Mr. PRESIDING OFFICER. The Senator from Missouri, Mr. Talent, made the point that we have come a long way from Senator Clinton's amendment to put a 25-mile-per-gallon standard on all new vehicles, to Senator Bond's amendment to require the President to establish an annual standard for fuel economy. I do appreciate the Senator's concern about this proposal. Senator Talent wants to make sure that the Members of the Senate have had an opportunity to hear from the various organizations that have been concerned about this issue.

I wish to make a brief statement in support of this amendment. I believe that people are concerned about the environmental and economic impacts of the current fuel standards. I am not going to repeat the arguments that have been presented by other Senators. Instead, I would like to focus on some of the broader implications of this proposal.

The National Academy of Sciences has made a number of recommendations regarding the design of fuel standards. They have suggested that the standards should be based on a number of factors, including the current technology, the cost of fuel, and the potential for technological improvements. They have also recommended that the standards be reviewed periodically to ensure that they remain effective.

In my view, this amendment would provide an opportunity to continue this process. It would allow us to assess the progress that is being made in developing cleaner and more efficient vehicles. It would also give us a chance to consider the economic impacts of the standards, including the potential for job losses.

In conclusion, I believe that this amendment is a good one. It would provide an opportunity to continue the work that has been done to date and to ensure that we have the best possible standards for the future.
Hatch, or his designee, and the Senator from Vermont, Mr. Leahy, or his designee.

The Senator from Nevada.

Mr. Reid. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally between Senator Hatch and Senator Leahy.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. Reid. Mr. President, I know the Senator from Ohio has the floor, but through the Chair to him, I would note we are under a time constraint. If the Senator wishes to speak, I have no objection as long as it is charged off Senator Hatch's time.

Mr. Voinovich. Mr. President, I would like permission to speak on the CAFE amendment.

The PRESIDING OFFICER. Is there objection?

Mr. Reid. Mr. President, as I indicated, I object unless the time is charged to Senator Hatch.

The PRESIDING OFFICER. Time will be so charged, unless the Senator from Utah objects.

Mr. Hatch. Mr. President, I ask what the request is.

The PRESIDING OFFICER. The unanimous consent request is that the Senator from Ohio be able to speak on CAFE standards.

Mr. Voinovich. For 6 minutes.

The PRESIDING OFFICER. Charged to the time for the judge.

Mr. Hatch. I ask the Senator, could you keep it a little lower than that because we are—

Mr. Reid. I cannot hear the Senator from Utah.

Mr. Hatch. Do you think you could do it in less time than that because we have very little time.

Mr. Voinovich. I can do it in 6 minutes.

Mr. Hatch. That is fine.

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

The Senator from Ohio.

Mr. Voinovich. I thank the Senator from Utah.

The remarks of Mr. Voinovich are printed in today's Record in legislative session.

Mr. Voinovich. Mr. President, I thank the Senator from Utah for giving me this opportunity to speak on behalf of the Bond-Levin CAFE standards.

The PRESIDING OFFICER. The Senator from Utah.

Mr. Hatch. Mr. President, what is the parliamentary order?

The PRESIDING OFFICER. We are under an hour of time equally divided. The Senator controls 24 remaining minutes.

Mr. Hatch. Mr. President, I rise today to speak on behalf of the nomination of Priscilla Owen for the United States Court of Appeals for the Fifth Circuit and to speak about the pattern of political tactics being used against President Bush's well-qualified judicial nominees.

We find ourselves at an important point in Senate history. History will show an effort by a minority of Senators to deliberately block well-qualified circuit court nominees during the 108th Congress. History will further show that this minority group of Senators was not asking for a full and open debate on the Senate floor. They were not asking for a well-informed decision on these well-qualified nominees. Rather, this minority group of Senators was committed to reworking the meaning of advice and consent.

I think we can all agree that the confirmation process is broken. I certainly do hope we can find a constructive way to restore the process, but recent events do not lead me to be overly optimistic—not when I hear injudicious talk about more filibusters and not when I hear my colleagues characterize our advice and consent duty in terms of batting averages or quarterback completion rates. If anything, my colleagues on the other side haven't let Justice Owen get up to the plate. This is not a matter of acquiring a certain win-loss record on the baseball field; this is a matter of whether we will be fair to our judicial nominees—the many talented men and women who have volunteered to serve our country through judicial service.

In Justice Owen's case, a handful of Senators blocked her nomination in committee last year, preventing a simple up-or-down vote on the Senate floor. Nearly a year later, Justice Owen still has not been afforded a vote by the full Senate. How much longer must she wait? One of my colleagues on the other side has already answered this question for himself, arguing that there are not enough hours in the universe for sufficient debate, but I strongly disagree. We have debated long enough. Justice Owen has been on the Senate floor for 4 months. It has been 7 months since she was renominated by President Bush. It has been more than a year since her first hearing, and it has been more than 2 years since she was first nominated by President Bush on May 9, 2001—811 days in total. During all that time, she has not been afforded a vote. I think it is time Justice Owen was given the courtesy of an up-or-down vote. Keep in mind, she has the unanimous well-qualified rating of the American Bar Association.

Priscilla Owen could not be a better selection for the Federal court. She attended Baylor University and Baylor University School of Law, graduating cum laude from both institutions. She finished third in her law school class. President Bush's nomination for Justice Owen earned the highest score on the Texas bar exam, and she has 17 years of experience as a commercial litigator.

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Justice Owen's opinions indicate that any characterization of Justice Owen as "pro-plaintiff" or "pro-defendant" is untrue. Those who have attacked her as being "pro-defendant" in selectivity or bias in her opinions, and have mischaracterized her fundamental approach to tort law. Justice Owen's fundamental approach to tort law is not stable. On the one hand, she is not a judge who would be likely to jump to the front of a plaintiff's lawyer's pettifogging, disposing of the scope of tort law. Therefore, she would be unlikely to allow claims for brand-new types of damages, such as hedonic damages, or create cutting-edge liability claims (e.g., allowing a lawsuit against a fast food chain, where there was no showing that an individual plaintiff's health was actually harmed by eating at that chain). She would avoid considering that a woman's health has not arbitrarily thwarted the rights of plaintiffs under existing tort law.

Let me give you just a few examples. In *Merrell-Dow Pharmaceuticals, Inc.* v. *Havner*, 953 S.W.2d 706 (Tex. 1997), a decision for which she was randomly criticized by a group called "Texas for Public Justice," Justice Owen held that the evidence was legally insufficient to establish that a birth defect was caused by exposure to the drug Bendectin. Justice Owen noted that a drug that could cause the severe symptoms of morning sickness is still approved by the U.S. Food and Drug Administration and regulatory agencies throughout the world. As Justice Owen recognized, the attempts by plaintiff's counsel to tie the birth defects of the plaintiff's child to Bendectin in the Havner case were insufficient. The Supreme Court of the United States itself recognized, in a case involving that very drug, that judges should act as gatekeepers, and not permit juries to make sense on bad science. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

I am not surprised that the Association of Trial Lawyers of America (ATLA), the organized plaintiffs bar, and those who have empathy with that group criticized Justice Owen for her decision. They also criticized the United States Supreme Court when it rendered the Daubert decision. ATLA and its sympathizers believe that judges should not act as gatekeepers, and not permit juries to make sense on bad science.

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I know my choice. I should allow a vote. I hope my colleagues will do the right thing and make the same choice. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. CORNYN. Five to seven minutes.

Mr. HATCH. Mr. President, I yield 5 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I thank the chairman of the Judiciary Committee, who has done yeoman's work in shepherding President Bush's highly qualified judicial nominees through the Judiciary Committee and to the floor of the Senate.

Chairman HATCH has mentioned a number of people on both sides of the aisle who support the nomination of this good woman to the Fifth Circuit Court of Appeals. I have a few comments—first, to echo those comments in terms of the consensus of opinion in my State of Texas as to the good work that Priscilla Owen has done as a justice in the Texas Supreme Court. But I also bring a personal perspective to this debate because I served with Priscilla Owen for 3 years on the Texas Supreme Court. Frankly, I do not recognize the caricature that has been painted of this good judge in the debate before the Senate.

In May of this year, I spoke on the floor regarding the 2-year anniversary of Justice Owen's nomination. That dismaling anniversary showed us just how far our confirmation process had gone awry. And now it has gotten even worse.

Today's vote is just the first in a series this week. Over the next 4 days, we will see just how far the minority in this body is willing to go to block well qualified nominees and parrot the talking points of interest groups who oppose this and other highly qualified judicial nominees. It is my hope that the Senate will do the right thing and provide an up-or-down vote for this judicial nominee.

As I said, Justice Owen and I served for 3 years together on the Texas Supreme Court—from the time she came in January 1995 until the time I left in October of 1997. During those 3 years, I had a chance to observe Justice Owen's Court of Appeals. I have a few comments about her judicial philosophy at work, how she approaches her job, how she thinks about the law, and how she acts given that position of public trust that judges hold.

I can tell you from my personal experience that Justice Owen is an exceptional judge who understands her profound duty to follow the law and enforce the will of the legislature.

That is, of course, one reason the American Bar Association has given her its highest qualified rating, and that is why she has such strong bipartisan backing. That is why she enjoys the enthusiastic support of the people of Texas, where she got 84 percent in the last election from the people who know her best.

Not once during my tenure with Justice Owen did I ever see her attempt to pursue some political or other agenda at the expense of the law as she understood it. I can have no greater confidence. This is an ability that Justice Owen believes very strongly, as I do and Americans do across this land, that judges are called upon not to act as another legislative branch, or as a politician, but as judges—to faithfully read statutes and to follow the law as written by the people, subject to the precedents established by higher courts in earlier times.

Some of my colleagues have, unbelievably, taken the position that Justice Owen is to be criticized for disagreeing with other members of the Texas Supreme Court in some of her opinions. Some of my colleagues act shocked that appellate judges, particularly on the highest court in my State, will disagree with one another and have spirited debates about what opinions they write. But I firmly believe that is exactly the job that is expected of a judge and that Justice Owen has fulfilled that position well.

There are those who apparently believe a judge is not supposed to have a real debate about their interpretation of the law and is just supposed to assert his or her own will, regardless of what the law actually says. Perhaps these advocates believe a judge is supposed to follow the practice of what author James Lileks has called "teasing penumbras from the emanations of the glow of the spark of the reflection of the echo of the intent of the Framers."

I fundamentally disagree with that idea. If we did not have judges disagree with one another, it would mean somebody was not doing their job.

By the time cases get to the top echelons of our judicial system, they are the hardest cases. They are the important issues and must be decided, through study and debate, by the people at the next level of the judiciary or indeed by settlement between the parties. These are important issues and must be decided, through study and debate.

A judge, unlike a Member of this body, cannot choose to simply walk away and ignore a thorny legal issue. Judges are not supposed to make law. They are supposed to interpret and enforce the law written by the legislature.

In Texas, Justice Owen followed this duty to the letter. From experience and from observation, I know that Justice Owen believes strongly that judges are called upon to faithfully read the statutes on the books, read the precedents in the case, and then apply them to the case before the court.

Justice Owen did this job, and she did it well. She is a brilliant legal scholar and a warm and engaging person. To see the kind of disrespect the nomination of such a great Texas judge—and a great Texan and judge—and who has served in this body is more than just disappointing. It is an insult to Justice Owen. It is an offense against the great
July 29, 2003

I yield the floor.

The PRESIDING OFFICER. Who yields time?

If neither side yields time, time will be charged equally to both sides.

Mr. HATCH. Mr. President, how much time does the Senator from Utah have?

The PRESIDING OFFICER. The Senator has 11 minutes.

Mr. HATCH. Mr. President, how much time does the Senator from Alabama desire?

Mr. SESSIONS. Five minutes.

Mr. HATCH. Mr. President, I yield 5 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 5 minutes.

Mr. SESSIONS. Mr. President, in the history of this country, we have not had a filibuster of a circuit judge or a district judge before and really never even one for a supreme court judge. This is an unprecedented obstruction of an nominee—something that really is unheard of.

It is particularly distressing to me, beyond words almost, that this fine nominee, Priscilla Owen, would be a person who would be blocked by a filibuster, who obviously has the votes, if given an up-or-down vote in this body, to be confirmed for the Fifth Circuit Court of Appeals. She is extraordinarily capable. She finished at the top of her class in law school. She made the highest possible score on the Texas bar exam. What a strong statement that is. She won her last race for the Supreme Court of Texas with 84 percent of the vote. She was unani- mously rated well qualified, the high- est possible rating the American Bar Association can give for this position, when they evaluated her. She has the support of 15 former presidents of the Texas Bar Association and is extraordi- narily in every way.

As I looked through her record, I stumbled across a letter from a female attorney, Julie Woody, who clerked for the Texas Supreme Court. She noted she is a lifetime Democrat and she had already decided and concluded, based on facts and evidence, having seen the minor and heard the evidence and saw the witnesses in person, her question was: Should the decision be affirmed?

The opponents are unhappy that she voted to affirm both the trial judge and the three-court panel below the Texas Supreme Court. Her only responsibility was to review the record of judges who had already decided and concluded, based on facts and evidence, having seen the minor and heard the evidence and saw the witnesses in person, her question was: Should the decision be affirmed?

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

Mr. REID. Mr. President, I yield myself whatever time I shall consume.

The original leaders and a member of the altar guild where she teaches Sunday school. She said about her:

Priscilla worked incredibly hard behind the scenes, never seeking any attention or praise for her efforts. She exemplified servant leadership.

What is the complaint about this ex- cellent, magnificent justice on the Texas Supreme Court? What is the ob- jection? They do not like the fact that she affirmed lower court opinions con- cerning parental notification when children, minors, desire to have an abortion. Eighty percent of the American people believe parents should be notified before a minor child should be allowed to have an abortion. The Texas law is not an extreme law. It simply says the parents should be notified, and they do not have a right to object or stop an abortion from going forward— just one of the parents be notified, ac- tually. If the minor does not like that, they can go to court. They go to court, not on any basis to object. Priscilla Owen would be a wonderful nominee. And I can only hope that my colleagues will realize that by blocking a vote on Priscilla Owen, they make themselves ali- lies to these groups, groups that rejoice at the prospect of a Senate in constant gridlock over these qualified nominees.

My colleagues should not think the American people do not know what is going on here. They see when a nomi- nee's well-recognized abilities are ig- nored by the use of scare tactics and revi- sionist history, and they see some igno- nore the interests of the States from which they were elected, and instead kowtow to special interest groups.

I am confident that Members of the Senate are wise enough to reject this inhuman caricature that has been drawn of Judge Priscilla Owen by special interest groups intent on vilifying, demonizing, and marginalizing an admirable nominee. And I know that if we were allowed to hold a vote, a bipar- tisan majority of this body stands ready to confirm Judge Priscilla Owen to the Fifth Circuit Court of Appeals. The question is whether that vote will ever happen.

I hope that my colleagues will give these qualified nominees what they de- serve, and allow them to have an up or down vote, today, tomorrow, and every day this week. For the sake of the Senate, the Nation, and our independent judiciary, I hope that we will not have 4 days of filibusters.

I hope my colleagues will vote to allow this fine judge an up-or-down vote.
We have heard for several weeks the urgency of passing the Energy bill. As I said this morning, we accept that urgency, but we have also said for several weeks that we cannot complete the Energy bill with 323 amendments in a period of 7 working days. It cannot be done. The majority leader has come to the floor and said we have been on the bill 16 days. That is not fair because a lot of those days have been late Thursday and Friday mornings. We have probably had about 7 real days of work on this Energy bill.

Complicating matters, the leader is scheduling issues that are unnecessary. To have votes on these judges when cloture has been attempted on a number of occasions and has not worked, and will not work again, is wasting valuable time. We could be working on Senator Domenici’s and Senator Bingaman’s Energy bill.

If the majority wanted to move judges—and we have moved 140 judges—but if the majority wanted to move judges, we have some who have already been cleared from the committee for over 2 years because a lot of them are being cleared. We would be able to work out agreements to have James Cohn of Florida be a U.S. district judge; Frank Montalvo of Texas to be a U.S. district judge; Xavier Rodriguez of Texas to be a U.S. district judge. We could also work something out for H. Brent McKnight of North Carolina to be a U.S. district judge. We could work something out on James Browning of New Mexico to be a U.S. district judge.

I recognize there are intense feelings about Judge Owen, but the intense feelings have not changed during the period of time since we last failed to invoke cloture on this nomination. When there is an urgent need, according to the majority leader, to move the Energy bill, it is almost beyond my ability to understand why we would go to something when everyone knows what the outcome will be. We lose momentum. We go off the bill. We have gone off the Energy bill again, and try to start again, it takes time. I think the majority leader should understand he is his own worst enemy in trying to move the Energy bill by going to all these extraneous issues that are doomed to failure before he starts.

I suggest the absence of a quorum. The PRESIDING OFFICER. The clerk will call the roll.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded. Without objection, it is so ordered.

The PRESIDING OFFICER. The clerk will call the roll.

Mrs. HUTCHISON. How much time is remaining?

The PRESIDING OFFICER. The Senator from Utah controls 4 minutes 21 seconds.

Does the Senator from Utah yield time?

Mr. HATCH. I yield the remainder of my time to the distinguished Senator from Texas. The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I rise on behalf of my friend Priscilla Owen. I cannot think of a person who is being treated worse by the Senate than my friend Priscilla Owen. This is the nicest, gentlest person one would ever meet, and she also happens to be smart as a whip. I watched her before the Senate committee. The chairman of the committee, Senator HATCH, took the extraordinary step of having two hearings for Priscilla Owen who was nominated over 2 years ago. She had her hearing and went through the process and did very well in her first hearing. Then, after the new Senate came in, in January, the chairman brought her back before such a committee, and she did an excellent job.

She knows exactly what she has done throughout her tenure on the Supreme Court of Texas, and she could cite the reasoning for all of the positions she was asked about the positions she has taken. She answered the questions in the most exemplary fashion. She showed exactly why she should be a Federal judge. She showed it by her brilliance.

We know she was a magna cum laude graduate from Baylor Law School as well as earning the highest score on the Texas bar exam that year, and she showed in that way that she is qualified to be a Federal judge. Her demeanor also showed why she would be such an excellent Federal judge, because she has maintained the nicest and most patient demeanor I have ever seen of anyone who has been attacked in that way. She has shown she has the temperament to be a good, honest, fair judge who also happens to be brilliant.

Priscilla Owen has been nominated for the Fifth Circuit. We have been talking about her now for over 2 years. Since May 9, 2001, Priscilla Owen has been before the Senate. She has handled herself beautifully. She has never shown any defiance. She has never shown any bitterness at the way she is being treated. She just answers the questions like a professional. She is a wonderful member of the Texas Supreme Court. She has been elected in her own right to the Texas Supreme Court. When she was running for the bench, the Dallas Morning News called her record one of accomplishment and integrity.

The Houston Chronicle wrote:

She has the proper balance of judicial experience, solicitude, legal scholarship and real-world know-how.

She was endorsed by every daily newspaper in Texas that endorsed in Supreme Court races. She has a wonderful record. The ABA gave her a unanimously well qualified ranking when she went before their committee.

I will read the words of former Texas Supreme Court Chief Justice John Hill.

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In a recent newspaper advertising campaign, run by groups supporting the Bush administration's judicial nominees, a closed courtroom door bears the sign "Catholics Need Not Apply." A newspaper advertisement placed in the Colorado Springs Gazette asked that William Pryor Jr., the Alabama attorney general and a conservative, anti-abortion nominee to the federal appeals court, was using social mores because of his "deeply held" Catholic beliefs. Democrats say they oppose Mr. Pryor because he is excluding what he regards as "practically nonexistent." Pryor supports capital punishment so fiercely he even opposed the death penalty, which Pope John Paul declared in 1995 was permissible only in cases of "absolute necessity" to maintain civil order, occurring "in cases of murder or rape committed in such a way as to exclude all possibility of regret.

The ironies don't stop there. Conservative Republicans are forever railing against "identity politics," when minorities seek special assistance from the government. But as a trial judge, Moore opened court with a prayer: "In the name of the Father, and of the Son, Jesus Christ, we will continue to work for the sake of others." The ad says that if Pryor were not a strict Catholic, the Democrats would have no problem with him. The newspaper ads show a picture of a door labeled "Judicial Chambers." A sign says "Catholics Need Not Apply." The ad reads, "Pryor's nomination to the floor, Republicans re-

The congressman has a long history of supporting the rights of pro-life voters. He has voted against nominees who openly adhere to Catholic teachings. He ardently supports the death penalty, which Pope John Paul II declared in 1995 was permissible only in cases of "absolute necessity" to maintain civil order, occurring "in cases of murder or rape committed in such a way as to exclude all possibility of regret." It is all part of a politics that has changed radically since 1960. Among the nine Democratic senators who happen to be Catholic, an important swing vote. In general, conservative Catholics are opposed to Pryor's nomination to the floor, Republicans repeated the allegation that Pryor's opponents believe "No Catholics need apply." This campaigning was part of a fact campaign for Pryor's nomination to the floor, Republicans re-

The ad says that if Pryor were not a strict Catholic, the Democrats would have no problem with him. The newspaper ads show a picture of a door labeled "Judicial Chambers." A sign says "Catholics Need Not Apply." The ad reads, "Pryor's nomination to the floor, Republicans re-
are its business when he seeks to impose those beliefs on others—as he has repeatedly tried to do. This is what the Democrats on the Judiciary Committee object to. Yet the ads, which a committee led by Boyden Gray, the first President Bush’s White House counsel, simply label Pryor’s opponents as religious bigots. Gray lent his name to a campaign ad that did little more than call Democratic Senator George H.W. Bush, who lent his house for a fundraiser. This is a GOP operation, pure and simple. Gray ought to be ashamed. Instead of battling religious prejudice, he is using the fear of it to stack the courts with conservative Republicans. At the same time, he has allied himself to a new traffic in political bigamy—the kind of religious bigotry—a smug disdain for the beliefs of others, including dissenting Christians, non-Christians and people who have no religion at all. Pryor clearly feels his religion is the better religion—the one the state should support, the one with which to open a court session or to proclaim in stone on the courthouse steps. This is dangerous stuff. We are a pluralistic society. I happen to think some religions are just plain weird. I also happen to think that Pryor cannot for a second explain it is a demagogic lie. As for Pryor, by statements and actions, he has disqualified himself for the federal bench. I don’t care if he’s a good Catholic. I do care that he’d make a bad judge.

[From the Washington Post, July 26, 2003]

BEGY THE PALE

“Some in the U.S. Senate are attacking Bill Pryor for having ‘deeply held’ Catholic beliefs to prevent him from becoming a federal judge. Don’t they know the Constitution expressly prohibits religious tests for public office?”

So reads a wildly inappropriate ad run in newspapers in Maine and Rhode Island by a group called Bi-fa-jor for Justice. The ad, while it is a demagogic lie. As for Pryor, by statements and actions, he has disqualified himself for the federal bench. I don’t care if he’s a good Catholic. I do care that he’d make a bad judge.

Bogus. That’s the only word that accurately describes this week’s dust-up on the Senate judiciary Committee over the nomination of Alabama Attorney General Bill Pryor to the Federal Appeals Court. Sens. Jeff Sessions of Alabama and Orrin Hatch of Utah, both members of the committee, suggested that other committee members opposed to Pryor because he is a Catholic.

This criticism seems part of a larger strategy. According to National Public Radio, some ads have run in Maine and Rhode Island that suggest the same thing. And according to NPR, it was Hatch who introduced Pryor’s faith into the proceedings by asking Pryor about his religious affiliation. The nominee had raised his religion—not did the Committee for Justice produce an example in response to our inquiries. The only people raising Mr. Pryor’s Catholicism, rather, seem to be his supporters. Mr. Pryor’s nomination is comprised of the simple reason that he has never shied away from taking strident positions on matters of national moment. His record is replete with the sort of blustering that opposition to Pryor due to his faith, you think? My guess: The GOP knew that Pryor’s right-wing views on Roe vs. Wade, Alabama Chief Justice Roy Moore’s Ten Commandments monument and homosexual sexuality would be lightning rods. So instead of going the stealth route—which would have been difficult for Pryor, to his credit, has been upfront about his faith—it would spin out the ruse that opposition to Pryor’s politics is actually opposition to his faith. As a political strategy, it’s clever. But discerning observers will know that the baloney-salami quotient is high.

Being anti-religion and opposing the insertion of religion into the public life are as different as being a meat-eater and vegan. The two aren’t even remotely the same.

Pryor, a smart, competent, compassionate and dedicated public servant, has made it no secret that he follows one of Alabama’s most practiced political traditions: fusing faith and politics. Again, to his credit, he’s above the level of the usual hypocrisy. But history shows that when religious dogma collides with public policy and practice, the outcome is often partisan. (Please turn to your history books to the chapters on the Crusades, the Reformation, and Salem witch trials, and the conflicts between Protestants and Catholics in Ireland and Christians on the African continent, and fundamentalist Islamic regimes and their opposition.)

In fact, isn’t the United States currently resisting attempts by fundamentalist Muslims to assume control in a reconstituted Iraq? Pryor’s fellow Catholics on the Senate judiciary Committee oppose how he applies his religion, not the religion itself. This shouldn’t be hard to grasp. Religions, like political parties, often have competing ideological wings.

Some of my Catholic friends in town also oppose Pryor. They mince no words as they spit out their criticism of him. Not one had anything to do with his faith. The committee, by the way, has voted along party lines to send Pryor’s nomination to the Senate for a vote. By the end of the summer, we may know if Pryor will get the appointment or if it will be derailed by a Democratic filibuster.

The latter, I guess Leahy, Durbin and any others who will have opposed him will be called bigots by GOP extremists. But this will be a false charge. The only thing they will be guilty of is disagreeing in matters of faith.

Last time I checked, the Constitution gives them that freedom.

[From the Palm Beach Post, July 27, 2003]

NO DEFENSE FOR PRYOR’S CONVICTIONS

By Randy Schultz

As part of their ongoing effort to stack the federal courts, Republicans first accused Democrats of being anti-Hispanic. Now, they’re accusing Democrats of being anti-Catholic. Here’s the funnier part: Many of the Democrats in question are Catholics.

When it comes to judicial nominations, the Supreme Court obviously gets most of the attention. The highest court is the last word on issues that prompt fund-raising letters. In July, for example, a Federal Circuit judge warned that race can be a consideration in college admissions and rules that sexual orientation can’t be a consideration when states make laws about sex between consenting adults.

In fact, the highest court hears only about 100 cases each year. The 13 federal appeals courts, however, rule on nearly 30,000 cases in 2003. In practical terms, appeals court judges set most of the law. Also, they are the Supreme Court’s farm teams. Seven of the nine justices—William Rehnquist and Sandra Day O’Connor are the exceptions—were promoted from the federal appeals courts.

So President Bush wants to put the youngest, most conservative people he can on the courts. The lastest is 43-year-old William Pryor, and you can tell how unqualified he is by the lengths to which Republicans are going.

TO FLORIDA FROM ALABAMA? NO WAY

Mr. Pryor is Alabama’s attorney general. He believes that the 1973 Supreme Court did greater harm by legalizing abortion than the 1857 court did by legalizing slavery. President Bush wants to put him on the 11th U.S. Circuit Court of Appeals, which hears cases from Florida, Georgia and Alabama. To maintain geographical balance, this vacancy on the 12-member court.

But to William Pryor? No way. There’s evidence that he solicited political donations
from companies that do business with his office. There's evidence that he wasn't straight about that when he testified before the judiciary committee last month.

So Bush doesn't want to be blocked, as they have when Mr. Bush has tried to put similarly ultra-orthodox conservatives such as Miguel Estrada and Priscilla Owen onto other appeals courts. Republicans blocked Estrada's nomination, Republicans whopposed that Democrats don't like Hispanics. Except that Republicans blocked Hispanics whom President Clinton had picked for the appellate bench.

Last week, the GOP kicked up the hysteria another notch when, as the White House's Chief Counsel, Mr. Bush's chief counsel ran ads saying that Democrats want to keep Catholics such as Mr. Pryor off the court. The ads show a courthouse with a sign reading, "Catholics need not apply." Boston merchants used the same language in the 19th century, saying "Irish" instead of "Catholics." Sen. Jeff Sessions, R-Ala., parroted the ad Wednesday. "Are we saying that good Catholics can't apply?"

NON-CATHOLICS LECTURING CATHOLICS

How hilarious that must have sounded to the four Catholic members who are on the committee who are Catholic. As National Public Radio reported, one of them, Sen. Dick Durbin, D-Ill., first said, This is disgusting. He then added, "I want to express my gratitude to my colleagues who are members of the Church of Christ and the Methodist Church and the Church of Jesus Christ of Latter-Day Saints for explaining Catholic doctrine today."

Sen. Orrin Hatch, the Mormon in question, yelped that Democrats were opposed to any Catholic with "deeply held" beliefs or any nominee who opposed abortion. Sen. Durbin noted that the Catholic Church opposes the death penalty while Mr. Pryor supports it. Also, who called reading "evil" got a seat on another appeals court with Democratic support.

For all the Republican fussing, President Bush has gotten his nominees through a Democratic Senate than President Clinton got through a Republican Senate. Nearly half of Mr. Clinton's appeals court nominees got no vote in the congressional term when they were nominated.

Now that Democrats are going all-out to block Mr. Bush's nominees, Republicans can't take it. They rant, and they pout. They can't argue the facts, and they can't argue the law. So they are trying to argue ethnicity and religion. The problem isn't their opponents. It's their president's nominees.

[From the Atlanta Journal-Constitution, July 25, 2003]

BRING ON THE FILIBUSTERS AGAINST ULTRACONSORTIAL

Southerners who care about the separation of church and state should hope Alabama Attorney General William Pryor Jr. never sits on the 11th Circuit appellate bench, which rules on appeals in cases from Alabama, Georgia and Florida. The ultraconservative Pryor, who preaches that Christianity should be more a part of American public life, was approved by the Senate Judiciary Committee Wednesday in a 10-9 vote along partisan lines.

If ever there were a nomination that merits a filibuster, it is this one. Not just because Pryor is far out of the mainstream, but also because of the unprecedented twisting of the Constitution's advise and consent process by President Bush's corporate cohorts. Indeed, funding the deceitfully named "Committee for Justice," have already run in Maine and Rhode Island to pressure moderate Republican senators into voting for Pryor's confirmation on the Senate floor. The despicable ads show a courthouse door with a sign across it saying "No Catholics allowed." Sen. Richard Durbin (D-Ill.), who is Catholic and opposes the Pryor nomination, is infuriated that he and others were being accused of opposing Pryor for his religion, a false charge. Sen. Patrick Leahy, the ranking Democrat on Senate Judiciary, said religion is irrelevant to consideration of a judicial candidate. "It isn't as if we're supposed to be colorblind, we must be religion-blind," he said.

The committee funding the ads is headed by the White House's chief counsel. Mr. Bush's chief counsel was former President Bush, C. Boyden Gray, and includes lawyers and lobbyists who represent huge tobacco, insurance and investment banking corporations with cases pending before the federal courts. Because it would be unseemly to campaign for judges who favor corporations, they have cleverly aligned with the Catholic pro-life political action committee.

Pryor's record is sufficient to disqualify him from any judgeship. In addition to his opposition to abortion, he favors prayer in public school classrooms and the Ten Commandments on courthouse walls. He was also the only attorney general in the nation to argue that the Violence Against Women Act is unconstitutional. George Bush was the first U.S. Sens. Saxby Chambliss and Zell Miller know their opposition to Pryor. He is simply unfit for the decision-making essential to a fair, independent and nonpartisan judiciary.

[From the Pittsburgh Post-Gazette, July 25, 2003]

 Pryor Restraint: Specter Should Have Balked at Pryor Nomination

With Pennsylvania's Sen. Arlen Specter trying to have it both ways, the Senate Judiciary Committee on Wednesday sent to the floor an unacceptably extreme nominee to a federal appeals court, a gts—but not before some silly sniping over whether the nominee, Alabama Attorney General William Pryor Jr., has been the victim of anti-Catholicism.

The anti-Catholic canard, raised by a conservative pressure group and echoed by some Republican senators, would be laughable if not anti-Catholicism was not a part of American history. Fortunately, excluding people from public life because they are "pa-pists" is largely a thing of the past. Mr. Pryor himself is proof of this.

A Yale law school graduate, where he serves as the chief law enforcement officer, was historically home to Bible Belt anti-Catholicism.

But if some of Mr. Pryor's supporters are to be believed, opponents of his nomination to the 11th U.S. Circuit Court of Appeals are anti-Catholic bigots. A pro-Pryor group aired a television commercial outside a courthouse Wednesday with a sign reading "No Catholics Need Apply." On the committee, Republican Sen. Jeff Sessions referred to his fellow Alabamaan Mr. Pryor as "this solid Catholic individual" and offered a convoluted argument for the bigotry charge.

According to Sen. Sessions, Mr. Pryor's views on abortion—he called the Roe vs. Wade ruling an "abomination"—are rooted in his church's teaching. Therefore senators who oppose Mr. Pryor because of his denunciation of abortion are "clearly objecting him to an unconstitutional "religious test" for office.

Well, not really. The concern isn't that any Catholic judge would repugnate Roe vs. Wade—Justice Anthony Kennedy, a Catholic, voted to reaffirm Roe in a 1992 ruling—but that Mr. Pryor's vehement denunciations of Roe as bad law indicate that he is a man on a mission, despite his protests that he would apply the law judiciously. The problem isn't that Mr. Pryor is a Catholic, it's the fact that he is what we have called a "walking stereotype" of right-wing legal extremism.

(We wonder, by the way, if Sen. Specter would rush to the defense of a liberal Catholic nominee who, citing pronouncements by the pope and American bishops, denounced Supreme Court decisions upholding the constitutionality of capital punishment.)

Some Democrats on the Judiciary Committee who are themselves Roman Catholic objected to the Republicans' decision to play the Catholic card. Sen. Richard Durbin face- threatened Sen. Sessions, a Methodist, and Judiciary Committee Chairman Orrin Hatch, a Mormon, for elucidating his own church's doctrine for him.

The "anti-Catholic" discussion was an unseemly sideshow to the committee's decision on partisan lines, to approve the Pryor nomination and send it to the floor. To his discredit, Sen. Specter, who faces a conserva- tive challenger in next year's Republican primary, joined in that vote—while suggesting that he might vote against the nomi- nation on the floor. That is the opposite of a profile in courage. If Sen. Specter thinks Mr. Pryor unsuitable for the court, he should have voted no.

Mr. LEAHY, Mr. President. This has been because the Pryor nomination generated a divisive and controversial activ- istic to another circuit court. That is regrettable. The Republican leadership in the Senate is forcing a confrontation at this time that is neither necessary nor constructive. I am the White House has chosen to move matters into partisan political fights rather than to work with Senate Demo- crats to fill judicial vacancies with qualified consensus nominees. There are thousands of qualified Republicans who would be endorsed by both Republican and Democrats in this Senate. That would allow the American people to say we are not politicizing the courts. There would be a sigh of relief.

But we do not see that. We have a high level of dissatisfaction with the White House. In fact, in the 29 years I have been here, through both Republican and Democratic administrations, I have never seen such a low level of cooperation.

Notwithstanding that, we have already confirmed 140 of President Bush's judicial nominees, including some of the most divisive and controversial sent by any President, Republican or Democrat. In fact, this year the Senate confirmed and voted on nominations of three circuit court nominees who received far more than 40 negative votes. If it were simply a case of filibuster- ing judges, they would not have been confirmed. For example, Jeff Sessions, the nominee to the 11th Circuit received the fewest number of favorable votes of any confirmation in almost 20 years. He got only 52 votes. When you have somebody who gets through the Senate with only 52 votes, you have to ask what kind of a signal that sends to the people of that circuit. Does it send a signal to the people of that circuit that we sent somebody...
July 29, 2003

CONGRESSIONAL RECORD — SENATE
S10099

there who is representing all the people within that circuit, Republicans, Democrats, independents? Or are we sending somebody who is intended to be a partisan ideologue representing only one party on a court that is supposed to be independent of party politics?

In fact, the administration is seeking to force through the confirmation process more and more extreme nominees in its effort to pack the courts and tilt them sharply in a narrow ideological direction. Instead of uniting the American people, too many of this administration's nominations divide the American people and divide the Senate. How much greater service could be done to the country and to the courts if the President sought to unite us and not divide us?

In the unprecedented level of assertiveness by the administration has led to more and more confrontation with the Senate. As Republicans in the Senate sought to further its effort to pack the courts in the previous administration, we worked hard earlier this year to correct some of the problems that arose from some of the earlier actions of the Judiciary Committee. But, once again, just last week, Republican members of the Judiciary Committee decided to overstep the rights that the majority and violate longstanding committee precedent and actually violated—imagine this, the Judiciary Committee violating its own rules, the Judiciary Committee of all committees, the committee that should set the standards for everybody else—violated these rules and precedents in order to rush to judgment even more quickly this President's most controversial nominees.

It was a sad day in committee, but it was a devastating day in the Senate. Yet my friends on the other side of the aisle persist in their obtinate and single-minded crusade to pack the federal bench with right-wing ideologues, regardless of what rules, what long-standing practices, what personal assurances, what relationships, or what Senators' words are broken or ruined in the process.

Republican partisans fail to recognize that Democrats worked diligently and fairly to consider President Bush's nominees, including nominees to the same court as that to which Justice Owen has been nominated. Two months ago, on May 1, the Senate confirmed Judge Edward Prado to the U.S. Court of Appeals for the Fifth Circuit. Senate Democrats cleared the nomination of Judge Edward Prado to the United States Court of Appeals for the Fifth Circuit without delay.

The Senate confirmed Judge Prado immediately, but he was held up by one anonymous hold—and it came from the Republican side. At the same time the White House is excoriating Democrats for holding up their nominees, we had a nominee of President Bush to the Fifth Circuit and for a month, while we are trying to have him confirmed, he is being held up by an anonymous hold, not even a hold somebody is willing to state on the record but an anonymous hold on the Republican side. Talk about rope-a-dope—if we clear the nominees, they hold them up and we get the blame. Interesting.

All Democrats serving on the Judiciary Committee voted to report his nomination favorably. All Democratic Senators indicated they were prepared to proceed with the nomination. When Republicans finally lifted the anonymous hold of Senator Prado, he was confirmed unanimously.

When Democrats assumed Senate leadership in the summer of 2003, there had not been a Fifth Circuit nominee confirmed for 7 years. There had been a cloture vote in 2001, but cloture on the cloture vote was blocked by the Republicans. Indeed, Republicans blocked consideration of three qualified nominees to the Fifth Circuit in the years 1995 to 2001, along with 60 other judicial nominees of President Clinton.

In 2001, Democrats worked hard on the nomination of Judge Edith Brown Clement, a conservative judge nominated by President Bush, and with the assistance of the White House, we proceeded last July to the hearing on Justice Owen and we proceed to debate and vote on all three of President Bush's Fifth Circuit nominees, despite the treatment of President Clinton's nominees by the majority.

The nomination of Priscilla Owen was rejected by the Senate Judiciary Committee. She was rejected as a judicial activist with extreme views. That is where it should have ended. Never, ever in our Nation's history has a President renominated somebody to the same judicial vacancy after rejection by the Judiciary Committee—never. In this case, of course, they did, to create a partisan hold. We tried very hard to work with the administration to fill judicial vacancies, in great contrast to the fate of many of President Clinton's nominees from Texas who were blocked and delayed. In 2001, nominees including Enrique Moreno, nominated to the Fifth Circuit Court of Appeals, who never got a hearing or a vote; Judge Jorge Rangel, nominated to the Fifth Circuit Court of Appeals, who never got a hearing or a vote; and Judge Hilda Tagle, whose nomination was delayed nearly 2 years for no good reason.

All we are saying is let's have judges who are there for all the people. It is one thing for Republicans to control the White House. The President was inaugurated. He has that right. Republicans control both Houses. But the court is supposed to be nonpartisan.

We have worked hard to try to balance the need to have enough judges to handle cases with the imperative that they be fair judges for all people, poor or rich, Republican or Democrat, of any race or religion. This has been especially difficult because a number of this President's judicial nominees have records that do not demonstrate that they will be fair and impartial. When the White House's allies have bombarded us with all sorts of misleading information to try to bully us into rolling over and rubber-stamping these nominees. They are playing politics with the judicial branch and using it for partisan political purposes. That is simply not fair. Their charges of prejudice are simply appalling and should be rejected by all Americans as the crass and base partisan politics that they are.

The plain fact is that this Senate has confirmed more judges at a faster pace than in any of the past six and one half years under Republican control with a Democratic President. With Democrat cooperation, this Senate has doubled the number of judicial confirmations and more than doubled the number of circuit court confirmations of President Bush's nominees compared to how the Republican-controlled Senate treated President Clinton's. The Senate has confirmed 40 judges already this year. That exceeds the number of judges during all of 2000, 1999, and 1997, and is more than twice as many judges as were confirmed during the entire 1996 session. It is more than the average annual confirmations for the 6½ years the Republican majority controlled the pace of the Senate from 1995 through the first half of 2001. Thus, in the first 7 months of this year, we have already exceeded the year totaled for 4 of the 6 years the Republican majority controlled the pace of President Clinton's judicial nominees and the Republican majority's yearly average. One hundred and forty lifetime confirmations in 2 years is better than in any 3-year period from 1995 through 2000, when a Republican majority controlled the fate of President Clinton's judicial nominations.

We have already this year confirmed 10 judges to the Courts of Appeals. This is more than were confirmed in all of 4 of the past 6 years when the Republicans were in the majority—in 1996, 1997, 1999, and 2000. And in the 2 other years, the 10th circuit nominee was not confirmed until much later in the year. We have now confirmed 27 circuit court judges nominated by President Bush. This is supposed to be a nonpartisan confirmed at this point in his presidency than for his father, President Clinton, or President Reagan at the same point. We have made tremendous progress and
I want to thank, in particular, the Democratic members of the Judiciary Committee for their hard work in this regard. These achievements have not been easy. The Senate is making some progress. More has been achieved than Republicans are willing to acknowledge.

So, as we repeat our vote on this nomination today and Republicans continue their drumbeat of unfair political recriminations, we should all acknowledge how far we have come from the 110 vacancies that Democrats inherited from the Republican majority in the summer of 2001. In addition to more confirmations and fewer vacancies, we have more Federal judges serving than ever before.

Under a Republican majority, circuit vacancies more than doubled and overall vacancies increased dramatically. Despite the fact that close to 90 additional vacancies have arisen since the summer of 2001, we have worked hard and despite the vacancies from 130 to 160 to 180.

Unfortunately, the nomination of Priscilla Owen is a nomination that has been waiving. The question is, Is it the Senate that debate on the nomination of Priscilla Richmond Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit. The yeas and nays are mandatory under the rule.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived. The question is, Is it the Senate that debate on the nomination of Priscilla Richmond Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit. The yeas and nays are mandatory under the rule.

The clerk will call the roll. The assistant legislative clerk read as follows:

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order and pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion.

The clerk will report the motion to involute. The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 86, the nomination of Priscilla R. Owen of Texas to be United States Circuit Judge for the Fifth Circuit. Bill Frist, Orrin Hatch, John Cornyn, Michael B. Enzi, Jim Talent, Judd Gregg, Jeff Sessions, Ben Nighthorse Campbell, Craig Thomas, Chuck Grassley, Chuck Hagel, Thad Cochran, Richard Shelby, Wayne Allard, Elizabeth Dole, Conrad Burns, and Larry E. Craig.

The PRESIDING OFFICER. Under the previous order, the hour of 12:15 p.m. having arrived, the Senate stands in recess until the hour of 2:15 p.m. Thereupon, the Senate, at 12:52 p.m., recessed until 2:15 p.m. and reassembled when called to order by the President (Mr. Voinovich).

ENERGY POLICY ACT OF 2003—Continued

Mr. CRAIG. Mr. President, I suggest the absence of a quorum. The PRESIDING OFFICER. The clerk will call the roll. The assistant legislative clerk proceeded to call the roll. Mr. FEINGOLD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded. The PRESIDING OFFICER. Without objection, it is so ordered. Mr. FEINGOLD. Mr. President, I ask unanimous consent to speak as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Wisconsin is recognized. Mr. FEINGOLD. I thank the Chair. (The remarks of Mr. FEINGOLD pertaining to the introduction of S. 1480 are located in today’s Record under “ Statements on Introductions Bills and Joint Resolutions.”) Mr. FEINGOLD. Mr. President, I suggest the absence of a quorum. The PRESIDING OFFICER. The clerk will call the roll. The assistant legislative clerk proceeded to call the roll. Mr. REID. Mr. President, I ask unanimous consent for the quorum call be rescinded. The PRESIDING OFFICER. Without objection, it is so ordered. Mr. REID. Mr. President, there is an order floating around here on the floor that sets forth about 7 hours of debate on these two trade agreements, the