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, having been in continuous session since yesterday, pursuant to the order of the Senate of February 29, 1960, will suspend while the Chaplain offers a prayer.

Today's prayer will be offered by our guest Chaplain, RADM Robert F. Burt, Chaplain of the U.S. Marine Corps and Deputy Chief of Navy Chaplains.

Mr. REID. Mr. President, I ask that the time be equally charged against both sides during the prayer.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina.) Without objection, it is so ordered.

The guest Chaplain, RADM Robert Burt, offered the following prayer:

Let us pray.

Almighty God, Lord of our universe, creator, sustainer, protector, and comforter, source of our hope, bless us with Your divine presence and fill us with Your joy.

Lord, thank You for these servants of our great Nation. Help them today to sense the support and prayers that go out on their behalf, not just here in this room, but all over our Nation as citizens lift them up before You and sincerely pray for them every day. Answer those prayers, O God, and fill these Senators with Your spirit and power.

Lord, we lift together this Nation up before You and pray that You would continue to pour out Your rich blessing upon us. Bless our citizens spiritually, financially, physically, and emotionally. Bless our military personnel and their families. Lord, continue to use these Senators as instruments and channels of Your blessing.

May they remember ''never to become weary in doing good, for in proper time they will reap the harvest.'' Bless each Senator, bless their families, bless the States they represent, and, most of all, bless our Nation and its commitment to the pursuit of freedom and liberty not only within our own borders, but also to so many nations that desperately need our help.

We ask these things in Your awesome and holy name. Amen.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I believe the regular order is that we now have half an hour on our side.

The PRESIDING OFFICER. The time until 1 o'clock will be evenly divided.

Mr. GREGG. Mr. President, first, I thank the guest Chaplain for that 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 good. 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 have been 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 issue of advise and consent, 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, as far 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 with the circuit court of appeals 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 adequately 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 issue of the question of their 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 governance 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. The question is, what 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. There are going 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 as should apply under our 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 getting to a vote really 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 nominee 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 view 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 smart; 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.

What their views were, I believed, was 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 position has an individual belief, 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 it as laid down by the leader of the Catholic faith and 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 decisions—and in one case we have a classic example of that, and that is Justice Pryor—that 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 Nation 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. Two of 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 Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, that was an excellent statement by 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 supermajority is required and moving to consideration, and approval 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, it is going to be 12, we know already, appellate nominees who are going to be blocked by filibuster—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 nominee 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 on to 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 nonpartisan entity that acts as the principal policymaking body for our court system, and it has declared 12 judicial emergencies on 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 overturned court 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 of appeals.

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. Of 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. Let me mention a couple of them. 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 the 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, as we go into 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 are going to 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.

Mr. President, 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 where my colleague from Iowa charged the Republicans 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, and they understand hypocrisy, sanctimonious and otherwise.

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, and I think using something close 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 professed 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.

Then there was the minority leader, at a time in 1995 when he said: 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, Senator HARKIN, 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 nicer way to put it. It is hypocrisy to take inconsistent positions based on expedience where they should be made on principle.

What we are fighting about today is a fundamental principle. My colleague from Iowa said he wondered what the moral demarcation line was between holds and committee inaction on the one hand and filibusters on the other hand. I have an answer for him. I think it is a great question. The answer is: The line of moral demarcation is the Constitution and majority rule. That is where the moral demarcation line is, and there have now 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 of the Senate—I am not sure—he is 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 nominee.

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 Griffin, 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 scene in 1968, 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.
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> 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, those opposed to the nomination were jubilant, not only because the count fell far short of the ⅔ then required to impose cloture but, after reviewing the leanings of the absentees, 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 anyone knows former Senator Lyndon 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 may want to know what 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.

So I thought 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 to ancient history for 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 Leonard, Jorge Rangel, Robert Raymar, Barry Goode, Alston Johnson, James Duffy, Elena Kagen, James Wynn, Kathleen McCree Lewis, Enrique Moreno, James Lyons, Allen 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. So 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 balance—especially by a White House that is so bent on controlling all the levels of power. They even want the Senate to change their rules, rules that have governed this body for over 200 years.

Now, should filibusters be used sparingly? Of course. And they have been used sparingly. But unlike the times of the recent Republican filibusters where 63 of President Clinton's nominees were stopped, we have used this very sparingly against a President who wants to run roughshod over other safeguards built into our system of government and into the very rules and practices of the Senate and its committees.

By using it sparingly, all this talk—you know, it is almost ironic to see my Republican friends with a straight face say how terrible this is and spend $150,000 or so of the taxpayers' money to tell us how terrible this is, after they stopped, by using 1-person filibusters, 63 of President Clinton's nominees.

Let us put the chart up there, if we might. Here is what we have done. We did not stop 63, as they did. We have stopped four. We have confirmed 168, and we stopped 4. There is even a T-shirt floating around which says: We confirmed 168 of President Bush's nominees and what did we get for it? When you look at the back, it says: All I got was this lousy T-shirt.

So this year, with breathtaking arrogance and a certain disdain for the past and certainly an unwillingness to be honest about the history of the Senate, we have seen a systematic dismantling of the Judiciary Committee's own rules. One by one, Republican majorities have changed, bent, and even broken the longstanding rules and practices that are intended to protect the rights of Senators to defend the rights of their States and their constituencies. These are the very same rules they used—some would say abused—when there was a Democratic President.

Would filibusters be necessary at all if the President lived up to the Constitution's injunction that he seek not only the Senate's consent but also its advice in selecting candidates for the independent Federal judiciary? Remember, the Federal judiciary is not supposed to be an arm of the Republican Party or the Democratic Party. Of course, it is supposed to be independent. It is a real question: Is there a clear way forward without the need to prevent the confirmation of any judicial nominee? The President has the ability to stop all of this. None of this impasse would be necessary if the President actually followed advice and consent.

If the President did what other Presidents of both parties have done, where they have tried to be a uniter, not a divider, if the President, who has declared his disdain for what he calls judicial activism, had nominated people who were not judicial activists, if he had tried to unite and not divide, none of this would be happening.

Instead of working with the Senate to name mainstream nominees to our courts, he has chosen instead to try to politicize the courts. He and his aides have unabashedly declared that they are out to remake the federal judiciary in the image of ideological activism. Our courts are foundational to our system. Our independent judiciary is the envy of the entire world.

In deference to groups on the far right, he has nominated judicial activists who cannot help but raise questions about their impartiality and their capability to administer justice for all.

What we need is an independent judiciary. Time and again, Democratic Senators have acted in good faith to fill vacancies that Republicans 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, the senior 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 Senate consideration of this important bill and proposed that we do so in just two hours. The Republican leadership objected. He renewed his request when the Republican leader did appear on the floor but was, again, rebuffed by Republican objection. 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 in next week, after the appropriations process has run its course, is to enter into a debate. . . .'' Well, when given the chance 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 real 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 are out of work, including those more than three 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 Republican has an anonymous hold on S. 1293, the Criminal Spam 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 and under cover of anonymity 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 for Congress to continue the federal highway programs that build and repair our roads and highways and bridges. There is the need to perform real oversight of the U.S.A. PATRIOT Act and 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 testified before us, they declared that 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 leadership.

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 Advancing Justice through DNA 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, and to fund other DNA-related 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 people. These mistakes in our system of justice carry a high personal and social price. They undermine the public's confidence in our judicial system, they produce 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 and the American people 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.

New 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 unlikely? When they were considering 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 rose from 65 in 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 as far as he was concerned. That was when the Senate was considering less than half as many judicial nominees and had more than twice as many judicial vacancies as there are today. During those days the Republican leader said he only had one regret, one apology regarding his obstruction 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 left no doubt 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 is not 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 shows little interest in 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 veterans, 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, Democrats have cooperated in confirming 168 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 when 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 from the real concerns 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 ''are accusing the Senate 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 empty envelopes'' from those who 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 obstructing the President's judicial nominees, they are going to have to stray far from the facts, because the facts show that the Senate has made dramatic progress on judicial vacancies when and where the Administration has been willing to work with the Senate. Indeed, last week the Senate confirmed the 168th of this President's judicial nominees 100 of them, confirmed by the previous Democratic-controlled Senate, in just 17 months. We could confirm several more if the Republican leadership would just schedule the votes. There are other nominees who were reported unanimously by the Judiciary Committee and are just waiting to be confirmed. The number of confirmations could easily total 170 or more if the Republican leadership were truly interested in filling vacancies. Of course, more progress might undercut the partisan message that some are trying to peddle. Maybe that is why for weeks at a time the Republican leadership in the Senate has repeatedly refused to schedule votes on judicial nominees who will be approved, and have chosen is choosing, instead, to focus on the handful of the President's most extreme and divisive nominees.

The truth is that in less than three years' time, the number of President Bush's judicial nominees the Senate has confirmed has exceeded the number of judicial nominees confirmed for President Reagan, the ''all time champ'' at getting Federal judges confirmed, in all 4 years of his first term in office. A handful of the most extreme and controversial nominations have been denied consent by this Senate in the proper exercise of its duties under the rules. Only four. One-hundred-sixty-eight to four. That is in stark contrast to the more than 60 judicial nominees from President Clinton who were blocked by a Republican-led Senate.

McCarthyite smears: If this show is being staged to give some a platform for repulsive smears that Democrats are opposing nominees because of their religion, Republicans will have entered a realm of demagoguery, repeating false allegations and innuendo often enough to hope that some of their mud will stick.

Before they do that again, I would refer them to what the distinguished Senator from Louisiana, Ms. LANDRIEU, said this morning, because if this was not almost ridiculously contrary 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 McCarthyism that has crept into this debate. The distinguished predecessor of mine, Ralph Flanders of Vermont, stood up on this floor and brought a halt to a member of his own party, Senator Joseph McCarthy, because of the smears he was making, the unsubstantiated 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 asked my press secretary about it. He said: The Senator did not hear it because he was at mass with his wife of 41 years.

We should not sink to something that we know is not so. 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 despicable and unfounded. Other Republican members of the Judiciary Committee and of the Senate have either stood mute in the face of these McCarthyite charges, or, worse, have fed the flames. Such accusations are harmful to the Senate and to the Nation and have no place in this debate or anywhere else.

Just a few weeks ago, President Bush rightly 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 division waged by those who would misuse religion, 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 religious 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 Democratic Senators appear anti-woman. 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 what the rumor is.

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 107th 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 32 circuit court nominees (25 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 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 from getting Senate action on their judicial nominations include Kathleen McCree-Lewis, Elena Kagen, 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 ideologues. 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, Federalism, privacy rights, equal 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 that all of us are entitled to 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 judicial activists 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, nominees who can be supported 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 Judge Rosemary Barkett and Judge H. Lee Sarokin. Of course, while in the majority, Republicans 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 articled entitled ''Filibuster Derails Supreme Court Appointment,'' the 1968 nomination 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 turned the filibuster of 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 bent over backwards to 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 to select ideological activists and try 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. The Senate 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. It is troubling for the two views being presented here to be so diametrically opposed about what the history is, what the facts are, what the law is, what the Constitution says and demands.

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 and 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 these people in that 168 number, 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 what is this really about? 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 it.

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 issue to the exclusion of so many other important issues such as the economy, education, homeland security, what is happening in Iraq, and should happen. But that is their choice. That says a lot about their priorities as they respond to the music played 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 misleading way that the treatment of nominees during the Clinton administration has become a mantra on the other side of the aisle. I think 168 to 4 shows the Democrats in the Judiciary Committee and here on the Senate floor have shown great deference, 98 percent deference to the President's nominees and the will of the majority. That is certainly not something that nominees by President Clinton or the Democrats on the Judiciary Committee and in this body received when the shoe was on the other foot.

I am a little bewildered by this because time and time again my friends on the other side overlook the history of how extremely qualified men and women from all walks of life, all races and ethnic backgrounds, were treated under the Clinton administration.

The other side suggests that there were no mistreatments because there were so few, if any, filibusters. That is what they claim. Here are the pictures of the circuit court nominees blocked by Republicans. I know many of these people personally. I have the same feelings about them that I know some of my colleagues on the other side have about the nominees from their State. I know what they and their families have been put through for months, for years. And why was that? Because the way they were treated was done essentially in secret.

I give the other side great credit. They did not come out in the open like we are. They did not come out and debate the merits and demerits of the nominees from the current administration. What happened is, these 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 difference in how 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 apples.

These 63 well-qualified, distinguished lawyers and judges were stiffed. They were not even given, in many instances, the decency of a committee hearing. They were left hanging out there, twisting in the wind, by a Republican majority that decided: We do not want to have to stand up and say why we will not confirm these people because if we have to talk about it publicly, everyone will see through us and it will be demonstrated conclusively that this is not about the Constitution or the law. This is about blocking well-qualified nominees from a Democratic President from having lifetime tenure on the Federal bench.

So, 63 qualified people were blocked. We have blocked 4 for a variety of reasons. We have been publicly willing to go on the record and say, for the world to hear, they are lemons. We cannot support these people. They do not have the temperament, the quality that should sit on the Federal bench.

I find this sad. That is the word I would use. Neutral, nonpartisan experts agree that the Clinton administration judicial nominees were, by and large, moderate, accomplished, excellent choices. What are we given? We are given four people who, for a variety of reasons, are just waving red flags. I understand that. This is not about confirming judges. This is about exciting a base. This is about scoring political points. This is about raking the money in. I can imagine the phones are ringing over at the Republican Senate campaign headquarters. They are making so much money today because they have their hard-core base sending those dollars in. Keep standing up there, keep fighting. But I venture a guess that even a majority of those folks do not know the facts. They certainly are not going to get it from what is said on the other side of the aisle.

It is sad, it is kind of heart breaking, actually. We had an opportunity during the 8 years of the Clinton administration to nominate 63 well-qualified people, none of whom were given the decency of fair treatment. It was done under the cloak of secrecy. It was done behind closed doors. It was done with anonymous holds. It was done with no committee hearing being scheduled. You can go through the individual accomplishments of these people, 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 stand up in public 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. 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 maneuver, 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.

UNANIMOUS CONSENT REQUEST—S. 1853

Mrs. CLINTON. Before I yield, I ask unanimous consent 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.

Mrs. HUTCHISON. Then I object.

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.

UNANIMOUS CONSENT REQUEST

Mr. REID. 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, Democratic and Republican, to be able to give their full attention to the proceedings in the secret room upstairs. I so move.

Mrs. HUTCHISON. Mr. President, reserving the right to object, I certainly 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 pleased that there is action by 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 sign, this one chart is more persuasive than everything that has been said. No one, except a far-right militant, extreme minority, believes that the courts are obstructed when 168 judges are approved and four are not approved. Say whatever you will, that fact is transcendent. That fact is dominant.

I thank my colleagues on the other side for giving us the opportunity to repeat it over and over.

Now, we have been engaged in a lot of sophistry, a lot of arguments that do not make a difference. The lead argument is that there should not be filibusters. Last night, I talked at some length about all the filibusters that have gone on before. By the way, if you believe that the Constitution prohibits filibusters, you certainly believe it prohibits them not only for the judicial branch but the executive branch. Of course, that would be interpreting the Constitution because there are no words in there that say it. So my colleagues on the other side who are so worried about those who expand the law are doing it themselves.

I make another point today. We have heard this morning a little bit of a shift in the themes from my colleagues. Majority should rule. Just give them a vote. That is all we want, they say. If we want to give every nominee a vote, how is it different preventing the vote by speaking on the Senate floor or preventing the vote by refusing to bring the nominee up in the committee?

Did Annabelle Rodriguez get a vote? All she wanted was a majority vote. No. Did Clarence Sundram or John Bingler or Robert Freedberg or Lynette Norton or Legrome Davis or Robert Raymar or Robert Cindrich or Stephen Orlofsky get a vote? Nope, these are President Clinton nominees who were not brought before the committee.

What is the rule? That when the President nominates someone, all the other side is saying is, majority vote. Here is a list of 63 people who did not get that majority vote. If the Constitution is telling us every nominee should get a majority vote, why didn't it apply to these 63 as well as those 4?

And one other thing my learned colleague from Texas got up and said, hypocrisy is when you did one thing 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. While 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. It was argued 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 yet. 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 any assertion or statement of 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 not 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 PRESIDING OFFICER (Mr. BUNNING). The Senator from Pennsylvania has the floor.

Mr. SCHUMER. I was responding to the question.

Mr. SPECTER. Mr. President, I do thank you for your intervention. I had not wanted to interrupt the Senator from New York by calling for regular order, which would be in order when the comments go beyond—far beyond the scope of the question. But I thank the Chair for his intervention.

I would ask the Senator from New York another question, and ask him to be as restrained in time as he can be because we only have a half an hour, for I was concerned the last answer might use up the entire half hour.

When the Senator from New York made the comment that he questions my judgment, did he disagree with my judgment when President Clinton nominated Berzon to be a Court of Appeals judge for the Ninth Circuit and I joined with Democrats to get her confirmed?

Mr. SCHUMER. As I said—and I will try to be brief; and I know neither the Senator from Pennsylvania nor I is known for brevity on the floor——

Mr. SPECTER. Mr. President, that calls for a yes or no answer.

Mr. SCHUMER. As I said, normally I think the judgment of my colleague is a good one. Berzon, in my judgment, the nomination of Judge Berzon, she was quite far to the left. But I spoke about this last night. I believe, at least, because President Clinton, by and large——

The PRESIDING OFFICER. The Senator from Pennsylvania is not privileged to ask a question of the Senator

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. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. SMITH. I would like to speak.

Mr. SPECTER. Mr. President, the Senator from Oregon will have time to speak. We are in a 30-minute sequence. I would follow up the question to the Senator from New York: Did he disagree with my judgment on agreeing for the confirmation of Judge 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. SPECTER. We will proceed with the debate.

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 those questions because I think his assertion, when you hold up the chart with 168 to 4 and then say that only a far right extremist militant would question that, is grossly in error. I sought to illustrate it by asking the question as to whether ARLEN SPECTER fits that bill of a far right extremist militant.

The reality is that the 168 to 4 does not tell the picture. It is a misconstruction. Beyond the 4 who have been rejected by the filibuster by the Democrats, there are 5 others who are currently being filibustered; there are 14 others pending where the filibuster is imminent. President Bush has had only 63 percent of his appellate judges confirmed, whereas in similar circumstance for the past three Presidencies, there have been 91 percent confirmed.

So the chart, which has been seen more often than the most activist commercials, simply is misleading. These filibusters have gone very deeply into the heart of the nomination power of the President. The tradition has always been that the President gets substantial latitude in selecting judicial nominees. And where you have a challenge in ideology, the Democrats have, in this proceeding, gone to a new level in filibustering circuit judges. It simply has never been done before.

Last night, the Senator from Illinois made a comment that all the Republicans were doing here was theater. And I spoke shortly thereafter, and I agreed with him that this is theater. But it happens to be factual theater, and the theater is being utilized for a very important purpose; that is, to acquaint the American people with what is happening in the Senate on the politicization of judicial nominees.

I outlined in some detail yesterday, and will summarize it only briefly, the business of it being difficult when the party in the White House is different from the party in the Senate, which is what happened during the last 2 years of President Reagan's administration, and all of the administration of President George Herbert Walker Bush, where the percentages were very low. Then, in the first 2 years of President Clinton's administration, the percentages were high because he had a Senate controlled by his own party. And when President Clinton made nominations in the last 6 years, the percentages again were low. So the fault has been attributable to both parties when one party controlled the White House and the other party controlled the Senate.

But what has happened here more recently has been a new low. It has been a new low because for the first time there has been a filibuster of a circuit judge, which had never happened in the preceding 216 years of the Republic. And what we are doing here in this marathon—aptly named; it is not a filibuster, it is a marathon—is to call the attention of the American people to what has happened.

I related the filibuster sequence back in 1987, which is worth repeating, because it illustrates the point about how these proceedings are effective in telling the American people what is going on.

In 1987, there was a filibuster by Republicans on campaign finance reform. Senator BYRD was the leader of the Democrats. At about 2 a.m.—one early morning—Senator Dole, the Republican leader, called us all back into the cloakroom, a few feet to the rear of where I stand now, and said he would request that no Republican Senator go to the floor, so as to compel the Democrats to maintain a quorum—51 Senators—because in the absence of a quorum on the floor, any Senator may suggest the absence of a quorum and then there is no further business to be transacted.

Senator BYRD then responded with a motion to arrest absent Senators, and the Sergeant at Arms, Henry Giugni, was armed with the warrants of arrest. The Sergeant at Arms started to patrol the halls, and the first Senator he found was Senator Lowell Weicker. Sergeant at Arms Henry Giugni was about 5 feet 6 inches and 150 pounds. Senator Lowell Weicker was 6 feet 4 inches and 240 pounds—in fact, still is 6 feet 4 inches and 240 pounds. The Sergeant at Arms decided not to arrest Senator Weicker, which I think was a wise decision.

I note the Senator from Connecticut, Mr. DODD, smiling. He was Senator Weicker's colleague at the time from Connecticut and I think would confirm the wisdom of not arresting Senator Weicker.

So then the Sergeant at Arms started to knock on Senate doors. It is interesting how, when you tell a story, there is so much more attention paid to what is going on. People are snoozing here generally during this marathon.

At any rate, Henry Giugni went to knock on doors, and he knocked on Senator Packwood's door, and Senator Packwood foolishly answered the door. Then Senator Packwood was carried, feet first, in through that door. I was in the Chamber at the time. They carried him feet first.

This is a true story. You do not get many true stories out of Washington, but this is a true story. Even the pages think it is funny. It was really funny that night. It attracted a lot of attention. And that is what we seek to do here today, is to attract attention, because if the American people focus on what is going on with this filibuster, of the politicization of the judges, we think we can end it. And we are trying to make C–SPAN the channel of choice, to replace Jay Leno in the late hours.

There are many people who are surfing as we speak. It is amazing how many people will even watch C–SPAN or get to C–SPAN inadvertently in surfing. And I would urge them to continue to listen because what is happening here is substantively important, and I think even more interesting than the soaps, or at least stay tuned for the next 20 minutes, until after Senator SMITH and Senator SUNUNU 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. Really, it 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 a 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: the reasons 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. But if those memoranda are to be turned over under that circumstance, every lawyer who is an Assistant Solicitor General or an assistant DA or in any legal position would be chilled by the prospect of having such memoranda disclosed at some time in the future when that individual 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 the 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 or 100 percent of the time.

In my view, my reading of the Constitution, it is that supermajorities 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 civil rights in this country.

What is the difference between that fight 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—and thereby deny justice—but to dumb down justice in our 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 couldn't 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 don't 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 we also disserve the marketplace 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, you 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 issue. I truly believe and 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.

As 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 justice in our country. But that is what is happening here. That is why this time is so important, that we spend it debating and hopefully resolve this issue.

Mr. President, I will not take more time. My colleague, Senator SUNUNU, deserves to be heard.

I pray, I plead, I hope we can get beyond this as it comes to executive appointments, the Executive Calendar, because we are disserving America with this process that has now ratcheted up to a new level that is constitutionally dangerous.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, I very much appreciate the remarks of my colleague from Oregon and in particular the emphasis he placed on what the tone and the tenor of our current debate on nominees could mean for future nominees, for future qualification of those who might be interested in serving on the bench.

As elected officials, we talk all the time about tenor in politics, big media,

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 or mayor or dogcatcher, 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 candidates who 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 75 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 these nominees deserve the fairness of an up-or-down vote, 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 used in a partisan way to prevent a nominee from getting that up-or-down vote on the floor. It certainly hasn't been used on the past on four, five, six, seven, or eight nominees. It is that process that I think has Members of this Senate, Democrat 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. SPECTER. 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 be putting 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 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. Most of our businesses are very small with under 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 products 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 win. That is not happening, and 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.

''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, 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 that when we lose manufacturing jobs.

''Straits Steel closing sad news for plant's 180 employees.'' This comes from Ludington.

We read in the Lancing State Journal: ''Jobless 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 me and asking 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 industry, in our farms, 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, not 4—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 level 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 children. 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, working 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 and believe 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—S. 224

At this time, 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 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 will not modify her request?

Ms. STABENOW. No.

Mr. SMITH. I would object.

The PRESIDING OFFICER. The objection is heard.

Ms. STABENOW. Mr. President, I am going to turn in a moment to my esteemed colleague from Connecticut who has been in this Chamber time and again, not only addressing the issue that brought us here but other issues as well. He is someone who has been fighting for those good-paying jobs. He is a consensus builder and problem solver and somebody who knows how to get things done. I am very grateful to be sharing this time with him today because of the wonderful leadership he brings to the Senate and the way in which his work has touched so many lives of people in Michigan as well as across the country.

In conclusion, I end as I started by saying what we do around here always relates to values and priorities. I hope we will choose to focus our time and attention on those things that affect the most people in our country, those things that are best to move our country forward and to keep the economic engine moving forward for all of us, that will at the end of the day allow us to say that what we did on the Senate floor today gave people an opportunity to work hard and create a better life for themselves and their families.

We are losing the manufacturing sector in this country. We need a sense of urgency about that. We need to act to give our businesses and employees a level playing field and address those issues that will allow them to keep jobs in this country. I hope as we are debating about 4 people, we will remember 3 million people who are counting on us to act.

I now yield time to my colleague from Connecticut.

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 very 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 are—while they may be interested from an intellectual standpoint, even some maybe on a more passionate level on the question of judicial nominations, there are 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 United States 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 20 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, will be 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. I work very hard to maintain my relationships with every Member. Regardless of what battle may ensue today, tomorrow is a new day and I always reach across the aisle wherever I can because I have never seen an issue in my 24 years here that had any value and merit be accomplished without it being bipartisan, ever. I defy any Member to mention a single issue of any significance that was ever adopted by this body that was not bipartisan in nature.

When we lose our ability to do that, we not only suffer as an institution but the people we seek to represent suffer terribly. So it is critically important that we make those efforts.

I have spent a lot of time over this last number of weeks trying to get something done on asbestos reform. My colleague from Michigan and my colleague from Oregon know of the efforts we made in this regard. It is terribly worrying to me that we are about to end this session. We have 700,000 lawsuits that have been filed for people who were exposed or could get ill from exposure to asbestos. Seventy thousand cases are being filed a year. There are major companies that have gone bankrupt because of the problems with exposure and the liabilities as a result of the asbestos issue. I would have hoped, maybe vainly, that we might spend some time on an issue such as that, candidly. I noticed to my colleagues the other day that while I voted against cloture on the class action reform issue, I immediately took the floor to say I am very interested in a class action reform bill and I am prepared to support one. There were issues that needed to be worked out.

I know there are businesses all across this country that would like very much to see us address the issue of class action reform. There is nothing like 30 hours' worth of debate on class action reform. There will be no 30 hours of debate on asbestos issues here, unfortunately.

So I say with all due respect—and I do respect my colleagues, all of them—that it is a reflection to some degree of what your sense of priorities is. There are a lot of issues that deserve attention, but I would ask any average American to identify for me, when given the choices to debate, whether or not we ought to do something about class action 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—none, absolutely none.

So while we in the minority cannot set the agenda, the power of the majority is the power to be recognized, 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 far more important than anything else on which this Congress, this session, with hours away from terminating it, should spend its time and efforts.

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 that it ends up being debated 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 we all face from time to time when we conduct our town meetings 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—do you have 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 spending the time of this institution 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 expeditiously, is the one we have lived 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, large States by population 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 I certainly did not; I was always in the majority there—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 one Senator, if they stand up and can stand long enough and do not leave the floor, to have the right not to be interrupted, extended debate; the right to amend. It has been a wonderful balance. The rights of a majority are down the hall. The rights of a minority are here in this Chamber. We have tried over the years to see to it that those unique rights give us a sense of balance, 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. So the Senate was a place to say let's stop, let's take a look, let's think again about whether or not this is the right way to go.

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, taxations 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 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 to the President. It was only an 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 carry it with me 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 judicial part of it. It says that people are appointed to the courts, supreme and inferior courts, and they will serve for life, during good behavior for life. It is unique. It is the only office in the country where one gets a lifetime appointment. The President does not. Members of Congress do not. A Federal judge gets a lifetime appointment. If you are appointed when you are 35 years of age and you live to be 85—50 years—unless you do something terribly wrong, you are there; you are not going anywhere.

Of course, in article II, they lay out in section 2: He—speaking of the President—shall have the power, by and with the advice and consent of the United States Senate, to make treaties, and so forth. It goes on. And by and with the advice and consent of the Senate shall appoint ambassadors, other public ministers, and so forth, judges of the Supreme Court, and all other officers of the United States.

Does anyone really believe for a single moment that the Framers of this unique document intended that the President, the executive branch, would appoint and that it was then the duty of this body to just rubberstamp that choice? Of course not. In fact, they did not even want to give him the power to appoint to begin with because they were uneasy about someone having too much power in their own hands.

I suspect our predecessors probably had in mind what some of the more recent predecessors did with postmasterships.

I remember my father talking about the postmastership appointment. He used to say that this was a dreadful idea, to give Senators the right to appoint postmasters, because he said inevitably you would have about 100 applicants for the job. Of course, once they were confirmed, they could never get involved in politics again. So he used to say you would end up with 99 enemies who did not get the job and 1 ingrate who did who could never talk to you again.

I suspect that may have been true as well about Federal judgeships, that our colleagues in the Senate, in the earliest days, probably said: Look, we do not want the business of having to nominate these guys because inevitably we are going to pick someone and the other guys are people who are going to be upset with us. So why do we not give that to the President, let him appoint them, and then we will decide whether or not they deserve to be confirmed.

The notion somehow that one has a constitutional right to a vote—I have read this document; I read it every day—there is nowhere in this document one gets a constitutional right to a vote on anything, any more than the American people have a right to a constitutional vote on the minimum wage or on Medicare reform or any other matter I want to bring up. There is no constitutional right to that. There is certainly no constitutional right that if one gets nominated to be a judge, they have a constitutional right to be voted on. Nowhere does the Constitution give someone that, in any area whatsoever.

The idea somehow that we would only apply a filibuster to legislative matters and not judicial nominations, so one can filibuster a sense-of-the-Senate resolution——

The PRESIDING OFFICER. The time of the Senator has expired. The Senator's half hour is up.

Mr. DODD. I thank the Chair very much. I apologize to my colleagues for going a little bit. I appreciate the indulgence of the Chair.

The PRESIDING OFFICER. Does the Senator from Alabama seek recognition?

Mr. SESSIONS. Mr. President, the Senator from Alaska is prepared to speak.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Ms. MURKOWSKI. Mr. President, I thank the Senator from Alabama for this opportunity.

I join today with my colleagues in the Senate to address the judicial confirmation process and really the procedural quagmire in which we find this body right now. I take very seriously my obligation under the Constitution to provide the advice and consent to the judicial nominations of individuals 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 take part of my job to mean that my 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 embroiled in this current dispute. Rather, we have been prevented, I have been prevented as a Member of the Senate, as an individual, from voting for or against a nomination by a legislative procedure, legislative procedural rules unique to this body.

We are engaged in the Senate in a historic session for not quite 24 hours, during which time we have heard about the nomination process, the qualifications of certain individuals to be Federal judges, the need for jobs, unemployment issues—a variety of compelling, interesting significant issues. I bring to this debate this afternoon a new issue and explain why legislation I have proposed, along with several other

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 would argue, by invoking the Senate procedures to filibuster the current judicial nominations, those on the other side of the aisle are simply trying to ensure the balance or the mainstream ideology on the U.S. court of appeals.

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. These cases from the Ninth Circuit made up approximately one-third of the Supreme Court docket despite the fact that the Supreme Court has jurisdiction over 11 other Federal circuits and over Federal questions decided in courts of all 50 states.

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 disagreeing 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 arguments. 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.

Let's go to 1998. The Supreme Court affirmed one case from the DC Circuit, vacated one case, and reversed no DC Circuit case. In comparison to the Ninth Circuit, in 1998 the Ninth Circuit was affirmed 4 times and reversed or vacated 14 times.

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, the DC Circuit 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 circuit 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 preside 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. The shear magnitude 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 to the Ninth Circuit since June 22, 2001. There are many who believe the U.S. Court of Appeals, the Ninth Circuit, is out of touch with the mainstream. This is part of the reason that I support splitting the Ninth Circuit and part of the reason the Senate must 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 being out of touch with mainstream America. The Senate, by a 94–0 vote, went on record expressing unanimous opposition to the Ninth Circuit decision in Elk Grove Unified School District. The U.S. Supreme Court shortly thereafter granted certiorari and briefs to be filed before the end of the year.

Another part of the problem with the Ninth Circuit is it is never able to speak with one voice. All other courts have one entity to hear full court en banc cases. The Ninth Circuit sits in panels of 11. This system injects unnecessary arbitrariness to decisions. 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 the 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. SESSIONS. What is the time situation?

The PRESIDING OFFICER. The majority controls 17 minutes and the minority controls 30 minutes allocated.

Mr. SESSIONS. I yield to the Senator from Ohio for 10 minutes or so.

Mr. VOINOVICH. How much time remains?

The PRESIDING OFFICER. There are 16½ minutes.

Mr. VOINOVICH. 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 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 issue of the Democrats using the filibuster to frustrate the Senate's right to advice and consent on presidential 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

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 done his 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 spend $5.1 billion for 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 obstruction continues. 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 2,000 cases in the Sixth Circuit affected by this growing delay. With 2,000 plus cases being delayed nearly 60 days, more than 120,000 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 operated by 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 and female 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 minority 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 and made sure, as President of 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 positive 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 staffer for the Mississippi Republican Party.

In 1981, he successfully represented a black man falsely accused of robbing a 16-year-old white 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 of varying 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 insure 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 Court of Appeals and I recommend him without reservation.

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 Charles 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 advise 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—it has to end—and I prayerfully and respectfully ask my colleagues on the other side of the aisle to cease and desist their obstructionist tactics for the benefit of our Constitution and the people of the United States of America.

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 they have been placing in the Chamber.

By the way, Mr. President, what is the time on this side?

The PRESIDING OFFICER. The majority controls an additional 7½ minutes.

Mr. SESSIONS. They have been saying 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 believe yesterday by the Michigan State Senate, expressing concern about this. I would just like to read from it. I know the Senator from Ohio was concerned about this circuit. It is his circuit.

They say:

Whereas, The Senate of the United States is perpetuating an injustice and endangering the well-being of many Americans. Its actions 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 Michigan. . . .

They say:

Whereas, The Senate of the United States is allowing the continued, intentional obstruction of the judicial nominations of all these nominees put forth by the President of the United States, including four fine Michigan jurists: Judges Henry W. Saad, Susan B. Nielson, 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 the chart they have been putting up says four judges are being mentioned; it does not include these four judges whom they are also obstructing?

Mr. VOINOVICH. They do not include those four judges who are being obstructed.

Mr. SESSIONS. I will just point out, Mr. President, if the Senator will yield the floor——

Mr. VOINOVICH. I yield the floor.

The PRESIDING OFFICER. The Senator 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 federal circuit court nominees pending on the Senate floor, to release those being upheld 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 RECORD.

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

Senator Cropsey offered the following resolution:

SENATE RESOLUTION NO. 199

A resolution to memorialize the United States 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 support the reforms of the federal judicial confirmation process, all which will be addressed during 30 hours of floor debate this week.

Whereas the Senate of the United States is perpetuating an injustice and endangering the well-being of many Americans. Its actions are jeopardizing our system of justice in 6 out of the of 12 federal judicial circuits that have been declared ''judicial emergencies,'' including the 6th Circuit Court of Appeals which includes the state of Michigan; and

Whereas the Senate of the United States is allowing the continued, intentional obstruction of the judicial nomination of all these nominees put forth by the President of the United States, including four fine Michigan jurists: Judge Henry W. Saad, Susan B. Nielson, David W. McKeague, and Richard A. Griffin, nominated to serve on the United States 6th Circuit Court of Appeals; and

Whereas there has never been a filibuster on any Court of Appeals nominee in the history of the Senate. This obstruction continues to harm the lives, careers, and families of eminently qualified judicial nominees and is prolonging the judicial emergencies that have compromised the administration of Justice for many of our fellow citizens in Michigan and around the country; and

Whereas both of Michigan's Senators continue to block the Judiciary Committee of the United States Senate from holding hearings regarding these nominees. This refusal and the refusal by many of their colleagues to allow the United States Senate to complete its constitutional obligation of advice and consent is denying all of the nation's filibustered nominees an up or down vote on their nomination. All the while, the severe backlog of cases is growing; and

Whereas the 30 hours of debate 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 reforms in the judicial confirmation process; now, therefore, be it

Resolved by the Senate, That we memorialize the United States Senate 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 upheld 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 further

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 believes judges are here to apply the law as written, they are not here to enforce their rules, their personal political agenda, do what they think is nice in every case.

Clients have rights. If the rights they have protect them from lawsuits, they should be protected. If they are entitled to recover or be successful, they ought to be successful. It is up to the judge to apply the law fairly and objectively.

President Bush has his hand on the heart of the problem. He understands what is wrong with the judiciary in America. He knows it is out of control. He knows we are allowing verdicts to run wild. He knows we have a radical secularization of America that is occurring through the power of the Federal courts. It is not healthy. We have things such as the Pledge of Allegiance being struck down. He knows criminal cases are being tossed over at record rates.

Two judges we confirmed—Berzon and Paez—and I voted to give them an up-or-down vote, and I voted against them on the merits—these two nominees, in separate cases, struck down California's highly effective ''three strikes and you are out'' law that has helped drive down the crime rates significantly in California. And I say that as a former prosecutor of over 15 years. Absolutely, that has had an impact in the reduction of the crime rate in California. They struck those down as unconstitutional.

Mr. President, 170 death penalty cases have been overturned, as the Senator noted, by this Ninth Circuit, the most liberal circuit in America, and they struck down the Pledge of Allegiance. The U.S. Supreme Court has reversed 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 mainstream. I am shocked that the distinguished Senator from New York, Mr. SCHUMER—who is really the point man on the advocacy of judicial activism in the Senate—I would submit this is what he said in this debate 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 moderation. That is not the language of collegiality. They are accusing Members over here of being far right extremists 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] launched a broadside at conservatives, accusing the President of ''loading up the judiciary 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,'' and said ''They have this sort of little patina of philosophy but underneath it all is meanness, selfishness and 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 African 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 Supreme Court of California, not a conservative 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 that I be given 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 Pryor, 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, that were bequeathed to us 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 to interpret law in America. They do not believe judges are entitled to reinterpret the meaning of words and statutes, and in our Constitution to legitimate the perpetuation of a political agenda.

That is what it is all about. President Bush understands that. The American people understand that. That is mainstream. The kind of allegations we have had here against these fine nominees is not mainstream. It is typical of the hard left that comes from the People for the American Way, the American Civil Liberties Union, and those kinds of groups.

Mr. President, I feel really strongly about it. I believe the majority acted responsibly during the Clinton years. We did not maintain a filibuster against Clinton judges, as has been done now for the first time in history. That is what is occurring today, a filibuster, systematically, of a number of highly qualified judges for whom there is no basis to object on the merits.

I yield the floor and I reserve the remainder of the time.

The PRESIDING OFFICER. The Senator from Wisconsin.

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 committee have sent to the floor 172 nominees since he came into office, and we have voted out 168 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 sent up by the President a vote? Mr. President, 168 have been voted on and are now sitting in their Federal judgeships, and 4 have been held up.

Furthermore, 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. That phrase 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.

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. So 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: Our economy, our deficit, our unemployment rate, our health care crisis, our educational crisis, the problems men and women who are leading their regular lives every day face and on which they are looking to the Federal Government for at least some help and assistance.

They are not all hot and bothered about the fact that 4.5 percent or 5 percent of the Federal judgeships in this country are today vacant, which is to say that over 95 percent are occupied. They are not concerned about that. They are concerned about their real problems and what we are doing to try to alleviate them. And here we are, taking 30 hours and, in my opinion, just wasting it in talking about a problem which the other side alleges exists and does not exist.

Finally, when President Clinton was in office, and the Republicans controlled the Senate from 1995 to the year 2000, nominees were also denied votes in that era. They were denied votes because they were not given hearings by the Republican Judiciary Committee. So they were denied their vote in much the same way that some are being denied a vote right now. That is the way the process works. There is nothing sinister about it, and it certainly does not cripple our country's judicial system.

My colleague from New Jersey is, I believe, waiting to speak.

The PRESIDING OFFICER. The Senator from New Jersey.

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 jobless being denied 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 these nine men—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, but 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 pregnancies 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 deny 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—went to 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 carry on this battle? Why 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 5 o'clock in the morning, then why isn't it important enough for us to be taking care of what we have to 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 show the people what 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 them he is sorry and acknowledge their bravery in serving? 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 did a poll. 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.'' I will talk about 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 and then advise, which is what they would like to see us do here. 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 judicious—judicial; they are not judicious at all—judicial nominees? Meanwhile, 3 million have lost their jobs since this President took office.

I ask my colleagues to listen closely to this fact. 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 humiliation about an inability to go to work.

I remember 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? What are we doing to help them 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.

The chart shows actual jobs gained or lost in the millions, and here we see there are 3 million lost.

The two blobs on this chart are the administrations of Herbert Hoover and the current administration. When we look at this chart, there are only two administrations in the last 80 years that have resulted in a net job loss: this administration and Herbert Hoover's administration. I don't remember thinking about it during Hoover's time, but I was there at the time. I knew it was a disaster in my house.

I would think the Bush administration doesn't enjoy sharing this kind of company, but the inaction of this administration on this issue makes me wonder if they understand the damage they are causing to the economy and families across the country. But we are taking 30 hours of time. The 30 hours don't belong to us. They belong to the people of the country. It belongs to our constituents.

Taking 30 hours of the time of the Senate not to pass a jobs creation bill, not to pass incentives for companies to continue manufacturing in the United States, not to extend the unemployment benefits for people victimized by this economy—none of that. We are here to discuss a couple of extremist judicial nominees the President wants to force down our throats.

President George W. Bush presented himself in the beginning days of his campaign and in the early days of his administration as being a uniter, not a divider, except that is far from the truth. I have never seen a more ideologically partisan White House, and I served with Ronald Reagan when he was President. I served with George Bush, Sr., when he was President. I served with President Bill Clinton. I have never seen a more ideologically partisan White House. This administration and my colleagues across the aisle are driven ideologically to the point that I think there is kind of an impaired vision to the simple, clear, and irrefutable facts.

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 Reagan did in his first full term. 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, and we will 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 98-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 the Senate's job 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 think it is instructive 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 of all President Clinton's 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 Wisconsin 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 go before 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 with the crocodile tears 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 for a question?

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, agenda-driven judges 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. That is 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 sure the State of New Jersey, like the State of Nevada, and all 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 care about our dealing with, 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 we be doing that or what we are doing now?

Mr. LAUTENBERG. I say to my friend from Nevada, I hear two principal concerns from the people 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—and I 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 attack. People want those drugs. We have got to live this long because, A, 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 can stand some 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.

To answer the question 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 kid's schooling. 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, to stay in touch. No, we do not have time for that.

The PRESIDING OFFICER (Mr. CRAPO). 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 of 1997, 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 of hypocrisy 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. Justice denied demands that 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 on 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, there is an emerging trend in 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 job of the nominee 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 this crusade 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 pass off. Everybody knows that sort of attitude. But the academic gloss quickly wears off when there is no substance 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 talk about 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 that when they are called into the class, but a professor makes it 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.

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 about 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 courts. We need balance 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 Republican associations.

I guess the only thing I can say about that quote is: that was then, this is now.

Senator TOM HARKIN said: I thought that if the President nominated them, they had a fair hearing, and they were reported out, my own decision was whether or not they were qualified, not whether they were ideologically opposed to me or to how I feel about what they believe. Again, that was then, this is now.

So then Senator HARRY REID said: I do not think we should have a litmus test on members of the subcabinet, the Cabinet, or the judges. But then again, that was HARRY REID then, not Senator REID now.

Although I myself have never studied the law, I know the reason, too. I am going to try to be as honest as I always am on the floor and as direct as I can be. When the nomination of Ruth Bader Ginsburg came up for the U.S. Supreme Court in 1993, I was confronted with a nominee whose past revealed that she had a vastly different 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, Justice Ginsburg was a judge of great ability, character, intellect, and temperance. 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 was here and I am there, 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.

That is not the kind of judgment nor is that 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 if it does not match the litmus test, they do not get the vote.

Now and then, of course, we probably ought to make a few examples here to prove that you have that kind of power, or that you can exert 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 ideologies. For instance, in Federalist Paper 78, Alexander Hamilton underscored how important an independent judiciary was to the separation of powers:

> The courts must declare the sense of the law; and if they should be disposed to 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, requisite integrity, competent knowledge of the law, be of fit 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?

The PRESIDING OFFICER. Thirteen minutes, 50 seconds.

Mr. CRAIG. I yield such time to the Senator from Wyoming as he may consume.

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 that we all do.

I am no 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 unemployment, we ought to be talking about a number of things, and I agree with that. We should have been doing that over the last year, but we spent a lot of time on this very issue right here on the floor when we could have been talking about energy; we could have been talking about health care; we could have been talking about all of those things.

So I kind of hate to hear that this 30 hours is holding things up when we spent much more than that with the other side simply holding up moving things along.

I am convinced there needs to be a system in the Senate we can depend on and work with, that we can bring it to a vote and decide yes or no. There has to be that system. That is what this is all about. There seems to be a lot of talk, of course, about the individual candidates we are talking about here who have not been able to be dealt with. But the real fact is it is the system that is in question. That is what it is really all about, and I think we need to deal with that issue.

There has been obstruction, frankly. There has been obstruction on almost all of our issues. It has been called slow-walking. Some evidence of that from last year is that we did not even get a budget. Remember that? We did not even get appropriations through the whole year.

That same obstructionism has been going on this year. It is all political. It is too bad, really, because we have so much we can do and so much we really ought to do. We have a constitutional duty, of course, to provide the advice and consent of these nominations. It is pretty simple. The Constitution specifically requires a supermajority for overriding a veto, for impeachment, for ratification of treaties. Advice and consent is not in that category and has not been in that category.

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 Senator EDWARD KENNEDY from 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 2 years, in many cases 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 for his comments as we debate this issue. How much time remains on our side?

The PRESIDING OFFICER. There are 9 minutes 40 seconds.

Mr. CRAIG. I yield to the Senator from Utah 8 minutes.

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. There has been no vote disapproving 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 existence of the Senate, never 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 until this year, 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 the law as I understand it becomes established is 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 proposal that was made some 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, followed up with a second 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 that. I am today rising to say, we thought that 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 will have tomorrow on what is now called the Frist-Miller proposal is a vote to endorse the wisdom and farsightedness 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 214-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 make a bipartisan solution to a problem that has spawned 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, who excelled 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 that good.

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, OK, I recognize the wisdom of Senator LIEBERMAN's proposal. I am willing to endorse it. Now it is before us once again. Let us not kill it just because it bears the name Frist-Miller instead of the names Lieberman-Harkin as it originally had.

Give Members an opportunity to put the bitterness, the wild and sometimes excessive statements behind us and move forward in the future as we have done in the past for 214 years to see to it that any nominee who makes it through the committee process and gets reported to the floor gets voted on, whether he or she is a Republican or a Democrat, Hispanic or an African American, a Roman Catholic or a Jew or whatever the situation. If he or she survives the committee process and comes to the Senate floor, he or she deserves 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 and the 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 and American communities are paying the price.

Senator MURRAY went on to say at a press conference on September 14: This delay is especially troubling when we look at what happens to women and minorities. It is time to dismantle the glass ceiling and let qualified jurists take their place on the bench. We are here to send a message. Confirm the judicial nominees pending before the Senate and let these qualified men and women fill the vacancies of the courtrooms across America.

That is a quote from the Senator who is about to address this afternoon the issue of the filibuster of the qualified judges who are before the Senate. I hope her statements of less than 3 years ago would be fresh again in her mind as she resumes the debate this afternoon.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, this morning on the Senate floor I spoke at length about the importance of the Senate's role in confirming judges for lifetime appointments and talked of the success in the Senate confirming 98 percent of the judges sent to the floor. We have, I remind our colleagues, confirmed 168 judges on the Senate floor. That is pretty impressive. But all the Senate action that is important to occur before the end of the year is now being held up over four judges.

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 did not. Today, 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 not 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 economy. We are not helping 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 we are 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, we really heard from people across 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 at that time 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 so Republicans can complain about four judges they want confirmed. Forget the laid-off workers, forget health care, forget education. The other side wants to make a point, and they are shutting down the Senate and the needs of the American people so they can make that point.

Each passing hour on this floor feels more and more like the Government shutdown of 1995. We cannot work on critical needs because the other side is holding things up. After 30 hours of hearing about this, the American people will get it. They will see that we are not working on the things that really do matter to them. I am sure many Americans are scratching their heads, wondering what is going on in the Senate. The answer is, we are not working on jobs. We are not working on education. We are not working on health care because the majority is upset we have confirmed only 98 percent of President Bush's judicial nominees.

As I mentioned this morning, there are much more important things we need to be doing. We do need to extend unemployment benefits for laid-off workers. I tried to bring up the bill to help laid-off workers get unemployment benefits, but when I bring it up the majority says it is not the right time to discuss helping laid-off workers.

I invite the majority to explain to laid-off workers in my State who 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 on the real crisis 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 the 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 ending next week—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

Congress does the right thing and extends unemployment benefits. If Congress does not extend those benefits, another 124,000 in my home State, Washington State, will exhaust their benefits by December 31. These families are draining their savings accounts just to hang on. Many of them have run out of options. But they still have to pay their mortgage. They still have to pay their medical bills. They still have to pay college tuition. That is why they need these unemployment insurance benefits.

The bill I introduced will do three things. First, it will help families as they try to get back on their feet. These benefits simply will help them buy groceries, pay the mortgage, keep their kids in college. It will give them a little bit of cushion as they try to find work.

Second, extending benefits will help stimulate the economy in every State and every Member wants their economy to be better in their State because when we send the unemployment insurance, people then have the money they need to buy things for every day. That will be a shot in the arm for the hard-hit States, for our hardware stores, for grocery stores, and all of our businesses like that. It means these people will have the money they need to keep those businesses going as well.

Finally, extending benefits will help stimulate our Nation's economy. Every dollar invested in these benefits generates another $1.73 for our economy.

Laid-off workers deserve a vote on this bill. They deserve a debate on this bill. They deserve time in the Senate on this bill. They need our help. We should be using 30 hours of time to talk about the unemployed workers, the difficulties facing them, and how we in this Congress are going to get them back on their feet. That is what we should be spending 30 hours on.

It seems to me at a time when we are spending $1 billion a week in Iraq, the very least we can do is give unemployed Americans a few hundred dollars a week. Congress cannot leave town without providing a life line to laid-off workers. The clock is ticking, time is running out, and we should be helping laid-off workers instead of squandering our limited time on the judges issues.

To understand how serious this is, I will read some letters from the people I represent.

How much time remains on my side?

The PRESIDING OFFICER. The Senator has 21½ minutes.

Mrs. MURRAY. I ask the Presiding Officer to notify me when I have used 6 minutes.

The PRESIDING OFFICER. You will be notified.

Mrs. MURRAY. Let me read a letter from Laura Perry in Battle Ground, WA, a small community in southwest Washington. Laura wrote:

I really need to know what is being done not only in the State of Washington, but in Congress to acknowledge workers who have lost their jobs.

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 one-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 insurance 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.

Let me read a letter from Marshall Dunlap of Kent, WA, a suburb out of Seattle. He 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 problem multiplied by millions.

There are over 97,000 people unemployed in the Puget Sound are 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 Kingston, 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 exhausted his benefits. That is why I think 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 40 seconds.

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 real life 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 its 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.

Fear, 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, 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. 1853

Because of that, I ask 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 concerns that these people 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 6 minutes.

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 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 be wasting 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 phony. It is fabricated. 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 and no Medicare, no Federal role in 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 the Constitution 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 whoever is President. 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—which apparently is the logic of the opposition here today—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, conservative Republican judges, which he mostly has done. 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 lightning rods, knowing they would energize the radical, 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 that turned out to be true.

The Senate, because of our parliamentary rules, allows the minority party to exercise a 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 of one allows them to jam almost anything through that body, 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 I believe that is 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 people, 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 are now 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 Federal court until you get to the Supreme Court—than 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 on 6 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 that I think is good for the 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 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 jobless 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.

As 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 attention. What 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 has concluded 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 strength until positions are created in new economic sectors. The surge in discouraged workers masks the true impact of the economic downturn.

Currently, 1.6 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. JOHNSON. I yield the floor.

The Senator from Mississippi.

Mr. LOTT. Parliamentary inquiry, Mr. President: I believe there will now be another hour, 30 minutes to the Republican side of the aisle, followed by 30 minutes to the Democratic side of the aisle.

The PRESIDING OFFICER. The Senator is correct.

Mr. LOTT. Under that agreement, I am glad to yield such time as he may consume 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 bond. 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 made in behalf of all of 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 general 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 Federal system. Now only 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 United States 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.

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

The cloture rule was adopted by the Senate in 1917. This was the first time Senators were guided by a procedure for bringing a debate to a close on any measure, motion, or other matter pending before the Senate.

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 it's 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 58 pointed out that the Constitutional Convention explicitly rejected the idea that Congress 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 not the prevailing 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 supermajorities are 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 effectively rewritten the Constitution to demand a supermajority vote 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 a 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 of 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 a pretty good record, they say.

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 a single Clinton nominee who was brought to 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.

This is 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. They say 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 look at this chart.

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 nominees in recent memory—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 December, 1828, lame duck President John Quincy Adams nominated John Crittenden to the Supreme Court. In February 1829, a month before Andrew Jackson was to be sworn is as President, the Senate voted 23–17 to postpone the nomination until Jackson came into office. Clearly, in this instance a minority was not blocking the will of the majority.

In June, 1844, President John Tyler nominated Ruben Walworth and Edward King to fill Supreme Court vacancies. The Senate, by votes of 27–20 and 29–18, voted to postpone the nominations. After Tyler was defeated in the 1844 election, he resubmitted the Walworth and King nominations. The Senate refused to vote on the nominations submitted by the lame duck.

John Meredith Read was also nominated by lame duck President Tyler. A month before Tyler'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.

In the summer of 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 nominated George Badger to the Supreme Court. The Senate voted 26–25 to postpone consideration of Badger's nomination. Fillmore then nominated William Micou, but the Senate refused to act on the lame duck nomination. There is no evidence that a majority supported Micou.

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 never was 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 24–23.

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 minority 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.

As my colleagues are well aware, historically, the Senate has demonstrated a great reluctance to tamper with the Rules that govern this body, especially the rules that govern debate. However, when a minority of Senators have repeatedly abused the filibuster, the Senate has acted to change its rules.

After a minority of Senators blocked efforts to have an up or down vote on a proposal to arm merchant ships during World War I, the Senate adopted its first cloture rule. The cloture rule was larger changed in 5 separate occasions, most recently in 1986.

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 as well as nominations. On a 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 in connection 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.

However, it has become apparent that there is no remedy in the current Senate rules to address the obstructive practices of a minority of Senators to block Presidential nominations. 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.

The majority leader's resolution that will return the advice and consent responsibility to what the founding fathers intended. Our resolution would give the opponents of a nomination more than a fair opportunity to express their reasons for opposing a nominee. But it would not allow a minority of members to avoid their constitutional responsibility to have a final yes or no vote on a nomination.

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 they will have as many as 8 days 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.

In other words, Senators would have as many as 234 hours to speak for or against any Presidential nomination. I think that is more than enough time for the Senate to fully consider a President's nominations.

The Republican cosponsors of this resolution are making a very simple statement—no matter whether the occupant of the White House is a Republican or a Democrat, we believe that a nominee reported from committee is entitled to a confirmation vote on the Senate floor.

We believe it is unconscionable and constitutionally infirm for a minority of Senators to have the capacity to prevent the Senate from carrying out it's advice and consent functions.

Filibusters by a minority of members to prevent a vote on a nomination should have no place in the Senate. Whether a cabinet choice, a district court judge or a Supreme Court Justice, Presidential nominees are entitled to a vote. That is what the founding fathers anticipated and that is what our resolution would achieve.

I would prefer that we could break this impasse without changing Senate Rules. But if this action stands, if a minority of Senators can obstruct the will of the majority and prevent the President's nominees from having a vote, the Rules of the Senate must be changed.

I wish to talk about how I feel personally touched and involved in what we are dealing with here.

In my 15 years in the Senate in a variety of positions as a new Member, as a member of the leadership, both as secretary of the conference and as whip and leader, I have experienced a lot of what has gone on with confirmations personally and firsthand. I have been involved in a lot of them.

I must say, without it being aimed at just one party or the other, this process has been on a slippery slope down that whole time. I believe it goes back to the nomination of Judge Bork before I actually got to the Senate. The pattern continued with John Tower who was nominated to be Secretary of Defense in my first year in the Senate, and it continued to slide down with the nomination of Justice Clarence Thomas. And throughout the Clinton years, we had difficulty in this area.

I just wonder how much further downward can it go. I think we have reached the bottom. We are trying now to abuse the rules of the Senate, to ignore the Constitution, and set in place a new precedent to block good, qualified men, women, and minorities to the Federal judiciary. We have to stop it. We should stop it here and begin to go back up into a more positive approach in how we deal with Presidential nominees.

I was involved with President Clinton's first Cabinet. I was selected by then-minority leader Bob Dole to work through the nominations and see if there were problems. As a matter of fact, I want the record to show that we

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.

During my years as majority leader, we had a lot of discussions back and forth over 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 Maryland was involved 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. By the way, it was attempted a few times. I had to file cloture several times, but usually we were able to set it aside and, in every instance, we confirmed the nominee.

On one occasion, I remember late in the afternoon—actually the Senate voted not to invoke cloture, not to cut off the filibuster on a judge—I took this spot in the Senate and said we cannot let that stand. Senator ORRIN HATCH, chairman of the Judiciary Committee, said the same thing. And before the night was over, we backed away from that position. Zero in the Clinton years; 4 already in the Bush years.

It has been just this year that this new abuse of procedure has started—the American people understand that. The American people understand there is something innately unfair about dragging out an up-or-down vote on these men, women, and minorities. So four already, and at least two more are threatened.

I don't know where it is going to end, but I do think that it is important the people understand this is not insignificant. This is very important. We are about to set this precedent, something the Senate did not do before this year. We did not do it in the 214-year history of this country, and now we are about to set this new precedent.

What do my colleagues on the other side of the aisle think is going to happen if the tables are reversed? What if there should be in some far off, distant future time a Democratic President and a Republican majority? Do they think if this precedent has been set that the tables won't be turned and there won't be filibusters of liberal judges on the other side? I will be opposed to that if I am here, as I have been in the past.

That is another number we ought to look at: 214 years, and no judges were defeated by a filibuster. I feel very personal about this point. I have gone back, in addition to looking at the number of years, and looked at occasions 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 shows what 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. Justice Fortas, in 1969, had his nomination withdrawn 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 Paez and Marsha Berzon. 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 2½ 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 so unfair.

I hear a lot of talk about the human aspects of unemployment. What about the human aspects that 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 these good people. Justice Owen 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. They try to let 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 being 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 difference. 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 process that could 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 a period of 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 51 votes—only 51 votes. That is 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. Justice for judges. Do whatever the Senate's will is, but don't use a procedural technique requiring 60 votes to defeat these good men, women, and minorities.

This is an important issue. It is worth taking time to debate. I am very pleased we are debating this issue. I see Senator SARBANES 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. In other words, 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 so the court system does not break 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 here is an important point: During that time I was the majority leader, we confirmed Merrick Garland. It happened. He got confirmed. He is on the bench today.

Senator SARBANES was right, give them an up-or-down vote, and that is what we are calling for today.

I see Senator GRAHAM of South Carolina is in the Chamber and prepared to speak. I may want to have a final statement later on today, but before I yield to Senator GRAHAM, let me wrap it up this way: I plead with my colleagues in the Senate. This is not a good thing for us. It is not good for the institution. It is not good for our country. It is not good for our relationships. It is not good in terms of getting our work done and making sure we have a judiciary that is occupied by good men and women.

We should stop rejecting these judges just on the basis of their philosophy. I voted for Justice Ruth Bader Ginsburg. I knew I would not agree with her decisions. I did not agree with her philosophically across the board, but by education, demeanor, qualifications, and experience, she should have been confirmed. I voted for her. I ask no less of my colleagues on the Democratic side of the aisle.

Let's stop this, and then let's get back to making sure we pass energy legislation, pass aviation legislation, get a prescription drug plan for our elderly people. This discussion is not delaying that. Work is being done on it right now. We can get this process corrected and then we can pass these substantive bills.

I yield the remainder of my time to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. I thank the Senator from Mississippi for yielding.

How much time remains?

The PRESIDING OFFICER. Eight minutes.

Mr. GRAHAM of South Carolina. I think it would be appropriate now to compliment Senator LOTT. During his time as majority leader, he ran into a very dicey situation with judges. There was a lot of emotion on both sides. 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 that must have been. It 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 or thought about saying, and they 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 on other matters, had a chart talking about 168 to 4. The 168 were apples; the 4 were lemons. Now we are down to calling people lemons. These are real people and they have one thing in common. It is not four that are going to be filibustered, it is well over a dozen before it is over with. The one thing these four have in common right now—and that is not including Justice Brown and Judge Kuhl, who will be filibustered; they cannot get a vote either—is that they are the first in the history of the country.

We could literally put everybody in a phone booth who has been voted out of the Judiciary Committee by a majority vote but has never received a vote on the Senate floor. This 168 to 4 is a joke. The four people in question are the only ones in the history of the country to come out of the Judiciary Committee and never get to be voted upon. That is very dangerous because if that is the way we react to people who come out of the Judiciary Committee, if we start letting 40, 41 Senators dictate the advise and consent role, then we have really taken a turn for the worst because the Constitution says the Senate will advise and consent to the Presidential nominations.

Who does the advising and consenting? A majority of us or a minority of us? For 200-plus years, we have done it one way. But on the watch of Senator DASCHLE, with whom I have also enjoyed working, we have taken a very big turn for the worst.

We are in political and constitutional quicksand. The harder we try to get out of it, the deeper we go. If my colleagues do not believe it will be answered in kind down the road if there is ever a Democratic President, as Senator LOTT talked about, then I think we are all naive.

What I hate the most is I have been in the Senate for a year, and the abuses of the past I am sure are real. I have never put a hold on any judge for any reason. I am worried about the future. I think my job as a new Member of the Senate is to talk about the consequences of this action for the future.

I do not want to serve in the Senate in its darkest days. Right now, we are writing every day we speak one of the darkest chapters in the history of the Senate. Good people are being put through the wringer unnecessarily. If my colleagues do not think they are good people and they really think they are lemons, the Constitution gives my colleagues a way to object to them, and that is vote.

My colleagues 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 because our base is excited 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 so 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:

Senate Democrats have launched an unprecedented effort. . . .

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 ought to get their money back.

It is unprecedented, and the word ''unprecedented'' is underlined for a reason. No one has ever done this before. He was not lying when he put it in an e-mail to open up people's wallets. 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 will not admit it is. Filibustering, 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 change an image of who somebody really is. In 1967, Judge Pickering, who has been a Federal judge for a dozen years, well qualified by the ABA, well respected in the State of Mississippi, was a young prosecutor—an elected position—who chose to testify against 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, unchanging 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 photograph of a lot of Black kids with very 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.

The Senator from Minnesota.

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 about it, was reportedly leaked by 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 inquired, could our colleagues 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 on behalf of their 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 news sources that 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 my State of Minnesota, whose loved ones 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 on passed appropriations bills for a fiscal year that started on October 1. Yesterday, we suspended action on the VA-HUD appropriations measure, set it aside for this period of time to talk and talk on the same well-beaten, thoroughly debated, and genuinely disagreed-upon difference of our respective opinions, which is somehow so important to some of us that everything and everyone else must simply wait.

The House Members are being paid by the American taxpayers to not even be in town this week because they are waiting for us to catch up. We are spending our time and American taxpayers' dollars to say the same things over and over and over and over again.

UNANIMOUS CONSENT REQUEST

I ask unanimous consent that the Secretary of the Senate be instructed to deduct the pay of all Senators for 15 hours, which is half the time that we are engaged in this excessive pursuit, and that should be our time, and for indulging in our priorities and playing to our audiences and doing whatever else this is supposed to be about but it is not serving the interests of the people of America any longer and I believe we should face up to that and recognize that.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. I object.

The PRESIDING OFFICER. The objection is heard.

Mr. DAYTON. I would point out we are not going to vote until tomorrow. We are going to vote tomorrow on a couple of these matters, on a couple of these nominees. According to our own Senate rules and procedures, we are not able to vote until then. Contrary to what some people watching this show might deduce from comments that have been made in the last few minutes, and before me and in the hours preceding, we actually do follow our rules and procedures in this body. We have 216 years' established rules and procedures, and if any 1 of the 100 Senators who doubts that those rules and procedures are being properly followed or disagrees with the action, we have a remedy for that. We have a referee, we

have a head umpire and impartial ruler on our rules, who is the Senate Parliamentarian. 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 violating 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 on behalf 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 with 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 remarkable of all the inventions of modern politics.''

James Madison, one of the authors of the document which we swear to uphold 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 distinguished Senator from Mississippi just now because he was kind and gracious enough, and correct enough, to disagree with the application of these rules and procedures. But not as some have done, casting aspersions on following the rules and procedures, but beyond that, following our responsibilities and proscriptions under the Constitution of the United States, which I consider to be about the most serious accusation that any Member could direct toward anyone else.

As I said earlier, we have taken an oath of office to uphold the Constitution 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 and dedicated to that oath as I. To different people it may mean different things. But I never imagined questioning any Member's commitment. If there were reason to doubt or question, the proper way to direct that is through courts of this 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 desire, to consider them in a learned way, to bring in constitutional scholars who can give us a variety of opinions, impartial, nonpartial opinions about the Constitution and case law.

Then we can 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 majority vote. I could argue the merits or demerits of that position over a particular 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 leader to consider bills and amendments, to go to final passage of legislation that affected health care for senior citizens, veterans benefits, environmental protection, matters that had far more consequence to many more Americans than any single judicial appointment to a Federal court.

I respect and appreciate the chairman 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 consider it, to recognize we have the right and responsibility.

We have been elected 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 Senator from Maryland.

Mr. SARBANES. Would the Chair state the parliamentary situation, please.

The PRESIDING OFFICER. The Senator 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. Before that, I will make a couple of comments about the judges.

Sixty-three of President Clinton's nominees were blocked from consideration. Four of President Bush's nominees have been blocked. Twenty percent of the Clinton nominees in the period of 1995 to 2000, the period when the other side controlled the Senate, the committees 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 they represent extreme points of view outside of the legal mainstream in this country.

In a sense, the period over the last 6 years of the last century when an incredible number of the President's nominees were blocked is 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 conclusion of my remarks.

The PRESIDING OFFICER. Without 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 reassurance to the nation's millions of unemployed tonight during the 30-hour ersatz ''filibuster'' they plan to protest the Democrats' blocking of President Bush's more extremist judicial appointees. The filibusters will talk through the night, performing from a political script in a time-wasting tableau designed to produce campaign fodder for next year. But out there in real life, federal emergency 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 extension that was far too modest.

I recall that very well because I was involved in the effort last year to try to extend these unemployment insurance benefits and the Congress left. It went home. The unemployment benefits ran out. People found themselves in absolutely dire circumstances. When the Congress finally returned, they extended the benefits retroactively. But meanwhile, people had passed through an extraordinarily difficult time for themselves and their family.

Nearly 9 million workers are unemployed today. There are another 4.8 million, just under 5 million Americans, who want full-time jobs but can only find part-time work. Some people

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 addition to that we have about 1.5 million Americans who were in the labor force but dropped out because they are so discouraged about the prospects of finding work.

This is the worst jobless recovery since the Great Depression. During this administration we have lost 2.9 million private-sector jobs, as measured by employees on private nonfarm payrolls. This chart shows where we were in January of 2001 and this is where we are in October of 2003. That is a loss of just under 3 million jobs.

Even the Secretary of the Treasury is not predicting that all of those jobs, will be recovered by the end of this term. He has made a prediction which a lot of people think cannot be achieved, but even the administration is not predicting that they are going to recover all of the lost jobs.

Now, if they do not recover these lost jobs, and I see no way that they can possibly do that, this will be the first presidential administration since Herbert Hoover under which the economy has lost private-sector jobs.

This chart shows presidents and private-sector jobs gained or lost during an administration, in millions. We start with President Harding and then we go to President Coolidge. The green on the chart shows there was job gain during those administrations. Then we plunge down with President Hoover and we come back for job gains, all positive, net job gains during these administrations, President Roosevelt, President Truman, President Eisenhower, President Kennedy, President Johnson, President Nixon, President Ford, President Carter, President Reagan, President Bush the first, President Clinton; and, now, the current President Bush, with a negative, net job loss.

In the past, it has been a long-standing bipartisan policy to extend unemployment insurance during periods of labor market weakness. Unemployment insurance benefits were actually extended four times during the Reagan administration and three times during the first Bush Administration. The month we are in is the 31st 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 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 only then 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 is inadequate 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 no longer receive benefits. 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, 1.4 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 660,000. The number of long-term unemployed in October of 2003, is just over two 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. Obviously, we need to extend these unemployment 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. But that money is not being used. It was specifically set aside for this purpose. The extension of unemployment insurance benefits is a policy we have followed in the past. It has support from both sides.

These 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 right now, once 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]

CHATTER IN THE CAVE OF THE WINDS

Senate majority Republicans might take a moment—or even a vote—to extend reassurance to the nation's millions of unemployed tonight during the 30-hour ersatz ''filibuster'' they plan to protest the Democrats' blocking of President Bush's more extremist judicial appointees. The filibusterers will talk through the night, performing from a political script in a time-wasting tableau designed to produce campaign fodder for next year. But out there in real life, federal emergency 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 extension that was far too modest.

This filibuster has no practical purpose. In the older days, a single lawmaker had to talk nonstop to block a hated bill; nowadays, the leadership merely counts heads to see if enough senators want to block a bill and then it is silently hung up. So if the retro-orators just want to make rhetorical points today and run short of topics, we beg them to ponder their jobless constituents instead of resorting to boilerplate sound bites and creaky filibuster stunts (in sad memory there was Alfonse D'Amato's singing an ''Old McDonald'' parody).

Serious help is needed for the 2.4 million more recent jobless facing the end of their state benefits, not to mention the 2.1 million long-term unemployed who have slipped off the job-hunting scope. The promising uptick in the deep hiring slump—126,000 new jobs in October—is less than half the rate needed to even begin to dent the backup of joblessness. To deal realistically with the problem, Congress needs to double—to 26 weeks from 13 weeks—the federal emergency benefits that are available when state benefits run out. This would be similar to the help offered during the recession of a decade ago when long-term joblessness, especially in manufacturing, was hardly the problem it is now.

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.

UNANIMOUS CONSENT REQUEST—S. 1853

Mr. SARBANES. Therefore, Mr. President, I ask unanimous consent that the Senate proceed to legislative session, that 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; that the bill be read the third time and passed and the motion to reconsider be laid upon the table.

Mr. LOTT. Reserving the right to object, I ask consent that the Senator modify his request so that just prior to proceeding the requested 3 cloture votes be vitiated and the Senate immediately proceed to three consecutive votes on the confirmation of the nominations, with no intervening action or debate.

Mr. SARBANES. Mr. President I made a unanimous consent request, which is pending.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Does the Senator object to the modification?

Mr. SARBANES. The Senator does not modify the unanimous consent request.

The PRESIDING OFFICER (Mr. CORNYN). Objection to the request is made.

Is there objection to the request as made?

Mr. LOTT. In view of that, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator's time has expired.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I do not have a New York Times to quote, but I think I am a lot more fortunate because I have two New Mexico papers, important papers in my State, to quote. I do not have to use them to change the subject. I will quote from a couple of our New Mexico papers on the issue of the nominations, the nominating process, and what has happened to that process in the last couple of years.

Let me first quote from our largest newspaper, the Albuquerque Journal. It says in its headline: ''End Filibuster, Put Court Nominee to Vote.'' And then it says:

What the Colt revolver was on the dusty streets of the Old West, the filibuster is on the floor of the U.S. Senate: The great equalizer gives 41 senators the ability to bring the chamber's business to a halt.

The tactic should be unholstered only on issues of high principle or grave importance. Considering the issues currently confronting Washington, the judicial nomination—

In this paper it is referring to Miguel Estrada when it says:

The judicial nomination of Miguel Estrada does not rise above partisan wrangling. To block a vote on his appointment to the U.S. Court of Appeals for the District of Columbia Circuit is an abuse of the filibuster.

I ask unanimous consent that this editorial from that distinguished newspaper be printed in the RECORD.

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

[From the Albuquerque Journal (NM), Feb. 23, 2003

END FILIBUSTER, PUT COURT NOMINEE TO VOTE

What the Colt revolver was on the dusty streets of the Old West, the filibuster is on the floor of the U.S. Senate: The great equalizer gives 41 senators the ability to bring the chamber's business to a halt.

The tactic should be unholstered only on issues of high principle or grave importance. Considering their issues currently confronting Washington, the judicial nomination of Miguel Estrada does not rise above partisan wrangling. To block a vote on his appointment to the U.S. Court of Appeals for the District of Columbia Circuit is an abuse of the filibuster.

Democrats say the filibuster is justified because too little is known about Estrada and he has not been forthcoming about his judicial philosophy.

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 views doubtlessly come closer to mirroring Bush's than those of left-learning Democrats or those of Clinton's judicial nominees.

Femisinst 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 right, 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 Clinton administration have high praise. 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 a 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 pure 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. . . .

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 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 was 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.

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 hurrahs from Capitol Hill, where only four Democrats sided with 51 Republican colleagues who quite properly saw him as an excellent appointment. New Mexico's Jeff Bingaman wasn't one of the four. The Senator has offered excuses about a lack of information on Estrada, who has been in a figurative fishbowl since long before his nomination—but Bingaman knows darn well this is party politics at its lowest. Republicans have pulled similar stunts on Democratic nominees during years past. This is payback time—or repayback 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 nominees might face treatment as shoddy as Estrada got. We can only hope the Republican Senators 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 compare how certain other judges have been treated in terms of how long they had to wait while the Senate did nothing because we were in a filibuster mode in the Senate. I want to take two or three of our nominees and just go through with those who are listening the various qualifications and the like for various nominees. I will start with Miguel Estrada, and I will take three other nominees and talk about them versus Miguel Estrada.

Nominee:

Douglas H. Ginsburg: nominated by President Ronald Reagan; college, Cornell University; law school, University

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.

A. Raymond Randolph: nominated by President George Bush; college, Drexel University; law school, Pennsylvania Law School; circuit court clerkship, Henry J. Friendly, Second Circuit Court of Appeals, Federal Government service, Assistant to the Solicitor General.

Merrick B. Garland: nominated by President Bill Clinton; college, Harvard, summa cum laude; law school, Harvard Law School; circuit court clerkship, Henry J. Friendly, Second Circuit Court of appeals; Supreme Court clerkship, William J. Brennan, Jr.; Federal Government service, Special Assistant to the AG.

Now, for each of these: it took 15 days for one of them, 66 days for one of them, and 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, Amalya Kearse, Second Circuit Court of Appeals; Supreme Court clerkship, Anthony Kennedy; Federal Government service, Assistant U.S. Attorney and Assistant Solicitor General. Mr. President, he waited 848 days.

Obviously, Mr. President, there is no validity to the conversations coming from the other side that they have not taken qualified appointees and decided that they would apply this rule of 60 instead of 51.

Out there in America, when people look at the Senate they say when you 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—not that 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 supermajority. 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. I am not going to say the others were not qualified; they were. But certainly Miguel Estrada is as qualified as any of them are, if you look at just the paper background and the previous service and achievements prior to them coming to the floor and languishing or getting confirmed.

For none of those three are better nominees than Miguel Estrada, and everybody looking at his record and seeing what he has done and what he has not done knows that.

Now I would like to close with a last editorial, an editorial also from New Mexico. This one is from the Albuquerque Journal. This editorial speaks about the current situation when so many candidates and other Democrats in high positions are coming to our State, the State of New Mexico, to talk to the Hispanic people where we have large numbers, and to talk politics to them.

I am quoting from a September 11, 2003, editorial from the Albuquerque Journal. It says:

> Democratic presidential hopefuls mouthed and sometimes mangled Spanish words in Albuquerque last week, searching for Hispanic votes.
>
> Earlier that day, a Hispanic judicial nominee who wanted a simple up-or-down vote on the Senate floor withdrew after two years of Democratic mangling of the confirmation process.
>
> Democrats could not argue that Miguel Estrada was unqualified to serve on the appeals court for the District of Columbia, a stepping stone to the U.S. Supreme Court.
>
> Playing catch-up after emigrating from Honduras at 17 with little English, Estrada graduated from Columbia with honors, earned a Harvard law degree and clerked for Supreme Court Justice Anthony Kennedy.
>
> Estrada's credentials were good enough for the Clinton administration, where he worked for five years in the U.S. Solicitor General's Office.
>
> Though he has no paper trail of decisions as a judge, his reputation as one of the nation's finest appellate lawyers led to a unanimous American Bar Association rating of ''well qualified'' for the Supreme Court.
>
> But ''well qualified,'' in terms of legal intellect, is not qualification enough in the U.S. Senate. There's blame enough to spread around both sides of the aisle. . . .
>
> But Democrats have escalated the partisan warfare to the filibuster level. Estrada would have been confirmed by a simple majority, but Democrats raised the bar for this Hispanic from the wrong side of the political tracks. Estrada had to have a super majority of a Senate where Democrats toed the party line against him.
>
> Though accustomed to adversity, Estrada finally withdrew after two years of this absurdity. His experience should not be in vain.
>
> Democrats who take Hispanic support for granted but can't bring themselves to vote for a qualified Hispanic should learn a new word from the lips of voters: !Basta!—Enough of this purely partisan jockeying on judicial nominations.

I think, while many came to the floor and quoted the New York Times and other major newspapers, I think my two New Mexico papers have hit it on the head, the last one right where it belongs during a political campaign—come and mingle and mangle our language and our last names, and then when one is nominated, make them have the supermajority, all the time asking for their vote—paraphrasing the last editorial that I just read from the Albuquerque Journal.

I think what has happened to these nominees—in particular, the four we are speaking of, led by Miguel Estrada, and the three women—it is clear they have been politicized. They are qualified. If they would have had a chance under other Presidents at other times with their kind of qualifications, they would be serving on a higher bench in the United States without question.

They have just found themselves at a point in time when the filibuster rule is applied with such assurance that there is no harm to come to those politically or otherwise who use the instrument of filibuster against the extremely qualified.

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 20 seconds.

Mr. TALENT. I am going to be brief, 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.

We are 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 hunt, 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.

This graph shows it. None of the previous four Presidents, or any of the Presidents, had ever lost a court of appeals nominee by a filibuster of the minority on the floor of the Senate.

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, 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 name of the traditions 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 traditions 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 qualifications of these nominees. On top of everything else, they just deserve this. Many of these people have overcome tremendous obstacles, personal obstacles in their youth, to achieve tremendous success in the 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 have been filibustering that: Well, 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. What you cannot do is filibuster and then complain about obstruction. You cannot do that. That 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. Just allow us a time agreement to vote. Allow us to vote on these people. Five 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.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, the nominees who President Bush have nominated are outstanding attorneys, people who would make fine judges and, frankly, the sooner we have an up-or-down vote on these nominees the better.

The nomination of these judges affects the citizens living in their judicial circuits and the nominees themselves. So this is not just a theoretical debate, this is a real world debate with real consequences.

Let me turn to one of those nominees, and that is Judge Charles Pickering. I want to talk about the merits because that is what we should be talking about, what we should be debating on the Senate floor, the merits of all these nominees. If we had an up-or-down vote, I say to the Members of the Senate, that is what we would be able to do. That is what this whole discussion for these 30 hours is about: our request to be able to vote on the merits.

Let me talk about the merits and what we would be able to talk about if we had that opportunity.

Judge Pickering, a man who graduated from the University of Mississippi with honors. This is a man who graduated from law school the first in his class; a man who has had a distinguished career as a lawyer; a prosecuting attorney; a judge who was confirmed unanimously by the Senate to a district court position 13 years ago.

What about the ABA? We always hear about the ABA. We don't think that should be the be-all and end-all, but the ABA should be a part of what we look to. Here is a letter ABA sent to me and other members of the Judiciary Committee:

> Senator DEWINE, We are transmitting to you for your consideration, this committee's evaluation pertaining to the nomination of the Honorable Charles Pickering, Sr., as judge of the United States Court of Appeals for the Fifth Circuit. I am pleased to report, as a result of our investigation, a substantial majority of the committee is of the opinion that the Honorable Charles W. Pickering, Sr., is well qualified for appointment as judge to the United States Court of Appeals for the Fifth Circuit.

That is what they had to say about him.

People who know Judge Pickering best in his home State of Mississippi also agree that he should be on the bench. People who have known him for years have written to this Congress and have talked with us and have said this man is qualified. This is a man of great character; he should be on the bench.

There have been attacks about Judge Pickering. Let me talk about these for a moment. Again, this is the type of discussion we should be having on the Senate floor. We shouldn't have to be down here making the argument that all we want is an up-or-down vote. This substantive argument is what we really should be able to have.

Let me talk about some of the attacks on Judge Pickering. At the time of our hearing on Judge Pickering, he had decided roughly 4,500 cases as a district court judge. Out of those 4,500 cases, he has been appealed 328 times and ultimately he was reversed or had the case remanded for additional work or some clarification in 26 cases.

Without getting too much into the numbers, I can tell you he has a good reversal rate—about 8 percent. That is better than the national average, and it is even better than the average in the Fifth Circuit.

Some of Judge Pickering's critics would argue the problem is not the number of cases on which he has been reversed. They say the problem is what you find in those reversals. Let's take a moment and look at that.

I looked at the 26 cases where he was reversed or where the case was sent back for further clarification. The statement was made in one of Judge Pickering's hearings several times that his cases boiled down to civil rights, voting rights, employment, and that is what was troubling. I think we need to look at each of these areas, and I will try to do that in the brief time I have.

There are a few ways to categorize a case and what type of case it is remains, certainly, in the eyes of the beholder, but I have looked at the reversals and the areas mentioned during the hearings, and this is how I break them down.

On my count, 2 of the 26 cases involve employee rights, 1 case involved voting rights, and 4 were civil rights cases. I believe as we look at these cases, there is no merit to the charges in regard to Judge Pickering.

Let's look first at the accusation of voting rights. Judge Pickering was reversed on one voting rights case, and that was Watkins v. Fordice. Judge Pickering was part of the three-judge panel that decided that case. Here is the key. We should be very clear about this. The voting rights issues in this case had already been resolved. The issue that went up for appeal was, guess what—Listen to this: attorneys fees. That is what the issue was. That is what went up on appeal.

So to categorize that as a voting rights case, that the judge was appealed on a voting rights case and overturned on a voting rights case is simply not fair. It is not fair by any good judgment.

When the case went up on appeal, the court of appeals said: We need more information. And they sent it back to Judge Pickering's three-judge panel. Judge Pickering and the other two judges gave them more information. It went back up, the court of appeals looked at it, and said: It's OK, you were right. We are not going to reverse you. And that ended it. That is the voting rights case about which everyone is talking.

I should also note for the record there were three other voting rights cases that Judge Pickering decided. Not one of these cases—not a single one—was reversed. In fact, nobody ever

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 with only one case where he 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, as civil rights cases. Lawyers 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 memory 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 other case, the judge found on behalf of the worker suing 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 these 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 supported or dispelled. There are many, allegations against these nominees that would be dispelled—just like the ones I've just discussed about Judge Pickering.

I encourage our colleagues to let us have the 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 power, what our Founding Fathers expect of the Senate, and whether we are measuring up to the test which they established at the Constitutional Convention.

I draw the attention of our colleagues once more to the raw statistic, which I think effectively rebuts so many of the allegations and the presentation that has been made, where we have actually confirmed 168 of the nominees, and only 4 have not been affirmatively approved. That is 98 percent. We ought to think about what has been said on the other side about the abuse of those who have expressed opposition to these nominees, whether there has been an abuse of the system itself, when we find out they have gotten 98 percent of their way over this Congress. My good friend from Vermont has gone through the statistics in great detail.

I listened a little earlier to one of my 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 considered. 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 someone 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 we 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. When this provision came before the Convention on June 5, several Members were concerned that having the Congress as a whole select judges was too unwieldy.

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 a power to a single person.'' 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 Senatorial branch.'' This is the debate of our Founding Fathers, 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 U.S. Senate—the sole power to appoint judges, and this motion was adopted without a single objection.

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 to be a principal partner, 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 Senate appointment of 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 be a 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 168. 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 tell you what rules 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 a bare Senate majority 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 the authority to set your own rules.'' 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 the powers 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 nominees 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. We have some for the 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 in and 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. They said we should make our 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 teachings 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 a lifetime by 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 historian 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 was 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 merely the right, but the duty of the Senators to do that, no matter how popular the President or how strongly the public opinion polls 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 its own powers, specified and sweeping . . . 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 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 inhibited debate, 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 fo 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 rebut 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 nations'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. Je 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 government agencies: The Presidential and 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.

The PRESIDING OFFICER. 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.

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 to provide the President with my advice and consent regarding the individuals he nominates 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 extended unemployment benefits for the long-term unemployed, the 3 million Americans who have lost their jobs during the Bush presidency.

If we want 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-woman, 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 have 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 serve on 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 30 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 also find 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 Circuit. A fine 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 with 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 on 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 supported 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 get back to the things we should be talking about—jobs, education, Medicare, minimum wage, unemployment insurance, and helping the poor.

We are squandering valuable time that the Senate could and should be using 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. He has spoken with tremendous passion of the urgent need for an increase in the minimum wage.

I remind my colleagues that since establishing the minimum wage requirement in 1938, we have had only 19 increases in the minimum wage, the latest occurring in September 1997. The minimum wage would need to reach $8.38 an hour to equal the purchasing power of the statutory minimum wage in 1968. A full-time worker paid the minimum wage earns about $4,000 below the poverty line 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 unemployed 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 remained unchanged at 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.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Massachusetts.

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 think it would not take us very long. If the Senator would agree with me, it would take us about half an hour before we are prepared to go ahead and vote on a minimum wage, and here we have just used 30 hours or are going to be using 30 hours of discussion that is not related to that or to education, overtime, unemployment compensation, jobs, or education funding.

I thank the Senator for an excellent presentation. I believe our time is just about up.

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

Who yields time for the majority?

The Senator from Georgia.

Mr. CHAMBLISS. Madam President, I say to my colleagues that if they will give us an up-or-down vote on all of these nominees, as they have done in every other instance and as the Senate has done for every other President of the United States, there is a lot of work we need to do and we look forward to moving on to that. What we have been doing over the past 24 hours almost now, what we are going to do for the next several hours, is some of the most important business this Senate can ever take up, and that is the confirmation of our judicial nominees.

I am pleased to yield such time as he may consume to the Senator from Missouri, Mr. TALENT.

Mr. TALENT. Madam President, I thank my friend for yielding. It has been a pleasure, in a sense, to be here. I will not take very much time.

I have enjoyed hearing the remarks of my friends, the Senator from Hawaii and the senior Senator from Massachusetts. I have the pleasure of serving with them on the Armed Services Committee. They have often been eloquent on the floor of the Senate.

My friend from Massachusetts has been eloquent on the subject of judicial nominations before. I am going to quote something he said about 5 years ago. I do it with respect and for a reason. He said on January 28, 1998:

> Nominees deserve a vote. If our Republican colleagues don't like them, vote against them. But don't just sit on them—that is obstruction of justice. Free and full debate over judicial nominations is healthy. The Constitution is clear that only individuals acceptable to both the President and the Senate should be confirmed. The President and the Senate do not always agree. But we should resolve these disagreements by voting on these nominees—yes or no.

We should resolve these disagreements by voting on these nominees—yes or no. I have quoted this for a reason. The divisiveness over nominations, holding them up in one way or another, is not new to this Senate. This tactic of abusing the filibuster rule for a minority to stop court of appeals judges from even getting a vote, that is new; that is unprecedented. They have been blocking now or threatening to block a quarter of President Bush's court of appeals nominees. That is unprecedented, and the Senators doing it 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, especially in North Carolina.

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 President's nominees, and every 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 free of politics.

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 duties of this office, including one of a Senator's most important responsibilities—voting on judicial nominees submitted by the President. Unfortunately, politics has undermined this process. Americans have the right to know where their Senators stand, and no one, no one should be able to hide behind parliamentary loopholes to avoid accountability to his or her constituents. The Constitution calls on all 100 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 20 appellate 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 every 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 then there is 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—currently, 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 emergency since 1999—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 precedent 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 is that the caseload, 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 and former chief judge of the Court of Appeals for the Armed Forces, describes Jim Dever as having ''all the requisite qualities''—''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 held in high esteem 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 then-Attorney General Janet Reno—Janet Reno, as the point man for a Justice Department Task Force looking into illegal fundraising on the campaign trail. Roy Cooper, 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.''

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 isn't fair to these nominees and certainly isn't fair to our judicial system, which must not be subjected to political maneuverings.

If a Senator believes a nominee is not qualified, then 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, adherence to the rule of law and judicial temperament. We owe it to their constituents to take a stand 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 unparalleled 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. CHAMBLISS. I thank the Senator from North Carolina for her very insightful comments, as always, about what has been happening in North Carolina with respect to the delay of judicial appointments once again.

Now I yield such time as he may consume to the Senator from Indiana, one of the most respected men in the Senate, Mr. LUGAR.

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 North 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 commanded respect, 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 a very fine consideration by the Judiciary Committee. I did not ever take that for granted, but I saw coming along the horizon a very different story in the current workings of the Judiciary Committee.

I have great 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 privately 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 out consumed tens of pages, including substantial writings and often the statements they had made in their professional work.

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. magistrate 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 at all of these applications, 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 a public corruption 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 Justice Department in the last administration.

Judge Springmann was the first woman to be made partner at Sprangler, 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 Springman 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 did likewise. Thus, what could have been a gaping hole in the Northern District of Indiana judiciary lineup, in fact, was promptly filled, even after the departure of these 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 have in mind. I can conceive that 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 service 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 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 situations that more characterize my State.

This is why the selection of people in this particular business—where there was enormous fraud, abuse, and corruption—was especially important and the civic 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, in a very large celebration, celebrating the judiciary and the rule of law in that part of our State.

I recite all of this and have asked Senators to indulge in what amounts to maybe a parochial recitation about Indiana simply to say I believe that somehow in the workings of the Judiciary Committee and the relation of that committee with the White House and with us, there really has to be a working out of a better feel. What I suspect is occurring here is that, unfortunately, there may be individual members of the committee who have decided a way to carve out a different

function for themselves or maybe suggest a different function for the Senate.

We are all judges of the Constitution and what is proper and so forth. There are some who say, after all, a Presidential nominee for a Cabinet position is going to be bound by the term of the President. But these are lifetime officials, and we recognize that. But as the distinguished Senators who preceded me have pointed out, new Presidents come and go. The fact is that Republicans and Democrats are somehow going to have to work together year after year in an ongoing body for the continuity of our country.

What is occurring now doesn't work. Without arguing the wisdom or justice of someone holding up a nomination through a filibuster, I submit that this is not in the best interest of the Senate or our judiciary. The public doesn't like it. There may be partisan persons or people with special interests in America who do like it. Whose entire being resonates with a particular cause and they attempt to prevail upon people to stop somebody at all costs before they do harm. I understand that. We all have to deal with that.

What we are talking about today is, I hope, the continuity for the very broad number of Americans who want to have confidence in justice and confidence in us, even in a closely divided Senate, maybe in a closely divided country, and to be able to work in their interests. That is why this debate is so important—to elevate this idea not only of comity but of justice, doing the right thing to a much higher level, as opposed to the tactical advantage of filibuster, of a misuse, in my judgment, of a separation of power situation to cause harm.

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 he knows 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 in the rural South just, 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 that she gave a speech to about 50 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 my colleagues to consider very thoughtfully voting positively on the cloture motions we are going to have tomorrow.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Madam President, here I am in the Chamber again exactly 24 hours 30 minutes from when I was gaveled down from trying to complete the VA-HUD bill. I was on the floor 24 hours 30 minutes ago, standing up for veterans, trying to protect the environment, and working very closely and enthusiastically on a bipartisan basis with the chairman of the subcommittee on appropriations for veterans, housing, the environment, and other independent agencies.

We were only 2 hours and about five or six amendments from being gaveled to come to cloture on the bill. As I was gaveled down, I was just heartsick that we could not take 2 more hours to finish the bill. Instead, this went on for 30 hours, and I am puzzled what has been accomplished by it.

I know what wasn't accomplished by it. We did not finish the appropriations bill yesterday. Because we didn't finish the appropriations bill yesterday, we essentially said to millions of American veterans that we are going to put you on hold. We said to those thousands of faith-based organizations that build housing for the elderly—oh, no, we have to worry about a filibuster for judges; oh, no, we cannot move the bill. For those people who are trying to bring criminal prosecutions on polluters in the environment, we said we cannot really fund that, even though you don't have the right computers and enough staff. We have to talk about four judges. Millions of veterans, housing to be built for the elderly, the environment to be protected, getting our astronauts back to space safely, investing in science and technology at the National Science Foundation—that is the stuff of the VA-HUD subcommittee. That is why I am so passionate about it. It is one of the greatest subcommittees in Appropriations because it meets compelling human needs and yet gets America ready for the future.

But oh, no, we could not finish it yesterday, we could not take 2 hours—oh, no, we had to talk about four judges and a process.

I am very disappointed in that, and I have to express my gratitude for the way Senator BYRD pushed for completion of the bill. I also express my gratitude to Senator TED STEVENS, who obviously worked out something where tomorrow we can come back and attempt to finish the VA-HUD bill. But this could have been done in the spirit of comity. We had momentum yesterday. It is the way the Senate ought to work. We had a bipartisan bill. We were forging bipartisan compromises, because when it comes to standing up for veterans, we cannot be the Republicans and Democrats, we have to be the red, white, and blue party.

Today, I was at Walter Reed talking to Marylanders who will forever bear the permanent wounds of war. We were in wards with young men who have put themselves on the line. They didn't lose their lives, but they have lost a limb. You see their families. You say hi to a young lady who is a wife or to a mother of one of those wonderful soldiers getting great treatment at Walter Reed. You have a 22-year-old wife and a 42-year-old mother trying to be there with her husband and her child, the man they love, so he can get well and get back on his 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. 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.

I know, working with the distinguished Senator from Missouri, the chairman, we can do this. But oh, no, we could not do it last night. We had to put it aside. I didn't tell the guys at Walter Reed that we didn't fund veterans health care last night. It would have broken my heart to tell them we are going back to the Senate to argue about a filibuster, to argue about four people of questionable qualifications to sit on the Federal bench.

I didn't say that to them, but I say this to you. We have to get serious about the agenda for the United States of America. We need the right priorities. Do we need a good judiciary? You

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, again, 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 significant 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 and leverage them with philanthropy. 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 protect the environment. 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 infotech and nanotech. Nanotechnology is a whole new field of inventing subatomic particles. I said to the Senator from North Carolina yesterday when she was presiding, our earrings, 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 are slowing 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 coequal 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 Quaries, 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? Because Judge Robert Bennet 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 what party she was. I didn't know. 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 at least half of 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.

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.

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 much 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 tonight? How about the millions of Americans who do not have health insurance tonight, the hundreds who 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 80,000 workers 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 7 years since 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 indignant 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.'' Oh, no, we can't do that. 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 6 hours pontificating 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 years when it was just at 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 blip 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 we have seen 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 might not seem like a lot to people, but it is 7 months of rent, 11 months of groceries, 14.5 months of utilities, full tuition for a community college degree. That is what that represents. That is real money for working families who are at the bottom end of the economic ladder.

Our Republican friends refuse to give us at least the opportunity to vote. Understand, vote. We heard that word used a great deal on the floor of the Senate. Let's get a vote on this issue.

Let me review as well about jobs. We talked about four jobs. What we are facing here is 3 million Americans who have lost their jobs. Let's think, besides the statistics, exactly what it means in terms of financial hardships of the unemployed. Look at this. Half the unemployed adults have had to postpone medical treatment—that is 57 percent—or cut back on spending for food. I have just given the figures and the statistics of the Department of Agriculture that have 13 million children hungry tonight. Thirteen million children are hungry tonight.

One out of 4, 26 percent, has had to move to other housing. Imagine that. We have 3 million people who have lost their jobs and 1 out of 4 had to move out—move in with friends or relatives. There is a problem that deserves debate, discussion, and ideas and solutions and resolution and determination and accountability here. There are 38 percent who have lost their telephone service, 22 percent are worried about losing their phones, more than a third, 36 percent, have trouble paying the gas or electric bill—things that are absolutely assumed around here.

People are really hurting. We are not talking about 4 people, we are talking about hundreds of thousands of people, and we have occupied the time of the Senate to talk about 4 judges who are not qualified, I don't believe, to serve on the Supreme Court. We are not expected to be rubberstamps. Our Founding Fathers never intended that.

I want to mention one other item that is now in the conference. It would be pretty worthwhile if we had engaged our friends on the other side to tell us what is happening in the conference on the issue of overtime pay. When people work overtime, something that for some 60 years has been in our law, it ensures people who work longer than 40 hours a week are going to be fairly treated. We have the proposal by the administration to deny that to 8 million Americans. It was defeated here on the floor of the Senate, defeated in the House of Representatives, and now it is in a conference.

Why don't we hear from the other side what has happened to that conference? Why don't we hear where they are on the issues of overtime? That makes an enormous difference to people. It makes a big difference in their lives. It is not 4 people and their livelihood, it is hundreds of thousands, tens of thousands, millions of people whose lives are going to be affected.

Right off the top of the list are firefighters, policemen, nurses. Does that ring a bell to anyone around here? They are the backbone of Homeland security. We are cutting back on their income.

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. 1853

I ask unanimous consent 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 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 with 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 I 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 function and effectiveness of the United States Senate as the deliberative and distinguished 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 any power over selecting 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 substitutes the judgment of individual Senators over that of 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 can not 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? That is the direction in which 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 may not be to some of their ideological liking. 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.

N O T I C E

Incomplete record of Senate proceedings.

Today's Senate proceedings will be continued in the next issue of the Record.