go to Cuba to promote agricultural sales while you penalize a young lady who goes to Cuba to hand out free Bibles?

Is there anybody here who thinks this makes any sense? Have we lost all bases of common sense? Or will someone at some point stand up and say, let's do the right thing here?

So instead, we are here 30 hours. It started with Fox News and the major networks and newspapers, and they kept the story going on the 6 o'clock news. They are talking about it. They want the people to talk in the Chamber. It is all in a memorandum: We need to do this. And they are very excited. Brit Hume is very excited to have on his show a live shot of the Republicans walking into the Chamber. And for 30 hours we talk about judges.

It is fine. They have a perfect right to do that. I do not disparage that right at all. I say, however, it certainly is not the topic that is on the minds of most of the American people. There is so much misinformation about this subject that ricochets around this Chamber.

We are told by our colleagues: You are filibustering; that has never been done. I don't know where they get that. Do they just not do the basic research? I do not understand that. Do they just not do basic research at all?

Tell me about Abe Fortas. Many years ago, was there a filibuster? Of course there was. Tell me about Richard Paez. Tell me about all the cloture votes we have had to cast around here because Republicans forced us to have cloture votes.

Why do you have a cloture vote? Because there is a filibuster, in order to break a filibuster. And I could go through, but my colleagues already have, name after name after name. There has been a filibuster by the Republicans.

Then let me just indicate, finally, that my colleague from Iowa indicated there are many men and women who never even got a hearing. That is a filibuster by one person demanding the Judiciary Committee refuse to even give a hearing to candidates. Yes, for the Ninth Circuit, but for judgeships all around this country.
So I know we are going to vent out here for, I suppose, another 12—I guess 12 hours. And it will amount to nothing. We ought to be talking about jobs and a range of things that are very important to the future of this country.

The PRESIDING OFFICER. The Senator’s time has expired.

PRAYER

The PRESIDING OFFICER. The hour of 12 o’clock noon having arrived, the Senate will now recess until 1 o’clock, pursuant to the order of the Senate of February 29, 2000, to permit Members to attend a luncheon.

Mr. REID. Mr. President, I am going to ask the Sergeant at Arms to be here for, I suppose, another 12 hours. And it will amount to nothing. We ought to be talking about jobs and a range of things that are very important to the future of this country.

Mr. GREGG. Mr. President, first, I want to thank our Chaplain for the very fine prayer which brings us back to reality in a way that is appropriate.

There has been a tremendous amount of excellent discussion today about the issue of the process of approving those four judges who have been nominated to the circuit courts of appeals, and the whole issue of the filibuster and how filibusters work into the process of the Constitution and the management of this Senate. It has been appropriate. It has been enlightening, I hope, to those who have taken the time to listen at whatever hour they happened to listen.

I heard some extraordinary discussions which were historical and legal and factual and informative. The question of whether or not a filibuster is appropriate is critical, and the constitutionality of using a filibuster relative to the Executive Calendar and the approval of judges is a very legitimate question in my mind.

I think when you look at the Constitution and the language of the Founders, they were fairly precise people in how they designed this Senate when they decided to be precise. And on the filibuster, for the purposes of approving judges, they were precise. They said it would take a supermajority to approve treaties, but they were silent on the issue of supermajority relative to justices, and, therefore, in my opinion, I think it is fairly evident that they were silent. As they were concerned, they expected a majority for the purposes of approving justices and, therefore, a filibuster is inconsistent with that.

Really the filibuster, and the issue of the filibuster which has received so much appropriate attention today and which is obviously why we haven’t been able to get to a vote, is systematic of the bigger issue, which is why is the opposition evolving relative to these justices?

We have to remember—and I think it is important for people to focus on this because there have been a lot of charts and signs up talking about the number of judges approved—that we are dealing now with the highest level of the judiciary. We are not dealing with district judges. The vast majority of the judges who are approved by this body, who are nominated by any President, are district court judges. They are the trial judges. What we are dealing with, however, is the people who take a look at what happened in the trial and decided whether law has been applied to the trial and who basically interpret the Constitution and the laws of the land and have, therefore, a huge impact, obviously, on how our society functions.

Fewer and fewer cases make it to the Supreme Court. More and more cases are decided on the question of the constitutionality, the implications of the broader law involved by the appeals level of our justice system. Therefore, when we look at the circuit court of appeals appointments, we are looking at an extraordinarily important position within the structure of our government as a nation, a governance which is based on the issue of the protection of law. You can’t have a democracy unless you have a structure of jurisprudence which is fair, honest, and applied consistently with principles developed over years.

Therefore, to look at all the judges out there and say 168 or 200 or 5,000 have been approved is irrelevant to the question at hand. The question is the circuit court issue; what has happened with the circuit court? We know in the circuit court area there have only been 29 approved, and there are presently 4 pending who are subject to a filibuster right now, which means they can’t get a majority vote. And, to be two more, it looks like, who are going to be subject to that same filibuster, who won’t get a majority vote, and that will be followed by, it appears, another six subject to a filibuster and, therefore, cannot get a majority vote. So we have 12 compared to 29.

Twenty-nine have been approved. That is a very high percentage of the circuit court justices who have been basically blocked from getting an up-or-down vote. And it is obvious that form of structure, our Constitution, in my opinion.

There has been a lot of discussion about that point. But what is the real implication? What is this fight over a vote going to be about? It is about who these justices are and what they represent, because this is a new radicalization of the issue of judges and their appointment to the circuit court.

The use of the filibuster at this time is symptomatic of that radicalization, and it is the radicalization of the nominating process which is the real issue at hand and on which the American people should be willing to focus.

It appears—not appears—it has occurred now that a litmus test has been put in place for the purposes of approving members to the circuit court, a litmus test that really has no relationship to the judicial temperament, experience, fairness, or expertise of the person who has been brought forward. It is a litmus test totally outside the bounds of what has traditionally been the way in which we evaluate a justice nominated to the circuit court. It is a litmus test based on the justice’s personal and religious views, not the justice’s judicial actions.

This is a huge departure from what has been the traditional method by which we have evaluated and confirmed judges in this country.

First off, the litmus test as an approach is wrong. I was a Governor. I appointed judges. I never asked one judge what his or her views was on any issue. What I wanted to know about a justice I was going to appoint was: One, were they honest beyond a question of a doubt; two, were they fair; three, were they fair; and four, have they life experience that is going to give them some sensitivity toward the people who would be coming before their court.

With that in mind, however, I believe it is inappropriate to ask, but that was my position. Clearly, it is not the position of the minority in this body. The minority in this body decided there...
must be a litmus test which every justice appointed to the circuit court has to jump over.

I could possibly accept that if that litmus test was tied to whether the justice was honest, whether the justice was fair, whether the justice was intelligent, or whether the justice had the life experience that was appropriate to go on the court. But that is not the litmus test. The litmus test now is whether or not the justice nominated to the court fulfills a litmus test, not a judicial view, which is inconsistent with the view of one Member—just one Member—of this body. It is a staggering event representing a fundamental change in the way in which we appoint justices and nominate and confirm and evolve a judiciary.

Under this philosophy, it is very likely that any person who comes to this body who subscribes to the Catholic faith and subscribes to the catechisms of the Catholic faith, even though they may, as a justice, have made it very clear they do not allow that faith to determine their decision. The litmus test, by the catechisms of the Catholic faith, even though they may, as a justice, have made it very clear they do not allow that faith to determine their decision. The litmus test was tied to whether the justice had the life experience that was appropriate to serve to the Supreme Court. These were two justices who subscribed to the Catholic faith. The President was just talking about Mr. Breyer—the justice will not be allowed to be confirmed because his personal views—not his judicial actions, not his judicial review process—but his personal views will not have passed the litmus test simply because he happens to maintain a religious belief.

That is an extraordinarily dangerous precedent to set in this body, and it will fundamentally change the character of this body over time if it is allowed to continue, to say nothing of the prejudice that it reflects.

Since I have been in this body, I have voted for a lot of judges. When President Clinton was here, I voted for Justice Breyer to the Supreme Court. I voted for Justice Ruth Bader Ginsburg to the Supreme Court. These were two justices I absolutely knew did not subscribe to my political philosophies, but they were honest, they were fair, they were smart, and they had life experience that was appropriate.

Had I applied a litmus test coming from the other side of the aisle, I could have easily said no, and we could have filibustered those judges, but that was not appropriate. That is not the way to proceed.

Unfortunately, my time is up. I would like to spend more time on this issue to make my fine colleagues wish to speak. I think this is the essence of the issue we are confronting today. The filibuster is symptomatic of it. The essence of it is we are radicalizing the manner in which we appoint justices, and we are allowing that radicalization to be based on personal beliefs rather than judicial action, which is fundamentally wrong.

Mr. President, I now yield 5 minutes to the Senator from New Hampshire, I wish to go further with some of the issues about which he was talking.

Our Constitution specifically spells out only five instances where a super-majority is required and moving to conclusion of the President’s judicial nominees is not on that list. This list includes treaties, impeachment, expulsion of a Senator, overriding a Presidential veto, and adoption of a constitutional amendment.

The spirit of our Constitution should mean something. It is in defense of our Constitution that we are taking these 30 hours. It has been said we are wasting our time. Defending our Constitution is not wasting the Senate’s time. It is critical to this Senate.

What the Senator from New Hampshire was just talking about—the Supreme Court nominees for whom he voted, even though they were different ideologically from him—if this process is allowed to continue, we know what is going to be 12—12 out of 41. If this is allowed to continue, we know next year it is going to be worse, and when the next Supreme Court comes up, if it is Ruth Bader Ginsburg or Breyer or Rehnquist, those people would not be approved in the climate in the Senate today. Highly qualified people will not be able to make it onto the Supreme Court.

Do my colleagues know what that is going to do to the process? Good people are not even going to be part of the process. When the President calls them and says: I would like you to consider this, they are going to say: Go see somebody else.

The Judicial Conference is a non-partisan entity that acts as the principal policymaking body for our court system, and it has declared 12 judicial emergencies in the circuit court of appeals. The President is doing his job by sending us the nominees. It is our time to do our job.

The Ninth Circuit, which serves my home state of Nevada, is the largest and busiest circuit court of appeals in this Nation and is also the most overburdened in the country. In 2001, it took 30 months in the Ninth Circuit for a case to go from original filing in the district court to the final decision on appeal. That is 5 months longer than the average court.

In the Ninth Circuit in the 1996-1997 session in the middle of the Clinton Presidency, the Supreme Court found it necessary to review 28 cases in the Ninth Circuit. Those 28 cases, it overturned 27 of them. By the way, this was one-third of the Supreme Court’s docket that year.

We know about some of the outrageous cases in the last year or two from the Supreme Court and some of the mention of the Court. We know the Ninth Circuit is the one that is trying to overturn the Pledge of Allegiance, saying that God should not basically be part of our country or part of our Government, or the name ‘God.’

The Senate took up a resolution which then-Senate majority leader Tom Daschle brought to the floor, and every Senator voted to condemn what the Ninth Circuit had done. This is the circuit to which Carolyn Kuhl is nominated. We need to get good people on the Ninth Circuit. It is absolutely critical for us to do that.

I feel passionately that we need to fix this process. We need to fix it for when the Democrats are back in power so that good people get an up-or-down vote. They shouldn’t be blocked simply for ideology from getting an up-or-down vote. If a Senator disagrees with them, vote them down, but give them an up-or-down vote. A minority of Senators should not be able to block the process for judicial nominees as part of the advise and consent clause.

So let’s work together. Let’s reach across the aisle and say: Let’s fix the process. Otherwise, the Senate belongs to the future, this tit for tat, this payback is going to continue to get worse and worse, and it is truly a threat to our constitutional Republic.

I close with this: We appeal to the other side. We Republicans try to offer a resolution to fix what is going on here, and we encourage them to join us so this doesn’t just get worse as the years go by.

I yield the floor.

The PRESIDING OFFICER. The Senator has used his 5 minutes. The Senator from Texas.

Mr. CORNYN. Mr. President, may I inquire how much time remains on our side?

The PRESIDING OFFICER. Twelve minutes.

Mr. CORNYN. Mr. President, I yield myself 7 minutes, and I yield the senior Senator from Texas the remaining 5 minutes of our time.

I have been either in the Chamber or watching the Chamber from other parts of this building as this debate has gone forward since early last evening. I happened to be watching from my office just before I came to the floor most recently when the Senator from Iowa, Mr. HARKIN, made a couple of comments to which I want to respond.

First, I want to say what I agree with. I agree with him that the people who work so diligently in this Chamber and elsewhere, in the cloakroom, the people who report what we say for the CONGRESSIONAL RECORD, how much I and the rest of us appreciate their faithful and dedicated service. Some of us got a few hours sleep last night. I am not sure all of them did. I just want to say for all of us how much we appreciate their service.

There is something else he said that I disagree with very strongly, and that is the bipartisanship. This Iowa charged the Republican offices in this Chamber, the bipartisan majority really—it is not just Republicans—but charged those of us who believe this debate is
important with “sanctimonious hypocrisy” for our attempts to uphold the Constitution for what we believe to be the unconstitutional obstruction of President Bush’s nominees.

There is a lot about this debate that I think folks at home watching TV or listening on the radio may have a little bit of trouble getting their head around, their brains around, because some of it involves arcane rules of the Senate and the Constitution. There is one thing that folks back home understand. It is called “gridlock.”

I think it is worth noting, indeed I think it is important to note, comments that have been made by those who are now on the other side of this debate, what they said a few short years ago on this very self-same subject.

My mother used to say that the test of one’s character is whether you are the same person in public as you are in private. Using competing envelope to that test, we could ask whether the speeches that a Senator gave 5, 6, or 7 years ago are consistent with the position they publicly take today.

In that spirit, I would offer this. On March 1, 1994, the Senator from Iowa said: I really believe that the filibuster rules are unconstitutional.

That is the same Senator who accused those of us who believe that the same thing he believed in 1994, when he called us sanctimoniously hypocritical for what we are doing today—he happened to agree with us in 1994 but has obviously changed his position today.

Senator Lieberman of Connecticut on January 4, 1995, said: The filibuster rule, there is no constitutional basis for it. It is in its way inconsistent with the Constitution. One might almost say it is an amendment to the Constitution by rule of the U.S. Senate. The Constitution is straightforward about the few instances in which more than a majority of the Congress must vote.

The Founders concluded that putting such immense power into the hands of a minority ran squarely against the democratic principle. Democracy means majority rule, not minority gridlock.

Then there are the comments of the distinguished legal counsel, Lloyd Cutler, who served as White House Counsel both to President Carter and President Clinton, who said: Nothing would more poorly serve our constitutional system than for the nominations to have earned the approval of the Senate majority but to be thwarted because the majority is denied a chance to vote.

I would like to agree with the comments made by Senator Lieberman, Senator Daschle, Senatorarkin, and Mr. Cutler just a few short years ago, but obviously their position has changed, or I should say their position has changed because majorities have changed. They find themselves in a different posture today than they found themselves in then, and it is no longer convenient or expedient for them to claim that majority should rule.

I submit they were right then and they are wrong now. I do not know of a single word of inconsistency to take inconsistent positions based on experience where they should be made on principle.

What we are fighting about today is a fundamental principle. My colleague from Iowa said: Whether intended or not, the inference can be drawn by many would be: Since the Republican majority are deed on the Senate floor or in private debate, what they said a few short years ago with respect to the Constitution by rule of the U.S. Senate was by rule of the U.S. Senate and the Constitution. There is some of it involves arcane rules of the Senate and the Constitution. There is something the moral demarcation line is, and there have been four unconstitutional filibusters.

The PRESIDING OFFICER. The Senator has consumed the time yielded to him.

Mr. CORNYN. I yield the floor to the senior Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. I thank the Senator from Texas, my colleague, for being here most of the night, as most of us were, and for carrying this debate as a distinguished member of the Judiciary Committee who is maybe the only Member I know who has been a member of a supreme court of his State, Texas, and the attorney general of his State. I am very pleased that he has been such an active participant in this debate.

I wish to talk a little bit about the issue of the filibuster as it pertains to judges. We have had a lot of debate about what is a filibuster and did one occur, previous to this, a filibuster on a judicial nomination. Well, there is an argument about one, and that is Justice Abe Fortas who was promoted to Chief Justice and was turned down by the Senate. “Turned down” might not be the right words, but whether or not there was a filibuster is in debate.

There is no debate that there have been no other filibusters of judicial nominees because Members of both parties have tried very hard not to filibuster until 2002 because they know it is the nuclear option. Once it starts, it is going to promote partisanship in this very important constitutional responsibility.

I want to read a letter from former Senator Robert G. Byrd who was a Member of the Senate during the Fortas debate. He quotes an Associated Press piece which, in discussing the nomination of Justice Abe Fortas to replace Chief Justice Earl Warren, said:

Republicans filibustered the nomination and Johnson backed off.

Here are his words:

Whether intended or not, the inference read by many would be: Since the Republicans filibustered to block Justice Fortas from becoming Chief Justice, it must be all right for the Democrats to filibuster to keep President Bush’s nominees off the appellate courts.

Having been on the Committee in 1994, and having participated in that debate, I see a number of very important differences between what happened then and the situation that confronts the Senate today.

First of all, four days of debate on a nomination for Chief Justice is hardly a filibuster.

Now, we are talking about people who have been nominated for over 2 years, who have had numerous cloture votes. That is a big difference. He goes on to say:

While a few Senators, individually, might have contemplated use of a filibuster, there was no Republican party position that it should be employed. Indeed, the Republican leader of the Senate, Everett Dirksen, publicly expressed his support for the Fortas nomination shortly after the President announced his choice. Opposition in 1968 to the Fortas nomination was not partisan. Some Republicans supported Fortas; and some Democrats opposed him.

When on October 1, 1968, a vote was taken on the first and only cloture motion, the count was: 45 in favor of the motion [for cloture] and 43 against. Of course, if the opposition to the nomination were jubilant, not only because the count fell far short of the 2/3 then required to impose cloture but, after reviewing the leanings of the votes, we were more confident than ever that we had, or would achieve, majority support for our position [against Justice Fortas]. Of course, it also demonstrated that the White House could not produce the showing of a majority in favor of the nomination. Even if four days of debate were to be characterized as a filibuster, it could not be claimed that our debate was thwarting the will of the majority.

Needless to say, that picture stands in stark contrast with the tactics employed these days by Senate Democrats.

President Johnson the next day withdrew the nomination.

The difference here is, there was not a partisan filibuster. There was not a majority that could be counted, and if there were, the Senate would have been one of President Johnson, who was President of the United States, they know he was a vote counter. The Senator, now President Johnson at the time, withdrew the nomination because he did not have the majority vote for the nomination. So there has not been this kind of partisan filibuster. Both parties have refused to allow it to happen for good reason, and I would hope it would end today as well.

The PRESIDING OFFICER. The majority’s time has expired.

The Senator from Vermont.

Mr. LEAHY. Mr. President, this has been interesting, and I think for the public who might be watching, they are getting for their $100,000 to $150,000 of taxpayer’s money that is being spent in this filibuster and those staff members who have lost any ability to have time for themselves and their families.

By the way, I might boil this down to its essence. Have filibusters been used before on Executive Calendar nominees, including judicial nominees to the lower courts, as well as to the...
Supreme Court? Of course they have. No matter how much my friends on the other side say no, of course they have. They know that.

The CONGRESSIONAL RECORD is open for all to read, and we do not even have to go back in history to find this. Three years ago, there were even two simultaneous Republican filibusters on the Senate floor against Richard Paez and Marsha Berzon, two of President Clinton’s nominees. In fact, here is a list of Republican filibusters of nominees. It is a pretty long list.

I do not think we have to remind our friends on the other side of the aisle about the dozens more that were blocked not through votes in the open, on the Senate floor, but through holds by anonymous Republican Senators. In fact, these were filibusters by one or more anonymous Republicans. If one or more Republicans objected to one of President Clinton’s nominees, they never got a vote. They never got on the floor. They never got out of committee. One actually did get out, and then by a party line vote he was voted down. That was the African-American chief justice of the Missouri Supreme Court.

So what happened in these one-person anonymous filibusters by the Republicans? Not 4 people being held up, it was 63 of President Clinton’s nominees. Sixty-three of President Clinton’s nominees were blocked by the Republicans by a one-person anonymous filibuster.

So are filibusters, including judicial nominees, rare? Sure, they are. And, incidentally, these are the Clinton circuit court nominees blocked by the Republicans during 1995 to the year 2000. As we can see, it is a pretty large number: James Beatty, Rich Leonhard, Jorge Rangel, Robert Raymar, Barry Goode, Alston Johnson, James Duffy, Elena Kagen, James Wynn, Kathleen McCree Lewis, Enrique Moreno, James Lyon, Alleeby Snyder, Kent Markus, Robert Cindrich, Stephen Orlofsky, Roger Gregory, Christine Arguello, Elizabeth Gibson, Bonnie Campbell, Andre Davis, Richard Paez, Marsha Berzon, H. Lee Sarokin, and Rosemary Barkett.

The Senate’s rules are intended to protect against abuses by the majority that at any given time controls the Senate. I have been here eight times in the majority, eight times in the minority. When the majority and minority go back and forth all the time. In this case, the Senate’s rules protect against abuses of power—we have a system of checks and balances—especially by a White House that is so bent on control of the Senate committees. Time and again, Democratic Senators have acted in good faith to fill vacancies that have been kept open for years when there was a Democratic President. Time and again they have blocked, by one or two anonymous Republican holds, Democratic nominees of President Clinton’s from going forward.

We have filled those. That is why we are able to get 168 of the President’s nominees through. We have stopped four. Come on. Is this worth spending the taxpayers’ money? Perhaps not. Maybe, though, they believe it is worth it to send out fundraising letters.

The public’s priorities v. the Republican leadership’s priorities: During this 30-hour talkathon, the Republican leadership of the Senate again is following a script laid out for it by a White House intent on bending all other branches of government to its will. This is a White House intent on establishing some sort of unitary government and intent on removing the checks and balances among our three branches of government that are a foundation of the American system. In furtherance of this script, in these rare final hours of this year’s legislative session, the Republican leadership has decided to abandon work on the real priorities of the American people. They are obstructing those priorities, in favor of repetitive speeches about promoting these four controversial nominees to lifetime positions as federal judges—four people who already have good, well-paying jobs—is more important than the three million Americans who have been struggling to find any jobs at all.

The Republican leadership has already overshot the Senate’s adjournment date by more than a month. We have already had to enact three continuing resolutions to keep the federal government operating because the appropriations bills that the Congress needs to pass have not been enacted. It is now more than five weeks after the fiscal year began and we should have completed all 13 appropriations bills, but the Republican Congress has enacted a total of only four out of 13.

The remaining annual appropriations bills include the funds that go to improve our schools. The funds that NIH uses to advance our medical knowledge in fighting disease and illness. The resources used by EPA to enforce our clean air and water laws. They include appropriations for our veterans and for law enforcement.

Yesterday evening as the Republicans gathered to accommodate the programming requests of a certain television network, Senator from West Virginia was trying to get the Senate to do its work. Senator Byrd, as the ranking Democrat on the
Appropriations Committee, was searching for the Republican leader and urging the Senate to complete its work on the appropriations bill that funds services for our military veterans. He asked that the Senate continue that work so that we could finish it before adjournment. Those few minutes may turn out to be the most telling of this entire so-called debate. Republicans chose to sacrifice the work of the Senate, the priorities of the American people and the interests of our veterans to a partisan political stunt.

In one of their many press conferences on this diversion, on November 6, the Republican leader committed to "complete the appropriations process" before beginning this charade. Even the junior Senator from Pennsylvania, agreed with that and said: "The leader's right. What we're about to embark on in the coming week, after the appropriations process has run its course, is to enter into a debate that is premature..." When given an opportunity to honor that commitment last night, the Republican caucus chose partisan theater over the work of the Senate.

There is the unfinished business of providing a prescription drug benefit for seniors. There is the Nation's unemployment and lack of job opportunities that confound so many American families. With millions of Americans having lost their jobs in the last three years, the Republican Senate is, instead, insisting on spending these final days of this session on a handful of highly controversial judicial nominations that divide the Senate and the American people and ignoring the needs of the almost 10 million Americans who have lost their jobs since President Bush took office.

There are the corporate and Wall Street scandals that concern so many of those who have invested and placed their trust and financial security at risk in our securities markets. While we are listening to Republicans pontificate about a handful of highly controversial judicial nominees, some Republicans have no less than 4293, the Criminal Smear Act of 2003. This is a bipartisan bill that can do something about the worst spam abuses.

Earlier this week, the Washington Times reported that spam is doing more damage to our economy than hackers or viruses. A few weeks ago the entire Senate joined in adopting a version of S. 1293 to the Burns-Wyden bill and we joined to pass that bill. Now some Republican has turned around on that we could finish Senate is holding up the bipartisan bill that can be enacted before adjournment this year that can stem the tide against the worst abuses and fraudulent conduct that is gumming up our internet economy and communications. This is the type of anonymous Republican hold that was likewise responsible for holding up more than 60 of President Clinton's qualified nominees to the federal judiciary from 1995 through 2001.

There is the need to perform real oversight of the U.S. intelligence community to provide real oversight for the war in Iraq, just as Republicans objected to the Senate Judiciary Committee investigating the factors that led to September 11. Republicans are now objecting and preventing a full investigation by the Select Intelligence Committee of what led the Bush administration to contend that Saddam Hussein had weapons of mass destruction and was about to use them against the United States and that we had to embark earlier this year on a preemptive war.

Nor has the Senate taken any action on the misrepresentations made to us by Bush administration officials about their efforts to gut Clean Air Act enforcement. When they appeared and were asked about air quality, they said their policies would not affect enforcement of the Clean Air Act and ongoing cases. Over the last two weeks we have seen how far from the truth that testimony was.

For the last three years this Administration has run roughshod over environmental protection and the Republican Senate has done nothing to stem the tide. They have catered to special interests in rolling back protections for clean water, clean air, toxic cleanups and public health. The Senate should be focusing attention on these attacks upon the environment and these rollbacks, but nothing could be farther from the agenda of the Republican Senate.

Forty-two environmental rollbacks by the Bush administration that have been announced on Friday is the number the Senate should be working on. There have now been more environmental rollbacks than there are vacancies throughout the entire federal judiciary. The Bush administration's announcement that they are halting enforcement actions against industrial polluters under the New Source Review provision of the Clean Air Act flatly contradicts the assurances by Justice and EPA officials to the Senate last year. The toxic pollutants that will cause asthma and heart disease for our children and grandchildren is apparently of little interest to the Republican leadership of the Senate. That would be worthy of serious inquiry, debate and Senate action.

Last week the House passed by an overwhelming bipartisan margin the Troubled Technology Act of 2003, H.R. 3214. This landmark legislation provides law enforcement with the training and equipment required to effectively, and accurately, fight crime in the 21st Century. More specifically, the bill would enact the President's DNA Initiative, which authorizes more than $1 billion over the next five years to eliminate the backlog crisis in the nation's crime labs, fund additional crime labs, and improve the DNA programs. It also includes the Innocence Protection Act, a death penalty reform effort I launched three years ago with Senators and Congressmen on both sides of the aisle.

The House vote was a major breakthrough in finding solutions to the flaws in our justice system. I understand that Republican Senators are now blocking action on the bill in the Senate. This bill is the result of extensive, exhaustive negotiations among Democratic and Republican leaders in the House and the Senate. It has broad support, both in the Congress and across the country and deserves the Senate's immediate attention and passage.

We have shown that the death penalty system is broken, we know that the reforms in this bill will help, and we know that every day we delay action may be another day on death row for some innocent person. We have built a system where our system of justice carries a high personal and social price. It undermines the public's confidence in our judicial system, it produces unbearable anguish for innocent people and their families and for the victims of these crimes, and they compromise public safety because for every wrongly convicted person, there is a real criminal who may still be roaming the streets. This matter is also being stalled by Senate Republican inaction. The Senate has yet to take up the Anthrax Victims Fund Fairness Act of 2003, S. 1740, which Senator DASCHLE and I introduced with a number of other Senators because we are concerned that the citizens harmed by the anthrax letters addressed to Senator DASCHLE and to me in October 2001 are the forgotten victims of the aftermath of September 11. They, too, should have access to the Victim Compensation Fund. The Senate has yet to consider the September 11th Victim Compensation Fund Extension Act, S. 1602, which must be passed before we adjourn or hundreds of families who suffered on 9/11 will likely be left out in the cold without the compensation Congress intended to provide. Nothing will take away the pain and loss of September 11 and its aftermath for the victims but we owe them the Senate's attention before we adjourn.

Rules for Republican nominees: Rather than consider those important matters, why would the Republican leadership insist on rehashing the debate on the handful of judicial nominees on which further Senate action is underway? As we consider the judicial nominees of a Democratic President in the years 1995 through 2000, they showed no concern about stranding more than 60 of President...
Clinton's judicial nominations without hearings or votes. They did not demand an up or down vote on every nominee but were content to use anonymous holds to scuttle scores of qualified nominees. Indeed, they stood cavalierly by while vacancies doubled from January 1995 to 110 when Democrats assumed Senate leadership in the summer of 2001. They presided over the doubling of circuit court vacancies from 16 to 33 during that time.

Indeed, the Republican leader at that time famously came to the Senate floor to defiantly declare that the Senate had confirmed too many of President Clinton's judicial nominees. "I probably moved too many already." Four years ago, toward the end of the third year of President Clinton's term, a year in which only 34 judges were confirmed, the Republican leader repeatedly argued that Republicans and the Republican leadership were unrepentant about their delays and obstruction of scores of qualified judicial nominees when he proclaimed: "Getting more federal judges confirmed is what I came here to do." That Republican leader would not schedule votes on President Clinton's judicial nominees when vacancies were much higher and growing in the summer of 2000 and, ironically, sought to use appropriations bills as an excuse. The Senator from Mississippi said: "[S]pending bills must move first. . . . Until we get 12 appropriations bills done, there is no way any judge, of any kind, or any stripe, will be confirmed." Of course, now the Republican caucus is exercising interest in those completing the Senate's work on appropriation bills, even though we are no longer in the summer but four months later in the year, well past the deadline and already into the next fiscal year without having even had the Senate initially consider these fundamental legislative matters. As I have noted, just last evening the Republican leadership rebuffed Democratic efforts to complete action on appropriations for our work which could have been done in two hours.

In those years, the Republican chair of the Senate Judiciary Committee repeatedly argued that 67 vacancies in the federal judiciary was "full employment" as far as he was concerned. He wrote in USA Today in September 1997, when there were more than 100 judicial vacancies, that there was no judicial vacancy crisis and that the 742 active judges were sufficient. Over the last three years, vacancies rose from 68 to 103 and the Republican leadership confirmed 188 judges nominated by this President, including 68 this year; we have reduced judicial vacancies on an expanded federal judiciary to 40; and we have 837 active judges, the most in U.S. history. We have 40 percent fewer vacancies than what Republicans used to call "full employment" for the federal judiciary and almost 100 more active judges than just a few years ago. Republicans were content to delay and obstruct President Clinton's nominees and argue that there was no problem.

So why do Republican partisans insist that the Senate now devote its time to rehashing the debate on some of this President's most controversial nominees to the independent federal judiciary? Is it merely coincidence that the Republican leadership has chosen to schedule these proceedings for the week of the Federalist Society's National Convention in Washington? Perhaps this is to give Republicans the opportunity to preen and posture while such an important segment of their base activists are in town. Perhaps it is to give the Republican leadership another chance to make false arguments about judicial nominations. Perhaps it is to give some a platform for baseless and McCarthyite accusations against Democratic Senators. Or perhaps it is to distract. Arguments that affect Americans every day. Newspapers this week report that this exercise is precipitated because of a "brewing rebellion by conservative activists." Reportedly partisan diehards and GOP leaders of going too easy and apparently when Republicans appear on conservative radio talk shows "they are often barraged with questions" about why the GOP is not successfully ramming every judicial nominee through the Senate that they control. Apparently this dissatisfaction has even begun to affect Republican fundraising and, according to the Washington Post, "a recent mailing [by a conservative group] to raise money for candidates yielded unprecedented response and more than had formerly contributed. Let us hope that this is not the real reason for this grandstanding. Let us hope that when something begins to affect Republican fundraising, it is elevated to the top of the agenda—the public, the responsibilities of the Senate be dashed.

Mr. President, 168 nominees have been confirmed. If the Republican leadership has staged this vote in order to try to persuade the American people that Democrats are opposing nominees because he was at mass with his wife of 41 years ago, we will stick. If it was not so hurtful to the facts, there is one part in this whole debate that should be troublesome to both Republican and Democratic Senators, and that is the religious McCarthyite smears he was making on people. Now, some of my friends on the right and some of my friends in the Republican Party have been making this smear. They are saying if you are opposed to these people, you are anti-Catholic or anti-Christian. If it was not so hurtful it would be humorous.

I first heard this when a radio talk show said I was anti-family, anti-Catholic. On Sunday morning, they accused me of being anti-Mormon. He said: The Senator did not hear it because he was at mass with his wife of 41 years.

We should not sink to some level where we message that some are trying to stir up division. Slanderous accusations have already been made by Republican Senators, and ads run by a group headed by the President's father's former White House counsel and
a group whose funding includes money raised by Republican Senators and even by the President's family when they falsely claimed that judicial nominees were being opposed because of their religion. These contentions are despite the lack of any evidence of discrimination based on religious creed by the Republican Senators. In addition to the Republican Senators, without explanation, without a vote, without accountability, women who were subjected to the Senate and the Nation have no place in this debate or anywhere else.

Just a few weeks ago, President Bush told the Prime Minister of Malaysia that his inflammatory remarks about religion were "wrong and divisive." He should say the same to members of his own party. Today, Republican Senators have another chance to do what they have not yet done and what this Administration has not yet done: Disavow this campaign of divisiveness that would create a war of religion and race and gender by playing wedge politics with it. I hope that the Republican leadership of the Senate will finally disavow the contention that any Senator is being motivated in any way by bigotry or for racial or gender-based reasons.

This week rumor is that the Republican public relations machine will be cranking overtime to try to make Democrat Senators appear as denounced women. Led by Senators Mikulski, Feinstein, Boxer, Murray, Landrieu, Lincoln, Cantwell, Clinton, and Stabenow, it is hard to see how Democrats can be subjected to such allegations with a straight face, but that is precisely the rumor.

The facts are that under Democratic leadership, the Senate confirmed 100 judicial nominees, including 21 women, nominated by President Bush in just 17 months, including four to our Courts of Appeal. During the 109th Congress, President Bush nominated only 18 women to district court seats, out of 98 district court nominees (18 percent), and only 8 women to circuit courts out of 52 circuit court nominees (15 percent). This year Democrats have supported the confirmation of 12 additional women nominated to the Federal bench, including three to our Courts of Appeal. This President's nominees have included only one woman in each of his five judicial nominees. The 33 women judges confirmed represent 20 percent of the 168 judges confirmed.

By contrast, nearly one of every three of President Clinton's judges are women. Of course, the Republicans who controlled the Senate and the Judiciary Committee during the Clinton Administration also blocked 18 women nominated to Federal judgeships by President Clinton. Women who were blocked in getting Senate consideration to their judicial nominations include Kathleen McCree-Lewis, Elizabeth Gibson, Helen White, Christine Arguello, and Bonnie Campbell, all of whom were nominated to the circuit courts. These six outstanding women lawyers were not extreme or ideologically driven. They were outstandingly qualified women lawyers whose nominations were blocked anonymously by Republican Senators, without explanation, without a vote, without accountability.

Records of activism: On important issues to the American people—the environment, voting rights, women's rights, gay rights, human rights, civil rights and more—too many of this President's nominees have records of activism and advocacy. That is their right as American citizens, but that does not make them qualified to be judges. As a judge, it would be their duty to impartially hear and weigh the evidence and to impart just and fair decisions to all who come before the court. In their hands, we entrust to the judges in our Independent Federal judiciary the rights and freedoms that we all enjoy through our birthright as Americans.

The President has said he is against what he calls "judicial activism." How ironic, then, that he has chosen several of the most committed and opinionated ideological judges ever to be nominated to our courts.

The question posed by his controversial nominations is not whether they are skilled and capable advocates. The question is whether—not for a 2 year term, or a 6 year term, but for a lifetime—they would be fair and impartial judges. Could every person whose rights or whose life, liberty or livelihood were at issue before their courts, have faith in being fairly heard? The President has chosen to divide the American people and the Senate with his highly controversial nominations. If Republicans want to clean the slate and start fresh, we should do so with nominees who unite the American people. Here are six outstanding women we can support by a strong bipartisan majority in the Senate.

We are also hearing the claim by Republicans that the filibuster of a judicial nomination in unprecedented. Republicans themselves filibustered the nominations of Judge Richard Paez and Marsha Berzon as recently as 2000. They previously filibustered the nominations of Judges Rosemary Barkett and Judge H. Lue Sarokin. Of course, of course, Republican Senators took full advantage of the secret hold and of their control of the agenda to prevent a vote on 63 nominations by not scheduling hearings and votes on them. Many of those now claiming that Senate filibusters are unprecedented participated in them and voted against cloture just a few years ago.

Indeed, as the Senate's own website notes in an article entitled "Filibuster Derails Supreme Court Appointment of Abe Fortas to be Chief Justice was filibustered with the help of Republicans: "Although the committee recommended confirmation, floor consideration sparked the first filibuster in Senate history on a Supreme Court nomination." The attempt at cloture on the Fortas nomination was rejected by the Senate.

In addition, Republican Senators tried to filibuster President Clinton's nominees and of legislation into a destructive art form. A nomination to be Surgeon General, Dr. Henry Foster, was defeated by a Republican filibuster, ambassadorial nominations were filibustered and bill and bill was filibustered as Republicans obstructed the work of the Senate and the legislative agenda. For Republicans to claim foul now, after their use of the filibuster tactic, may earn them the political equivalent of an Oscar, Tony or Grammy.

For 3 years I have asked the President and Senate Republicans to join with us to fill the vacancies on the Federal courts with qualified, fair, non-ideological judges. Democrats have worked harder, without support a record number of nominees. When the White House will work with all Senators, we have been able to identify and confirm judges quickly and by consensus. When the President has chosen ideological judges, he has tried to pack the courts, we have opposed a handful of his most extreme nominees.

The Federal courts should not be an arm of the Republican Party. Nor should they be an arm of the Democratic Party. Or, as Republicans should continue to honor its constitutional responsibilities to this third branch of our Federal government and to the American people whose rights are protected by our Federal courts. No President, with or without the complicity of any current majority in the Senate, can be allowed to relegate the Senate to the role of rubber stamp.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Mr. President, I thank the Senator from Vermont for his exemplary leadership on these issues. During a very difficult time in the Senate's history, he has continued to deal with the challenges and criticism in his usual humorous, self-deprecating way. It is a real example for all Members.

I, like many of my colleagues, have been following this debate not just for the last hours but for the last months. My friends on the other side of the aisle have chosen this opportunity to try to garner public attention for their perspective, which is that somehow the Democrats, acting in what we believe is the highest sense of duty, our understanding of the Constitution under the law, have drawn a line. We have seen this hour after hour now in the Senate, in the big chart that says 168. That is how many of the President's nominees
have already been confirmed. Those men and women are sitting on our Federal benches. They are making decisions that affect our lives. I voted for virtually all of them. They would not have been my choices. I would not have nominated some of those people if I had 168 numbers, but they passed the test. They passed the test of judicious temperament. They passed the test of being people who understood the critical role of what it meant to be a judge in a free society like ours.

So, how do I feel about this? We got some hints from some of our colleagues on the other side of the aisle. This is about trying to gain political partisan advantage and also increase fundraising. I was amused to read a story about how some of their more extreme supporters sent back empty envelopes when solicited for funding for the Republican Senate campaign committee. Those contributors said: You are not tough enough. You need to make a big issue out of this.

So, in obedience, the Republican leadership decided to do that. That is their choice. They can dominate the floor on whatever issue they choose. It is a shame they keep the attention on this particular issue. They do not come out and debate the merits and demerits of the nominees from the current administration. What happened to the distinguished men and women never even got a hearing. They never got to appear before a committee in most cases. They never got a vote out of a committee. The Judiciary Committee, under Republican leadership, became a judge buster. You could not get out of the committee. You could not get to the Senate floor. So, of course, there could not be a filibuster because they never had the opportunity.

I have a little chart that shows the differences in the nominees were treated, that clearly demonstrates we had 63 nominees, 23 circuit court nominees, 40 district court nominees. They are represented by apples on my chart. We grow a lot of apples in New York so I am partial to this fruit. These 63 well-qualified, distinguished lawyers and judges were stifled. They were not even given, in many instances, the decency of a committee hearing. They were left hanging out there and treated by the most extreme of their privileged contributors.

It is somewhat disquieting for those who have a memory longer than 24 hours, or longer even than 2½ years, to see the distortions that have been presented with great passion and conviction. But, nevertheless, beating on the table does not necessarily mean what you are saying is true.

I am concerned, too, about the mis-leadership by the Republican Senate chose to rewrite the Constitution. It was done under the cloak of secrecy. It was done behind closed doors. It was done with no committee hearing being scheduled. You can go through the individual accomplishments of each one and it is stunning how well qualified they were. You can look at the names. I know many of these people. Republicans blocked 15 times more judicial nominees of President Clinton than have been blocked here. It has been a little difficult for many on this side of the aisle to explain to our constituents why we did not block more of them. A lot of the people who got through in that 168 were people many Members would prefer not to be on the bench, but we could not make the case and say why we would vote against this person, so we voted for them. When it comes to the four we blocked, we have more than ample reason.

I regret the majority has chosen to politicize this important process. I regret that they have chosen to ignore history and to distort the facts. I regret they would decide to spend time on these matters instead of the many important issues that confront our Nation and our world. We have a lot of big challenges around the world and I am personally concerned about what is happening in Iraq, what is happening in Afghanistan. I wrote to the Secretary of Defense yesterday because of reports about potential threats from al-Qaida to hijack cargo aircraft and fly them into nuclear powerplants. We have a lot of very difficult issues facing us. But instead, my friends on the other side want to rewrite history, want to ignore the well-qualified people they blocked through every faint, and incredible behind-the-scenes stealth they could come up with.

I will now yield the remaining time on our half hour to my good friend and colleague, Senator SCHUMER, who has been a champion on this issue.

Mrs. CLINTON. Before I yield, I ask unanimous consent that the Senate proceed to legislative session, the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment insurance benefits for dislocated, displaced workers; that the Senate proceed to its immediate consideration, the bill be read the third time and passed, and motion to reconsider be laid upon the table.

Mrs. HUTCHISON. Mr. President, reserving the right to object, I ask consent that the Senator modify her request so that just prior to proceeding as requested, the three cloture votes be vitiated, the Senate would then immediately proceed to three consecutive
votes on the confirmation of the nominations, with no intervening action or debate.

The PRESIDING OFFICER. Will the Senator from New York modify her request?

Mrs. CLINTON. No, Mr. President.

The PRESIDING OFFICER. Mr. Reid, Mr. President, before the junior Senator from New York speaks, I want to spread on the record the entire Democratic Caucus's appreciation for his stalwart service during the last many hours. The Senator has been here now for his fifth shift. On behalf of all the caucus, I extend my appreciation.

Mr. Reid. Mr. President. I ask unanimous consent the Senate stand in recess today from 4:15 to 5:15 so we can all go upstairs and find out what is happening from Ambassador Bremer, our No. 1 person in Iraq on the war in Iraq. It seems to me the fact that we talked 23 hours instead of 24 hours should not have any bearing on the outcome of the proceedings, but it would help every Senator, and God help Republican, to be able to give their full attention to the proceedings in the secret room upstairs. I move.

Mrs. HUTCHISON. Mr. President, recognizing that we can understand the sentiments of the distinguished deputy leader. We do all want to be able to do that, and we will be able to go in shifts. All Members are very interested in what is going on and very much interested is action here in the United States to make sure that we do everything possible for the stability of Iraq. But we are in a very important debate. We are debating a constitutional issue. I would have to object.

The PRESIDING OFFICER. The objection is heard.

The Senator from New York.

Mr. SCHUMER. Mr. President, I thank all of my colleagues for the debate. I repeat something I have repeated in the five other times I have been here. We have had a lot of talk, a lot of palaver. But this one chart is more persuasive than everything else. There are 63 people who did not get that majority vote. Here is a list of 63 people who did not get that majority vote. If the Constitution did not prohibit us every nominee should get a majority vote, why didn't it apply to these 63 as well as those?

And one other thing my learned colleague from Texas got up and said, hypocrisy. I hope these people for 10 years ago and do a different thing now. These were not 10 years ago; these were 5 years ago. I would ask but he is not here. Is it hypocrisy for the members of the Judiciary Committee on the other side, who never called these people for a vote, who deprived them of the principle of a majority vote, not to bring them up and now complain they want a majority vote for these four? I am not sure either measures up for hypocrisy. That is a strong word. But what is good for the goose is certainly good for the gander.

The whole issue of majority vote—

The PRESIDING OFFICER. Time controlled by the minority is consumed.

The Senator from Pennsylvania.

Mr. SPECTER. The Senator from New York is on the Senate floor, I ask him to respond to a question, and that is, Does he consider this Senator a far-right extremist militant?

Mr. SCHUMER. Is this on the time of the Senator from Pennsylvania?

Mr. SPECTER. Yes.

Mr. SCHUMER. Please repeat.

Mr. SPECTER. A few moments ago with a chart, 168 to 4 that only a far-right extremist militant would say that was an insufficient record.

So my question to the Senator from New York is, Do you consider ARLEN SPECTER a far right extremist militant?

Mr. SCHUMER. I do not, in answering his question. But sometimes he has occasional lapses in his very fine judgment. And this is obviously one of those.

Mr. SPECTER. Well, I do not know how the Senator from New York can say there is a defect in judgment when I have not asserted anything. All I asked, Mr. President, was a question as to whether he considered ARLEN SPECTER a far right extremist militant. And he said, no, but sometimes there are lapses in my judgment.

I will ask a followup question to the Senator from New York. In the absence of judgment on my judgment, where are the lapses in my judgment at the moment?

Mr. SCHUMER. I will say to my colleague, I heard him speak on this before, and when it comes to the issue of judicial nominees, where my colleague has usually quite good judgment, in recent months he is sort of edging way over to the right side, for reasons I am not sure of. But his normally sound and moderate judgment, in my judgment, when some of these nominees came up, has abandoned him, at least in this moment.

I say to my colleague, any nominee who believes that Lochner—and my colleague is very erudite, so I do not even have to describe to him what it is—who says that Lochner was correctly decided does not belong on the bench, in anyone's book, and, my guess is, really in his heart of hearts, does belong on the bench, in the book of the Senator from Pennsylvania. I know he will dispute that, but seeing his record, I have admired his record. And a judge who believes that property rights, that zoning is taking the comments go beyond ARLEN SPECTER a far right extremist militant. And to whether he considered ARLEN SPECTER a far right extremist militant.
absent consent. The regular order is that the Senator from Pennsylvania has the floor. Mr. SCHUMER. I ask unanimous consent that he be allowed to continue asking me questions. Mr. SMITH. Mr. President, the Senator from Oregon will have time to speak. We are in the midst of questions. I would follow up the question to the Senator from New York: Did he disagree with my judgment on agreeing for the confirmation of J. J. Paez, along with the Democrats, nominated by President Clinton? Mr. SCHUMER. Mr. President, there was no—do we have unanimous consent? I did not hear.

The PRESIDING OFFICER. Objection is heard.

Mr. SMITH. I would like to speak.

Mr. SPECTER. Mr. President, the Senator from Pennsylvania has the floor. The Senator from Pennsylvania was the object.

Mr. SPECTER. Mr. President, the Senator from Pennsylvania has the floor. The PRESIDING OFFICER. Objection is heard.

Mr. SMITH. I would like to speak.

Mr. SPECTER. Mr. President, I withdraw the question.

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

Mr. SPECTER. Mr. President, I withdraw the question.

The PRESIDING OFFICER. Thank you.

Mr. SPECTER. We have quite a number of people here who are already prepared to speak, and we will go on in regular order. But I asked the Senator from New York: Did he agree with my judgment on agreeing for the confirmation of J. J. Paez, along with the Democrats, nominated by President Clinton? Mr. SCHUMER. Mr. President, there was no—do we have unanimous consent? I did not hear.

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

Mr. SPECTER. Mr. President, I withdraw the question.

The PRESIDING OFFICER. You withdraw the question.

Mr. SCHUMER. Mr. President, this is theater. It is theater, and I think even more interesting than the soap operas or at least stay tuned for the next 2 minutes. I urge the Senator from New York and the Senator from New York and the Senator from Connecticut to C-SPAN inadvertently in surfing. And I urge them to continue to listen because what is happening here is substantive, important, and it is substantive, important, and it is substantive, important, and it is substantive, important. We have had an opportunity to speak.

I want to cover one other subject very briefly before yielding to my colleagues, and that is the subject of the quality of the nominees who have been filibustered. I will cite only one in the interest of time, and that is Miguel Estrada. This is a young man who was born in Tegucigalpa, Honduras. He came to the United States as a teenager, and he is the great American story. He went to Columbia, where he was Phi Beta Kappa and magna cum laude, and that is a considerable achievement. He then went to the Harvard Law School where he was magna cum laude and on the Harvard Law Review. That is an unique achievement.

He then was a law clerk to two distinguished Federal judges, one of whom was on the Supreme Court of the United States. He then had a distinguished career as a practicing lawyer. Then he went to the U.S. Attorney's Office in the Southern District of New York. And I can tell you from my own experience as an assistant DA, that is a very valuable experience. Then he was an Assistant Solicitor General and had really a remarkable record.

He was rejected by the Democrats on a filibuster and ultimately withdrew, and it was really because he was potentially a Supreme Court nominee. And the reasons given by the Democrats were that he was a stealth candidate. But any fair analysis of his responses to other nominees' would demonstrate...
that he answered the questions at least up to the standard level, and then the Democrats objected to his nomination because he refused—the administration refused to turn over memoranda he had written as an Assistant Solicitor General. As a result, the individual concerned is to be turned over under that circumstance whereby every lawyer who is an Assistant Solicitor General or an assistant DA or in any legal position would be chilly at the prospect of having such memorandum disclosed at some time in the future. A position was subject to the confirmation process.

Now, it is my hope that these proceedings will produce something useful by way of focusing the attention of the American people. I was on a radio program in Fargo, ND, for about 25 minutes earlier this morning, and these ideas have been spread across the country. It is my hope that the American people will communicate with their Senators on both sides of the aisle, both Republicans and Democrats. I think when the American people focus on this issue, there will be great pressure to change to take politics out of the selection of Federal judges.

I now yield to my distinguished colleague from Oregon, Senator Smith.

I ask the Senator, how much time would you like?

Mr. Smith. Ten minutes.

Mr. Specter. Done.

Mr. President, how much time remains?

The PRESIDING OFFICER. Thirteen minutes 20 seconds.

The Senator from Oregon.

Mr. Smith. Mr. President, for those of you who may still be watching this debate, I know the suggestion has been made by our friends on the other side that essential work is not being done. This time, I assure you, what is being done is a lot of work, and it is being done currently in conference committees.

What we are doing here, I think, is also very important. In terms of dialog and debate in our democracy, we have an important issue before us. You have seen the sign. It says: 98 percent. All these judges have been confirmed. It is important not to get locked into that number because what is being missed is whether we are upholding our oath to the Constitution only 98 percent of the time. 100 percent of the time.

In my view, my reading of the Constitution, it is that supermajority are provided for in our Constitution in cases of Presidential vetoes, expelling a Member, and other areas.

Mr. President, I listened to my friend from Connecticut last night. He made a very good speech. He talked about his boyhood and sitting here in the time of his father. I am sure he was listening to great civil rights debates, and the filibusters went on and on in terms of civil rights.

But I will tell you, based on my reading of the recent book on Lyndon Johnson's life, by Robert Caro, “Master of the Senate”—central in the fight among Democratic southerners and Democratic northerners, along with Republican northerners—there was the frustration over the issue of the filibuster. Hubert Humphrey and Clinton Anderson of New Mexico repeatedly began each session trying to change the rules on filibuster because they knew if they could not change them, then Senator Russell would make it impossible for them to break the veto and deny the African-American community in this country.

What is the difference between that flight over a filibuster when it comes to a legislative issue such as civil rights versus an executive appointment or Executive Calendar issue such as we are dealing with today?

Well, I suggest that what has happened ever since the defeat of Robert Bork is each side is upping the ante and we are exalting now single-issue politics in our country in a way that I think truly disserves our country. There is an old maxim in the law that justice delayed is justice denied. It is a fact that many justices or judges have been confirmed, but the real potential exists not just to delay justice but to prevent it. The filibuster is a tool which the Senate can use to block and deny the African-American community of this country.

let me tell you why I believe that this could happen.

Right now, we are seeing the winnowing out of anyone in the law who is learned, well written, well spoken, and whose views are well revealed to the American people. I remember as a new lawyer listening to the debate in the Senate over Robert Bork. I remember as a law student, prior to that, particularly enjoying the writings of Laurence Tribe and Robert Bork. These two great legal scholars would debate in their writings over the word “liberty” and the proper role of judges in enforcing and providing for liberty.

You can find two scholars with more polar opposite positions than Tribe and Bork. But, I loved their readings. I had the feeling when I would read them that I was a part of the contest of ideas. I remember the feeling when Robert Bork was defeated that, doggone it, I would sure have given them Laurence Tribe if they would have given us Robert Bork. Because I knew the writings of our country's legal journals would be all the better if the judiciary could attract the best and the brightest.

Now we are saying as the Senate, if you have strongly held views, you had better check them at the door. And, if you do not do that, you had better not expose them. We are saying to the judicial branch of Government—we, the Senate, the legislative branch—we don't want the best and the brightest; we want the mediocre, we want the mushy middle; we want those who are just going to go along and get along.

I think this market-place of ideas when both parties ratchet up these politics. This is what has happened. The difference between the filibuster as it relates to the Legislative Calendar and the Executive Calendar is simply that we, the legislative branch, are now attacking the judicial branch.

American justice will be the poorer for this because we watch, when we have a Democratic President and a Democratic majority in the Senate—this will happen again—watch the filibusters come up. That is unfortunate because we have elections for a reason. This is an ebb and flow in American politics that is important.

Am I suggesting we get rid of filibusters? I am not, but I am suggesting we have escalated this too high. I believe we are exacting single-issue politics, I believe we are delaying justice, and I believe we are dumbing down justice in America.

The unspoken word here is the single issue of a woman's right to reproductive choice. The word is “abortion.” Every one of us has wrestled with that, but I truly believe I understand why a woman doesn't want the Government part of such a decision. I also believe there are times when life is so viable and so obvious that the law ought to protect that life. I looked in the mirror and then presented myself to the people of the State of Oregon, I had to say: You know, I am pro-life. I am pro-life with exceptions, but I am pro-life. My State is pro-choice. But, they had a right to know my position. I told them. Ultimately, I was elected anyway. I promised them I would not have a single-issue litmus test on judicial appointments.

I am here to tell the people of Oregon, I have kept that promise. I voted for President Clinton's nominees who were pro-choice because I believe we should not let single-issue interest groups rule the day on an issue so constitutionally fundamental to the future of our country. Democratic majority in the Senate, are now attacking the judicial branch. Are we losing the American justice will be the poorer for this.

CONGRESSIONAL RECORD — SENATE
and advertising campaigns, and all the rest that a modern campaign involves, and the way in which the introspection and intrusiveness of that process discourage good people from running for office.

Anyone who has ever spent time looking at the political process is aware of that concern. It doesn’t matter if you are running for the Senate or not; you could be running for school board, governor, or bogeyman, for that matter; but people understand that there is a level of intrusiveness, an invasion of personal life, that discourages good people from running for office.

There is not much we can do about that as a Senator, as an elected official, but there is something we can do about this process, the judicial nomination process, the vetting process, the approval process. If we allow this current tone and tenor to remain, then, as the Senator from Oregon has described, we will not only discourage good people from wanting to serve on the Federal judiciary to bring their judgment and intellect to bear to help provide justice to those who deserve and need justice, we will even discourage people from engaging in debate, from putting their ideas out on the table, from writing, from thinking about different ways to look at or evaluate the law.

I am not a lawyer. I am about as far from the law as one can get. I am an engineer by training, and I am proud of that fact. I understand the value of creativity, innovation, and debate, and the marketplace of ideas. When we have Members of the Senate come to the floor and say: I am voting against someone because I don’t like the way they decided a case, that raises a red flag for me. If there is a specific case and a specific issue and you truly believe the way they decided the case means they are not capable, they are not fit, they are not qualified, that is fine, but let’s not suggest for a minute that we will ever or should ever seek to find and pick disgusted agree with us on every issue on every legal point.

My constituents back home won’t agree with me on every issue anytime. I don’t think there is a member of my family who agrees with me on every issue. And we certainly shouldn’t accept that kind of bar for our judicial candidates. What we should look for are qualifications of experience, intellect, or a sound, consistent case record.

I think, we have moved away from that. When we have nominees who have the support and endorsement of every paper in their State, liberal or conservative, or we have nominees for the judiciary who have received the support of 70 or 80 percent of the people in their State, liberal and conservative, or we have nominees who have demonstrated time and again, as we do, their commitment to uphold the law as written regardless of their own point of view, I think we have won the support of the majority of people in their State, liberal and conservative, and that is ultimately what I think is at stake here.

We can look at the numbers and discuss whether or not there has ever been a cloture vote at a particular time or a particular place on a particular nominee, and we have had cloture votes before, but what is different about the current debate is that cloture votes have never been brought in a way to prevent a nominee from getting that up-or-down vote on the floor. It certainly hasn’t been used on the past four, five, six, seven, or eight nominees. It is that process that I think has Members of the Senate of both Democratic and Republican, and the public very frustrated.

Technically, is it within the right of the minority to force these cloture votes? Sure. It is not a question of whether it is technically within the right of a Member of the Senate or the minority to engage in this kind of obstruction. The question is, is it the right thing to do, is it the fair thing to do?

Ultimately, it is important that we take a stand as to whether or not we believe it is right. I certainly do not. And ultimately the public will also be asked to decide whether they think this is appropriate behavior for their Senators and for their leaders in Washington, DC.

I yield the floor.

The PRESIDING OFFICER. The majority time has expired.

Mr. SPECKER. Mr. President, that is what I was about to inquire. I thank the Chair.

The PRESIDING OFFICER. The Senator from Michigan is recognized. Ms. STABENOW. I thank the Chair. Mr. President, every debate we have in the Senate comes down to a question of values and priorities for all of us, how we spend our time personally, how we spend our time in the Senate, where we choose to put our efforts.

I wish to speak today about where I believe we should use our efforts if we are going to spend 30 hours of time speaking on the floor of the Senate. First, I remind colleagues again, lest we get lost in all of the discussion of what we are talking about, we have, since I have been in the Senate, approved 168 judges. We have confirmed 168 judges, and we have said no to 4—168 to 4. Almost every one of those 168 I voted for.

We are talking about four people who currently have jobs who want to be promoted to lifetime positions as Federal judges. What I would like to spend my time talking about today are the 3 million people who don’t have jobs. Three million Americans have lost their jobs during this same time period, in the last 2½ years.

What I want to spend my time speaking about are the 162,000 people and more who have lost their jobs in the great State of Michigan, most of those in the manufacturing sector.

I am very proud of the fact that Michigan is first in the Nation in the manufacturing of automobiles. About 31 percent of all of the automobiles that are made in this country and almost 17 percent of all the trucks made in this country are made in the great State of Michigan. I am proud of the fact that we produce about half of the office furniture. Three leading office furniture manufacturers in the Nation are based in Michigan. I am proud of our tool and die makers. I am proud of everyone in our small manufacturing businesses. Michigan’s small businesses are very small with 20 people in auto supply and in the tool and die industry. I know they are under severe crisis today.

We are under severe crisis in Michigan and in this country as it relates to our manufacturing economy. That is worth 30 hours of debate on the floor of the Senate. That is worth 30 hours of action on the floor of the Senate.

We cannot afford to lose our ability to make in Greenville in this country. That is what we do in Michigan. I am proud of the fact that we make products, we grow products, and we do it well. Give us a level playing field for our businesses and our workers, and we will compete and we will compete. That is what I am concerned about. I am deeply concerned about the stories after stories I have heard.

I wish to share a couple stories today. I look at the headlines: “2,700 jobs in danger as Electrolux considers closing Greenville refrigerator plant.” This is in the Grand Rapids Press: Electrolux Home Products announced today it may eliminate 2,700 jobs at Greenville refrigerator plant and shift production to Mexico.

That is all too common a headline, and it is something that is going on in Michigan.

Such a move would be a huge blow to the city of Greenville and Montcalm County, where Electrolux and its predecessors have long been the largest employers and among the largest taxpayers.

That is what we should be talking about: What is happening in Greenville and Electrolux.

“For Ford sets a timetable for plant closings. Revitalization plan called for cutting 35,000 jobs.” Ford Motor Co. will close plants in Ohio and Michigan by year’s end and another in New Jersey in the first quarter of next year.

It goes on:

Another factory in Ohio will end production in the next four years.

Not four people who already have jobs, but people who right now are working hard every day, 9 to 5 or longer, to earn a paycheck so they can have a good-paying job in the United States of America and send their kids to college to afford their health care. We have to afford their house, maybe a cottage up north, which is something we like to do in Michigan, maybe a boat, maybe a snowmobile—those things that allow a good quality of life in our country. We are in danger of losing those when we lose manufacturing jobs.

“Staits Steel closing sad news for plant’s 180 employees.” This comes from Ludington.
We read in the Lancung State Journal: “I obless rate could rise in the winter.” There is more concern about what happens when we lose construction jobs in the wintertime.

I receive a lot of letters from people writing to me for help. They would love to see us spending 30 hours on the floor of the Senate not only talking but actually doing something to save their jobs and to support our manufacturers.

I would like to read you just one letter from Walker, MI:

I am writing to you in the hope you will read my letter. What I want to write you about is how much of our industry is disappearing. Factories continue to close or lay off. Often they leave the State and, even worse, they leave the country. A lot of these are American companies, like Lifesavers plant in Zeeland.

Yes, we need bankers, lawyers, doctors, and computer consultants. I am one. But that is not our strength. Our strength is in our retail and our manufacturing, in our shops. I live in Grand Rapids, MI, and I see a lot of construction, but it is all retail and restaurants. How can we continue to grow if we are all making only $8 to $10 an hour? Most of the time you can’t even make that. Henry Ford knew that he had to pay his employees a living wage so that they could afford to buy his cars.

There is story after story coming from the State of Michigan, across the Midwest, and all across our country. They are asking for our help. With over 3 million jobs that have been lost—3 million jobs that have been lost, what is the response of the administration? We have had to fight to stop them from taking people’s overtime pay. Can you imagine, 3 million people lose their jobs and what is the response? Take away the other people’s overtime pay.

Then we have to fight to extend unemployment compensation for the people who have lost their jobs and are having difficulty finding new jobs. Of deep concern to me is what is happening as relates to a lack of a level playing field in China and Japan and other Asian countries. We know in the Banking Committee—and the esteemed Senator presiding today I know has expressed concerns as well as to what is happening to the currency manipulation in China and Japan. Effectively, we are seeing a tax on American goods and services sold in China and Japan, and they get a tax break here or a price break because of what they are doing. We need a playing field.

We asked the administration to do something; join us; we know it is happening, and yet they refuse to step up and join us in the tough efforts that need to happen to give our businesses the level playing field they need to keep jobs in America.

We have seen a refusal to address the high health insurance costs. We need to create more competition with pharmaceutical drugs. We need to be working with our employers to lower health care costs, the No. 1 pressing issue that has caused layoffs, that has caused people to pay more in deductibles and premiums and has caused businesses to struggle to survive.

Let’s talk about those issues that create jobs, that relate to our ability to have a standard of living that we have been accustomed to and deserve in this country. If people are willing to put in a day’s work, they ought to be able to know there will be a good-paying job there so they can care for themselves and their families and they can do those things that will allow them to have the best possible life in this great country of ours.

Finally, we have seen a continual block over and over on the issue of increasing the minimum wage. An awful lot of folks working for minimum wage are women. They are women with chilen. They are working minimum-wage jobs, most often without insurance. They are paying for daycare. They are wanting to work and yet finding themselves in a situation that, no matter how hard they try, they cannot afford to work a 40, 50, 60 hours, they just can’t make it because the minimum wage has not kept up.

So it is very concerning that we have seen a continual effort to block a simple $1.50 increase in the minimum wage for 7 million people living in the United States of America, who work hard and play by the rules and assume that if they do that, they will be able to succeed and care for their families. Seven million people need our help today with a $1.50 increase in the minimum wage.

Thirty-seven percent of those folks right now are seeking emergency food aid, and they are working. They are working, and yet they cannot make it and are having to ask for food assistance. So we over and again have asked for the support of our colleagues on the other side of the aisle to address those 7 million individuals who work hard every day in America and want to be able to be successful.

So I am very hopeful that we will be able to do that.

UNANIMOUS CONSENT REQUEST—5.

At this time unanimous consent that the Senate now return to legislative session and proceed to the consideration of Calendar No. 3, S. 224, the bill to increase the minimum wage; that the bill be read a third time and passed, and the motion to reconsider be laid upon the table.

Mr. SMITH. Mr. President, I would ask that the Senator modify her request so that just prior to proceeding as requested, the three cloture votes would be vitiated, and the Senate would then immediately proceed to three consecutive votes on the confirmation of the nominations, with no intervening action or debate.

Ms. STABENOW. Mr. President, I would object.

The PRESIDING OFFICER. The Senator from Connecticut?

Mr. DODD. Mr. President, first, I thank my colleague from Michigan not only for her work today but her tremendous contribution in the relatively short time she has been a Member of this body. We thank her immensely for her hard work, balanced and deliberate approach. I thank her particularly for raising the issue she has today.

While the subject matter defined by the majority is the question of judicial nominations, I think the point she has raised, that there are an awful lot of people all across this country who—while they may be interested from an intellectual standpoint, even some maybe on a more passionate level on the question of judicial nominations, there is a significant number, the overwhelming majority, I think, of people, if asked how they would like to see the Senate of the United States allocate its time and resources, the Senator from Michigan has identified a subject matter that is of far more compelling interest to a larger number of people in this country, the issue of putting people back to work; what has happened to the closure of so many small manufacturing firms all across the country that have seen their products no longer marketable in this country and elsewhere because of the onslaught of foreign products that have come in through misguided and failed
trading agreements we have reached, particularly with the People’s Republic of China and elsewhere.

So I thank her. I suspect there are an awful lot of people across this country who appreciated the fact that she took 15 or 30 minutes to talk about the 3 million people who over the last 29 months have lost their jobs in this country and who are sitting there today wondering whether or not they are going to be able to keep that home, whether or not they are going to be able to afford their children going on to college, whether or not if they get sick they will be able to pay for that illness, if they had a job that provided health insurance for them.

So I thank her and I suspect there are an awful lot of people across this country who appreciate immensely her determination to see that those jobs, not just the jobs of some people who were unable to have a vote on the Senate floor to confirm them for a judicial nomination, but the consideration of this institution.

I must say as well, I appreciate my colleague’s kind comments about my efforts as a legislator. I try to take some pride in that. I think my colleagues on the other side know this on this body that was not bipartisan in its form issue, I immediately took the stand against cloture on the class action reform legislation we have been working on. I would have hoped, maybe vainly, that we might spend the time of this Chamber on the asbestos issue. I would have hoped, I would have hoped, that we make those efforts.

We have a lot of merit, unfortunately. There are a lot of issues that deserve attention. I would ask any average American to identify for me, when given the choice, whether or not we ought to do something about asbestos reform, something about asbestos legislation, something about joblessness, something about Medicare reform, prescription drug benefits. I have seen nothing even remotely close to 30 hours of debate in this Chamber on any of those issues at all—all—none, absolutely none.

So while we in the minority cannot set the agenda, the power of the majority is not to be underestimated, and the power to be recognized means you set the agenda. Even though our ranks are only separated by two Members, the division of two Members makes it possible for the majority to decide what this Chamber will do, what this institution does, on a daily basis, on an hourly basis.

The majority, in their judgment, have decided that this issue, the issue involving four judicial nominations, is something that has to be separated. I have been told, or that idea will be suggested to us by tomorrow, but I have been told it will. I will come to that in a minute.

I do not disagree that this is an important issue. I think it is an important issue, particularly where we may be asked to vote on changing the rules of the Senate to either eliminate or virtually eliminate the right to filibuster judicial nominations. That is a profound question, and I just regret the way it has been played at 2, 3, 4, and 5 o’clock in the morning and not something that ought to consume a serious debate in this Chamber as to the wisdom of such a potential move.

I am not sure that amendment is going to be offered, or that idea will be suggested to us by tomorrow, but I have been told it will. I will come to that in a minute. I do think it is important that people wonder whether or not this body, or politics or Congress, ever gets it. One of the questions that have always involved in our efforts is: Do you have any idea, Senator, what it is like to raise a family today, with all the pressures we are under? Do any of you in Congress—I do not care whether you are Democrats or Republicans—ever think about any idea what we are going through out here?

When we conduct 30 hours of debate about four judicial nominations, I sometimes think that question has a lot of merit, unfortunately.

So I wish we were spending some more time on some of these other issues. Maybe we will get to them. Hope springs eternal, and I will keep trying to work on it. I have been asked to come and spend some time to protect our interests on the floor and so I will utilize some time, as I did last night, to talk about the issue at hand.

I am terribly disappointed that we are not addressing the_SUPP_stitution on something such as this when we need to be spending our time, what little time we have, on so many other questions, that so many people in this country want to see us address and try to come up with some answer for. They know it is difficult.

Look, what we love about this institution is also what galls us the most about it. The beauty of the Senate is not only the manner in which we do things but also the frustrations that are evoked as a result of how we do things. Had the Founders of this great Republic sought efficiencies, they never ever would have set up this system. The last system you would ever set up, if you were trying to get the job done, is one that you have had to live with for 217 years. This is a terribly frustrating system. It will drive you to madness watching it happen, particularly this institution of the Senate.

When the Framers were debating the existence of a legislative branch—in fact, the idea was pretty much to have a unicameral system I think in the early discussions: One house, simple majority rules. I sit in the seat of a man by the name of Roger Sherman, from the State of Connecticut, who was one of those Framers of the Constitution, the only one of the Framers, by the way, to ever have signed all four of the cornerstone documents of the United States. He signed the Articles of Confederation, the Declaration of Independence, the Constitution of the United States, and the Bill of Rights. I am very proud to sit in his seat in the Senate, after 217 years.

In that Constitutional Convention, it was Roger Sherman, my forbearer in this job, who suggested, along with Oliver Ellsworth from Connecticut as well, the creation of a separate body in the Congress of the United States that we have come to know as the Senate.

The argument was about small States and large States. The fear was, for people who came from smaller States, that in the House of Representatives, since it would be determined by population, that large States would so dominate the Congress of the United States that those who lived in smaller States would be overwhelmed.

They were about to vote against the Constitution when Sherman and Ellsworth came up with the idea of a Senate, where every State, regardless of size, would have equal representation—two Senators from every State.

My colleague from New Hampshire and I from Connecticut, small States, we have two Senators. My colleague from Michigan, a large State, and from California, two Senators. It is a rather beautiful system in a way. They went beyond the idea of just small States...
and large States. The seed of the notion that there ought to be a place where the rights of a minority get protected was also included in this concept.

In the House of Representatives, in which I had the privilege of serving for 6 years before coming to this body 24 years ago, the majority rules. If you are in the minority in the House—I do not know if my colleague from New Hampshire ever served in the minority in the House, but certainly did—I was always in the minority. Therefore, being in the minority in the House is painful because it can roll right through you. What the majority wants to do happens. That is it.

In this body, the idea was to create a place where the minority interests, including a minority of one, would have rights that you would never get in the House of Representatives. Hence the right of a minority to be heard, they decided: We need a place where the passions would cool, because the tyranny of a majority can be overwhelming. So the Senate was a place to be heard. The rights of a majority are down the hall. The rights of a minority are here in this Chamber. We have tried to see if someone really believes for those unique rights give us a sense of balance, what one of the Framers called the saucer—what one of the Framers called the saucer—the Senate—in which the passions would cool, because the tyranny of a majority can be overwhelming.

Now, if we go back and look at the genesis of the thought process that was involved in the creation of the Constitution in this Republic, a unique event in the history of mankind, certainly they had been through an experience where a king had been overbearing. Remember, two-thirds of the population of this country in 1776 was not terribly enthusiastic about a revolution. Only about a third of the population thought that was necessary. As the tyranny of a king grew larger and people's rights were being deprived, taxation levied without their ability to be heard, they decided: We need to move away from that.

So as this system evolved and a discussion of what it would look like, the last thing the Founders wanted to do was create an executive without some check, without any checks and balances on it, an unlimited tyranny of an executive. In fact, as I pointed out last night, there is ample evidence, of course, that when it came to judicial nominations, the Framers did not want to give the right to nominate judges to the President. It was a place where in afterthought that said, on judicial nominations, they ought to go to the President, and then the Senate would provide its advice and consent.

I carry with me every day a copy of the U.S. Constitution. It was given to me by my seatmate Robert C. Byrd many years ago. It is a rather worn-out copy of this wonderful document, but I never use it because I carry it with me every day 7 days a week. I read it constantly. As I get older, my appreciation for the wisdom of these people grows deeper.

It is very clear article III of the Constitution lays out judicial power, the judges appointed by the President to be, among others, Associate justices of the Supreme Court, and all other judges of the United States shall be appointed by the President, but the Senate shall advise, and consent to the appointments of the Supreme Court judges and all other judges of the United States. Hence, the Senate shall advise and consent, and, of course, if they do not want to approve, you cannot serve on the Federal bench. I have heard repeatedly over the hours the term “rubberstamp,” there is a rubberstamp approval. Those on my side of the aisle would automatically take the President's nominees. I do not think that was what the Founders had in mind when they wrote that a Senate vote is intended to be a rubberstamp of approval for the President's nominations to these critical judicial positions.

I am frustrated that after serving in the Senate for almost a year, and contrary to what some Members may assert, the Senate has not been permitted to vote up or down on the merits, on the qualifications of the individuals who are nominated by the President to serve on the Federal bench who are nominated by the President to serve on the Federal bench. I have heard repeatedly over the hours the term “rubberstamp,” there is a rubberstamp approval. Those on my side of the aisle would automatically take the President's nominees. I do not think that was what the Founders had in mind when they wrote that a Senate vote is intended to be a rubberstamp of approval for the President's nominations to these critical judicial positions.

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colleagues of the Senate, to split the Ninth Circuit Court of Appeals, why this is relevant and important to the debate today.

The Senate has debated the qualifications and character of specific individuals to serve on the Ninth Circuit. As some have pointed out, in filling the Ninth Circuit vacancies, the Senate has not had a majority of any party because neither party controls the Senate.

But there is little doubt in my mind they seek to maintain what I perceive to be philosophical bias on the Ninth Circuit Court of Appeals.

For those looking for circuit courts whose actions may raise concerns about ideology and balance, I suggest my colleagues take a close look at the U.S. Court of Appeals for the Ninth Circuit. In the makeup of who is currently serving on the Ninth Circuit, the court currently has 9 judges appointed by Republican Presidents and 17 judges appointed by Democrat Presidents. I will put the Ninth Circuit record into a historical precedent, a recent historical precedent.

During the United States Supreme Court October 1996 term, the Supreme Court found it necessary to review 28 cases decided by the Ninth Circuit. Of those 28 Ninth Circuit cases back in 1996, the Supreme Court reversed 27. Some could argue this reversal rate is simply the impact of a more conservative Supreme Court, agreeing with the Ninth Circuit on close questions. However, most of the reversals were unanimous. In fact, six were summary reversals. The Supreme Court did not even ask for briefing or oral argument.

The Supreme Court simply reversed the Ninth Circuit on the basis of the petition for certiorari. This lopsided reversal rate has since continued since that 1996 term.

As we compare other circuit court reversal rates, it is helpful because it puts the Ninth Circuit into a context and helps us review the balance.

In 1997, of those cases decided by the Supreme Court in a full opinion, the Supreme Court reversed or vacated four cases from the DC Circuit cases and affirmed five. Balance that against the Ninth Circuit, where in that same year the Supreme Court affirmed 3 cases from the Ninth Circuit and reversed or vacated 14 cases.

Let’s go to 1998. The Supreme Court affirmed one case from the DC Circuit, vacated one case, and reversed four cases from the Ninth Circuit. In comparison to the Ninth Circuit, in 1998 the Ninth Circuit was affirmed 4 times and reversed or vacated 14 times.

In 1999, the Supreme Court affirmed three DC district cases and reversed or vacated no cases from that court. In 1999, the Ninth Circuit in comparison was reversed or vacated 9 times that year and affirmed only once. In 2000, however, one case was reversed once and only had one case from that court to go up to the Supreme Court that year. The Ninth Circuit was affirmed 4 times, and in the year 2000 reversed or vacated 13 times.

Over the last 3 years, one-third of all cases reversed by the Supreme Court came from the Ninth Circuit, the court that my State is part of. That is 3 times the number of reversals for the next nearest circuit, and a 33 times higher reversal rate than the Tenth Circuit.

I suggest these statistics are astounding in their proportion. One of the reasons the Ninth Circuit is reversed so often is it has become too large and too unwieldy. It is a simple fact. The circuit serves a population of more than 54 million people, almost 60 percent more than served by the next largest circuit. By the year 2010, the Census Bureau estimates that the Ninth Circuit will have over a population of more than 63 million people.

According to the Administrative office of the United States Courts, the Ninth Circuit alone accounts for more than 60 percent of all appeals pending for more than a year. One additional perspective of cases brought before the court explains why it takes nearly 50 percent longer than the national average, almost 1 year and 4 months, to get a final disposition of a case in the Ninth Circuit. It takes 5 months longer to resolve a case in the Ninth Circuit than the national average for a court of appeals, and the delay increased by a full month in 2003 compared to the time it took in the year 2001. Talk about justice delayed, this is it here in the Ninth Circuit.

With such a huge caseload, the judges cannot possibly have the opportunity to keep up with the decisions within the circuit, let alone track decisions made in other circuits. I suggest that now is not the time to have vacancies on the bench in the Ninth Circuit.

One of the individuals who is the subject of these 30 hours, Carolyn Kuhl, has been waiting for an up-or-down vote on the Ninth Circuit since June 22, 2001. The interim or to watch as cloture vote fails. The interim or to watch as cloture vote fails. The interim or to watch as cloture vote fails.

One would have to wonder how much time it would take to complete the pending nominations. We only need to look back to March of this year when the Ninth Circuit decided that the Pledge of Allegiance was unconstitutional. Talk about a very graphic example of the Ninth Circuit vote in this case. The Ninth Circuit, in an en banc decision, a case is decided 6 to 5. There is no reason to think it could actually represent the views of the majority of 24 active members of the bench. In fact, there are some commentators who have suggested that a majority of the 24 members of the Ninth Circuit may have disagreed with the pledge decision. But there was a concern that a random pick of 11 members of that circuit to hear the case en banc might have resulted in the decision being affirmed.

The time has come to fill the vacancies in the Ninth Circuit and to enact legislation to split that circuit. We have heard again many times in the Senate over the course of these hours: Justice delayed is justice denied. That is most certainly happening in the Ninth Circuit. That is happening to the individuals who are pending before the Senate seeking confirmation of their judicial appointments. Filling the current vacancies would decrease the time it takes to resolve cases and would therefore provide better administration of justice.

I see the Senator from Ohio is in the Senate, and I know he was to have a share of our side’s time.

Mr. President, today I rise to talk about this body’s treatment of President Bush’s judicial nominations. This is not the first time I have been forced to come to the floor to protest this treatment, but I hope it will be the last.

Over the past few years we have seen highly qualified nominees wait sometimes two years before their nomination reaches the floor of the Senate, only to see their records and reputations vilified for political purposes in the interim or to watch as cloture vote fails after cloture vote fails.

And where has this filibustering and posturing gotten us?

I want to underscore that one might question spending 30 hours on the issues of the Democrats using the filibuster to frustrate the Senate’s right to advise and consent to hear judicial nominees, but we would not be here today if my colleagues across the aisle had not created a constitutional crisis with their use of the filibuster—and have
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now driven us—in order to protect the Constitution to consider changing the cloture rules of the Senate.

Beyond the constitutional crisis, there is a diminishing of the third branch of Government, the Judiciary, at the hands of the legislative branch that has serious implications for the people of the United States.

We have 12 judicial emergencies on the circuit courts of appeal. The President has left a job, nominating new judges for 11 of the 12 appellate court vacancies. But the Senate has not done its job in confirming these judges.

And there is a cost associated with these vacancies. The American taxpayers fund the operation of the federal judiciary every year. The American people are paying for fully staffed courts—not for political games. When courts are vacant and cases take longer than they otherwise could, lives are disrupted; businesses can be crippled, and financial resources are drained from the productive economy.

My circuit in particular, the Sixth Circuit, is getting slower and slower as the vacancies continue. It has been plagued by political game-playing by my friends, the Senators from Michigan, who want to control who President Bush appoints to the circuit court vacancies that currently happen to exist in Michigan.

Over the last 2 years, court delays in the already-slow Sixth Circuit have increased by nearly 2 months. In 2001, it took 28.9 months, that's over 2 years, in the Sixth Circuit for a case to go from original filing in district court to final decision on appeal. By June, 2003, it took 30.8 months. This 2-month increase difference may seem small, but there are more than 12,000 extra days have been spent by both parties waiting for a decision. What a waste of resources.

I would like to draw your attention to a nominee who has faced the harshest of criticism from this body: Charles Pickering. I preface my comments on Judge Pickering, with a brief review of my civil rights record. The utility of this will be important in a few minutes.

I have always been very proud of my record on civil rights. When I was Mayor of Cleveland, we created the first Minority Business Development Center in a city. As a result, minority participation in city contracts rose from 1.5 percent to 28 percent in the first 2 years.

As Mayor, we also increased the amount of business the city did with minority owned businesses from less than $1 million per year to more than $90 million/year by 1989.

We recruited and promoted more minority firefighters than any other administration in the city's history. We increased hiring on the police force by 63 percent in 5 years.

We successfully defended our fire and police hiring program in a landmark U.S. Supreme Court case that established that prospective race-conscious relief for past discrimination is constitutional.

I also lobbied Congress on behalf of establishing a Martin Luther King Day holiday, which is now observed in the National League of Cities, that it was properly celebrated across America. I was one of only 2 invited to the inauguration of Martin Luther King Holiday in Atlanta.

As Governor, we established the Governors Challenge Conference, to discuss human relations. We established the Disadvantaged Black Male Commission, which helped achieve a 200 percent funding hike for the Commission on African American Males; the Urban Schools Initiative, to improve accountability and performance in Ohio's urban school districts; and the Cleveland Scholarship Program, recently upheld by the U.S. Supreme Court, to give scholarships for low-income families and allow them to send their kids to the school of their choice. These are just a few of the civil rights initiatives I worked on before coming to the Senate. And yes, I broke ranks with my colleagues on this side of the aisle to support hate crimes legislation, and I have been working with one of my colleagues on the other side of the aisle on racial profiling legislation.

I mention all of this now so that people know that I would not support a nominee such as Charles Pickering if I thought for one minute that he would undo any of the progress we have made in the civil rights area, or if I thought he would treat individuals differently because of the color of their skin.

Judge Pickering has been a leader for equal rights, integration, inclusion and reconciliation in his community, church, political party, and state.

As a county attorney in the 1960's, he worked with the FBI to dismantle, disrupt and prosecute violent members of the Ku Klux Klan. In 1967, he testified against the Imperial Wizard of the KKK for a fire bombing of a civil rights activist in Mississippi. That was not easy in 1967.

In 1976, he hired the first African-American staff for the Mississippi Republican Party.

In 1981, he successfully represented a black man falsely accused of robbing a 16-year-old girl.

In 1985, as President of the Mississippi Baptists he presided over the first Convention session addressed by an African-American pastor and the first African-American congregation to join and integrate the Convention.

In 1988, he chaired a race relations committee for Jones County, Mississippi.

In 1991, he worked with his son and son-in-law to integrate his former fraternity at the University of Mississippi. He helped establish and still serves on the Board of the Institute of Racial Reconciliation at the University of Mississippi.

In 2000, he helped establish a group to work with at-risk African-American youth in Laurel, Mississippi.

Mr. President, in examining Judge Pickering's fitness for this judgeship, it is important to not only look at his record, but also his broad base of support from individuals from all backgrounds, and political affiliations.

Judge Pickering has been endorsed by the current president and 17 past presidents of the Mississippi State Bar. He has been endorsed by all major newspapers in Mississippi. He has been endorsed by all statewide elected Democrats and the chairman of the Mississippi Legislative Black Caucus.

James Charles Evers, brother of slain civil rights leader Medgar Evers has said of Judge Pickering:

As someone who has spent all my adult life fighting for equal treatment of African-Americans, I can tell you with certainty that Charles Pickering has an admirable record on civil rights issues.

Rev. Nathan Jordan, Pastor, St. John United Methodist Church and former President of the Forrest County NAACP:

Without hesitation, I can truthfully say that Judge Pickering is an extremely fair judge who serves all our citizens. It seemed to me that he pushed very hard to ensure the fair treatment of minorities.

Ruben V. Anderson, the first African American Supreme Court Justice in Mississippi and former associate counsel for the NAACP stated:

I have known Judge Pickering for at least a quarter of a century. At all times I have found him to be an honorable man. . . . Judge Pickering would be an asset to the Fifth Circuit. I encourage him to support the nomination and deny this man an up or down vote on the floor of the Senate.

There is no reason—no reason—as one looks at the qualifications of hundreds of people that this Senate has already confirmed over the years that Judge Pickering should not be sitting on the Fifth Circuit Court of Appeals. The reason he is not is because my colleagues on the other side of the aisle, for all intents and purposes, have modified the Constitution by filibustering his nomination and denying this man an up or down vote on the floor of the Senate.

It is an outright violation of the advice and consent provision of the Constitution, and all Americans—Democrats and Republicans, liberals and conservatives—should demand that it stops now so that the judicial branch of Government can go about doing the job envisioned for it by the Constitution, and this body can get on with the other business of the people.

This has to end—and I pray for a day when the people of varying political backgrounds can come together and respect each other's beliefs and their respective roles in a system that the Constitution envisioned for it by the Constitution, and this body can get on with the other business of the people.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, will the Senator yield? He has been talking...
about the Sixth Circuit and this chart that they have been placing in the Chamber.

By the way, Mr. President, what is the time on this side?

The PRESIDING OFFICER. The major-

ity controls an additional 7½ minutes.

Mr. SESSIONS. They have been say-

ing there are four judges being held up. But there are four being held up in the

Sixth Circuit.

This is a resolution just passed I be-

lieve yesterday by the Michigan State

Senate, expressing concern about this.

I work to redress the justice of those four judges whom they are also obstructing?

The resolution be printed in the RE-

CORD, as follows:

WHEREAS the Senate of the United States is

allowing the continued, intentional ob-

struction of the judicial nomination of all these nominees put forth by the President of the United States, including four fine Michi-

gan jurists: Judges Henry W. Saad, Susan B. Niels-

on, David W. McKeague, and Richard A. Griffin, nominated to serve on the United States 6th Circuit Court of Appeals . . .

They say:

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gan jurists: Judges Henry W. Saad, Susan B. Niels-

on, David W. McKeague, and Richard A. Griffin, nominated to serve on the United States 6th Circuit Court of Appeals . . .

I ask the Senator from Ohio, isn’t it true that they have been put-

ting up says four judges are being men-

tioned; it does not include these four judges whom they are also obstructing?

Mr. VOINOVICH. They do not include those four judges whom they are obstructing.

Mr. SESSIONS. I just point out, Mr. President, if the Senator will yield the floor.

Mr. VOINOVICH. I yield the floor.

The PRESIDING OFFICER. The Sen-

ator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I will just conclude by noting this is a very

strong resolution from the Michigan State Senate. They say:

Resolved by the Senate—

That is the Michigan Senate.

That we memorialize the United States Senate and Michigan’s United States Senators to act to end the filibusters of the fed-

eral circuit court nominees pending on the Senate floor, to release those being held up in the Judiciary Committee of the Senate of the United States, and to vote for the bipartisan Frist-Miller Resolution.

I ask unanimous consent that this resolution be printed in the RE-

CORD.

There being no objection, the ma-

terial was ordered to be printed in the RE-

CORD, as follows:

SENATE RESOLUTION NO. 199

A resolution to memorialize the United States to end the filibusters of the federal circuit court nominees pending on the Sen-

ate floor, to release those being held up in the Judiciary Committee of the Senate of the United States to supersede the re-

forms of the federal judicial confirmation process, all which will be addressed during 30 hours of our debate this week.

Whereas the Senate of the United States is

perpetuating an injustice and endangering

the well-being of many Americans. Its ac-

tions are jeopardizing our system of justice in 6 out of the 12 federal judicial circuits that have been declared “judicial emergencies,” including the 6th Circuit Court of Appeals which includes the state of Michi-

gan . . .

They say:

WHEREAS both of Michigan’s Senators con-

tinue to block the Judiciary Committee of the United States Senate from holding hear-

ings regarding these nominees. This refusal and the refusal on the part of their colleagues to allow the United States Senate to complete its constitutional obligation of advice and consent on the nation’s filibustered nominees an up or down vote on their nomination.

WHEREAS the Senate Majority Leader’s action on the floor of the Senate of the United States aims to improve our judicial system by attempting to end the filibuster on several nominees, and the blocking of our Michigan 6th Circuit nominees while instituting necessary re-

forms in the judicial confirmation process; now, therefore, be it

Resolved by the Senate, That we memorialize the United States and Michigan’s United States Senators to act to end the filibusters of the federal circuit court nominees pending on the Senate floor, to release those being held up in the Judiciary Committee of the Senate of the United States, and to vote for the bipartisan Frist-Miller Resolution (S. Res. 249); and be it fur-

ther

Resolved, That copies of this resolution be transmitted to Michigan’s United States Senators, the Senate Majority Leaders, the President Pro-Tempore of the United States Senate, and the President of the United States.

Mr. SESSIONS. Mr. President, there has been a lot said here. I just want to share a few thoughts. This matter is, at its core, about the rule of law in this country. We have a system that be-

lieves judges are here to apply the law fairly and objec-

tively. That is the point man on the advocacy of judi-

cial activism in the Senate—I would submit this is what he said in this de-

bate earlier, and I am just shocked by it. No wonder when I came in, I saw Senator Specter having his feelings hurt. Senator Schumer said:

No one except a far right militant extreme minority believes that the courts are being obstructed when 168 judges are approved and 4 are not.

So that is not the language of moderate.

That is not the language of collegiality. They are accusing Mem-

bers over here of being far right ex-

tremists because they do not agree with the filibuster tactics that are going on here.

In another comment recently, on the Internet site 365Gay.com:

New York’s other Senator, Democrat Chuck Schumer [was quoted as saying he] was “alarmed” by the Senate majority leaders’ efforts, accusing the President of “loading up the judici-

ary with right-wingers who want to turn the clock back to the 1980s.” Schumer said America is under attack from “the hard right, the mean people.”

They have this sort of little patina of philosophy but underneath it all, selfishness, narrow-mindedness.

That hurts my feelings.

Mr. President, these nominees who are here who are being held up are not extreme. Janice Rogers Brown, an Afri-

can American, who grew up in Alabama under racial discrimination, went to California, got her law degree at UCLA, a single mom, got elected to the Su-

preme Court of California, not a con-

servative State. She got 76 percent of the votes. Are these mean-spirited, selfish, narrow-minded people? Not Janice Rogers Brown, if you saw her testify, as I did.

Carolyn Kuhl went to Duke Law School, graduated on the Law Review, clerked with Justice Anthony Kennedy

Two judges we confirmed—Bazelon and Paez—and I voted to give them an up-or-down vote, and I voted against them on the merits—these two nomi-

nees, in separate cases, struck down the so-called “three strikes and you are out” law that has helped drive down the crime rates sig-

nificantly in California. And I say that as a former prosecutor of over 15 years. Absolutely, that has had an impact in the state and in the nation.

Mr. President, 170 death penalty cases have been overturned, as the Sen-

ator noted, by this Ninth Circuit, the most liberal circuit in America, and they struck down the Pledge of Alle-

giance. The U.S. Supreme Court has re-

versed the Ninth Circuit—in 1 year—in 27 out of 28 cases; in another, 14 out of 17 cases. In fact, the New York Times several years ago, in a news article, said a majority of the Supreme Court considers the Ninth Circuit to be a rogue circuit.

So what we are trying to do is come back to the main point. He maintains that the distinguished Senator from New York, Mr. SCHUMER—who is really the point man on the advocacy of judi-

cial activism in the Senate—I would submit this is what he said in this de-

bate earlier, and I am just shocked by it. No wonder when I came in, I saw Senator Specter having his feelings hurt. Senator Schumer said:

No one except a far right militant extreme minority believes that the courts are being obstructed when 168 judges are approved and 4 are not.

So that is not the language of moderate.

That is not the language of collegiality. They are accusing Mem-

bers over here of being far right ex-

tremists because they do not agree with the filibuster tactics that are going on here.

In another comment recently, on the Internet site 365Gay.com:

New York’s other Senator, Democrat Chuck Schumer [was quoted as saying he] was “alarmed” by the Senate majority leaders’ efforts, accusing the President of “loading up the judici-

ary with right-wingers who want to turn the clock back to the 1980s.” Schumer said America is under attack from “the hard right, the mean people.”

They have this sort of little patina of philosophy but underneath it all, selfishness, narrow-mindedness.

That hurts my feelings.

Mr. President, these nominees who are here who are being held up are not extreme. Janice Rogers Brown, an Afri-

can American, who grew up in Alabama under racial discrimination, went to California, got her law degree at UCLA, a single mom, got elected to the Su-

preme Court of California, not a con-

servative State. She got 76 percent of the votes. Are these mean-spirited, selfish, narrow-minded people? Not Janice Rogers Brown, if you saw her testify, as I did.

Carolyn Kuhl went to Duke Law School, graduated on the Law Review, clerked with Justice Anthony Kennedy
on the Ninth Circuit when he was on the Ninth Circuit, and has served for a number of years on the courts out there and has won bipartisan praise from those courts.

Mr. President, I ask unanimous consent to add an additional 3 minutes to be deducted from the majority time in the next section.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SESSIONS. And Priscilla Owen. I guess they claim she is a right-wing, mean-spirited person. Priscilla Owen graduated at the top of her class in law school, made the highest possible score on the Texas bar exam. She was one of the most successful legal practitioners in all of Texas. They asked her to run for the supreme court. She did. She won reelection with 84 percent of the vote and the support of every major newspaper in Texas.

Bill, the Attorney General from Alabama, got 59 percent of the vote in his reelection bid.

These are people out of the mainstream of this country, right-wing extremists? No, sir. The values this country holds dear with regard to the legal system and the separation of church and state from the English tradition, need to be cherished and protected and valued. America understands this. Mainstream America is very troubled by courts that do not adhere to the traditions of how they created and how they are supposed to be sitting and again to suggest that perhaps a third of a half of all of the Federal judgeships in this country today are vacant. Again, I repeat, it is less than 5 percent. It is at its lowest point since 1985 in terms of vacancies.

Now, on the Ninth Circuit, which was referred to by my colleague from Alaska, there are 25 circuit court judges who are supposed to be sitting, and there are but 2 vacancies at the present time. So how can we make the argument that justice delayed is justice denied because there are “so many vacancies on the Federal judiciary”? It simply is not true.

So what is the argument about? What are we spending these 30 hours on? To suggest that the Democrats are holding up the Federal judiciary by some vast conspiracy which, in fact, the numbers do not suggest in any way to be true. In fact, when President Bush took office, we did have a vacancy rate of about 12 percent, and now it is down, as I said, to less than 5 percent, which is at its lowest point since 1985.

So to my colleagues on the other side of the aisle, what is the point? Why are we spending 30 hours debating an issue which, in fact, is not an issue? If we want to debate ideology, that is an entirely different story. But that is not what this 30-hour debate is all about. It is about the assertion made by the other side that the Democrats are preventing our Federal judiciary from doing its job by decimating Federal judgeships all over the country.

As I pointed out here, in the most clear manner, in an arithmetic way, the argument in no way has any merit. I wish we could move on and talk about the things that are really important to the American people today, on which they are looking to us for leadership.

Mr. KOHL. Mr. President, I have been in the Senate now 15 years, and I must say I never experienced what will be 30 hours, when this debate ends at around midnight tonight, that I thought were as off point and, in many ways, as not relevant to what we are talking about here which is Federal judgeships in our country—as this debate has been.

In my judgment, that is because our colleagues on the other side of the aisle have not wanted to deal with the facts and have wanted to, instead, try to create impressions which are not true. Because the fact is—and it has been said now on many occasions and many times since this debate started last night—the President and the commissioned 172 nominees since he came into office, and we have voted out 186 of them positively, and 4 have been held up.

So how can anybody claim that in fact there is a conspiracy to deny those nominees a vote? Mr. President, 186 have been voted on and are now sitting in their Federal judgeships, and 4 have been held up.

Further more, the vacancy rate at the Federal judgeship level is less than 5 percent. In other words, over 95 percent of all the Federal judgeships in this country are now presently occupied. When you have a vacancy rate of less than 5 percent, how can anybody make the argument that there is something sinister going on?

Just a minute ago, my colleague from Alaska suggested that in the Ninth Circuit, because of the vacancies, apparently, justice delayed is justice denied. It has been used time and again to suggest that perhaps a third or a half of all of the Federal judgeships in this country today are vacant. Again, I repeat, it is less than 5 percent. It is at its lowest point since 1985 in terms of vacancies.

Mr. SESSIONS. And Priscilla Owen. I guess they claim she is a right-wing extremist.

Mr. LAUTENBERG. I thank my friend from Wisconsin, Mr. President, and I was very interested in what he had to say. I thought it was right on the mark.

The fact is, this is a clear example of misplaced priorities, those of the Republican leadership and the White House. It is hard to understand why there is such outrage on the other side of the aisle about these four people being denied a spot on the Federal bench.

If they are worried—and I heard it requested here: Give these people a break. Be fair with them.

They are worried about these four people being denied their opportunity, but there is an expense to putting them on the bench that is going to be felt by Americans across this country.

What about the 3 million people who are denied jobs? What about the millions of people being denied their unemployment benefits? What about the White House’s attempt to deny millions of workers their overtime pay? What about lower income, working Americans being denied an increase in the minimum wage? What about the millions of women being denied their right to reproductive freedom by nine men surrounding the President when he signed the new anti-choice law? They took away a woman’s right to make a decision in concert with their doctor, about their health because they denied the women—the male oligarchy—decided that it was appropriate that they take away a woman’s rights.
There was not one woman on the floor to defend that decision. Not one woman spoke about it. Not one woman in this picture or even in the other picture that was shown in the top newspapers across the country. Not one woman about whom they are making decisions about women.

I said the other day on the Senate floor, and I repeat it, I have three daughters, and I respect their judgment about how they ought to conduct their marriages and how they ought to live their lives to make sure they are healthy to take care of the nine grandchildren I have been blessed with, and not run any risk—my middle daughter is on her fourth pregnancy right now—not to run any risk that anything was amiss with her health that she couldn't take care of her three children.

What about the administration's attempts to denounce our troops their imminent danger pay?

I just came from Walter Reed Hospital with other Senators, and I met a couple of people there. One was a young double amputee from Rockland, MA. He was in Iraq 3 weeks. He has no hands. Part of one arm is still in place. Most of the other arm is missing. It is a tragedy.

My guess is he was somewhere in his early twenties. He had been a member of the National Guard a few months and was called up from Rockland, MA. By the way, two of our Senators—one former and one present, amputees themselves, one with three limbs missing—one was in Walter Reed to console this young man and encourage his spirit and his belief that life can be functional. Senator Cleland, now out of office, and Senator Inouye with an arm missing that he lost in southern Italy, went to cheer up this young man.

What about them? We are using time here to talk about these choices when they are not choices. They are not qualified by the judgment of many. But why do we battle? Why is this stick in the eye to the public at large when there are so many other issues about which to talk?

I had a chance to be on TV this morning with one of our Republican colleagues. We talked about what was going on. He said: We are not losing any time. My duty was at 5 o'clock in the morning. What time did we lose? It occurred to me, what a foolish response. If it is important enough to be here at the morning hour, then why isn't it important enough for us to be taking care of what we have to do in Iraq and getting those kids home and making sure we get as many allies as we can to pick up this burden we have and share it.

Why can't we talk about that at 2 o'clock in the morning or 3 o'clock in the morning or 4 o'clock in the morning? I don't get it. Why can't we talk about 3 million jobs lost and talk about a way to adjust that situation—jobs lost?

What about the administration denying photographers the right to honor our fallen heroes coming back in flag-draped coffins? When do we say the public doesn't have a right to honor them and remember that these people gave their lives on behalf of our country? Why is that not permitted? Why is it so obscure? We can't see them. They don't see the body that has really happened in the war. Maybe they won't think it is such a bad idea that we don't have the kind of partnership we ought to have over there fighting the battle.

On Monday, I went to a funeral in Newark, NJ, of a young man named Joel Perez. He was a sergeant. He was on the Chinook helicopter, as was the man we visited this morning. There are bones broken all over his body, but he is glad to be alive. He is very happy to be alive. He knows what happened to the 16 others. They lost their lives.

Since May 1, the President has found time for 36 fundraisers. How many families did he visit to console, to tell someone whose children have died that they could have been heroes in the war? No, the debate is on four judge nominees. What do the American people think about that?

Look at the majority leader's own Web site. He said he didn't know. The poll said: Should the President's nominees to the Federal bench be allowed an up-or-down vote on confirmation as specified in the Constitution?

First error, "as specified in the Constitution" was taken that in a minute. The poll answers came in: 60 percent said no, the President's nominees to the Federal bench ought not be allowed an up-or-down vote if the opposition doesn't want to give it to them—60 percent. But they quickly changed this Web site because they didn't like the answer they got. So they changed it to a more mealy-mouth kind of thing: Should we do it or shouldn't we do it? The Constitution says "advise and consent." It doesn't say consent if the majority says they wouldn't like to see us do it. They would like to see us go ahead and say: Mr. President, that is what you asked for; that is what we are giving you. No, our responsibility in the minority and in the majority is to stand up for what we believe and what the people who sent us here want us to say, and if they don't want us to say it, then they will reject it at the appropriate time.

This Senate spending 30 hours to talk about four judicial—judicial, there are not judicial any—judicial nominees? Meanwhile, 3 million have lost their jobs since this President took office.

I ask my colleagues to listen closely to this. In the private sector, two Americans have lost their jobs every minute that George W. Bush has been President. Two families without an income; two families where there may be some humilation about an inability to go to work.

I consider my late father who finally, in the desperate days of the Depression, had to take a job with the WPA. He was embarrassed about doing it because it looked like welfare. It was a job. The Government had created jobs. He was humiliated having to take that job, but he did it because he wanted to provide for me, my mother, and my little sister. He had to do it.

What about those 3 million people? Where are we going to go to work? The latest survey shows there are a total of 8.8 million Americans currently unemployed; 3 million have lost their jobs since this administration took office; and the reality is this administration doesn't have a jobs plan. Not surprising. It has a bad record on jobs.

Let's look at this chart of the last 80 years. It shows jobs gained or lost during administrations, in the millions. We have two administrations identified in red. By the way, those in green were Harding, Coolidge, Roosevelt, Truman—a variety. None of them, except President Herbert Hoover and George W. Bush, have lost jobs during their administrations. It is a sad commentary.

Senator Inouye with an arm missing who served with President Bill Clinton. I remember my late father who fit up as a ship's carpenter in the beginning days of his administration and Herbert Hoover and the Great Depression. What about those 3 million people? What about those 3 million people?

I remember my late father who fit up as a ship's carpenter in the beginning days of his administration, and Herbert Hoover and the Great Depression. What about those 3 million people? What about those 3 million people?
The Senator from Wisconsin said it. As of today, the Senate has confirmed 168 judicial nominees recommended by President Bush and blocked 4 in 3 years. President George W. Bush has gained more confirmations than President Clinton in the first four months of his administration.

Mr. President, 168 confirmed judicial nominees is particularly impressive because 100 nominees were confirmed when Democrats still controlled the Senate in the last Congress. We did our share to continue to do our share, but we will not let the judicial system and the citizens of this country be taken advantage of, not if we can help it.

This is a 99-percent rate of confirmation for President Bush’s judicial nominees. That is an impressive rate. As I said before, the Constitution says that the Senate must advise and consent, not consent and then advise, which is what we would like to see happen here. It is now time to put a check on the President’s appointments. If it were not, then the Founding Fathers would not have written the consent requirement into the Constitution.

I would like to look back at the treatment of President Clinton’s judges by the Senate. During the Clinton administration, 248 Clinton judicial nominees were confirmed, and 63 were blocked from getting votes. That is 20 percent. All those are full-term nominees, and now there are complaints from the other side because President Bush is not getting just 2 percent of his choices.

During the Clinton administration, Republicans placed secret holds on judicial and executive nominees preventing many fine Americans from even having a hearing in the Senate Judiciary Committee.

The Senator from New Jersey is on the Judiciary Committee. He knows and everybody in this room knows that you don’t have to have a talkathon to kill nominees. All you have to do is just not bring it before the committee, or if they do bring it to the committee, not bring them before the Senate. That is the control of the majority.

We did it differently when we were in charge. We processed most of the administration’s recommendations. In total, 63 Clinton judicial nominees and more than 2,200 Clinton executive nominees were defeated by delay or no votes. These numbers are unchallengeable. We see it here: Clinton nominees from 1995 to 2000, number confirmed, 248; nominees blocked, 63, 20 percent of the total. Of the Bush nominees, we processed 168; nominees blocked, 4; total, 2 percent. That is what is happening. And now to have this circus taking place where the crocodile tears are about how we treated these nominees, and not one word about how we are treating the public. No, no.

Mr. SESSIONS. Will the Senator yield the floor to me?

Mr. LAUTENBERG. No, I would like to finish, Mr. President. I am sorry. At such time as the floor shifts hands, I will be happy to answer any questions.

The fact is, Democrats have used the filibuster only to block nominees with records of extremism. Americans deserve an independent judiciary with fair judges who will enforce their rights and uphold the law. Republicans want Democrats to blindly confirm result-oriented judges to whose rules of judicial interpretation change to meet their ideological agenda.

It is pretty obvious, I guess, to the American people, we are not consenting to the choice and the right that the Founding Fathers gave us as Senators. I am not about to give up that right.

I ask the Chair, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from New Jersey has 4½ minutes remaining.

Mr. REID. Will the Senator yield for a question?

Mr. LAUTENBERG. I will. Mr. REID. Through the Chair to the distinguished Senator from New Jersey, I ask my friend, we have spent—how many hours it has been since last night at 6 o’clock—talking about four people. I am not talking of New Jersey, like the State of Nevada, and 48 other States, has people who are unemployed. New Jersey is a very heavily populated State. Does the Senator from New Jersey think the people in New Jersey would be above the delinquent, for example, unemployment insurance where during the last 3 years we have lost 3 million jobs, or does the Senator think they would like to talk about some way to get jobs for the more than 9 million people who are unemployed in this country?

Would the people in New Jersey rather be doing that or what we are doing now?

Mr. LAUTENBERG. I say to my friend from Nevada, I hear two principal concerns in New Jersey: One, jobs; having to get to work because not only is it the deprivation of funds and the shortage of being able to afford, many times, the necessities, but it is the humiliation of not being able to provide for your family. That is what they talk about.

Do you know what else they talk about in New Jersey? They talk about health care. They talk about prescription drugs. People in the senior community happen to fit, thankfully, in that community—are concerned about the prescription drugs they can’t get to sustain themselves.

We saw things in the paper today—I read these with great interest—about the successful effects of a drug that is called Lipitor. I am not advertising any medication, but look in the paper and you will see that it has reduced the possibility of heart attacks. People who are on those drugs. We have got to live this thing because, we were lucky and, B, maybe because we had the right doctors and the right prescription drugs to keep us going. So that is what they think about.

I have yet to have a call that I am aware of, that said: Senator, for crying out loud, pass those four judges and, by the way, I am jobless, in case you should think about it; or: Pass those four judges and do not worry about the environment, because we stand someone more toxic waste in our skies or on our ground. No, do not worry about those things. Senator, you just take care of getting those four people the job that the President and the Republican Party want them to have.

I might answer the question on this. The Senator from Nevada asked—and I am reminded about this constantly—3½ million people, since January 2001, have lost their jobs in manufacturing. It also breaks the economic structure that we desperately need. We need manufacturing jobs because those are decent-paying jobs. One does not have to have a college education there, or a master’s degree, or anything like that for most of those jobs. It is for the people who want to go to work who have not had the advantage of getting the extended education.

That is what they want us to talk about. They want us to talk about what is happening: Where are these jobs going that are leaving our shores? What should we do about it?

Well, we do not have time for that debate. I have to remember to tell them that when they call up. Sorry, we cannot discuss jobs or prescription drugs, or your kids’ education. We do not have time for it. We are busy, very busy, and we are under the gun, and that is to get our appropriations bills done and things of that nature. We have to get it done so that we can end this session and we can get back to our communities and talk to our people and do what we have to do, to stay in touch. No, we do not have time for that.

The PRESIDING OFFICER. (Mr. CRAP. The time of the minority has expired.

Mr. LAUTENBERG. Mr. President, I reluctantly yield.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, may I inquire how much time now is allotted to the majority side?

The PRESIDING OFFICER. The majority has 27½ minutes.

Mr. CRAIG. Mr. President, I recognize the Senator from Wisconsin is still in the Chamber. Let me say, in all fairness, I was listening from my office to the Senator when he asked how justice delayed is justice denied when the vacancy rate is so low. He also wondered why we are spending time on judges. I think his own words answer the question.

Senator Kohl declared that the judicial confirmation process should not be about politics. In a quote in the Congressional Record, Senator Kohl said: We need these judges both to prosecute and sentence violent criminals and to prevent more backlogs in the civil cases.
I think he also stated it was in our system where judges got blocked and that there was nothing sinister about it.

Let me read a couple more of the Senator’s quotes because we have been accused on this floor and I do not think any of us ought to be accused of that. Different circumstances and different times oftentimes produce less than consistent quotes. My guess is that this Senator has been a bit guilty of that on occasion, too.

In the CONGRESSIONAL RECORD of May of 1997, it says that Senator KOHL urged votes on nominees who had been approved by the Judiciary Committee. Let’s breathe life back into the confirmation process, let’s vote on these nominees who have already been approved by the Judiciary Committee, and let’s see a timetable for future hearings on pending judges. Let’s fulfill our constitutional responsibilities.

I justice denied demands that be at a minimum—and so forth and so on. I could read other quotes. My guess is that if we searched the RECORD, I would find quotes by myself.

I come to this debate in probably a slightly different way than some. I am a freshman in the Judiciary Committee. I have spent plenty of time over the last year watching the inner workings of the Senate judicial nomination process. With all due respect to our colleagues on the other side of the aisle, I am emerging from the process that is very disturbing to this freshman Senator on the Judiciary Committee.

I refer to an effort by a select few to legitimize probes into the nominee’s personal and political ideology, in addition to the nominee’s judicial philosophy. That is, they would have us ask what the nominee thinks about such items as abortion, the death penalty, affirmative action, even though the future judge has nothing to do with what he or she thinks about these issues and everything to do with how the nominee would apply and enforce constitutional, statutorial, and common law in the cases involving those issues.

Now, that ought to be very clear and it ought to be a clear difference between how one approaches a judicial nominee and how we are now approaching judicial nominees. Those who have mounted an effort have tried to divert attention from serious constitutional problems this process poses. They have held straw hearings and brought in heavyweight legal scholars to say, of course, a nominee’s political ideology should be considered in the nomination process in an effort to toss it off. Everybody knows that sort of attitude. But the academic gloss quickly wears off when there is no substantive underneath, and they find out this is not a probative debate on judicial philosophy. This is really raw politics of the first instance.

In a 2001 Senate judicial committee hearing, the leading proponent of the personal ideology probe said this: For whatever reason, possibly Senators’ fear of being labeled partisan, legitimate concerns of ideological beliefs seem to be driven underground. It is not that we do not consider ideology, we just do not talk about it. Now you try it openly. If you do not have the right ideology, you cannot make it to a vote on the Senate floor. You may be the brightest legal scholar in the country, with an absolutely gold-plated record, but if you do not walk the fine line of political attitude, political philosophy, you do not cut it.

That Senator may truly not know that political ideology is not traditionally the subject of an extensive probe. However, I would submit that the rest of us do know the reason.

Law students—I have never been one—in their first year of law school know the reason. They cannot tell you what it is when they are called into the classroom, but they keep very clear that it does not matter what they think about the legal issue at hand but only what the law is on the issue and how they should apply the law. That is what a freshman law student finds out.

I refer to a Senator from the Judiciary Committee. It is, from the very beginning, it is not the politics of the issue, it is the law: What does the law say, and how do you apply the law?

We are in the Chamber today not because of law. We are in the Chamber today because of politics, because these judges who have been responsibly nominated by a President, brought before the Judiciary Committee, with the highest possible credentials in almost every instance, gold-plated records in the judicial process, cannot now come to the floor for a vote, not even a simple up-or-down vote.

Why? Because the other side has now established a litmus test of political philosophy, and if they do not meet it, they do not cut it. That is the bottom line.

Our Democratic colleagues even know the reason. Let me tell my colleagues what Senator PAT LEAHY has said. I am quoting him. I would not take him out of context. Nobody should take any Senator out of context. Here is what he said: We need to get away from a rhetorical and litmus test and focus on rebuilding a constructive relationship between Congress and the Judiciary. We need a principle and moderation that respects the democratic will and the weight of precedence. We do not need our Federal courts further packed with ideological purity. We do not need nominees put on hold for years while we screen them for their ideological, political, personal, and political ideology than my own. My constituents from Idaho, in fact, made it clear how different she was in what she had done from the mainstream of my State’s thinking. However, I Justice Ginsburg was a judge of great ability, character, intellect, and temperament.

Her record was replete with this evidence, and though at one time she had been a vocal advocate of particular political issues, she had a sharp understanding of the limit of the character of the judiciary and the role she would play as a judge, a neutral arbiter, not an advocate.

Well, I voted for Ruth Bader Ginsburg, not because she had the same ideology—my guess is she is here and is here, and I think the record probably clearly demonstrates that, but I was convinced she was a bright legal mind who would, in fact, not be an advocate but a neutral arbiter.

What is not the kind of test that is being applied to the nominees who are before us now. It is raw politics, folks—nothing more, nothing less. It is a fine litmus test of the attitude on the part of the Democrats, and it does not match the litmus test, they do not get the vote.

And now, then, of course, we probably ought to make a few examples here to prove that you have that kind of power or that you have that kind of power, even in fact when the advice and consent clause of the Constitution, in my opinion, and I think the opinion of a lot of constitutional scholars—of which I am not one—is that we advise and we dispose, or consent, and that you do that not by suggesting to the President that he can only send up those who meet the narrowest of a litmus test but those who meet the broadest and the most easily substantiable character, quality, training, expertise, and talent. That is what we want.

Our Founders also understood the reason judicial nominees should not be subjected to personal attacks. For instance, in Federalist Paper 76, Alexander Hamilton underscored how important an independent judiciary was to the separation of powers:

The courts must declare the sense of the laws and if they should in any exercise will instead of judgment, the consequence would equally be the substitution
of their pleasure to that of the legislative body. To guard against such legislative encroachments, Hamilton emphasized the need for qualified judges; that is, individuals who possess virtue, honor, requisites of integrity and competence. The election of the last couple of the legislature for character and those who have the ability to conduct the job with utility and dignity. Character and competence is what Hamilton talked of and was, therefore, the foundation of the judicial selection process. Consideration of an individual’s independent political will would undermine it.

Yet today, we have slipped into that morass of politics. We are not holding up individuals looking at them for the character of the individual and the quality of the legal mind and how they have demonstrated the use of that talent in their lifetime and through their professional ways.

Those are the issues that are debated on the floor, and that is the substance of this debate. For the first time, this freshman on the Judiciary Committee is witnessing something unique, and that uniqueness is quite simple. We are now applying politics instead of the judgment of character to the judges the President is sending forth for us to consider.

May I ask how much time remains on our side? That said, I will not take much time. I have been listening, of course, as we all have, to the debate, some of it from the chair this morning. Nearly everyone has been said, I suppose. Not all of us have said it, and so it is interesting as time goes by. Let me quote from the statement from the Minority Leader from the CONGRESSIONAL RECORD in 1999, in September: ‘Delay can be described as an abolition of the Senate’s constitutional responsibility to work with the President and ensure the integrity of the Federal courts.’

Another quote: ‘The delay has been especially unfair to nominees who are women and minorities, selected for that sort of business.’

Another from the Senator from California: ‘I am very glad we are moving forward on judges today.’

We have all heard, as we were growing up, that justice delayed is justice denied. We have vacancies in many of our courts that have gone on for a year or two. We see the delays getting to a crisis level. I am pleased we will be voting. I think whether the delays are on the Republican or Democrat side, let the names come up and let us have a vote. Let us debate and have a vote. The Senator from California and I agree with that point of view.

I yield the floor.

Mr. CRAIG. Mr. President, I thank the Senator from Wyoming as he may conclude.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. I will not take much time. I have been listening, of course, as we all have, to the debate, some of it from the chair this morning. Nearly everything has been said, I suppose. Not all of us have said it, and so it is important to do. I am not an expert in the judicial system. I am not on the committee. But I have been here and I have observed what has gone on throughout this whole last year. We keep talking about the fact that we ought to be talking about health care; we could have been talking about energy; we could have been talking about the whole year.

As I said, I will not take long. Some of the past comments from the other side of the aisle I think have been interesting as time goes by. Let me quote from the statement from the Senator from Wyoming in the CONGRESSIONAL RECORD in 1999, in September: ‘Delays can be described as an abolition of the Senate’s constitutional responsibility to work with the President and ensure the integrity of the Federal courts.’

Another quote: ‘The delay has been especially unfair to nominees who are women and minorities, selected for that sort of business.’

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Mr. CRAIG. Mr. President, I thank the Senator from Wyoming as he may conclude.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. I will not take much time. I have been listening, of course, as we all have, to the debate, some of it from the chair this morning. Nearly everything has been said, I suppose. Not all of us have said it, and so it is important to do. I am not an expert in the judicial system. I am not on the committee. But I have been here and I have observed what has gone on throughout this whole last year. We keep talking about the fact that we ought to be talking about health care; we could have been talking about energy; we could have been talking about the whole year.

As I said, I will not take long. Some of the past comments from the other side of the aisle I think have been interesting as time goes by. Let me quote from the statement from the Senator from Wyoming in the CONGRESSIONAL RECORD in 1999, in September: ‘Delays can be described as an abolition of the Senate’s constitutional responsibility to work with the President and ensure the integrity of the Federal courts.’

Another quote: ‘The delay has been especially unfair to nominees who are women and minorities, selected for that sort of business.’

Another from the Senator from California: ‘I am very glad we are moving forward on judges today.’

We have all heard, as we were growing up, that justice delayed is justice denied. We have vacancies in many of our courts that have gone on for a year or two. We see the delays getting to a crisis level. I am pleased we will be voting. I think whether the delays are on the Republican or Democrat side, let the names come up and let us have a vote. Let us debate and have a vote. The Senator from California and I agree with that point of view.

I yield the floor.

Mr. BENNETT. Mr. President, we have compared numbers around here. Particularly the number of 168 to 4 over and over again. I make it clear that these two numbers are not in the same ballpark; that is, this is not 168 who have been approved and 4 who have been disapproved. That has been a vote regarding the 4. Rather, it is 168 who have received a vote in the tradition and the precedent set and maintained for 214 years.

The Constitution was ratified in 1789, and from that time forward there has never been an instance where a judge reported out of the Judiciary Committee, or whatever committees preceded the Judiciary Committee in the Senate, or whether the Senate has been a time when a judge whose name has come to the floor has been denied a vote until this year. If you take apples and apples, if you take the number of those reported to the floor and voted on in the Senate, the number was 2,372-0 for 214 years. Whether it was under control of the Democrats or the Republicans, this body never denied a reported nominee a vote. Some of those who got votes got defeated, but no one who was reported was denied a vote until this year.

We talk about the law. We talk about the Constitution. One of the parts of cloture was an understanding that was established in the question of precedent, 214 years of precedent, 2,372 cases of precedent upset in this Congress by the Democratic leadership.

A lot of people have called a lot of people names during this debate. I don’t want to do that. I was urged to do that just before I came over here by some who said: Why don’t you say the kind of things about them they are saying about you or their nominees? Mix it up.

I don’t want to do that because I don’t think that is useful. What I would like to urge on the Senate on this occasion is that we go back to a process that was made possible years ago by the Democrats: specifically, Senator LIEBERMAN and Senator HARKIN, a proposal endorsed by Senator DASCHLE, that said let us eliminate the filibuster for nominees, start out with a 60-vote cloture motion at a lower level, follow it up with another cloture motion at another level, and so on. The Republicans did not endorse that. I am today, rising to endorse it. I am today rising to say that this rule change was not necessary because we thought the precedent would hold. But the precedent has now been broken. The precedent did not hold.

The time has come to recognize the wisdom of Senator LIEBERMAN and Senator HARKIN and Senator DASCHLE and others to change the rules. The vote we have taken tomorrow on what is now called the Frist-Miller proposal is a vote to endorse the wisdom and far-sightedness of Senator LIEBERMAN, Senator HARKIN, and Senator DASCHLE in previous Congresses. And the practical effect of passing Frist-Miller will be to establish in the Senate rules a 10-year-old precedent that has been broken in this Congress for the first time. The effect would be to establish in the Senate rules a precedent that has held up 2,372 times, and has only fallen in this Congress. It will be a vote to stifle the bipartisan solution to a problem that has disappeared far too much acrimony, far too much controversy. It will be a permanent solution to this matter.
It will not solve the question of Miguel Estrada who was tired of having his reputation trashed and decided to withdraw and thus deprive the United States of the opportunity to have the services of a man who excelled academically and professionally, who, though he was appointed to the Solicitor General’s office by the first President Bush, was maintained in that office for several years by President Clinton because they thought he was good enough.

Today he has been attacked on this floor as a lemon, someone who deserved to be rejected. We have fallen to that level of discourse, and we should avoid that level of discourse. Let us adopt a bipartisan solution which Republicans previously blocked. This Republican is prepared to repent. This Republican is prepared to say, okay, I recognize the wisdom of Senator Lieberman’s proposal. I am willing to endorse it. Now it is time to act. Let us not kill it just because it bears the name Frist-Miller instead of the name Lieberman-Harkin as it originally had.

Give Members an opportunity to put the bill to the floor and some less excessive statements behind us and move forward in the future as we have done in the past for 214 years to see that any nominee who makes it through the committee process and survives the committee process and gets reported to the floor gets voted on, whether he or she is a Republican or whatever the situation. If he or she survives the committee process and comes to the floor, he or she serves a vote in the same tradition that we have followed for 214 years. I yield the floor.

Mr. CRAIG. How much time remains on this side?

The PRESIDING OFFICER. There are 2 minutes 15 seconds.

Mr. CRAIG. Mr. President, let me be brief and close. I see the Senator from Washington Senator from Wisconsin ready to speak. As the Senator from Washington engages this afternoon, I would like to quote some of her comments so they are fresh in her mind.

Senator MURRAY raised the issue of the action on female and minority nominees was denying justice and holding the system hostage. On September 14, 2000, she said at a press conference: Our justice system is being held hostage by the fact that any nominee who makes it through the committee process and survives the committee process and gets reported to the floor gets voted on, whether he or she is a Republican or Hispanic or an African American, a Roman Catholic or a Jew or a Democrat, Hispanic or an African American, a Roman Catholic or a Jew or whatever the situation.

I also talked this morning about the success we had in Washington State using a bipartisan commission to select and confirm qualified judges. This morning I noted that we should be spending our time on much more pressing issues like helping the many unemployed workers who are about to run out of unemployment benefits.

We are wasting 2 days of the Senate’s very limited time left in this session on four judges. We certainly have more important things to do. We were supposed to pass 13 appropriations bills by October 1. We have passed more than half the bills that fund the Federal Government are incomplete, waiting for congressional action. We have a lot of work to do that affects millions of families. But instead, we are wasting 30 hours of the Senate, precious hours of time talking about four judges.

What we are doing is we are not helping laid-off workers in these 30 hours. We are not improving health care. We are not fixing roads across this country. We are not improving the conditions for our troops. And we are certainly not improving veterans care. We are not doing anything for the millions of Americans who need help today because the other side is tying the Senate in knots so nothing can get done.

What are we doing right now reminds me a little bit of the behavior back in 1995 when the other side did not get exactly what they wanted on the budget, so they shut down Government. Boy, do we really see the country when the Government was shut down. Federal services were shut down, people could not get their Social Security check, agencies were shut down. The needs of every American were set aside.

What I am doing right now reminds me of the behavior back in 1995 when the other side did not get exactly what they wanted on the budget, so they shut down Government. Boy, do we really see the country when the Government was shut down. Federal services were shut down, people could not get their Social Security check, agencies were shut down. The needs of every American were set aside. That is why so Republicans could complain about a budget with which they disagreed.

The same thing happened here today. The needs of every American are being set aside. That is why so Republicans could complain about a budget with which they disagreed.

In my home State of Washington, we have the third highest unemployment rate in the Nation. It is 7.6 percent. Since President Bush took office, we have lost more than 70,000 jobs in Washington State. Those laid-off workers want jobs. They are eager to work. In King County alone, 10,000 people are out of work. They are struggling. They are losing their homes. They have lost more than 70,000 jobs in Washington State. In fact, the national unemployment rate is 7.6 percent.

In the same way, they are going to exhaust their benefits on December 31 why we are talking about judges instead of helping those laid-off workers? These hours that we are wasting on this manufactured crisis could be much better spent helping those people facing so many Americans.

Two weeks ago I introduced legislation to extend unemployment benefits to workers who will run out of benefits on December 31, right after Christmas. For millions of Americans who cannot find jobs, the clock is ticking and every day counts. Unless this Congress acts, those families are going to start the new year without a job and without any help paying for the basics like housing and food and medicine.

Two weeks ago I introduced an amendment in the Senate. If the majority wants to vote against helping laid-off workers, that is their choice, but we are going to force them to take a vote because working families should not be punished any more than they already have been in this tough economy.

Congress cannot leave town for the year—and many people are talking about doing just that. We cannot end next week without extending the benefits on which these many families rely. We have extended benefits in past recessions and we need to do it in this recession because the clock is ticking. In my home State of Washington, we have the third highest unemployment rate in the Nation. It is 7.6 percent. Since President Bush took office, we have lost more than 70,000 jobs in Washington State. Those laid-off workers want jobs. They are eager to work. In King County alone, 10,000 people are on a waiting list for job training. They want to provide for their families, but they are about to get cut off unless the
Millions of us are going to lose our homes! Throughout my life, I have done all the right things to stay current with the job market.

In spite of this fact and having a college degree, I lost my job after 9/11 when my company closed the northwest branch office due to the economic downturn. Now, a year and a half later, I find that I do not fit in all the niches for acquiring employment retraining because I am not on welfare, I haven’t been employed by Boeing, I am not a dislocated homemaker, and I am not a veteran.

Please let me know what is being done to help the unemployed in this country when the unemployment runs out. For the first time in my life, I am also without medical benefits.

I think Laura Perry deserves 30 hours of time on the Senate floor. I met a letter from the people in Kent, WA, a suburb out of Seattle. She writes to me:

Please support the upcoming bill to extend unemployment benefits to those who have lost our jobs.

It doesn’t help the economy when millions of us are about to become homeless. I would prefer a job but until the economy recovers I am finding this impossible. I am a high tech worker and have no other skills.

I am 53 years old and have very few options. For every job I apply for there are hundreds of other applicants.

Once the economy comes back, I’m sure I’ll be able to support myself but without help until that happens I will lose my house.

I know I am not alone so imagine the problems multiplied by millions.

There are over 97,000 people unemployed in the Puget Sound alone. Please help.

That is from Mr. Marshall Dunlap, in Kent, WA.

I think Marshall would prefer we were spending 30 hours talking about how we are going to help him get back into the workforce and able to provide for his family.

Here is a letter from Ronnie Harper of Kingstom, WA:

Thank you very much for working to extend UI benefits in the state of Washington.

I moved here 6 years ago to enter the technology market, which I did immediately upon my arrival.

Unfortunately, things turned sour at Hasbro last year because people stopped buying toys, and I was laid off after 5.5 years of exemplary service.

I have been working extremely hard over the past year to find another job; a job that is in the IT industry with a competitive compensation package.

My efforts have been practically fruitless, with most employers even refusing to discuss their reasons for not considering me for their open positions, and many filling posted positions internally.

At this point, I am on my last week of unemployment insurance, and I have mouths to feed. I hope very much that this bill is successful, please keep us posted!

That is from Ronnie Harper in Kingston, WA.

Unfortunately, I need to add that since he wrote this letter to me, Mr. Harper has now lost his benefits. That is why this Senate needs to act and why we should be spending 30 hours of debate time talking about how we are going to help Mr. Harper.

Mr. President, how much time do I have left?

The PRESIDING OFFICER. Seventeen minutes remain.

Mrs. MURRAY. Mr. President, let me add one final letter before I turn it over to my colleague from South Dakota who has been waiting in the Chamber.

This is a letter from Bill Gilbertson of Sequim, WA. He says to me:

Dear Senator Murray: Thank you for your support of S.1708, Emergency Unemployment Compensation Act.

Your comments to the Senate, describing the hardship problems of being unemployed will hopefully encourage passage of this important matter.

Please pass on my comments to your colleagues who don’t know what it’s like to be jobless.

Life without a job is a demeaning experience; it affects all aspects of your life. You have to be very careful with the little money you have, only necessities can be considered.

I have a low self image, feeling of lack, and despair of the future are some of the challenges you face when hit by unemployment. I have been unemployed now for over a year and it’s been tough, but I won’t give up till I get a job.

Extension of S. 1708 would really help me thru this.

That is Bill Gilbertson of Sequim, WA.

We are talking about real people facing real problems. I think it is essential that this Senate deal with this issue now.

UNANIMOUS CONSENT REQUEST—S. 1708

Because of that, unanimous consent, Mr. President, that the Senate proceed to legislative session and the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment insurance benefits for displaced workers; that the Senate proceed to its immediate consideration, the bill be read a third time and passed, and the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection?

Mr. CRAIG. Mr. President, reserving the right to object, I appreciate the concern of the Senator from Washington. The Senate is in session. The Senate is working. It is November 13. The timeline she has outlined is December 31.

Mrs. MURRAY. Is there an objection? Mr. CRAIG. I therefore object.

The PRESIDING OFFICER. Objection is heard.

Mrs. MURRAY. I am deeply disturbed to hear that. The Senate is going to be out of session shortly. Everyone wants to finish by Thanksgiving. I am sure the letters I have read from a few of the people in my State reflect a lot of people’s concern. There are going to be facing Thanksgiving without knowing how they are going to be paying for their mortgage, their food, and their basic necessities.

The PRESIDING OFFICER. The Senator has used up his time.

Mrs. MURRAY. Mr. President, I yield to my colleague from South Dakota who has been waiting.
The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. Mr. President, I rise today to express not just my profound disappointment but, very frankly, my contempt for the outrageous political ploy that the Senate Republican leadership is foisting upon this Senate and upon the American people.

This is a monumental waste of time, every Member knows that, at a time when we have so much work to be done, to waste 30 hours—now, I understand, perhaps more than that—on a false, fabricated issue.

On top of that, all of this, I am being told, is costing the taxpayers at least $100,000—taxpayer money for this political ploy to be brought to the floor. And as the media has said from all around the Nation, there is no judicial crisis in America at the Federal level. This is a fabricated crisis which, frankly, is a polite way of saying that what is being brought to the floor is a fake. It is a fabricated issue, at stake is not a principle; at stake is—let’s face it—money.

What is at stake is the far radical right of the Republican coalition with their vision of an America with no Social Security, no Medicare, no role of the schools, what have you, a radical vision that very few Americans share. They have let it be known to the Republican leadership of the Senate here that they are going to not be as generous with their political contributions if they do not see more noise and more combat on behalf of a tiny percentage of judges nominated by the President.

This, what we have here today, and last night, and on into the night tonight, is an incredibly cynical political ploy not worthy of the Senate, certainly not worthy of the American people, Republican or Democrat.

The American people deserve better. They deserve better of this institution than what the Republican leadership has foisted on this country; and then, to add insult to injury, putting it on the credit card of the American people.

So far, this President has had 168 Federal judges—virtually all conservative, Republican judges—approved by this Senate, and I have voted for most of them. So the question is not whether the Senate will approve conservative Republican judges—we have over and over and over again—168—but this institution requires the Senate to provide advice and consent to this President or any President on these appointments, which are of a lifetime nature. This is not some Cabinet appointee who will come and go with the winner of the Senate. These people will sit on the Federal bench for as long as they live, if they so choose. Much longer than virtually anyone in this Chamber will live, these nominees will still be there.

If the expectation is that apparently is the Senate Republican leadership apparently is that anything short of 100 percent approval of these judges is out of compliance with the obligation of the Senate, then what does that say about our Republican friends’ notion of what advice and consent is all about?

Now, President Bush, obviously, with 168 successes to 4, could have 100 percent success if he would send us mainstream, moderate, Republican judges, which he mostly has. But obviously he has taken the political tactic of rounding up a handful of judges who are absolutely beyond the pale and sending them here knowing they would be shootouts, knowing they would beISTA, political right in this country, and it would gin up political contributions. That is what this is all about.

Now, when President Clinton was President he was told: Do not send any liberals to be nominated for the bench. They will not even get hearings, much less votes on the Senate floor. And it turned out to be true.

The Senate, because of our parliamentary rules, and the essentially party by-party 60-vote criterion on issues that are controversial. It is one of the reasons the Senate has long been the institution of moderation, relatively speaking, in the Congress, because while in the other body the majority determines who is on the bench, on the Senate side we have an ability to enforce a certain level of bipartisanship because nobody can get anything done that is controversial without 60 votes. I would suggest that this is one of the geniuses of the Senate, that this is not the House of Representatives, that there is a certain level of consensus that is required to get things done in the Senate, and that we believe in that what the American people want to see.

Now, we respect the right of this President to nominate like-minded people to the bench. He has. And they have been approved—168 of them. But where those nominees fall outside of the broad consensual understanding of the Senate, and cannot get 60 votes, those nominees ought to be rejected.

They will be easily filled by other no doubt conservative Republicans, but at least people who have the respect of the bar associations, of the Senators of their States, and who fall clearly within the mainstream of contemporary legal and political thinking.

Mr. President, 98 percent of the administration’s judicial nominees have been confirmed—98 percent. That is a good success ratio in almost any human endeavor, contrary to what you hear from the other side.

Mr. President, 95 percent of Federal judicial seats have been filled. We currently have the lowest judicial vacancy rate in 13 years. If anything, this Senate ought to be patted on the back for its acceleration of judicial nominees the Judiciary Committee has considered and the floor has approved.

Last year, the Senate, led by my colleague from South Dakota, Senator Daschle, confirmed the largest number of judicial nominees in a single year since 1994—a remarkable track record. So to stand this on its head and suggest there is some sort of an obstruction, some sort of interference with the process, it goes beyond outrage, it defies comprehension.

Sometimes we hear: But what about the appellate judges? Well, the Senate has confirmed 29 of President Bush’s circuit court of appeals nominees to date. More Bush circuit court nominees—get this, and this is the highest number, Mr. President, that any circuit court—the Supreme Court—that Clinton, Reagan, or George Herbert Walker Bush had by this point in any of their administrations.

We also hear that this process requiring 60 votes, this process requiring bipartisanship on judicial nominees for their lifetime appointments, is some unprecedented sort of thing. Well, that is far from the truth.

Our Republican friends required 60 votes of 63 Democratic judicial nominees on the floor and filibustered 63 nominees in committee. So there is nothing unprecedented that is going on here. What is happening is there is an enforced bipartisan, an enforced moderation to what is happening in this country, and certainly good for the Federal bench, at a time when this country is narrowly divided, at a time when we are approving people who will serve on that bench for a lifetime.

What is sad is that while these 30 hours are being devoted to a fabricated fake crisis that has to do with political fundraising, we are not getting on with the issues of jobs, of education, of health care, and prescription drugs. We have an Energy and Medicare bill in conference, but they are both on life support as we speak.

The budget, which was supposed to have been done by October 1, the first day of the Federal fiscal year, has not been done. It is not even close to having been done. And yesterday Senator Byrd, our colleague from West Virginia, noted that this week, the week of Veterans Day, the Republican leadership insisted we shut down the debate on the Veterans Administration legislation appropriations bill in order to consume this time on this issue. The American people deserve better than that.

I have to wonder if the other side that concocted this cockamamie scheme has any shame at all, to have done this to the American people, and to have done this to this institution. We ought to be talking about the jobs-less economy that continues to drag on. The economy would now have to create 326,000 jobs every month to keep the Bush administration from having the worst job creation record of any administration since the Great Depression.

The loss of October 2, 2 million people have been unemployed for over 6 months, more than triple the number at the beginning of the Bush administration. That remains the highest level in 10
years. Almost 5 million people work part time because of the weak economy. This is an increase of 44 percent since January of just 2001—the highest level in almost 10 years.

Talk about crisis. Talk about the need for action. Talk about an increase of 44 percent in part-time workers and record high unemployment. Mr. President, 24,000 manufacturing jobs were lost last month alone. Imagine that, 24,000 manufacturing jobs just last month lost. And in too many cases, those jobs are not coming back.

Talk about crisis. That is what this body ought to be talking about. According to job placement firms, planned layoffs of U.S. companies shot up to 172,000 jobs in October from 75,000 in September. Announced layoffs are at their highest level since October 2002, when 176,000 jobs were cut.

Recent studies suggest that jobs lost since 2001 are now gone for good. A study by the Federal Reserve Bank of New York found that the vast majority of job losses since the beginning of the 2001 recession were the result of permanent changes in our economy and are not coming back.

The labor market is not going to regain the momentum. New positions are created in new economic sectors. The surge in discouraged workers masks the true impact of the economic downturn. Currently, 16 million people are marginally attached to the labor force: about 462,000—almost a half million of these workers—have stopped looking for work altogether because they do not believe there is any work available.

African Americans and Hispanics bear the brunt of the economic downturn. During a month with a net gain in jobs, the unemployment rate among African Americans jumped to 11.5 percent in October, about twice the national average. The unemployment rate among Hispanics, 7.2 percent, is far higher than the national average.

This anemic job creation of the last month provides about 25,000 fewer jobs than are required to even keep up to the new entrants into the labor market. We actually lost ground this last month, meaning young people leaving high school and college cannot find work in too many cases. In addition, average hourly wages increased by 1 penny last month.

So when we talk about urgency, when we talk about a crisis, we need to get past the right-wing politics and get back to political moderation, which is what this 60-vote requirement requires of this body, and we ought to get back to the real issues the American public want the United States to be considering.

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

Mr. LOTT. Under that agreement, I am glad to yield such time as he may need to the distinguished senior Senator from my great State of Mississippi, Mr. COCHRAN.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. I thank the Chair. Mr. President, I appreciate my colleague yielding me time.

Back in 1787, with a great deal of disenchantment around the country with the Articles of Confederation, a new Constitution was written to bring all the States of the Union into a workable one. One of the fundamental principles reflected in that Constitution, as explained in the Federalist Papers, was majority rule. It was a difficult concept because the States were not all the same size, and the Senate would have two Members from each State.

There were situations that could develop when a minority of Senators, or Senators reflecting a minority of the population, could actually cause a decision to be taken against the people of the country. So there are controversies surrounding that principle. But it was a fundamental maxim that is reflected in the Federalist Papers. One other complicated factor is Gov. George Clinton of New York was strongly opposed to ratification of the Constitution. The Framers thought if he prevailed, then it might kill the effort to ratify the Constitution and get the country moving forward to fulfill the hopes and aspirations of the Framers.

Alexander Hamilton was also from New York, and he took the lead in crafting some essays that were published in newspapers in New York to convince the public and, through them, the legislators who would vote on ratification that the Constitution was a good idea for the country. He was joined, of course, by James Madison and John Jay. They all collaborated, contributed to the essays published under the pseudonym Publius, and they were persuasive.

That majoritarian principle has been carried down through the years in our country, in our Government, in our Constitution. In exceptional circumstances is more than a majority needed on any particular issue. As a matter of fact, the Constitution itself states that supermajority voting requirements exist only in certain specific circumstances. Confirmation of judges and other high-ranking officials in the administration are not among those instances where a supermajority is required by the Constitution.

The Framers were committed to the majority-rule principle, and the rules of the Senate carry forward that principle. But this year, the Standing Rules of the Senate are being used in an unprecedented way to impose a supermajority requirement of 60 votes to obtain confirmation by the Senate of Presidential appointments. Article II of the Constitution creates a unique relationship between the President and the Senate in the selection of people to serve in the Government. It provides that the President “by and with the Advice and Consent of the Senate, shall appoint” and then it lists those that come under this section. The constitutional provision 2 of article II actually contains the exact language. It is instructive to be reminded what the Constitution itself says:

He shall have Power—

The President—

by and with the Advice and Consent of the Senate, to make Treaties, and to receive Ambassadors and other public Ministers and Consuls, J udges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Departments of Law, or in the Heads of Departments.

It is very clear, in my mind, that this majority principle is supposed to apply and obtain in the votes for confirmation as described in section 2 of article II of the Constitution.

The filibustering of nominations is a new development. Prior to this year, the number of cloture votes taken on any executive nominee was three, and on any judicial nominee, it was two. Over the next 51 years, no judicial nomination was filibustered, and not one cloture vote was required to end debate on a judicial nominee.

The minority has begun a process that only history will be able to judge, but I fear—I genuinely fear—that nominations in the future by any President will be denied confirmation unless they can muster 60 votes to win approval by the Senate. That is not what the Constitution requires. That is not what the rules of the Senate require. A 60-vote requirement for the confirmation of Federal judges is not consistent with the history and the practices of the Senate. It must be rejected.

If we are unable to prohibit this practice by a change in the Senate rules, we will find it harder than ever before to attract talented and well-qualified candidates to serve in the Federal judiciary.

The PRESIDING OFFICER (Mr. SMITH). The Senator from Mississippi.

Mr. LOTT. Mr. President, I thank my distinguished colleague from Mississippi for his comments. He has
shown, once again, he is a student of the Constitution and of the law. I hope our colleagues found his speech to be informative, and I keep hoping and praying that there will be a change of heart and mind in how we deal with this issue.

Mr. President, the debate that has been taking place for nearly 24 hours is the culmination of 9 months of obstructionism by a minority of Senators who have subverted the Constitution's advice and consent provisions and undermined the very fundamental tenets of democracy.

It is an elementary principle of democratic government that the majority determines the outcome of political questions. Certainly the minority has a right to state its case and have input into the issues. But at the end of the day, when the final decision is at hand, a majority decides the outcome.

Yet in the 108th Congress we have seen an unprecedented attack on this core principle of democracy. Instead of majority rule as our governing principle, we have the rule of the minority. Four nominees to the Courts of Appeal are supported by a clear majority of Senators. Yet a minority of Senators refuses to allow the Senate to vote on these nominations.

The Founding Fathers well recognized the dangers inherent in granting a minority a veto over the will of the majority. James Madison, in Federalist SB pointed out that the Constitutional Convention explicitly rejected the idea that Congress would be required to adopt a supermajority quorum to transact business. He warned that the "fundamental principle of free government would be reversed" if we allowed a minority to overrule the majority.

Why is majority rule the "fundamental principle of free government?" Simply stated, Mr. President, if the will of the majority is the only pre-vailing principle, then it is legitimate for one person, whether a King, or autocrat, to determine the fate of political society. Our Founding Fathers rejected that idea and all of American society has rejected that concept since 1776.

Unfortunately, what we have witnessed over the past 9 months in connection with the nominations of Miguel Estrada, Priscilla Owen, William Pryor, and Charles Pickering is a hijacking of the Senate's constitutional responsibility to advise and consent on the President's nomination and to accept the idea of majority rule.

A minority of Senators have literally rewritten the Constitution to engraft a supermajority rule into the confirmation process, a requirement that completely contradicts the intent, spirit and language of the Constitution.

The Founding Fathers believed there were a few extraordinary instances where a supermajority was necessary and they spelled them out in the Constitution: Ratification of a Treaty; override of a presidential veto; conviction in a case of impeachment; passage of a constitution amendment; and expulsion of a Member.

Amendments to the Constitution have added two other supermajority requirements—one, a post-Civil War disqualification rule for serving in Congress; and another regarding a determination of whether a President is disabled.

But now a minority in the Senate has effectually rewritten the Constitution to demand supermajority votes on some Presidential nominations. That completely contravenes the Constitution.

When the members of the Constitutional Convention considered the appointment power, they first debated placing the appointment power in the Senate. However, that idea was rejected because the members of the Convention believed the Senate was "too numerous and too little/personally responsible to ensure a good choice," according to Madison.

The convention also considered giving the President the sole authority of appointment. In an effort at compromise, Madison suggested that the power of appointment be given to the President with the Senate able to veto the choice only if two-thirds of Senators opposed the nomination. Ultimately, the Convention allowed for a simple majority vote on the President's nominations.

The Founders were so confident that the power of judicial appointment is primarily an executive function that they wrote into the Constitution a provision that allowed Congress to pass law giving the President exclusive authority to appoint all judges below the Supreme Court. In addition, the President was granted the power to make temporary appointments when the Senate is in recess.

You can search the historical record and not find a single shred of evidence to suggest that the Framers of the Constitution ever envisioned a scenario where a minority in the Senate could cause the rejection of a Presidential nominee. But that is exactly the situation we face today.

On 7 different occasions, as many as 55 of 100 Senators voted in favor of ending debate on the nomination of Miguel Estrada. But the minority obstructing his nomination refused to allow an up or down vote and ultimately Mr. Estrada withdrew his nomination.

Fifty three Senators voted to end debate on the nomination of Priscilla Owen. But the minority refused to allow an up or down vote.

Fifty three Senators voted to end debate on the nomination of William Pryor. Again, the minority refused to allow an up or down vote.

And just 2 weeks ago, a majority of 54 Senators voted to end debate on the nomination of Charles Pickering. And once again, the minority prevented us from bringing this vote to a conclusion.

This undemocratic obstructionism threatens to destroy the integrity of this institution.

I have heard it said by some who are blocking the President's nominations, that there is nothing wrong with the confirmation process. They say we've confirmed 168 of the President's nominees; why is there a problem just because we block four nominees? 168-4 is an exceptionally good record.

I would like to bring to the Senate's attention another statistic: The number of President Clinton's judges that were blocked by Senate filibusters. 0. No single Clinton nominee who was blocked at the floor was blocked by a filibuster.

Cloture petitions were filed on 5 of President Clinton's nominees. But every single one of those nominees was given a straight up or down vote. Every one of them. So if we are comparing records, here is the record that matters: Four of President Bush's nominations blocked by filibuster and none of President Clinton's nominees blocked by filibuster.

That's not baseball or basketball; this is the responsibility of the Senate to live up to its Constitutional responsibilities. And what a minority of Senators have done is to create a double standard for judicial nominations. For some judges, we accept the constitutional mandate of a majority vote. But for other nominees, we have created an extra-constitutional higher standard.

For nominees Miguel Estrada, Priscilla Owen, William Pryor, and Charles Pickering, a constitutional majority is not good enough. You have to garner a supermajority.

That's a standard that is not fair, yet that is precisely what a group of Senators in the minority have demanded. And as a result, they are failing to fulfill their constitutional responsibility to provide advice and consent.

For those who say there is nothing wrong with the confirmation process, I say that this is a problem.

Up until 1968 there was never a filibuster of a judicial nominee. In some instances, cloture was filed twice and even when cloture was not invoked, every single nominee whose name had not been withdrawn was given an up or down vote.

We have had an unprecedented 7 cloture votes on Miguel Estrada and 3 on Priscilla Owen. In both cases, a majority of the Senate voted in support of the nominees. But a minority of Senators refuse to give these nominees straight up or down votes as required by the Constitution.

I believe that establishing a rule that if a nominee cannot garner a supermajority of 60, the nominee will not be entitled to a vote is a very dangerous precedent that will haunt this chamber for decades to come.

We have never in 214 years established such a rule. Even in the case of the most controversial—Robert Bork and Clarence Thomas—the Senate carried out its constitutional responsibility by giving each of them an up or down vote.
In June, I chaired a Rules Committee hearing on judicial nominations where one of the witnesses claimed that in the 19th Century, there were several instances where a minority of Senators prevented the Senate from considering judicial nominees. I would like to take a few moments to clarify the record on this issue.

In February, 1829, a month before President John Quincy Adams nominated judicial nominees. I would like to take positions where a minority of Senators in the 19th Century, there were several instances where a minority of Senators took over the Senate. I must say, without it being aimed at any of the nominees from having a vote on a nomination. The Senate refused to vote on the nominations submitted by the lame duck.

In June, 1852, President Millard Fillmore nominated Edward Bradford to the Supreme Court. The nomination was made just before the Senate was already planning to adjourn. It adjourned before considering Bradford's nomination. When the Senate reconvened, Franklin Pierce had won the 1852 Presidential election. And Fillmore did not renominate Bradford.

Instead, in early 1853, lame duck Fillmore's successor was to be sworn into office, the Senate voted to adjourn rather than consider the Read nomination. Obviously, the will of the majority was not thwarted by the minority when the Senate voted to adjourn.

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Finally, Mr. President, in January 1881, the lame duck President, Rutherford B. Hayes, nominated Stanley Matthews to fill a vacancy on the Supreme Court. The nomination was re-reported from the Judiciary Committee. When President Garfield took office in March, he renominated Matthews. After 2 months of debate, Matthews was confirmed by a vote of 24-33.

I have taken the Senate's time to provide details of these 19th Century nominations to make the point that there is no evidence that any of the controversial justices nominated in those years was blocked by a majority of Senators.

In every instance, a majority voted to delay or defer consideration. And in most of these instances, they involved nominations made after a sitting President was defeated for re-election. They have absolutely no relationship to the situation that has confronted President Bush throughout this year.

I agree with Senator BYRD that the biggest abuse of the filibuster had occurred with motions to proceed and that the Bulletin of the Senate, in particular Paragraph 2 of Rule VIII, provided an adequate remedy to address this problem.

The last attempt to change the cloture rule occurred in 1995 when Senators HARKIN and LIEBERMAN proposed a cloture rule nearly identical to the majority leader's proposal, but broader in scope because it applied to legislation on non-cloture motion to table, that effort failed by a vote of 76-15.

I voted against that proposal because I agreed with Senator BYRD that the biggest abuse of the filibuster had occurred with motions to proceed and that the rules of the Senate, in particular Paragraph 2 of Rule VIII, provided an adequate remedy to address this problem.

I wish to take up this issue of cloture and cloture rules to block the nomination of judges nominated by the President. This resolution was reported favorably from the Committee on Rules on June 26, of this year.

The majority leader's resolution that will return the advice and consent responsibility to what the founding fathers anticipated and that is why I cosponsored the majority leader's resolution, S. Res. 138. This resolution was reported favorably from the Committee on Rules on June 26, of this year.

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Under our approach, cloture on a nomination could not be filed until the Senate has considered the nomination for at least 12 hours. On the first cloture vote, 60 votes would be necessary to invoke cloture. On a second vote, cloture could be invoked by 57 votes. If a third vote was necessary, 54 votes could bring cloture. And if a fourth cloture vote was necessary, then, and only then, a majority of Senators voting and present would be all that is needed to invoke cloture.

What our proposal does is give the opponents of a nomination 12 hours to first express their opposition. And then, through the Senate's various ways to speak against a nomination. And then, if cloture is invoked on the fourth cloture vote, the opponents will still have 30 hours in which to speak.
confirmed every one of his nominees by the day he was inaugurated. It was not easy. Some nominees had some problems. We got the job done. He was the President. These were his Cabinet selectees. They deserved to be confirmed.

Our majority was big enough that we had a lot of discussions back and forth on how the process worked, how judicial nominees were treated when they got to committee, and when they got to the floor. I remember a lot of those debates. I remember the Senator from Wisconsin. It was his last 12 hours in those debates in March and in December of 1997. I didn't always like the process. I wasn't always proud of how we treated these nominees. But I will tell you this: On my watch, not one Clinton nominee was filibustered. Zero. None.

If you want to use the numbers game—this is not baseball or basketball, but that is an important statistic—during the Clinton years, from 1993 to 2001, no judge was defeated by a filibuster. There were attempted filibusters, when there were attempted filibusters, when Presidents late in their terms made nominations and there were subsequent votes. I want to show you the list of what has happened over the years where there have been attempted filibusters. This is an interesting event happened in 1968, 1971, through the eighties and nineties. We can see there were some attempted filibusters, and cloture motions to cut off this extended debate were filed. But in every case but one, they were all confirmed. J ustice Fortas, in 1968, had his second nomination by President Johnson when it was revealed that he did have some serious ethical problems.

Over all these years, even though there were filibusters and cloture motions, they were all confirmed. There are a couple of nominations on this chart about which I feel very strongly. There was an attempt to hold up in a variety of ways two nominees to the Ninth Circuit Court of Appeals—Richard C. Tallman and Robert Karlen. Their filibusters were offered. I had great concerns about these judges, but I voted against the filibusters. I voted to invoke cloture, and they went to a straight up-or-down vote. I voted against them, but they were confirmed.

I was under intense pressure to not let that happen, but I refused to let that precedent be set on my watch because I didn't think it was fair at all. I also feel personally, and I admit emotionally involved because of the very unfair treatment that Judge Charles Pickering of Mississippi received over the last 2+ years. This is a good man, a good judge. He has had his reputation besmirched. This is a man who was confirmed unanimously by the Senate 13 years ago. Now he is being filibustered by the Senate. It is unfair.

I hear a lot of talk about the human aspects of unemployment. What about the human aspects of these men, women, and minorities have had to go through? Their career is in limbo. They don’t know whether they should stay with their law firm, stay on a State supreme court; are they going to be confirmed; how do they explain, how do they answer questions from the press? They have a very personal problem, too.

In the limited time we have, I don’t want to just complain about what is going on here, I want to talk about the solution, how we get out of this situation, how we get off this limb onto which we have worked ourselves. We know this is wrong. Both sides of the aisle know this is wrong, and there has to be some concern about what the long-term impact will be. It has contributed to the overall atmosphere we are now dealing with in the Senate.

Here is what we can do. First of all, we can bring up the nominations of the people I just cited. Our friend from Texas is a brilliant, impressive woman on the Texas Supreme Court. She is being filibustered. Why? Is she not qualified? Does she not have the proper education? Does she not have impressive credentials in her experience? Is she not sitting on the highest court in Texas? What is the problem?

The answer is that she is a conservative woman, that is all, a mainstream conservative woman. What do we get on there is something wrong with her philosophy and how she has ruled. I looked at a lot of these rulings. This is an eminently qualified woman. Yet she is blocked by a filibuster. How do we get out of this situation? First of all, we try to give our colleagues on the other side of the aisle an opportunity to stop doing this filibustering. We bring up nominations of the judges. Apparently, they are not going to stop.

At the end of this week, we will probably have three men and three women, including minorities, all blocked by filibusters—Hispanic, African American, women, men, it doesn’t make any sense. I don’t understand what is happening here.

What do we do next? We have a debate like we are doing now. Some people say: Why are you doing this? The Federal judiciary has a huge influence in what happens in this country. So these lifetime appointments are very important. We are trying to put the American people on notice as to how dangerous this is and what is going on, and it is getting some additional coverage. People are now calling in and saying: I didn’t know that was going on. Why are you doing this?

Give us an opportunity to highlight the unfairness and the precedent we are setting and allow the people to weigh in a little bit. That is step 2.

Step 3: As chairman of the Rules Committee, I worked with the majority leader, Bill Frist, and Senator Zell Miller of Georgia, and we came up with a plan. Apparently, they could not stop these filibusters. It is an elongated process, but one to which surely nobody could object.

After 12 hours of debate, we would have a cloture vote. It would require 60 votes. Then after that time, there would be a second vote. Fifty-seven votes would be required. A third vote would then occur with 54 votes required, and finally, only on the fourth cloture vote, would we get down to 51. We would have the 12 hours initially. Then we would have 30 hours after the fourth cloture vote to speak. All total, it could take as long as 234 hours. It is not a perfect process, but at least it is a process.

A similar proposal was made a few years ago by two current Senators on the Democratic side of the aisle. We should perhaps have a vote on that proposal.

Last but not least, at some point I feel very strongly we are going to have to make it clear through some process—and I won’t go through it now—that says judges will be confirmed with only 51 votes. What do we mean by what the Founding Fathers intended. Senator Cochran made the historical point, and so have I. That is what it should be.
We can go back and vote on these nominees. They might not be confirmed, but I think the American people understand the fairness of voting them up or voting them down. I justice for judges. Do whatever the Senate’s will is. We have a procedural technique requiring 60 votes to defeat these good men, women, and minorities.

It is an important issue. It is worth taking time to debate. I am very pleased we are debating this issue. I see Senator on the floor of the Senate. He has been on the House Judiciary Committee. I was on the Judiciary Committee with him way back in the seventies. He is a lawyer. He has looked at these issues. I know he has been involved in them. We have had some discussion back and forth over the years.

In March 1997, he rose on the floor of the Senate and spoke in support of the nomination of Merrick Garland to be on the district court. He said:

It is not whether you let the President have his nominees confirmed. You will not even let them be considered by the Senate for an up-or-down vote. That is the problem today. Otherwise the other side—

The Republicans—will not let the process work so these nominees can come before the Senate for judgment. Some may come before the Senate for judgment and be rejected. That is OK. But at least let the process work so the nominees have an opportunity and the judiciary has an opportunity to have these vacant positions filled in the court system. It does not benefit down because of the failure to confirm new judges.

These judges along the way were being slow-walked or they had problems or they got to the floor and we had other legislation we wanted to consider. We did not always get them up, but it is a lot of work. He was able to manage the system so that the people would get the vote the Constitution requires.

After having witnessed this debate for the last day or so, I can understand how hard these people must have taken a lot of effort, a lot of courage. He had to tell people no who did not want to hear no. The country is better off by Senator LOTT allowing these people to have a vote up or down. If we do not fix this situation before the Senate, and it becomes part of the institutional way of doing business, then the consequences to the public are very dire.

The first thing that is going to happen, in my opinion, is we are going to get good men and women who are watching this, maybe one day aspiring to be judges, to say: Why in the world would I put myself through this? You are called all kinds of bad names. They take everything you have written or said and twist it and cut and paste it and try to create mental images of who you are that are totally contradictory to your life’s work, are contradictory to what the ABA says about you as a professional, are contradictory to what your friends and the people who have practiced with you say about you. So it is not a very pleasant thing.

The Senator from New York, Mrs. CLINTON, with whom I have very much enjoyed working, I knew I would not agree with her philosophy. I asked her for fundraising letters about this event, and that we are doing this to make the process worse. That, my colleagues do not think they are lemons, the Constitution gives my colleagues a way to object to them, and that is vote.

Perhaps we can be on record forever saying, this is a lemon, this person should never be able to be on the bench; but they do not have the right to take the Constitution and turn it upside down for their own political gain and their own political desires. That, my colleagues do not have the right to do.

Money was mentioned. They were talking about the phones ringing over at the Republican Senatorial Committee and the Democratic Senatorial Committee and we are fighting back and this is a fundraising opportunity. Well, people are raising money off this event and it pretty much stinks, on both sides, but that is the moment in which we find ourselves.

Let me read an e-mail that was sent out on November 3 by Senator CORZINE, the chairman of the Democratic Senatorial Campaign Committee. His job is to fire up his donors to give money to the Democratic Party can recapture the Senate. There was a great deal of lambasting the Republican Party about writing fundraising letters about this event, and that we are doing this to
fire up our base, and that we are doing this to raise money.

Let me read what Senator Corzine told his Democratic contributors:

Senator Democrats have launched an unprecedented attack on the White House.

We are well into the 30 hours and we cannot get an agreement as to whether or not this is unprecedented. I can assure my colleagues that he is not lying in the e-mail, that this is not false advertising. If it is false advertising, people owe money back. Unprecedented by doing what?

By mounting filibusters against the Bush administration's most radical nominees. Let's break that statement down. It is unprecedented, but my colleagues on the other side are doing it. They are trying to do exactly what my colleagues on the other side are doing, against the Bush administration's radical nominees because of their ideology. That is something that is very dangerous, too.

One of the nominees was asked the question why he and his wife chose not to take their two daughters to Disney World during Gay Pride Day. Nobody should be asked about that. They are trying to ask that question to have a mental construction that this person somehow is not going to be fair to people based on sexual orientation.

The Mississippi situation is the worst of them all, in my opinion, of trying to channelize the White kids. That was the Imperial Wizard of the Ku Klux Klan in Mississippi, not the fast track to get ahead in 1967. It was radical in the right way.

In 1967, they integrated public schools in Mississippi, as they did in South Carolina. I was in the sixth grade. I could remember going back to school and seeing five Black kids come to my class for the first time in my life. As an adult, a 48-year-old man, I now realize how their parents must have felt, to send their kids into a very uncertain, unchangeable situation, but they sent their kids to public schools to make it better. I respect those parents because a lot of people quit, on both sides.

In 1967, Judge Pickering chose to send his children to public schools when White flight was the phenomenon of that county. We will see a photography book, kids with only a few White kids in 1967 Mississippi public schools, and those White kids are Judge Pickering's kids. That was the right thing to do.

These people are not lemons, but if my colleagues do not like them, vote against them. My colleagues do not have the right to change the Constitution for the political moment.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DAYTON. May I inquire, does this side have 30 minutes?

The PRESIDING OFFICER. There are now 30 minutes for the Democratic side.

Mr. DAYTON. May the time be equally divided between the Senator from Maryland and myself?

The PRESIDING OFFICER. It may if the Senator wishes.

Mr. DAYTON. I thank the Chair.

Mr. President. It is now 4:30. At 4:15, the Central Intelligence Agency began a classified briefing of all Senators on a just completed report on the worsening conditions in Iraq, a report that, according to the news accounts that were published yesterday and today aboard a very high level Bush administration official so that it could not be hidden from the American people and from us in Congress.

When I became aware of this—and we were only informed of this briefing this morning—I asked Senator Daschle and Senator Reid to see if we could suspend our talking and talking and talking about all of this for 1 hour to go listen to what is happening to the 130,000 courageous Americans whose lives are on the line in Iraq and to learn what we might be able to do, or must do, to support and aid them.

Senator Daschle and Senator Reid, inquire of the Senate or the House, across the aisle either give up 1 of the 30 hours that we are talking and talking about the jobs of four Americans and devote that time to protecting the lives and protecting the safety of 130,000 Americans and to preserving their heroic success that they achieved last spring in Iraq, which was for some of them their heroic sacrifice on our behalf, and which the CIA assessment reportedly has concluded is now in real jeopardy. Or even if that was not satisfactory, could that hour be added on to the scheduled conclusion for this blame-athon, keep the 30 hours as planned even though it is clear to this Senator, having participated between 12 and 1 this morning and listened to others throughout the early hours and now up until this time, that 30 hours for this topic is excessive and that our speeches are becoming increasingly repetitive, but just pause for 1 hour so that all of the Senators could attend that briefing and be better for our constituents who are over in that precarious situation.

The answer was no. I thought that when this blame-athon began, it showed fellow caucus members on the other side of the aisle with mistaken priorities, but this has convinced me that it is much more serious than that. Winston Churchill once described a fanatic as somebody who cannot change his mind and will not change the subject. This fixation today fits that description.

We had a Senate Armed Services Committee hearing scheduled this morning, the committee on which I serve, with the Acting Secretary of the Army and other high-level Army officials testifying. We just received a briefing from them, reports of the timetables they have for deployments in and out of Iraq. We have seen reports of other newspapers within a few months the intention is to increase significantly in Iraq the number of reservists and National Guard men and women, which has a lot more importance to a lot more people who live in many States of the Union. If those people are either over there now or are training to go over there soon or will be called up to go over later, than any judicial appointment. That hearing was cancelled.

The House of Representatives is taking this whole week off. They are waiting for us to catch up with the Bush administration's most radical nominees.

By mounting filibusters against the Bush administration's most radical nominees.
have a head umpire and impartial ruler on our rules, who is the Senate Parlia-
mentarian. He or she, as the case may be, at the moment can be asked by any one of us to rule on any action, any tactic, any maneuver being employed by any Member of the Senate or any group of the Senate.

Yet for all the accusations for the last number of hours that we are vio-
lating somehow the rules, the procedures, the traditions, the Constitution, the intent of the Founding Fathers and just about everything else anybody has conjured up to justify their own point of view, we could ask. No one has asked. I am told that as of yesterday no one had asked the Parliamentarian, and I believe the reason is likely that the colleagues on the other side know that the answer would be clearly and unequivocally that we are following the practices and the traditions long established over 216 years by which this body conducts its matters, its business, its deliberations of the people of the United States of America.

We can have legitimate differences of opinion about whether that is a good set of rules, one that serves us and serves us in one situation or does not serve us, but they are there. I have learned this in my 3 years here, to my own proper humility, that there is a real collective wisdom that has been established with almost 1,900 men and women serving over the course of those 216 years and that while I may still not agree on some of the particulars, there is a way in which this country has been better served in the eyes of many people more learned than I about government and legislative procedure, has been better served by this body than any other legislative body in the history of the world anywhere on this planet.

Two generations ago, Gladstone called the Senate of the United States “that remarkable body, the most remark-
able of all the inventions of modern politics.” James Madison, one of the authors of the document which we swear to up-
hold when we take this oath of office, the Constitution of the United States, said at the time:

In order to judge of the form to be given to this institution [the Senate], it will be proper to take a view of the ends to be served by it. These were,—first, to protect the people against their rulers, secondly to protect the people against the transient impressions into which they themselves might be led.

I appreciated the words of the distin-
guished Senator from Mississippi just now because he was kind and gracious enough to have an excellent, to agree with the application of these rules and procedures. But not as some have done, casting aspersions on fol-
loowing the rules and procedures, but beyond that, following our responsibilities as Members of the Senate, the Constitution of the United States, which I consider to be about the most serious accusation that any Member could di-
rect toward anyone else.

As I said earlier, we have taken an oath of office to uphold the Constitu-
tion of the United States. That is the most solemn oath I have ever taken in my life. I expect every other Member of this body who has taken that oath is as sincerely, as deeply, as committed to that oath as I. To different people it may mean dif-
ferent things. But I never imagined questioning any Member’s commit-
ment. If there were reason to doubt or question, the proper way to direct that through the country, because it is a constitutional matter of the gravest import.

I urge everyone who has engaged in this constitutional practice these many hours to weigh those words far more carefully than some are doing. As I am on the Senate Rules Committee, I appreciate the approach the chairman of that committee suggested or implied in looking at these matters and, through a proper forum, if it be the de-

gree, to consider them in a learned way, to bring in constitutional scholars who can give us a variety of opinions, im-
partial, nonpartial opinions about the Constitution and case law.

Then we do have an opportunity to consider whether what is established as a long-standing tradition and practice, whereby 41 Members of this body can prevent the other 59 from proceeding on something that would be passed by the majority vote, the merits or demerits of that position over a par-
ticular matter, but I certainly would not question any Member’s proper use of that just because I did not happen to like its application.

There were 69 of those measures taken in the last two years when we were in the majority; 69 times Senator Daschle had to move to proceed and file cloture when he was majority lead-
er to consider bills and amendments, to give to the minority that or some of the minorities, a way in which that was affected health care for senior citizens, veterans benefits, environmental pro-
tection, matters that had far more con-
sequence to many more Americans than any single judicial appointment to a Federal court.

I respect and appreciate the chair-
man of the Rules Committee and his thought on that matter. I welcome the chance to participate in that. I believe that is the responsible forum to review these matters and, if deemed necessary or desired on the part of those to con-

template, to recognize we have the right and responsibility.

We have been subjected independently by the men and women of our own States to do this job as each of us sees best, and I am willing to give anyone the benefit of the doubt who is doing so. That is our responsibility. That is our right.

I yield the floor.

The PRESIDING OFFICER. The Sen-
ator from Maryland.

Mr. SARBANES. Would the Chair please. The PRESIDING OFFICER. The Sen-
ator from Maryland has 15½ minutes remaining on the Democratic side.

Mr. SARBANES. I will address the various issues concerning the long-
term unemployed in this country. Be-
fore that, I will make a couple of comments about the judges.

Sixty-three of President Clinton’s nomi-
nees were blocked from consider-
ation. Four of President Bush’s nomi-
nees have been blocked. Twenty per-
cent of the Clinton nominees in the pe-
riod of 1995 to 2000, the period when the other side controlled the Senate, the committee and the floor were blocked and not given any opportunity to move forward. Many of those blocked were extraordinarily able people. Only four of President Bush’s nominees have been blocked. Many of us feel very strongly that what those people are imposing on us, that those people are being denied the chance to have positions in the government. That is extraordinary in the history of the United States.

In a sense, the period over the last 6 years of the last century when an in-
credible number of the President’s nominees were blocked by the other side of this country, that is the moment that we are at, that is the moment that was the genesis of the situation that people are talking about. Of course, the other side was able to do it in committee. They did not have to do it on the floor, they did it in the committee since they had a majority in the committee and they simply brought the curtain down at that point.

Yesterday, the New York Times ran an editorial entitled “Chatter in the Cave of the Winds.” I ask unanimous consent the full text of that editorial be printed in the RECORD at the conclu-
sion of my remarks.

The PRESIDING OFFICER. Withou-
t objection, it is so ordered.

[See exhibit No. 1]

Mr. SARBANES. I will quote part of it and then I will elaborate on this issue.

Senate majority Republicans might take a moment—or even a vote—to extend reassur-
ance to the nation’s most destitute citizens, who want full-time jobs but can con-
tend the benefits retroactively. But out there in real life, federal emer-
gency unemployment benefits are scheduled to expire on Dec. 31 with no sign of notice from the Republicans in Congress. A year ago, they blithely quit the Capitol and let the unemployed stew through the holidays before retroactively approving a benefit ex-
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tension that was far too modest.
choose to work part-time. These are people who want to work full time but cannot find full-time jobs so they have part-time jobs. That is almost 14 million Americans, those that are unemployed and those that are underemployed. In that 33rd month, since the recession began, at this point during the 1990s recession, every worker was eligible for a minimum of 20 weeks of additional benefit. The basic benefit is 26 weeks. We then seek to extend it if the labor market is not improving, so people can support their families. Actually, the benefit they get is less than 50 percent of what they were earning and in order to draw down an unemployment insurance benefit you must have built up an employment record. So by definition, you were working and you had a job, you lost your job, and then only do you get the unemployment insurance benefit. The benefit is designed to help carry you and your family through difficult circumstances.

Now we have 13 weeks of extended benefits but that pales in comparison with what was done in previous times. It certainly was not in the face of a labor market in which we are not recovering jobs. What are these people to do who lose their jobs, they start drawing unemployment benefits, the benefits run out, they have been looking for work, they cannot find work, and then they must go through the key negotiations. How do they support their family at a minimum level? They cannot do it.

As the New York Times said in this article:

After the tax-cutting binges President Bush and Congress engineered for the affluent, failure to renew the nation’s helping hand to the jobless would present a scandalous holiday scenario worthy of Dickens. More than talk, action is required.

They are absolutely right. Mr. President, 14 million American workers have exhausted their benefits and are unable to find work. They are out in the cold with no support. We now have over 2 million long-term unemployed. That is people who have been out of work for 26 weeks or more. When President Bush came into office in January of 2001, the number of long-term unemployed, people unemployed for more than 26 weeks, was 600,000. In October of 2003, it is just over 2 million. The number of long-term unemployed has tripled in the course of this administration. It now constitutes 23 percent of the entire unemployed population.

The last time such a large percentage of the unemployed were the long-term employed—in other words, people out of work for more than 26 weeks—was 20 years ago. This is the worst performance in 20 years, in two decades. Obvi-ously, the recession of these unem- ployment benefits and repeated efforts to do so have been blocked. The leadership is talking about leaving at the end of next week until next year. Of course, what that means is millions more will run out of their benefits and be unable to sustain their families.

There is money in the unemployment insurance trust fund for this purpose. That money is paid in, in good times, in order to address the situation in bad times. We need to make sure that money is not being used. It was specifically set aside for this purpose. The extension of unem- ployment insurance benefits is a policy we have followed in the past. It has support from both sides.

The benefits are for people without jobs. I am hearing lamentations about four people who did not get their Federal judgeships. They have other jobs. These people have no jobs.

We made repeated efforts to bring the legislation up. I will make such an effort again. There is legislation pending to address this issue in the Finance Committee. It would help these workers. It would help our economy. It would ensure that we did not go through the travail and the turmoil which occurred at the end of last year, as well. It would provide an additional 13 weeks of benefits to those who have already exhausted their benefits.

[From the New York Times, Nov. 12, 2003]
New Mexico Sen. Jeff Bingaman said Friday he has not made up his mind about backing continuation of the delay tactic, and echoed the Democratic indictment of the Honduran immigrant as a stealth conservative.

"Obviously, you become suspicious of a person's point of view if he won't answer questions," Bingaman said.

Let's get on past mere suspicions of Democrats and declare guilt by association. Estrada is the choice of President Bush. His nomination has been clouded by questions about Bush's than of left-leaning Democrats or those of Clinton's judicial nominees.

Feminist Majority President Eleanor Smeal, for one, doesn't need any more information about Estrada to know that in blocking him, "the Democratic leadership is giving voice to its massive base of labor, civil rights, women's rights, disability rights, environmental, gay and lesbian rights groups."

Oh, then this is about constituent politics. There's another constituent-oriented facet: Miguel Estrada is a successful immigrant, current front-runner to become the first Hispanic Supreme Court justice and an obvious role model in short, a poster boy for Republican recruitment of minorities away from the one, true political faith.

This isn't about suspicions; Estrada is the Democrats worst nightmare from a partisan perspective.

From a personal perspective, Democrats who have worked with him in the administration or high practice. Seth Waxman, Clinton's solicitor general, called Estrada a "model of professionalism." Former Vice President Al Gore's top legal adviser, Ron Klain, said Estrada is "genuinely compassionate. Miguel is a person of outstanding character (and) tremendous intellect."

During Judiciary Committee hearings in September, Estrada said: "Although we all have views on a number of subjects from A to Z, the first duty of a judge is to put all that aside."

That's good advice for a judge, and it's good advice for senators sitting in judgment of a nominee. Put aside partisan considerations; weigh Estrada's qualifications, character and intellect; end the filibuster and put this nomination to a vote.

Mr. DOMENICI. This editorial continues:

Feminist Majority President Eleanor Smeal, for one, doesn't need any more information about Estrada to know that in blocking him, "the Democratic leadership is giving voice to its massive base of labor, civil rights, women's rights, disability rights, environmental, gay and lesbian rights groups."

Oh, then this is about constituent politics.

Then there was another editorial in a New Mexico paper, the paper is a rather liberal newspaper, the Santa Fe New Mexican. The Santa Fe New Mexican editorial is entitled: "Estrada Tosses Towel; Pyrrhic Win For Dems."

So Senate Democrats got what they wanted—or avoided what they didn't want: Miguel Estrada has asked President Bush to withdraw his nomination to the U.S. Court of Appeals, for the District of Columbia Circuit.

The 41-year-old Honduran immigrant, who led his law class at Harvard, was a vastly better choice for the judiciary than any number of Democrats who slid onto the federal bench during the early Clinton presidency.

Now, with a GOP president and a bare Republican majority in the Senate, the Dems still are able to stymie the appointment of conservative judges reflecting the apparent wishes of the American electorate: There are too few Republican senators—or principled Democratic ones—to apply cloture to threatened filibusters over confirmation of Estrada and other qualified appointees.

Estrada was appointed to the appellate court in the spring of 2001. He's been in a kind of limbo ever since. Yesterday, he threw in the towel, saying it's time to devote full attention to his law practice and his young family.

We can almost hear the echo of hurrâas from Capitol Hill, where only four Demo- crats sided with 51 Republicans who quite properly saw him as an excellent appointment. New Mexico's Jeff Bingaman wasn't one of the four. The Senate has offered excuses about a lack of information on Estrada, who has been in the fishbowl since long before his nomination—but Bingaman knows darn well this is party politics at its lowest. Republicans have pulled similar stunts on Democrats during years past. This is payback time—or re-payback time; playing schoolyard games with our nation's system of justice.

For the Dems, this could prove to be a Pyrrhic victory: The day will come when a Democratic president's nominee might face treatment as shoddy as Estrada got. We can only hope the Republican Senate majority of that day will prove more gracious than their GOP predecessors—and today's Democrats.

Mr. DOMENICI. Mr. President, I just want to move, for a moment, to consider certain other nominees and talk about them too. There are too few Republican senators—or principled Democrat ones—to apply cloture to threatened filibusters over the confirmation of Estrada and other qualified appointees.

And it goes on to talk about various Senators and how they conducted themselves on this nomination. I ask unanimous consent that the editorial from the Santa Fe New Mexican be printed in the RECORD.

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

[From the Santa Fe New Mexican, Sept. 5, 2003]

Estrada Tosses Towel; Pyrrhic Win For Dems. So Senate Democrats got what they wanted—or avoided what they didn't want: Miguel Estrada has asked President Bush to withdraw his nomination to the U.S. Court of Appeals, for the District of Columbia Circuit.

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of Chicago Law School; circuit court clerkship, Carl McGowan of the D.C. Circuit Court of Appeals; Supreme Court clerkship, Thurgood Marshall; Federal Government service, Deputy Assistant AG.

Alfonso M. Luna: nominated by President George Bush; college, Drexel University; law school, Pennsylvania Law School; circuit court clerkship, Harry J. Friendly, Second Circuit Court of Appeals; Supreme Court clerkship, William J. Brennan, Jr.; Federal Government service, Special Assistant to the AG.

For none of those three are better qualified than Miguel Estrada, who had to wait more than 800 days before he gave up. I have 51 votes, that is the way you win. With 51 votes you win; with 49 you lose—but not when it comes to judges they do not like, just plain do not like—and they are not qualified, they just do not want them.

For some reason they have decided they are not going to let that person on, and no longer is the majoritarian rule the rule of the day. It is a super-majority. Then the time begins to run. Miguel Estrada had to wait more than 800 days before he gave up. I have just gone through the names of three. Two of them, 71 days for the third. Then we come to Miguel Estrada: nominated President George W. Bush; college, Columbia, magna cum laude; law school, Harvard Law School, magna cum laude; circuit court clerkship, Mr. President. I had an opportunity to speak last night and I want to have a chance to hear my friend from Ohio and I want to give him a full opportunity to speak. But here—I am here again; others have been here more often than I—because we are trying to put a stop to filibusters that are unprecedented in their nature. For the first time in the history of this institution, court of appeals nominees of the President of the United States have been filibustered to death on the floor of this Senate by a determined minority.

It is a usurpation of the Constitution. It is hurting the courts, and it is unfair to these nominees who are not only qualified, who not only should be confirmed, but who would, just a few years ago, have flown through this body because of their extraordinary qualifications.

I just want to address a couple points. One that has been made very often by some Senators who have been participating in these filibusters is that, in fact, they are really not doing anything that unprecedented or that bad because they have approved, they have allowed all but four of the nominees to go through. Well, that is just not the right way of looking at it. They set out to hurt, if you will, the big game, the court of appeals judges. So it is true, they have not been taking any shots at the rabbits, at the squirrels, at the district court judges. Those they have let through. But they have taken down or they are threatening to take down, through the filibuster, a quarter of President Bush's nominees to the court of appeals. They set out to hurt, if you will, the big game, the court of appeals judges. So it is true, they have not been taking any shots at the rabbits, at the squirrels, at the district court judges. Those they have let through. But they have taken down or they are threatening to take down, through the filibuster, a quarter of President Bush's nominees to the court of appeals. That is exactly what has happened here. I am pleased to speak for just a few moments. I compliment all of those who have taken much time over the last day and a half to speak to the issue, specifically as to these people, and generally as to how this process used this way is ruining the political process and making good candidates—let's make it superior candidates—subject to the whim of the 60-vote rule. I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. TALENT. How much time do we have remaining on our side?

The PRESIDING OFFICER. There are 15 minutes remaining.

Mr. TALENT. I am going to be brief, Mr. President. I had the opportunity to speak last night and I want to have a chance to hear my friend from Ohio and I want to give him a full opportunity to speak. But here—I am here again; others have been here more often than I—because we are trying to put a stop to filibusters that are unprecedented in their nature. For the first time in the history of this institution, court of appeals nominees of the President of the United States have been filibustered to death on the floor of this Senate by a determined minority.

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President Bush has had 29 court of appeals nominees confirmed. Twelve of them have either been filibustered or they are going to be filibustered tomorrow or there are threats to filibuster them.

He sent 46 down in total. Twelve have been filibustered or threatened to be filibustered, which is a quarter of his nominees. That is not a passing percentage in anybody's book, and it is unprecedented to have even one filibustered.

Second, Senators have said: Well, look, the filibuster has been used in the past, and that is because motions for cloture have been offered and passed sometimes in the past. There have been small groups of Senators who have tried to filibuster nominees in the past, and the rest of the Senate has said: No, we do not do that. We may not like the nominee, but we do not filibuster them. In every case where the leaders of both parties have supported motions for cloture, and cloture has been invoked.

They are using instances when the filibuster has been stopped by the Senate in the name of the Constitution, and in the tradition of the Senate to support their efforts where the filibuster has succeeded. They are turning the past on its head to support a present and a future which is completely inconsistent with the Constitution and the tradition of the Senate. It is wrong, and it is wrong to people involved.

I wish I had time today. Perhaps I will have time later to go through the quality of the nominees. The nominees have been the best in their field of law. They would be great judges. We need those judges on the courts.

Finally, Mr. President, and before I yield to my friend from Ohio, I just want to say that repeatedly it has been suggested by that group of Senators who are filibustering that we ought to go on to other business. In fact, they are upset that the process of the Senate is being obstructed.

Well, I would sure like to go on to other business, too. You can filibuster or not filibuster. There is no question under the rules of the Senate, Members have the raw power to do this. You can not do what is called having your cake and eating it, too. The minute that Members of this Senate decide they want to go on to other business, we can go on to other business. I just allow us a time agreement to vote. Allow us these periods of minutes after you do that, we are off to other business of the Senate, which all of us want to go on to.

In the meantime, please, if you are going to filibuster these nominees, at least do not complain about obstruction of the processes of the Senate.

With that, Mr. President, I yield the floor to my friend from Ohio.
appealed the cases, which again tells us something. When a voting rights case is not appealed or when a major case is not appealed, it certainly tells us something.

So we end up on the voting rights issue in only one case where it was appealed, in that particular case it was about attorney’s fees and, in the end, Judge Pickering was held to be correct anyway, and three other cases were not appealed at all.

Let me talk briefly about Judge Pickering and the civil rights cases. Every one of the civil rights cases—of the 26 cases we are talking about—every single one of them involved claims made by prisoners. I point that out not to say prisoners’ rights cases are unimportant; they certainly are important. We all know they are important. They can involve basic rights. But these are not the type of cases that we would normally associate, or at least the public would normally associate, with civil rights cases. We know them as civil rights cases, but I believe the general public would not think of them as typical civil rights cases. They were often procedural requests, sometimes requests for very specific relief.

For example, in one case, the whole issue was whether or not a prisoner had a right to use a certain type of typewriter. This prisoner wanted to use a typewriter instead of a regular typewriter, and that is what the substance of the case was about.

There were procedural issues there, and the court of appeals took a look at them. They were reversed, and we certainly understand that.

Again, I am not minimizing that, but I think we just need to put this whole case in its proper perspective.

Let me also note for the record that Judge Pickering was reversed, as we have said, in a total of 11 of the so-called prisoner cases out of an estimated 1,100 prisoner cases with which he dealt.

Let’s now talk about Judge Pickering’s employment cases. I will be very brief because I see my time is almost up. We need to look at both the employment cases, the Marshall case, and the Fairley case. In the Marshall case, Judge Pickering upheld an arbitrator’s decision reinstating an employee who had been fired from her job. In the Fairley case, the judge wanted to see whether or not the arbitration was done in a manner that allowed the worker to seek his employer’s disability plan for damages. In both cases, Judge Pickering ruled in favor of the employee.

The court said he was wrong about how he did it, wrong in the decision, and the court overturned him. But no one should use the employment case where he was overturned—these two cases—as in any way indicating that he is not sensitive to employees. He did, after all, in these two cases, rule in favor of the employees.

Judge Pickering is well-qualified. There is no doubt about it. His overall record as a judge is excellent. The specific cases cited as a concern do not show anything at all except that he is a human being who sometimes made some mistakes. I submit that virtually every district court judge that we look at and look at as carefully as we have looked at Judge Pickering, we would find similar reversals.

When we look at those specific cases, I believe there is no indication that Judge Pickering is hostile to civil rights, to voting rights, to employment rights, or any other type of rights. I believe there is no evidence at all that Judge Pickering substitutes his personal opinions for the law. In fact, the evidence shows that he clearly does follow the law.

Judge Pickering has testified under oath to the Judiciary Committee twice that he will follow the law and abide by the law, and Mr. President, his record shows that he will.

This is just an example of the debate that I think we ought to be having. If our colleagues across the aisle would allow us to have an up or down vote on these nominees, we could talk about the qualifications and criticisms of these nominees. We could talk about allegations and they could be supposed.

I encourage our colleagues to let us have a debate on the merits of the nominees. Then Senators can hear all the facts—both sides of the debate. And then they can make up their minds and vote—yes or no, just vote.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as I understand under the agreed procedure, the Senator from Hawaii and myself will have a half hour; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. KENNEDY. I yield myself 15 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. KENNEDY. Mr. President, I have listened with interest over the last 24 hours to those who have taken exception to the action that has not taken place in the Senate with regard to judges. I listened very carefully. Many of our colleagues have been extremely eloquent in their presentations.

As we are reaching the 24-hour point, it is important to understand exactly what our responsibility is in the Senate with regard to the appointment process. When we look at that, we will see that they expected us to exercise our own good, independent judgment. There are those on the other side who say, if the President sends up to the Senate, you better find a good reason not to vote for him or otherwise the President is entitled to that individual. That is not the case. That has been repeated time and time again.

To the contrary, if you look at the debates in the Constitutional Convention, our Founding Fathers weighed their debates and discussions believing that in the Senate should have the heavy hand in terms of the final judgment with regard to nominees. I will take a few moments to review that because it is instructive.

The Constitutional Convention met in Philadelphia from late May until mid-September of 1787. On May 29, 1787, the Convention began its work on the Constitution, and when the Virginia Plan was introduced by Governor Randolph, it provided that a National Judiciary be established to be chosen by the National Legislature.

Under this plan, the President had no role—no role—in the selection of Federal judges. What’s been pointed out by our colleagues on that side of the aisle say there never has been an instance where a circuit court judge was filibustered by the other side. I am a member of the Judiciary Committee, and I would be glad to sit down with my colleague and go over the 23 well-qualified nominees who never emerged from the Judiciary Committee to be considered on the floor of the Senate.

Nonetheless there are those who are listening tonight who may say, “My goodness, we have these nominees and they are not being confirmed. Isn’t this a one-way street, where now Democrats, perhaps a few Republicans, are not permitting the vote on particular nominees?”

I can remember very well the other side using the same rules to their own advantage with regard to judicial nominees, and history demonstrates that, as has been pointed out by our colleagues.

Rather than dwelling on that, I think it is instructive once more to think about what our Founding Fathers expected of this body with regard to the appointment process. When we look at that, we will see that they expected us to exercise our own good, independent judgment. There are those on the other side who say, if the President sends up to the Senate, you better find a good reason not to vote for him or otherwise the President is entitled to that individual. That is not the case. That has been repeated time and time again.

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James Wilson of Pennsylvania suggested an alternative: that the President be given the sole power to appoint judges. The idea had no support. John Rutledge of South Carolina said he was "by no means disposed to grant too great an influence to the President." James Madison agreed that the legislature was too large a body, and stated that he was "rather inclined to give the appointment power to the Senate—branch." This is the debate of our Founders. A group sufficiently stable and independent, as James Madison pointed out, to provide "deliberate judgments" on judges.

A week later, Madison offered a formal motion to give the Senate the appointment power to the Senate and the courts.

On June 19, the Convention formally adopted a working draft of the Constitution, and it gave the Senate the exclusive power to appoint judges. This was the thinking of our Founding Fathers.

We learn in that debate on the floor of the Senate, the Founding Fathers intended the Senate of the United States be a principal organ, obviously, in the consideration of these judges.

On July 18, the Convention reaffirmed its decision to grant the Senate the exclusive power. Wilson again proposed "that judges be appointed by the executive," and again his motion was defeated. The issue was considered again on July 21 and in the Convention for the fourth time and again agreed to the exclusive power of the Senate to appoint judges. In a debate on the provision, George Mason of Virginia called the idea of executive appointment of Federal judges a "dangerous precedent."

Not until the final days of the Convention was a compromise suggested. On September 4, 2 weeks before the Convention work was completed, the committee proposed that the President should have a role in selecting judges. It stated the President shall nominate and, by and with the Advice and Consent of the Senate, shall appoint judges of the Supreme Court.

The debate made clear, Mr. President, however, that while the President had the power to nominate the judges, the Senate still had a central role. Gouverneur Morris of Pennsylvania actually described the provision of giving the Senate the power "to appoint judges nominated to them by the President."

It's clear that the Constitutional Convention, which had repeatedly rejected the proposal to let the President alone select the judges, did not intend the Senate to rubberstamp for the President. And it is equally clear that, especially when the Senate is controlled by the President's own party, the Founders did not intend the Senate to roll over and play dead whenever the President tells them to.

We have approved 169. And only 4 have been rejected. That is a pretty good record for this President.

On the contrary, it is clear what the Founders would say to us today. They would say, "We gave you this power to use it whenever you think the President proposes judges who will not be beneficial to the Nation. We did not give you the right to use to exercise that power. We gave you the right to set your own rules."

And they did. And the Founders did not say, and did not mean that "the President can appoint whomever he wants to the Federal courts, as long as he gets the Senate to consent." If we did adopt a rule that allowed the President to do so, the Founding Fathers would look down on us and say, "Shame!"

"You are the Senate. If we wanted the President alone to be able to pick the judges, we would not have given you the power that we did in the Constitutional Convention. For 214 years, you have used that power wisely, and under the power we gave you, you have had the authority to say no to the President. That is what the Founding Fathers said.

As Senators, we have the obligation to say no to the President when we think he is wrong. We should not abdicate our responsibilities to the President or the Founding Fathers gave us. If we are true to our oath of office as Members of the Senate, we cannot abdicate the powers the Founders gave us.

We should not erase the rules which give us the ability to be the Senate and protect the independence of the Federal courts.

We exercise different judgments on Presidential nominees. The independence of the Senate and the courts is the essence of our Constitutional system of checks and balances that has served us so well throughout our history.

The Senate has never hesitated to exercise its advice and consent power. During the first 100 years after ratification of the Constitution, 21 of 81 Supreme Court nominations one out of four were rejected, withdrawn or not acted on. During these confirmation debates, ideology often mattered. John Rutledge, nominated by George Washington, failed to win Senate confirmation as Chief Justice in 1795. Alexander Hamilton and other Federalists strongly opposed him because of his position on the controversial Jay Treaty with Great Britain. A nominee of President James Polk was rejected because of his anti-immigration position. A nominee of President Herbert Hoover was rejected because of his anti-labor view.

When a President makes the request for a member of the Cabinet, it is time limited to the 4 years that President is going to be there. The President has the heavy presumption that he is entitled to his own advisers, and that is why the overwhelming majority of nominees by the Presidents for their Cabinet are approved. The same is true of regulatory agencies that may be a little bit longer, or go past a particular administration, and perhaps we apply a somewhat tighter and more stringent test, but we are talking about lifetime tenure on important courts of this land.

The DC Circuit Court has really been called another supreme court because they have the appellate jurisdiction on so many of the regulatory agencies. These appeals that come before that DC Circuit involve the rights of working men and women. They make the decision in terms of whether the workplace is going to be safe for all of those who go to work in their plants and factories. They are going to interpret whether the various legislation dealing with the environment is adequately enforced, along with a whole range of different issues that affect the health and safety and well-being of the people of this country.

Our friends on the other side say, "If the President nominates someone, why are you not rubberstamping it?" That is not what our Founding Fathers said or agreed to or instructed us to do. The President must make his own independent judgment and decision, and the fair judgment and decision, I believe, is whether these individuals who are nominated demonstrate a core commitment to the fundamental tenets of the Constitution of the United States. That is what this Senator looks for with a nominee.

When they will not answer the questions—but the administration knows what those answers are—or they have demonstrated over the last 20 or 30 years of the President's statements and deeds that they will not abide by the fundamental teachings of the Constitution, why in the world should we take a chance, in representing the people we do, to think they deserve a promotion to serve in these high courts? It should not be that way. The Founding Fathers never expected us to be that way, and we will not have it that way.

Recently, we had a very distinguished set of witnesses who wrote a magnificent book. It is called "Master of the Senate" by Robert Caro. In that book, he did an enormous amount of reading and studying of the views of our Founding Fathers and also of the early years of the Senate in order to put his historical figure, President Johnson, then-Majority Leader Johnson, into some perspective. I will just mention these lines which I think are very insightful about the Founding Fathers and what they believed this institution we really all about.

"The writings of the framers of the Constitution make clear that Senators, whether acting alone or in concert with like-minded colleagues, are entitled to use whatever means the Senate rules provide to vigorously contest a President's assertion of authority with which they strongly disagree."

One could say, in fact, that under the fundamental concept of the Senate as envisioned by the Founding Fathers, it is not meant the right, but the duty of the Senators to do that, no matter how popular the President or how strongly the public opinion poll of the moment
support the President’s stand on the issues involved.”

Then he continues:

“...in creating the new nation, its Founding Fathers, the framers of the Constitution, gave its legislature... not only powers, but also powers designed to make the Congress independent of the President to restrain and act as a check on his authority, (including) power to approve his appointments, even the minor appointments made within his own administration...

And the most potent of these restraining powers the framers gave to the Senate is:

...the power to approve Presidential appointments was given to the Senate alone; a President could nominate and appoint ambassadors, Supreme Court Justices, and other officers of the United States, but only 'with the advice and consent of the Senate.'...

...the Founders, in their wisdom, also gave the Senate the power to establish for itself the rules governing exercise of its powers. Unlike the unwieldy House, which had to adopt rules that allowed it to function, the Senate became the true deliberative body that the framers had envisioned by maintaining the ability of its members to debate as long as necessary to reach a just result. For more than a century, the Senate required unanimous agreement to close off debate. The adoption of Rule XXII in 1917 allowed a two-thirds cloture vote on 'measures,' but nominations were not brought under the rule until 1949."

In short, two centuries of history rebuts any suggestion that either the language or the intent of the Constitution prohibits or counsels against the use of extended debate to resist Presidential authority. To the contrary, the nation's Founders depended on the Senate's Members to stand up to a popular and powerful President. In the case of judicial appointments, the Founders specifically mandated the Senate to play an active role, providing both advice and consent to the President. That shared authority was basic to the balance of powers among the branches.

Surrendering such authority is not something which should be done just because of a Senator's point of view on the particular issues of the moment—because much more than the particular issue is involved.

Republican Senators are wrong when they say, "The President is entitled to have his own people on the courts." We know that history tells us the opposite. The Senate usually chooses to give the President broad leeway in appointing members of his cabinet and filling other positions in the Executive Branch. He is politically responsible for these appointees. They generally serve at his pleasure, and their appointments end at the end of his term in office. But appointments to the federal courts are lifetime appointments. Federal judges are able to fulfill their own constitutional responsibility because they are independent of both Congress and the White House.

The Founding Fathers wanted the checks and balances, the independent judiciary. The President, as the executive, the Congress with the House and the Senate, and an independent judiciary. It does not belong to the President. It does not belong to the Congress. It belongs to the American people, and both the President and the Senate have an important responsibility to make sure it remains independent.

I yield the remaining time to the Senator from Hawaii.

Mr. Akaka. Mr. President, I have spent the past 23 hours listening to the debate which was billed as a debate on judicial nominations and has turned into a semantics fest over who is responsible for the delayed enactment of legislation important to both sides of the aisle. One thing is clear to me, this is not getting us any closer to enacting the legislation we have identified as important to the Senate.

We are devoting 30 hours to debate the fact that the Senate has passed only 98 percent of President Bush's nominees, not 100 percent. I take my responsibilities as a United States Senator very seriously. My understanding is that I am being asked to approve the President with my advice and consent regarding the individuals he nominees for a lifetime position to the federal judiciary. It troubles me that we are spending 30 hours to discuss the fact that we have not acted on 2 percent of the President's nominees to the federal judiciary.

We are talking about 4 individuals, 4 individuals who have jobs, while 3 million people have lost jobs since President Bush took office. We should be talking about jobs. We should be debating and voting on legislation to increase the minimum wage. We should be finishing our appropriations bills. We should be talking about ways to strengthen our manufacturing base. We should be discussing extending unemployment benefits for the long-term unemployed, the 3 million Americans who have lost their jobs during the Bush presidency.

If we were to start talking about legislation that is important to us as individual Senators, we could be talking about Federal recognition for Hawaii's indigenous peoples, Native Hawaiians, an issue of extreme importance to my constituents in Hawaii. We could be talking about ending mutual fund abuses for investors or promoting financial literacy for our students. We could be talking about how to fund the promises we extended when we passed the No Child Left Behind Act which has been severely underfunded since its enactment.

Instead, we have spent 23 hours talking about 4 judicial nominations, 4 nominations out of 172, which have not been approved by this body. We have spent the past day blaming each other for the lack of progress on the issues that we have identified as priorities. It is sad that we have come to this point. During my tenure in the Senate, we have been able to work in a bipartisan manner to achieve our goals.

I take particular offense, to the claims that have been made about Democratic Senators being anti-Semitic, anti-Catholic, anti-Hispanic, and anti-African-American, merely because we refuse to approve 4 of the President's judicial nominees. Since when do we cast aspersions simply because we are unable to get our own way? As a former principal and teacher, this is not behavior that I would condone in the classroom, much less on the floor of the Senate.

My colleagues from the other side of the aisle argue that this is the first time a filibuster has been used for a judicial nominee. Republicans openly filibustered 6 judicial nominees on the floor of the Senate, 5 of which were circuit court nominees.

There seems to be a theme that my colleagues on the other side of the aisle have not engaged in efforts to block a judicial nomination. I want to share with my colleagues a situation I encountered during the 104th and 105th Congress. An individual from Hawaii was nominated to the U.S. District Court, District of Hawaii. This was a nominee strongly supported by both Senators from Hawaii. This nominee had a hearing before the Senate Judiciary Committee and was reported favorably. However, this is where the process stopped for a period of two-and-a-half years.

A colleague from another state placed a hold on this nominee for over 3 months before allowing us to confirm this nomination. In effect, a Senator from a State thousands of miles from Hawaii blocked a district court nominee that the senior Senator from Hawaii and I supported. This colleague is now the attorney general of the United States, and happens to be a good friend of mine. I found this situation to be so unusual, that a colleague from another state would place a hold on a district court nominee from my State when both Hawaii Senators strongly supported the nomination. I found it highly ironic that the person who placed that hold is now in a position of great importance in this administration. I raise this issue to dispute the notion that this is the first time a nomination has been blocked, after the Senate Judiciary Committee favorably reported the nomination to the Senate for consideration.

I could also speak about the nomination of Justice James Duffy to the United States Court of Appeals for the Ninth District as an anti-affirmative action nominee, described by his peers as the "best of the best," he had strong support from Senator Inouye and me to fill Hawaii's slot on the Ninth Circuit. Yet, Justice
Duffy never received a hearing in the Senate. Seven hundred and ninety-one days without a hearing. Justice Duffy is one of the well-qualified and talented men and women nominated during the Clinton administration, individuals and bipartisan and home-state support, whose nominations were never acted on by the Senate. In back of me are pictures of those, and Mr. Duffy's picture is on the chart.

The last person I will mention is Richard Clifton, who is now serving with the U.S. Court of Appeals for the 9th Circuit. Richard Clifton was nominated after President Bush withdrew Justice Duffy's nomination. Richard Clifton served as the Hawaii State Republican party counsel. While I don't necessarily agree with all of his views, I support his nomination, and he was confirmed within a year of his nomination.

Ninety-five percent of Federal judicial seats are now filled, creating the lowest vacancy rate in 13 years. So let's set aside the things we're not talking about—jobs, education, Medicare, minimum wage, unemployment insurance, and helping the poor.

We are squandering valuable time that could be used to address matters of great importance to thousands of Americans. I am honored to cosponsor legislation offered by the senior Senator from Massachusetts, Mr. Kennedy, to raise the minimum wage to $8.88 an hour to equal the purchasing power of the statutory minimum wage in 1968. A full-time worker paid the minimum wage earns about $9,000 below the poverty level for a family of three. This is not right.

We should not only be raising the minimum wage so that employees working full time are not struggling to stay above the poverty line. We should also extend the Temporary Extended Unemployment Compensation program. This program, which was enacted on March 9, 2002, provided up to 13 weeks of federally-funded benefits for unemployed workers in all states who exhausted their regular unemployment compensation benefits. In addition, up to an additional 13 weeks for certain high unemployment states that have an insured unemployment rate of 4 percent or higher. The program has been extended several times, with the latest extension enacted into law on May 28, 2003. While this program will be phased-out through March 31, 2004, the program actually ends on December 31, 2003. Although employment has risen, the national unemployment rate has not declined by 6 percent. In October 2003, the Department of Labor has indicated that 2 million unemployed persons were looking for work for 27 weeks or longer. This is greater than the 13 weeks of regular unemployment and greater than the additional extended unemployment benefits. We should be doing more not just for our men and women who are fighting our war on terrorism, but for those who are fighting the war on poverty.

My time is almost up, so I will end here. In a Senate where the divide between the majority and minority is held by a mere vote, and that division reflects the viewpoint of the American body politic at-large, it is imperative that we work together to resolve so many of the issues that are important to our constituents. When it comes to judicial nominations, the confirmation rate of 98 percent clearly shows that we, in the minority, are doing what we can to work with the majority in upholding our constitutional obligation to provide advice and consent to the President on judicial nominations. I can only hope we achieve a 98 percent rate in enacting the laws addressing funding for education, healthcare reform, Medicare reform, increasing the minimum wage, extending unemployment insurance, and providing Americans with the financial tools to be successful.

Mr. KENNEDY. How much time do we have remaining?

The PRESIDING OFFICER. The minority has 1 minute remaining.

Mr. KENNEDY. I thank my colleague and friend. He mentioned the increase in the minimum wage. It has been 7 years since we have increased the minimum wage. In that time, we have also increased the pay for Members of the Senate five times, but we are denied the opportunity to increase the minimum wage for working families in this country. I believe the Senate is just about to the point where they are responsible for doing it. They have to stand up for that. But the divisiveness and some elements of obstruction are not new.

We have an opportunity with this debate, and we are all exhausting ourselves talking, trying to come up with a real bipartisan resolution. I hope we can end the debate by stepping back and coming up with a set of rules that will be fair to whoever is the President and whichever party controls the White House. If we could do that, then we could clear these nominees for a vote.

We are coming to the end of President Bush's term. We don't know who is going to be President a year from now. But we know that President deserves a better procedure than we have given this President. Now is the opportunity to do that, and then we can get on to the other business of the Senate. I encourage both sides to do that, and I thank my friend from Georgia for yielding.

Mr. CHAMBLISS. I thank my friend for his very insightful comments, as always.
I yield such time as she may consume to the Senator from North Carolina, Mrs. DOLE.

Mrs. DOLE. Madam President, when the Constitution was drafted so many years ago, it outlined a process by which the President of the United States would nominate judges with the "advice and consent" of the U.S. Senate. The filibuster expands the Senate's advice and consent role in nominations well beyond what the Constitution envisioned.

And for too long, politics has prevented the Senate from doing its constitutional duty.

The judicial process is obviously gridlocked. Qualified candidates have been nominated only to find that they are unable to get proper consideration on the Senate floor. In the meantime, burgeoning court dockets, delayed trials and overworked judges have become the norm for far too many of our courts.

This simply isn't right. Every President, Republican or Democrat, deserves to have his nominees voted on. Every Senator has a responsibility to exercise his or her constitutional duty to vote on the nominees. Each nominee deserves a hearing, a committee vote, and an up-or-down vote on the Senate floor. Americans deserve courts that are staffed with qualified judges, and the process should be absolutely transparent.

I was sworn in as a U.S. Senator to represent 8 million North Carolinians. In doing so, I took an oath to fulfill the President's constitutional duty to vote on each nominee. That is very important to me and to my constituents. The Constitution calls on all Senators to give their advice and consent—not one Senator with a blue slip, not a group of Senators on the Judiciary Committee, but all 100 Senators.

President Bush has said that each judicial nominee deserves a vote within 180 days of his or her nomination. Unfortunately, that is not the case for several of our excellent North Carolina nominees. Right now, we have three candidates whose nominations have been languishing in the Senate.

Terry Boyle was first nominated to the 4th Circuit Court of Appeals in 1991—and then again in May 2001—this means he has been denied the courtesy of a vote in the Senate for more than a decade. Let me make that clear—More than a decade. The 4th Circuit hears federal appeals from North Carolina, South Carolina, Virginia, West Virginia, and Maryland. North Carolina is the largest State in the 4th Circuit, and historically the number of judges roughly corresponds with population. By this measure, we should have four to five judges on the court. We have only one. This seat has been vacant so long it has been declared a judicial emergency, so it is imperative that we act now.

And Terry Boyle is extremely well qualified for the job. He is Chief Judge for the U.S. District Court in the Eastern District of North Carolina, having served on that court for 17 years. He was designated to sit with the court of appeals 12 times, and he has authored over 100 opinions. Everett Thompson, an Elizabeth City lawyer and a Democrat, said this of Terry Boyle: "I think he is really one of the best trial judges I've ever appeared before. He's a student of the law, he works hard, he's bright, he's fair. And I never saw him be political about anything at all."

And there is Dr. JIM Dever, former Editor in Chief of the Duke University Law Journal, nominated to serve on the U.S. District Court for Eastern North Carolina. How long should a nominee have to wait for a hearing? Three weeks? Six week? Six months? This distinguished attorney has waited 18 months just to get a hearing. The seat has been vacant for almost 6 years—current, the longest district court vacancy in the country. And the Eastern District is an area where his skills and expertise are desperately needed—this vacancy has been a judicial crisis. And until the recent confirmation of Louise Flanagan, there were only two full-time judges there. The caseload got so heavy last year that U.S. District Judge Malcolm Howard had to continue seven civil cases because of the pressing criminal docket, which takes precedence by law. In an order announcing his decision, Judge Howard wrote, "For more than two years, this four-judge authorized court has functioned with two active judges. The result over time has been that civil and criminal, has become almost insurmountable." Mr. President, there hasn't been one single objection raised about JIM Dever's qualifications. He has broad bipartisan support. Robinson Everett, a Duke Law professor, former Governor and chief judge of the Court of Appeals of the Armed Forces, describes JIM Dever as having "all the requisite qualifications"—"he will be a superb jurist."

And Bob Conrad is a well-respected U.S. Attorney nominated in April to be U.S. District Judge for the Western District of North Carolina. He is sorely needed. This is a district that had one of the highest caseloads in the country for the sixth year in a row. Bob Conrad is a law enforcement officer. He is highly regarded by his colleagues—Republicans and Democrats. He is known for his prosecution of a cigarette smuggling ring funding the terrorist group Hezbollah. In 1999, he was appointed by the Attorney General as the point man for a Justice Department Task Force looking into illegal funding raising on the campaign trail. Roy Coo per, the Democrat Attorney General for North Carolina, said of him, "Bob is a straight shooter. We are from different political parties, but I believe he is a student of the law and his decisions are not affected by partisan politics at all."

All three North Carolina nominees come with superb credentials, yet none has ever been considered by the Senate Judiciary Committee or, of course, the full Senate. This is a fairness issue. It raises the question of whether or not the Senate's current practice of the filibuster is fair to our judicial system.

If a Senator believes a nominee is not qualified, then they have the confidence to convince fellow Senators to vote against him. But at least take a vote. I trust my colleagues will vote based on a nominee's qualifications, like integrity, fairness, intelligence, work ethic, and adherence to the Constitution. And judicial temperament. We owe it to the constituents to come to a decision on each and every judge. And that simply isn't happening in the U.S. Senate.

There are a variety of ways that nominees have been held up in the Senate over many years. But we have reached an unprecedented level with the filibuster of judges. Instead of continuing a trend of retaliation, we have the ability to stop this downward spiral in its tracks. If we don't, the loser will be justice, the hundreds of thousands of crime victims in the United States and the judges who are overworked and unable to meet the demands on their courtrooms. And common sense tells us that many of America's highest courtrooms don't have judges to run them, and as a result, the legal system simply can't function. Yes, justice delayed is justice denied.

Mr. LUGAR. Madam President, I thank the distinguished Senator from Georgia. I thank him for his leadership throughout this debate and his extraordinary contribution to our understanding. I likewise appreciate very much the testimony of the distinguished Senator from South Carolina with specific references to remarkable nominees, and the distinguished Senator from Missouri, who preceded the Senator from North Carolina, with his insightful comments.

I would like to take a slightly different approach in my speech. I believe this debate is about the thought that we ought to have a vote up or down on each nominee. That is very important to the Senate, to our country, for fairness to the nominees and to the strength of the judiciary.

It has been my privilege to serve almost 27 years, 15 of these years with a...
Republican President. The custom I knew as a young Senator and now in whatever age I am at is that you have a responsibility: If you are going to make recommendations to the President of the United States, do so with care.

In the first 25 years of my career, I appointed a nominating committee in Indiana made up principally of very distinguished attorneys and judicial figures for whom I had respect and from all over my State. I knew these people well, and they were very helpful in identifying, each time a judicial vacancy occurred, several nominees.

Without fail, I presented all of these nominees to the President, and his staff sifted through them and in each case came up with one of the nominees, frequently the one recommended first by the panel I had suggested. And thank goodness, each one of these nominees had an up-or-down vote, usually in consideration by the full Senate. I had found that for granted, but I saw coming along the horizon a very different story in the current workings of the Judiciary Committee.

I have every respect for that committee and its members and for those who have served as chair and ranking member of the committee. I think there is a crisis in that committee which is very important for us to be thinking about. I believe that presently a good number of members in the committee on both sides of the aisle deeply regret what has been occurring in the committee.

Nevertheless, once again, on May 15, 2002, I was confronted with the news that Judge William Lee and Judge James Moody would both be retiring. I appreciated that those vacancies, two of them, were going to come in to the particular milieu about which we are now talking.

So on this occasion, I took the responsibility personally to write to the press throughout our State that we had a very substantial opportunity ahead of us. I outlined all the qualifications I could see of a Federal judge and, with great cooperation of the press, invited every well-qualified person to apply. The applications the candidates filled consumed tens of pages, including substantial writings and often the statements they had made in their professional care.

Over the course of 4 months, ultimately 15 serious candidates emerged. I personally read all of their statements carefully. Those 15 candidates included 6 State judges, 4 U.S. magistrates judges, 2 attorneys in private practice, 1 Federal prosecutor, 1 Indiana prosecutor, and a legal professor. Their ages ranged from 35 to 61 and they represented 11 counties across our State.

After taking a hard look and at all of these candidates, I interviewed, over the course of an hour or 2, 5 of the nominees I thought were the most promising. In those interviews, I was interested principally in their professional skills, but likewise I had read the opinions of these nominees. I did not ask them questions on social issues in America today, on political issues, on foreign policy issues. I did ask them about their work, the characterization of how they would fulfill their responsibilities.

Following all of that, I submitted three names to the White House, and two of those persons were in fact nominated. They were Philip Simon, an assistant U.S. attorney and chief of the criminal division in Hammond, IN, and Theresa Springmann, a U.S. magistrate judge from Hammond, IN, this being the northern half of that State, that particular district that was involved.

In fact, I have nominated a third, whom I shall not indicate in this address. But President Bush, in fact, did send those two nominees I have cited, Mr. Simon and Ms. Springmann, to the Senate.

Philip Simon, I had found and the Senate Judiciary Committee discovered, had a remarkable record as a U.S. attorney. He was chief of the criminal division and responsible for all criminal prosecution in the Northern District of Indiana. He supervised and participated in prosecutions involving large-scale drug distribution rings, illegal firearms trafficking, white-collar fraud cases, environmental crime, and mob-related racketeering cases. He was in charge of the prosecution task force in Lake County, IN, which was very vigorous. He has been the recipient of a number of awards and commendations. The mutual insurance companies of Indiana presented an award to Judge Simon for his work to combat insurance fraud. He was given the Directors Award by former Attorney General Janet Reno, the highest award given to a U.S. attorney by the Department of Justice in the last administration.

Judge Springmann was the first woman to be made partner at Spranger, Jennings & Doherty, the largest law firm in northwest Indiana. She followed this up by becoming the first woman judicial official in the Northern District of Indiana, presided over 30 civil jury trials, 10 civil and criminal bench trials, and conducted 300 settlement conferences for the district court. She received a number of commendations and the highest rating from the Lake County Bar Association.

At this point, I decided to write to Senator HATCH and Senator LEAHY, chairman and ranking member of the committee. Beyond that, I went to both of them for personal conversation about these nominees, to explain the procedure and my own criteria, at least, in making these suggestions to the President.

In fact, on March 12 of this year, Judge Springmann and Judge Simon were given hearings; but prior to that time, I approached Senator EVAN BAYH of Indiana, and I gave to Senator BAYH the total records of these nominees, so that he might see exactly the same applications I had examined, the same opinions. I asked him for his support of these nominees, and in fact he gave that. He appeared with me before the Judiciary Committee on behalf of these two nominees.

Perhaps we had an unusual situation in Indiana, but I point out that I was pleased the Judiciary Committee acted promptly on the nominees and the Senate. There had been a gaping hole in the Northern District of Indiana judiciary lineup, in fact, was promptly filled, even after the departure of the two distinguished judges. Now, that will not work for every situation, and there may be occasions, as a matter of fact, when the President of the United States has nominees in mind, as he takes a look at a particular State, that the Senator from that State may not send. Indeed, my three nominees might have led to the President or his people saying: Go back and try again and see if there are not other persons among these distinguished people you have nominated who more fit the idea of what I believe ought to be on the bench in America today. I recognize that.

But it was very important to my constituents in Indiana that we have the caretaking of these judges—continuity in that regard. It was very important that they knew the criteria, the character, the whole process, that it was totally transparent and played out over several months with an enormous amount of publicity.

Sadly enough, the Northern District of Indiana has an extraordinary number of political corruption trials going, with problems of gang-related crime from Chicago and the Illinois border, and sometimes from Michigan and sometimes from - the whole process, that it was totally transparent and played out over several months with an enormous amount of publicity.

This is why the selection of people in this particular business—where there was enormous fraud, abuse, and corruption—was especially important and the civics trust in these judges is especially important. They have been serving for several months with distinction, as I anticipated they would. There was in fact a recognition at the time they were sworn in by the total community, and through that area, which brings a total Federal emphasis quite apart from the local situations that might have been involved. These were controversial areas of turmoil, not the placid situation that more characterizes a State.

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The PRESIDING OFFICER. The Senate from Maryland is recognized.

Mr. CHAMBLISS. Madam President, I thank the Senator from Indiana. As always, he has provided great insight into the way in which judicial nominees are best handled. He does it in a way in which all of us function. It does work. Particular instances we have had on the floor under consideration have also gone through a similar process, where the President has picked nominees who are great jurists and great men and women.

Unfortunately, we are having to go through the exercise that we are having to go through to hopefully seek the cloture and to vote to ensure that these men and women get an up-or-down vote.

I want to talk quickly, in the remaining time we have, about two of the nominees.

I had the opportunity to visit this afternoon with the Honorable Janice Rogers Brown, who is a justice on the Supreme Court of California, whom the President has nominated for a position on the DC Court of Appeals. Justice Brown has a very distinguished 26-year legal career, all but 2 of which she served in public service. She has a great Horacio Alger story to tell. She was born in a tiny community called Greenville, AL, outside Montgomery. She grew up poor, as I did and Senator Alexander did, at a time that was very difficult. She made the best of the conditions under which she grew up and she survived in a situation which a lot of people didn't survive.

I was so impressed not only with her legal background and her educational background but just with Janice Rogers Brown as a person. She is just a great lady. For her to go through what she is going through now, for one simple reason—that reason being nothing to do with any particular decision she has rendered in the Supreme Court of California. The only reason she is going through what she is going through now is because of a filibuster. I have now seen a number of people in which she challenged the young people in that audience and, as a result of that, she is now being filibustered or is in the process of coming to be filibustered by the Democrats. I urge you to consider the thoughtfulness voting positively on the cloture motions we are going to have tomorrow.

Mr. CHAMBLISS. Madam President, I yield the floor.

Ms. MIKULSKI. Madam President, I appreciate the opportunity to participate in this debate with my distinguished colleagues. I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Madam President, I thank the Senator from Indiana. As always, he has provided great insight into the way in which judicial nominees are best handled. He does it in a way in which all of us function. It does work. Particular instances we have had on the floor under consideration have also gone through a similar process, where the President has picked nominees who are great jurists and great men and women.

Unfortunately, we are having to go through the exercise that we are having to go through to hopefully seek the cloture and to vote to ensure that these men and women get an up-or-down vote.

I want to talk quickly, in the remaining time we have, about two of the nominees.

I had the opportunity to visit this afternoon with the Honorable Janice Rogers Brown, who is a justice on the Supreme Court of California, whom the President has nominated for a position in the Department of Justice. That is why this debate is so important.

As we go through this, consider that the Senate, I will tell the guys at Walter Reed that we didn't say that to them, but I say to you. They are so brave and they cannot wait to get back on their feet. Some want to get back to their unit. They are going to come back to the VA. We cannot abandon these soldiers, sailors, and marines who are coming back from Iraq either, bearing permanent wounds of war or the permanent impressions of war on them. We have to have a VA. This is why we need to move our legislation forward promptly, expeditiously, on a bipartisan basis.

We are going to do all we can to support them. Those men and women look so young, so fragile. They are so brave and they cannot wait to get back on their feet. They are doing a fabulous job at Walter Reed. We are going to do all we can to support them. Those men and women look so young, so fragile. They are so brave and they cannot wait to get back on their feet.
bet we do. That is why we passed 168 judges already. With these four, with the qualifications that are so thin and troubling and these other issues, I don't think so.

I want to talk about the priorities. Fortunately, but because of the vigor of Senator Byrd and the cooperation of Senator Stevens, we are going to be in the Chamber tomorrow. We do have priorities. I spoke about veterans health care. You also know we have really the major issues in—housing. Our communities need help. We are ready to move funds such as the community development block grant. This is money that goes into local communities, whether it is a big city such as New York or the small communities of Alaska, providing help to build childcare centers, rehabilitation of dilapidated properties. CDBG, last year, created over 100,000 jobs. When we asked for 2 hours, we were standing up for that. When we look at housing for the elderly, most of it is built and operated by faith-based organizations, such as the Associated Jewish Charities, Associated Catholic Charities, the Lutherans. It is wonderful because they take small amounts of Federal dollars, very little, and they build with compassion. They not only run programs, they run them with great compassion.

These are the things we should be spending hours on the floor advocating. That is why we also worked to have funds to start helping them. I wanted to talk about the Chesapeake Bay. Last night, I didn't talk about how we needed to protect the bay because we were short of time. People wanted to stand up on how they want to protect something about these four judges in the filibuster.

How about the National Science Foundation? That needed attention last night, too. This is the one that invests in groups such as biotechnology and that whole area. Nanotechnology is a whole new field of inventing subatomic particles. I said to the Senator from North Carolina yesterday when she was presiding, our ears, Madam President, this will contain all the books in the Library of Congress 20 years from now. That is what nanotechnology means. Taking one pill—you can take everything from your heart rate to your blood sugar, and also make new metal that is 10 times lighter than steel and 10 times stronger.

I just lost thousands of steel jobs—thousands—and they are losing their pensions and their health care. Maybe with nanotechnology, we will have a new kind of metal mill and we can bring manufacturing back to our country. Instead, we are sending our jobs on a fast track to Mexico and a slow boat to China while we arerowing the Senate down in this 30-hour process and squandering time and not focusing on national priorities.

I don't want to diminish what we are doing on judges. The judiciary is a separate and independent branch of Government. This is why we need to have the best of the best.

Our courts are charged with safeguarding the very principles America stands for: justice, equality, individual liberty. That courthouse door must always be open and when someone walks through that door they have to find an independent judiciary. I want to be sure when somebody walks through that courthouse door they not only get a fair trial and a fair hearing, but they know that person providing it is the best of the best.

The Senate does have an important and equal role in the confirmation of judges. There is an advise-and-consent clause. It doesn't say sit around and rubberstamp. There is nothing in the Constitution that talks about 180 deadlines. It says give advice and consent.

We gave advice, but we do not give our consent on four individuals. When I look at judges, I have three categories: judicial competence, integrity, and commitment to the core constitutional principles.

My senior colleague and I have just supported three Republican judges from Maryland. We did it with enthusiasm. One was Judge Titus, whom the Senate confirmed just a few days ago. He is a brilliant man, very esteemed, involved in the Maryland bar. He could go on the Fourth Circuit Court of Appeals.

Another we backed in committee and on the floor was Judge William Quarles, an African-American jurist who I predict will go far. A scholar with a touch of the people. He has a unique touch.

We also backed someone unique, a man who chaired the Republican Party in Maryland. He actually ran against a Democratic attorney general and Senator Sarbanes and I signed the blue slips with a flourish and appeared before the committee. Why would we do that? That is what the American people expect. He is a fantastic person and an excellent judge. He was fabulous as the U.S. Attorney. He brings legal ability, writings, et cetera, Look, we said, let bygones be bygones, he would make a great judge, and we are not going to stand on the party. This is the way Sarbanes and Mikulski have operated.

But guess what. Now we get to the court of appeals. What a process this has been. First they sent us a gentleman who wasn't even a member of the Maryland bar. He lived in Maryland, but we don't think ZIP Codes are the only qualification. We think you have to be a member of the Maryland bar and participate in the Maryland legal community. So we rejected him.

The next person they sent was on the staff of Judge Gonzalas. We felt that was a little—it was an excellent job for him, but a little thin for the court of appeals.

Guess what. Now we have been sent a Virginian. You might say, Is there anything wrong with being from Virginia? No, as long as it is the Virginia seat. It is by tradition that there are geographic seats on the court of appeals and we want ours. My colleague Senator Sarbanes and I are going to fight that on the basis of geography. There are many other things about Mr. Allen that are troubling about his background, but right now our battle will be because this should be a Maryland seat.

I have voted for Republican judges and I voted for Republican judges on the Court of Appeals in Maryland. There is Judge Niemeyer, an excellent judge. I supported him for the district court and now on the court of appeals. When Judge Dianna Motts went to the court of appeals I didn't even know party she was from. You know what, I didn't care.

Here we are, arguing over a process. We are squandering our time, while pressing national needs are here. I would say, let's move on. Let's get back to the business America wants us to focus on. We can't have food fights and so on in the Senate. I have worked with so many of my colleagues on a bipartisan basis that I would like to get the momentum back for that type of action.

Tomorrow when I get another chance at VA-HUD, I look forward once again to returning to work in the Senate that tries to move bipartisan legislation. When it comes particularly to national security and the people who defend America, we put party aside and we are the red, white, and blue party. Maybe we need to start acting like that in the Senate on every issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts, Mr. Kennedy, Madam President, as I understand the allocation of time, we have the remaining time, am I correct? The PRESIDING OFFICER. Yes, 15½ minutes.

Mr. KENNEDY. We have 15½ minutes.

As my friend and colleague from Maryland pointed out, we have been listening to our friends on the other side of the aisle for the past 24 hours. After we have listened to that, we still come back to the fact that 98 percent of their judges have been approved and 4 have not, and the Constitutional Convention never expected us to be a rubberstamp. We are faced on the other side by the prospect, at least, of changing the rules of the game even though those on the other side have used the system and refused to permit consideration of a number of judges. They did that in the Judiciary Committee of which I have been a member for many years.

It is interesting to me as we have gone over that ground so many times, our friends on the other side would be so interested and concerned about four individuals who have lost their jobs when we are facing so many other Americans out there who have lost their jobs and are really suffering.

When we were talking about numbers, I mentioned the recent figures of the Department of Agriculture that say tonight there are 13 million children who
are going hungry. That is Department of Agriculture statistics. Have we heard over the period of the last 24 hours ideas or suggestions or recommendations about how we are going to deal with the problems of hunger in children? That is happening tonight, 13 million Americans.

The other side is talking about four judges—four individuals who make more than $100,000 a year. What about the 13 million hungry children? Have we talked about that?

How many of us have we talked about the 9 million Americans who are unemployed? There are 1.4 million who have already lost their unemployment compensation, with all the implications of that. They can't buy health insurance, they can't put food on the table, they can't pay the mortgage, they can't buy a birthday present for their children, they can't celebrate any kind of holiday for any of the members of their family. They are hard-put and hard-pressed. Have we talked about that for those individuals?

How about the millions of Americans who do not have health insurance today? How about the millions of Americans who do not have health insurance, hundreds of thousands of them who have lost their health insurance today, and all of their concerns for their families? How are they going to be able to deal with medical bills? Have we talked about that?

The escalation of the cost of health care—have we talked about that and what that means to families? Have we talked about families who have gone into bankruptcy because they can't pay their medical bills? That affects 2 million Americans every year. We talk about four judges; we don't talk about 2 million Americans who go bankrupt every year because of health care costs.

We don't talk about that.

We haven't talked a great deal about the 13 million unemployed who have contributed to the unemployment compensation fund, and starting the end of next month—and we are in the final moments and hours of this session—80,000 a week are going to lose their unemployment. This is at a time when the unemployment fund has $20 billion in surplus.

We are in the final hours, as the Senator from Maryland has pointed out. Have we talked about what is going to happen to them? Don't you think they are concerned about whether the Senate is going to take any action in the final hours? Do we demonstrate any anxiety about what is going to happen to their families? I haven't heard a great deal about it from our friends on the other side. I haven't heard a great deal about it.

We haven't heard a word from the other side about doing anything about increasing the minimum wage. It has been 2 years and we have increased the minimum wage 7 years have gone by, and we can't get a vote on it in the Senate. The other side brings up a bill like the State Department reauthorization and I offer the minimum wage as an amendment and the majority Republicans pull the bill to deny us the opportunity to vote on it. I mean, if we are going to get indictment about the rules of the Senate, come on. Come on.

Let's vote on an increase in the minimum wage. All of those on the other side who said, "Let the majority have a chance, let's have a vote on an issue, let's have a vote on this, let's have a vote on that," we say, "Let's have a vote on the increase in the minimum wage. We can't have a vote on the increase in the minimum wage. We couldn't even get a vote now on the question of extending unemployment compensation. Oh, no, we can't do that. No, no, we are not going to be able to do that. We can't get a vote on hate crimes. No, no, we can't. We have to study that some more."

I mean, come on. Twenty-four hours and you are going to continue for another day? Do you want to pontificate about the injustice that is being perpetrated when you have all this taking place across this country? The anxiety and tremendous frustration and the sense of hopelessness that takes place across this country, and you refuse to let us have a vote on the increase in the minimum wage?

This is the chart on the minimum wage. This is what is happening to the minimum wage in the United States of America. This blue line indicates the purchasing power. It was almost $8.50 back in 1968. It is now down to, without the increase, $4.95 in purchasing power this year, without any increase. It will be just about the lowest it has ever been.

Who are the minimum wage recipients? Here we go. Here is another chart that shows the minimum wage no longer lifts a family out of poverty—

from 1972 through 1982, there were 2 million people in the parks with the poverty line. We said people who want to work and can work will work 40 hours a week, they will be able to get out of poverty. Look what has happened in the 1980s, 1990s. We were able to get a little bleep in early 1992 and again in 1998. It was basically the same legislation. Now, since 1998 to 2003, we are unable to get a vote to increase it $1.50 over 2 years.

Can you imagine the amount of money that has been returned to American taxpayers, $2 trillion over the past 2 years, and we can't get an increase in the minimum wage for working men and women? And the other side is trying to be indignant about the fact four individuals who are making over $100,000 are being put upon and we are going to have to listen to them for 6 more hours?

What is the increase in the minimum wage? It is the equivalent of $3,000. It is the equivalent of passage of $3,000. It is the equivalent of passage of $3,000. It is the equivalent of passage of $3,000.
We have had a bipartisan determination on that issue here. Do we hear anyone on the other side, when they are talking about 4 jobs, talk about all these numbers of Americans who are losing out?

Madam President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 2½ minutes remaining.

Mr. KENNEDY. I would have liked to have gone on. Maybe we will have time later.

UNANIMOUS CONSENT REQUEST—S. 224

In the meantime, I ask unanimous consent the Senate return to legislative session, proceed to the consideration of Calendar No. 3, S. 224, the bill to increase the minimum wage, that the bill be read a third time and passed, and the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection?

Mr. CORNYN. Madam President, I ask unanimous consent that the Senator modify his request so that just prior to proceeding as requested, the three cloture votes would be vitiated and the Senate would then immediately proceed to three consecutive votes on the confirmation of the nominations, with no intervening action or debate.

The PRESIDING OFFICER. Is the Senator from Massachusetts willing to modify his request?

Mr. KENNEDY. Madam President, I withdraw my consent request because it is quite clear there is objection by the Republicans to the consideration of an increase in the minimum wage.

UNANIMOUS CONSENT REQUEST—S. 183

I ask unanimous consent the Senate proceed to legislative session, the Finance Committee be discharged from further consideration of S. 183, a bill to extend unemployment insurance benefits for displaced workers, that the Senate proceed to its immediate consideration, the bill be read a third time, passed, and the motion to reconsider be laid on the table.

Mr. CORNYN. I ask consent the Senator modify his request so just prior to proceeding as requested, the three cloture votes would be vitiated and the Senate would then immediately proceed to three consecutive votes on the confirmation of the nominations, with no intervening actions or debate.

The PRESIDING OFFICER. Does the Senator from Massachusetts modify his request under those conditions?

Mr. KENNEDY. I withdraw my request and let the Record indicate the Republicans have objected to the extension of the minimum wage and have objected to the extension of unemployment compensation for hard-working Americans who have paid into that fund.

Mr. CORNYN. Madam President, once again, we are proceeding with the Democrats' filibuster of the circuit court nominees.

Mr. KENNEDY. Do I have the floor?

Mr. LEAHY. Regular order, Madam President.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. SHELBY. I yield myself as much time as I require.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Madam President, I rise tonight to speak on behalf of the President's right to select qualified judges of his choosing and the Senate's duty to provide advice and consent on these judicial nominees by means of an up-or-down vote on their confirmation.

The quagmire in which we currently find ourselves believe threatens the constitutionally-vested discretion of this and all future Presidents in appointing those judges they see fit. Second, it threatens the independence and effectiveness of the federal judiciary, and third, it threatens the future functionality and effectiveness of the United States Senate as the deliberative and distinguishing institution it is today.

Article 2, Section 2, Clause 2 of the United States Constitution vests the President alone with the power of appointing Federal judges “with the Advice and Consent of the Senate.” Nowhere does the Constitution grant the Senate the right to over select judicial appointments.

A review of over 200 years of the Senate's history and practice makes it clear that the Senate's role in Presidential nominations is either to confirm or deny their appointment by means of an up-or-down vote on the floor—nothing more and nothing less.

The unprecedented obstruction we are now experiencing is simply unjustifiable, I believe.

Why not allow the President to do his job of selecting judicial nominees and let us do our job in confirming or denying them? Principles of fairness call for it and the Constitution requires it.

Those of my colleagues who are currently blocking confirmation of the President's circuit court nominees have admitted to doing so on ideological grounds. They feel that these nominees are outside of their definition of ‘mainstream’—whatever that may mean. When Senators impose a subjective litmus test on judicial nominees, they are really just seeking out candidates that agree with them ideologically. This introduces a political element into the constitutional framework of judicial appointments that isn't there—and with good reason.

The Constitution grants Federal judges lifetime tenure and salary protection precisely in order to insulate them from political influences.

The Senate's standard for confirming a judge should simply be a nominee's honesty, competence, temperament, and appreciation for the proper constitutional role of an Article III judge. Any test beyond this substantiates the judiciary's independence. Senators who vote against the President and unduly politicizes a position that is intended to exist outside the realm of politics.

What is more, as my colleagues in the minority continue to use their ideological litmus test to justify blocking the President's circuit court nominees—four so far, with more promised—these unfilled vacancies impose a heavy burden on our judiciary.

The ability of these appellate courts to manage their caseloads and to effectively interpret and apply the law is dependent on a full complement of judges available to consider and rule on pending cases.

We all know the saying “justice delayed is justice denied,” and we simply cannot allow our own political agendas to undermine the fair application of the rule of law.

I would encourage all Senators to take a step back from the current debate and envision the future of this Senate if the obstruction of these judicial nominees continues. Do we really want to operate in an environment where judicial confirmations require 60 votes in order to ensure that we are rapidly headed?

I can understand that some of my colleagues don't agree with our current President's politics. That is politics. I can understand that this President's judicial nominees have some ideological leaning. That is politics. However, this does not justify denying a judicial nominee a simple up-or-down vote.

I feel quite certain that my colleagues on the other side of the aisle would not be nearly as accepting of these obstructionist tactics if they proverbial shoe were on the other foot.

I am not asking any of my colleagues to vote in favor of confirming a nominee that they oppose. I leave that determination to their discretion. I am simply asking them to allow the Senate to complete its constitutionally-appointed duty in providing the President with advice and consent on all of his judicial nominees.

Now, I would like to take just a few moments to discuss two of the President's filibustered circuit court nominees in which I take a particular interest: Alabama Attorney General Bill Pryor and California Supreme Court Justice Janice Rogers Brown.

Bill Pryor is the President's nominee for the United States Court of Appeals for the Eleventh Circuit. I have known Bill for many years and have the highest regard for his intellect and integrity. Whether as a prosecutor, a defense attorney, or the Attorney General of the State of Alabama, he understands and respects the constitutional role of the judiciary and specifically, the role of the federal courts in our legal system.

I am confident that Bill would serve honorably and apply the law with impartiality and fairness, if he were confirmed for the Eleventh Circuit. Unfortunately, Attorney General Pryor's nomination has been filibustered for most of this year.

Janice Rogers Brown is the President's nominee for the United States
Court of Appeals for the D.C. Circuit, which is widely regarded as the court second in importance only to the United States Supreme Court.

I am proud to say that Justice Brown is a native of my own State of Alabama, having been born in Greenville and raised in Luverne before moving to California.

The progression of her career to serve on California’s highest court—the first African American woman ever to do so—is a remarkable story of success through hard work and dedication that serves an example for us all.

Justice Brown has enjoyed a distinguished career on the California Supreme Court, most recently receiving 76 percent of the vote the last time she came before California voters.

Justice Brown possesses the highest character and ideal temperament for this important judgeship. Unfortunately, her nomination is subject to filibuster and thus the D.C. Circuit is denied her services.

It is the role of the Senate to provide the President with advice and consent on his judicial nominations. We can only fulfill this duty by allowing each of these nominees an up-or-down vote by the full Senate.

The proper function and balance of the executive, judicial and legislative branches depends upon it.

It is my hope that we can end this impasse tonight and vote on each of these nominees. Let the majority vote. Let the majority count. If we get the majority vote, they will be confirmed, but they should not be obstructed. They should not be filibustered.

I yield the floor.

NOTICE

Incomplete record of Senate proceedings.

Today’s Senate proceedings will be continued in the next issue of the Record.
HIGHLIGHTS


Senate (Not Final)

Chamber Action

Routine Proceedings, pages S14463–S14682

Measures Introduced: On Wednesday, November 12, 2003, six bills were introduced, as follows: S. 1850–1855; and on Thursday, November 13, 2003, three bills and two resolutions were introduced, as follows: S. 1856–1858, S. Res. 266, and S. Con. Res. 81. (See next issue.)

Measures Reported:


Measures Passed:

Basic Pilot Program Extension and Expansion Act: Senate passed S. 1685, to extend and expand the basic pilot program for employment eligibility verification, after agreeing to the committee amendment in the nature of a substitute, and the following amendment proposed thereto:

Pages S14504–06

Bond (for Leahy/Brownback) Amendment No. 2170, to extend the duration of the immigrant investor regional center pilot program for 5 additional years.

Pages S14505–06

VA–HUD Appropriations Act: Senate continued consideration of H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, taking action on the following amendments proposed thereto:

Pages S14464–81, S14496–S14504, S14506–28

Adopted:

Craig (for Bond) Amendment No. 2156 (to Amendment No. 2150), to clarify the current exemption for certain nonroad agriculture and construction engines or vehicles that are smaller than 50 horsepower from an air emission regulation by California and require EPA to develop a national standard.

Pages S14477–81, S14496

Craig Modified Amendment No. 2158 (to Amendment No. 2150), to provide for the enhanced review of covered pesticide products, to authorize fees for certain pesticide products, and to extend and improve the collection of maintenance fees.

Page S14496

Bond Amendment No. 2167 (to Amendment No. 2150), to remove the emergency designation on VA medical care.

Page S14496

Lautenberg Amendment No. 2171 (to Amendment No. 2150), to maintain enforcement personnel for the Environmental Protection Agency at the fiscal year 2003 level.

Pages S14506–07

Bond (for Graham (SC)/Hollings) Amendment No. 2172 (to Amendment No. 2150), to authorize the Secretary of Veterans Affairs to enter into an enhanced-use lease at the Charleston Department of Veterans Affairs Medical Center, Charleston, South Carolina.

Page S14507

Bond (for Mikulski/Bond) Amendment No. 2173 (to Amendment No. 2150), to require notice and comment rulemaking, and prohibit disclosure of selection information, by the Corporation for National and Community Service.

Page S14507

Bond Amendment No. 2174 (to Amendment No. 2150), to increase funds for the Office of Federal Housing Enterprise Oversight to conduct audits, investigations and examinations and to provide for additional emergency funds.

Pages S14510–11

Bond (for Stevens) Amendment No. 2175 (to Amendment No. 2150), to provide an allocation of funding under the Native American Housing Assistance and Self-Determination Act of 1996 for the State of Alaska.

Page S14511
Bond (for Durbin/Fitzgerald) Amendment No. 2176 (to Amendment No. 2150), to insert a provision relating to VA-Navy sharing of facilities at the North Chicago VA Medical Center. Pages S14511–12

Bond (for Murkowski) Amendment No. 2177 (to Amendment No. 2150), to provide housing for teachers, administrators, and other school staff in remote areas of Alaska since such housing is often extremely substandard, if it is even available at all, and rural school districts in Alaska are facing increased challenges, including meeting the mandates of the No Child Left Behind Act, and in recruiting and retaining employees due to a lack of housing units. Pages S14512

Bond Amendment No. 2180 (to Amendment No. 2150), to require HUD to make any changes to the operating fund formula by negotiated rulemaking. Pages S14518, S14520–24

Bond (for Murkowski) Amendment No. 2181 (to Amendment No. 2150), to provide for the treatment of the Pioneer Homes in Alaska as a State home for veterans. Pages S14520–24

Bond (for Dorgan) Amendment No. 2182 (to Amendment No. 2150), to express the sense of the Senate on the access to primary health care of veterans living in rural and highly rural areas. Pages S14520–24

Bond (for Sarbanes) Amendment No. 2183 (to Amendment No. 2150), to express the sense of the Senate that housing vouchers are a critical resource and that the Department of Housing and Urban Development should ensure that all vouchers can be used by low-income families. Pages S14520–24

Bond (for Clinton) Amendment No. 2184 (to Amendment No. 2150), to provide VISTA volunteers the option of receiving a national service educational award. Pages S14520–24

Bond (for Landrieu) Amendment No. 2151 (to Amendment No. 2150), to increase the amount of funds that may be used by States for technical assistance and administrative costs under the community development block grant program. Pages S14520–24

Bond (for Levin) Amendment No. 2185 (to Amendment No. 2150), to authorize appropriations for sewer overflow control grants. Pages S14520–24

Bond (for Boxer) Amendment No. 2186 (to Amendment No. 2150), to express the sense of the Senate that human dosing studies of pesticides raises ethical and health questions. Pages S14520–24

Withdrawn:

Dorgan Amendment No. 2159 (to Amendment No. 2158), to permit the Administrator of the Environmental Protection Agency to register a Canadian pesticide. Pages S14478–79

Pending:

Bond/Mikulski Amendment No. 2150, in the nature of a substitute. Pages S14464–81, S14496–S14504, S14506–28

Clinton Amendment No. 2152 (to Amendment No. 2150), to permit the use of funds for the Capital Asset Realignment for Enhanced Services (CARES) initiative of the Department of Veterans Affairs for purposes of enhanced services while limiting the use of funds for the initiative for purposes of the closure or reduction of services pending a modification of the initiative to take into account long-term care, domiciliary care, and mental health services and other matters. Pages S14496–S14504, S14508–10

During consideration of this measure today, Senate also took the following action:

By 44 yeas to 49 nays (Vote No. 449), three-fifths of those Senators duly chosen and sworn, not having voted in the affirmative, Senate rejected the motion to waive section 502(c)(5) of H. Con. Res. 95, Congressional Budget Resolution, with respect to the emergency designation provision in Mikulski Amendment No. 2178 (to Amendment No. 2150), to provide for certain capitalization grants. Subsequently, a point of order that the emergency designation provision would violate section 502(c)(5) of H. Con. Res. 95 was sustained and the provision was stricken. Also, the Chair sustained a point order that the amendment would exceed the subcommittee’s 302(b) allocation and the amendment thus falls. Pages S14512–18

National Defense Authorization Act—Conference Report: By 95 yeas to 3 nays (Vote No. 447), Senate agreed to the conference report on H.R. 1588, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, and to prescribe personnel strengths for such fiscal year for the Armed Forces, clearing the measure for the President. Pages S14481–94

Military Construction Appropriations—Conference Report: By a unanimous vote of 98 yeas (Vote No. 448), Senate agreed to the conference report on H.R. 2559, making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2004, clearing the measure for the President. Pages S14494–96

Nomination Considered: Senate resumed consideration of the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit. Pages S14531–32, S14547–S14682 (continued next issue)
A fourth motion was entered to close further debate on the nomination and, in accordance with the provisions of Rule XXII of the Senate Standing Rules of Order, a vote on cloture will occur on Friday, November 14, 2003.

Nomination Considered: Senate resumed consideration of the nomination of Carolyn B. Kuhl, of California, to be United States Circuit Judge for the Ninth Circuit.

A second motion was entered to close further debate on the nomination and, in accordance with the provisions of Rule XXII of the Senate Standing Rules of Order, a vote on cloture will occur on Friday, November 14, 2003.

Nomination Considered: Senate began consideration of the nomination of Janice R. Brown, of California, to be United States Circuit Judge for the District of Columbia Circuit.

A motion was entered to close further debate on the nomination and, in accordance with the provisions of Rule XXII of the Senate Standing Rules of Order, a vote on cloture will occur on Friday, November 14, 2003.

Point of Order Raised: During Executive Session, Senator Gregg raised a point of order that a sign displayed on the minority side of the aisle violated provisions of Rule XVII of the Senate Standing Rules of Order. (See next issue.)

Messages From the President: Senate received the following message from the President of the United States:

Transmitting, pursuant to law, a periodic report relative to the national emergency with respect to Iran which was declared in Executive Order No. 12170; to the Committee on Banking, Housing, and Urban Affairs. (PM—56) (See next issue.)

Messages From the House: (See next issue.)

Enrolled Bills Presented: (See next issue.)

Executive Communications: (See next issue.)

Executive Reports of Committees: (See next issue.)

Additional Cosponsors: (See next issue.)

Statements on Introduced Bills/Resolutions: (See next issue.)

Additional Statements: (See next issue.)

Amendments Submitted: (See next issue.)

Notices of Hearings/Meetings: (See next issue.)

Authority for Committees to Meet: (See next issue.)

Privilege of the Floor: (See next issue.)

Record Votes: Three record votes were taken today. (Total—449) Pages S14493–94, S14495–96, S14518

Adjournment: Senate met at 9:30 a.m., and remains in a continuous session.

Committee Meetings

(Committees not listed did not meet)

ONGOING MILITARY OPERATIONS

Committee on Armed Services: Committee met in closed session to receive a briefing to examine ongoing military operations and areas of key concern around the world from Lieutenant General Norton A. Schwartz, USAF, Director for Operations, J–3, and Major General Ronald L. Burgess, Jr., USA, Director for Intelligence, J–2, both of the Joint Staff; William J. Luti, Deputy Assistant Secretary of Defense for Near East and South Asian Affairs; and Ruben Jeffrey, Representative and Executive Director of the Coalition Provisional Authority.

FINANCIAL ACCOUNTING STANDARDS BOARD


TOBACCO SETTLEMENT FUNDS

Committee on Commerce, Science, and Transportation: Committee concluded a hearing to examine State use of tobacco settlement funds, focusing on the growing number of non-participating tobacco manufacturers, the prevention and control of tobacco use, and cigarette taxes, after receiving testimony from Delaware State Representative Deborah Hudson, Dover, on behalf of the National Conference of State Legislatures; Mississippi Attorney General Mike Moore, Jackson;
and Matthew Louis Myers, Tobacco-Free Kids, Raymond C. Scheppach, National Governors Association, and Cheryl G. Healton, American Legacy Foundation, all of Washington, D.C.

BUSINESS MEETING

Committee on Environment and Public Works: Committee ordered favorably reported the following business items:

S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, with an amendment in the nature of a substitute; and

The nomination of Rixio Enrique Medina, of Oklahoma, to be a Member of the Chemical Safety and Hazard Investigation Board.

BUSINESS MEETING

Committee on Finance: Committee ordered favorably reported the nominations of Michael O’Grady, of Maryland, and Jennifer Young, of Ohio, both to be an Assistant Secretary of Health and Human Services, and Bradley D. Belt, of the District of Columbia, to be a Member of the Social Security Advisory Board.

NOMINATION

Committee on Governmental Affairs: Committee concluded a hearing to examine S. 1358, to amend chapter 23 of title 5, United States Code, to clarify the disclosure of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, after receiving testimony from Senator Grassley; Peter Keisler, Assistant Attorney General, Civil Division, Department of Justice; and Elaine Kaplan, Bernabei and Katz, PLLC, Thomas Devine, Government Accountability Project, Stephen M. Kohn, National Whistleblower Center, and William L. Bransford, Shaw, Bransford, Veilleux and Roth, P.C., on behalf of the Senior Executives Association, all of Washington, D.C.

NOMINATIONS:

Committee on the Judiciary: Committee concluded a hearing to examine the nominations of Judith C. Herrera, to be United States District Judge for the District of New Mexico, who was introduced by Senators Domenici and Bingaman, F. Dennis Saylor IV, to be United States District Judge for the District of Massachusetts, who was introduced by Senator Kennedy, Sandra L. Townes, to be United States District Judge for the Eastern District of New York, who was introduced by Senator Schumer, and Domingo S. Herrera, of Ohio, to be Director of the Bureau of Justice Assistance, Department of Justice, who was introduced by Senator DeWine, after the nominees testified and answered questions in their own behalf.

FEDERAL EMPLOYEE PROTECTION OF DISCLOSURES ACT

Committee on Governmental Affairs: Committee concluded a hearing to examine S. 1358, to amend chapter 23 of title 5, United States Code, to clarify the disclosure of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, after receiving testimony from Senator Grassley; Peter Keisler, Assistant Attorney General, Civil Division, Department of Justice; and Elaine Kaplan, Bernabei and Katz, PLLC, Thomas Devine, Government Accountability Project, Stephen M. Kohn, National Whistleblower Center, and William L. Bransford, Shaw, Bransford, Veilleux and Roth, P.C., on behalf of the Senior Executives Association, all of Washington, D.C.

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House of Representatives

Chamber Action

Measures Introduced: 2 public bills, H.R. 3485 and 3486; and 1 resolution, H. Con. Res. 324, were introduced.

Additional Cosponsors:

Reports Filed: Reports were filed today as follows:


Chaplain: The prayer was offered today by Most Rev. Anthony Sablan Apuron, Archbishop of Agana in Guam.

Meeting Hour: Agreed that when the House adjourn today, it adjourn to meet at 2 p.m. on Friday, November 14, and further that when it adjourns on that day, it adjourn to meet at 12:30 p.m. on Monday, November 17 for morning-hour debate.

Calendar Wednesday: Agreed to dispense with the Calendar Wednesday business of Wednesday, November 19.

Presidential Message: Read a message from the President, received by the Clerk on November 12, notifying Congress of the continuation of the national emergency with respect to Iran—referred the Committee on International Relations and ordered to be printed (H. Doc. 108–141).

Senate Message: Message received from the Senate today appears on pages H1147–48.

Senate Referral: S. 1657 was referred to the Committee on Transportation and Infrastructure; S. 286 was ordered held at the desk.

Adjournment: The House met at 2 p.m. and adjourned at 2:06 p.m.

Committee Meetings

VACCINE SAFETY PROTOCOLS

Committee on Government Operations: Subcommittee on Human Rights and Wellness held a hearing entitled “Preventing Another SV40 Tragedy: Are Today’s Vaccine Safety Protocols Effective?” Testimony was heard from the following officials of the Department of Health and Human Services: William Egan, M.D., Acting Director, Office of Vaccines Research and Review, FDA; Robert Hoover, M.D., Director, Epidemiology and Biostatistics Program, Division of Cancer Epidemiology and Genetics and May Wong, M.D., Program Director, Division of Cancer Biology, both with the National Cancer Institute, NIH.
NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST, p. D1259)


H.R. 1516, to provide for the establishment by the Secretary of Veterans Affairs of additional cemeteries in the National Cemetery Administration. Signed on November 11, 2003. (Public Law 108–109).

H.R. 1610, to redesignate the facility of the United States Postal Service located at 120 East Ritchie Avenue in Marceline, Missouri, as the “Walt Disney Post Office Building”. Signed on November 11, 2003. (Public Law 108–110).


H.R. 2075, to designate the facility of the United States Postal Service located at 1905 West Blue Heron Boulevard in West Palm Beach, Florida, as the “Judge Edward Rodgers Post Office Building”. Signed on November 11, 2003. (Public Law 108–112).


H.R. 2396, to designate the facility of the United States Postal Service located at 1210 Highland Avenue in Duarte, California, as the “Francisco A. Martinez Flores Post Office”. Signed on November 11, 2003. (Public Law 108–116).


H.R. 3011, to designate the facility of the United States Postal Service located at 135 East Olive Avenue in Burbank, California, as the “Bob Hope Post Office Building”. Signed on November 11, 2003. (Public Law 108–120).

H.R. 3365, to amend title 10, United States Code, and the Internal Revenue Code of 1986 to increase the death gratuity payable with respect to deceased members of the Armed Forces and to exclude such gratuity from gross income, to provide additional tax relief for members of the Armed Forces and their families. Signed on November 11, 2003. (Public Law 108–121).


S. 926, to amend section 5379 of title 5, United States Code, to increase the annual and aggregate limits on student loan repayments by Federal agencies. Signed on November 11, 2003. (Public Law 108–123).

COMMITTEE MEETINGS FOR THURSDAY, NOVEMBER 13, 2003

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Armed Services: to hold hearings to examine current Army issues, 9:30 a.m., SH–216.

Committee on Indian Affairs: business meeting to consider pending calendar business, 10 a.m., SR–485.

Committee on the Judiciary: business meeting to consider H.R. 1437, to improve the United States Code, S. Res. 253, to recognize the evolution and importance of motorsports, and the nominations of Henry W. Saad, of Michigan, to be United States Circuit Judge for the Sixth Circuit, Michael J. Garcia, of New York, to be an Assistant Secretary of Homeland Security, Claude A. Allen, of Virginia, to be United States Circuit Judge for the Fourth
Circuit, James B. Comey, of New York, to be Deputy Attorney General, and Federico Lawrence Rocha, of California, to be United States Marshal for the Northern District of California, both of the Department of Justice, 9:30 a.m., SD–226.

Subcommittee on Immigration, Border Security and Citizenship, to hold hearings to examine state and local authority to enforce immigration law relating to terrorism, 2:30 p.m., SD–226.

COMMITTEE MEETINGS FOR FRIDAY, NOVEMBER 14, 2003

(Committee meetings are open unless otherwise indicated)

Senate

Committee on the Judiciary: business meeting to consider H.R. 1437, to improve the United States Code, S. Res. 253, to recognize the evolution and importance of motorsports, and the nominations of Henry W. Saad, of Michigan, to be United States Circuit Judge for the Sixth Circuit, Michael J. Garcia, of New York, to be an Assistant Secretary of Homeland Security, Claude A. Allen, of Virginia, to be United States Circuit Judge for the Fourth Circuit, James B. Comey, of New York, to be Deputy Attorney General, and Federico Lawrence Rocha, of California, to be United States Marshal for the Northern District of California, both of the Department of Justice, 9 a.m., SD–226.

House

Committee on Government Operations, Subcommittee on Human Rights and Wellness, hearing entitled “Preventing Another SV40 Tragedy: Are Today’s Vaccine Safety Protocols Effective?” 2 p.m., 2154 Rayburn.
Next Meeting of the SENATE
Senate remains in the continuous session of Wednesday, November 12

Senate Chamber
Program for Wednesday: Senate will continue to debate certain judicial nominations.

Next Meeting of the HOUSE OF REPRESENTATIVES
2 p.m., Friday, November 14

House Chamber
Program for Friday: The House will meet at 2 p.m. on Friday, November 14 in pro forma session.

NOTICE
Effective January 1, 2004, the subscription price of the Congressional Record will be $503 per year or $252 for six months. Individual issues may be purchased at the following costs: Less than 200 pages, $10.50; Between 200 and 400 pages, $21.00; Greater than 400 pages, $31.50. Subscriptions in microfiche format will be $146 per year with single copies priced at $3.00. This price increase is necessary based upon the cost of printing and distribution.

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