

for so long to have his confirmation heard on the Senate floor, finally had to give up and go about his daily life because of this unprecedented obstruction.

The worst part of this is that it has not only been about blocking President Bush's highly qualified judicial nominees and other people who he has proposed for various boards and commissions serving the American people, this, unfortunately, has also involved a character assassination as well. Judicial nominees have been called names by Senators on the other side of the aisle that are really unbecoming of the dignity of this body, names such as "kooks," "Neanderthals," "turkeys," and other names that are just entirely inappropriate to the civil discourse and debate that people have come to expect and deserve a right to hear from Members of the Senate.

We can disagree about policy matters. We can have a different proposal for the American people about which direction this country should go on a number of these issues. But surely—surely—the Senate should continue to conduct its discussions in a civil way and one that allows majorities to govern, not that allows obstinate minorities led by the Democratic leadership to block vote after vote on matters that are important to the people of the United States.

The problem we now hear is they are objecting to proceeding on any nominees because President Bush has used the authority given to him under the Constitution to make recess appointments. They act as if this has never been heard of, that it is unprecedented in U.S. history. The fact is, there have been more than 300 recess appointments made during the course of this Nation's history, including by President Clinton, before President George W. Bush, and others. Indeed, this is a constitutional response to unconstitutional filibusters.

Unfortunately, we know the nature of this process is such that if the Democrat obstructionists get away with blocking President Bush's nominees, not from voting against them but by preventing a vote on them at all, this is a tactic once determined to be successful that will likely be employed by others when the shoe is on the other foot.

When the next Democrat is President of the United States and Republicans are in the minority in the Senate, how is it we are going to explain to our Republican colleagues that, no, you should not use this tactic which, up until now, has been out of bounds but which has now been employed successfully against the Democratic minority against this President?

We ask for an up-or-down vote today on President Bush's judicial nominees, and we would ask that rather than answering "stop" to all of the Republican agenda on behalf of the American people, we could at least get an up-or-down vote.

I yield the floor.

The PRESIDING OFFICER. The time of the Senator from Texas has expired. Who seeks recognition?

The Senator from Nevada is recognized for 5 minutes under the previous order.

#### MEDICAL LIABILITY REFORM

Mr. ENSIGN. Mr. President, the theme we are talking about this morning is obstructionism. We have heard about judges. Later on we are going to hear about the Democrats obstructing legislation that would create jobs in the United States. It is called the FSC/ETI bill. It really is a jobs bill. This is legislation that will actually bring hundreds of thousands, if not millions, of jobs back home to the United States. Democrats have been blocking, as far as jobs are concerned, asbestos reform, bankruptcy reform, class action litigation reform—all of those items make American companies less competitive and make it tougher to have new job growth in the United States.

Outsourcing is a big issue. As we hear more and more about this issue, we have to understand some of the reasons surrounding it. Right now the other side of the aisle is blocking a lot of the legislation that would allow companies to bring new jobs to this country to make our country more competitive.

What I want to talk about this morning very briefly is the answer to what has caused a severe access to care crisis in many States, and that is the issue of the medical liability reform. My home State, the State of Nevada, is one of those 19 States that are truly in crisis. In fact, only five States across the United States are showing no signs of a crisis. Unfortunately, the rest of the states are all headed in Nevada's direction, and it is only going to continue to get worse unless we fix the problem right here in Washington, DC. This is a national problem and it requires an immediate national solution.

One of the main reasons we need a national solution is because the Federal Government now pays 60 percent—60, 6-0 percent—of all the medical bills in the United States with regard to Medicare, Medicaid, and the Veterans Administration. There is a huge amount of money the Federal Government pays in taxpayer dollars that goes toward paying medical bills in this country.

For this and many other reasons this is a national problem that requires a national solution. We are losing doctors and other medical professionals at an alarming rate all over America. They are not going into the specialty and high-risk fields, especially in the numbers that we need in this country. There used to be a huge demand for many of these residencies. Now, some of our schools cannot even fill their residency programs. Unbelievably, often times they are not even getting any applications for these residencies.

A few weeks ago I heard about the problems in Utah. There are tremen-

dous medical facilities there. They are having problems getting doctors to go into some of the fields we want our best and our brightest to go into—those fields that require the most technically brilliant people—because of the fear that when they get out of medical school they will not be able to afford to practice because the medical liability premiums are too high.

Why are the medical liability premiums too high? Well, it is pretty simple. It is because we have an overly-litigious society where unscrupulous trial lawyers basically say bring your Rolodex and we will find out who we can sue. More and more, this practice has spread into the medical profession where hard-working and honest professionals are being subjected to frivolous lawsuits.

I am a veterinarian, and I know medicine is not an exact science. Mistakes are made. If there is medical malpractice, the patient deserves to get compensated, no questions asked, and our civil justice system has the ability to do that. But because the courts are so filled up with frivolous lawsuits these days, and some of the jury awards are so incredibly high, it motivates people to basically say let's go hit the lawsuit lottery because the system is broken. It is a situation where because of the backlog, the people who are really injured die before they ever get compensation. It can take 6, 7, 8, 9, 10 years in the courts before their case actually has a final resolution, and that is unacceptable for those patients who are injured. That is one of the major reasons we need to have medical liability reform. Unfortunately, the other side continues to obstruct our efforts in this area.

If opponents want to debate differences, if they want to amend the bill, fine, but they will not even let us go to a vote on a bill. In fact, they keep obstructing us even moving to debate a bill. They are filibustering, just as they are doing on judges and many other things. It is a shame because it is a crisis. It is a crisis with OB/GYNs—arguably the most dire of circumstances with regard to access to care—but it is also a crisis with trauma doctors, neurosurgeons, and even with general surgeons.

Some of the best people who practice medicine in my State are either leaving practice or now, unfortunately, not going into those high-risk specialties. We need to enact reform to protect every American's access to quality care, and to keep the best and the brightest practicing and entering into the medical profession. In order to so, this obstructionism by our opponents must stop, and it must stop right now.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada has yielded the floor. Who seeks recognition?

The Senator from Nevada.

## ORDER OF PROCEDURE

Mr. REID. I ask that when we move to the welfare bill, TANF, that on our side for 30 minutes 7 minutes be given to our manager, Senator BAUCUS; 7 minutes to Senator KENNEDY, the ranking member of the full committee; 5 minutes to Senator REED from Rhode Island; and 5 minutes to Senator BOXER from California.

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

The Senator from Wyoming.

## ENERGY POLICY

Mr. THOMAS. Mr. President, I rise to speak about where we are, where we are going, and some of the difficulties we are finding in getting there. I was listening earlier as the Senator from New York and the Senator from Illinois were discussing some of the issues they consider to be problems with this administration.

They talked about the cost of energy. One of the reasons we are having some problems with the cost of energy is we have not been able to get an Energy bill passed that gives us any direction because it has been obstructed by the other side of the aisle, and it continues to be. So that is not a surprise.

They talked a lot about the health care problems. One of the reasons we have health care problems is the obstruction on the other side that will not allow us to move forward with malpractice insurance.

The same thing, of course, is true with Medicare. They were critical of doing something with Medicare. I remind my colleagues this is the first time in 30 years we have done something to help change Medicare, and it is going to be implemented over a period of time because there will need to be some changes in it. For the first time, people will be given an opportunity to get pharmaceuticals at less cost, and we will begin to have an opportunity to change Medicare from the way it was originally structured. It is very difficult to do that with the obstruction on the other side.

It is frustrating to be in the Senate where we are supposed to be making decisions, supposed to be moving forward. We do not all agree, that is certainly true, but we do have a system that allows us to go forward. That is what votes are for, but we cannot take votes. We continue to sit here and only talk about things.

I am particularly interested in the energy issue, of course. I think it is certainly one that we have talked about for a very long time. It now becomes more important because of the cost increases, because of the difficulties we are having with energy. It begins to be more apparent that we need to have an energy policy that has some plans for where we go over the next 5 or 10 years. We need to do that as soon as we can.

One of the things the Bush administration, Vice President CHENEY and the

President, did was to seek to have an energy policy. All we have heard are complaints and criticisms and still there is obstruction to having an energy policy, when it is so clear that that is precisely what we need to have.

We have higher gas prices at the pumps, partly because OPEC has backed off somewhat, but also because we have made it necessary for refiners to put into place about 18 different combinations of fuel. There have been unexpected disruptions from Venezuela and elsewhere. We are having higher home heating bills because of the stress on natural gas where the consumption is going up much faster than the production, and it is predicted to do that in the future for some time.

So we are still talking about these issues. People are more aware of them because of the blackout, because of the cost, and because of the difficulties. So we need to make some changes, but we need a policy. We are not talking about all that we can do instantly. We are saying we need a general policy, and that is what this policy is. It has to do with alternative sources. It has to do with efficiency. It has to do with conservation. It has to do with more research so that, for instance, there can be more clean coal burned.

Today, the Wall Street Journal said finally people are saying we are having trouble with natural gas because of the demand, but coal is the fuel that we have with the most fossil reserves in this country, and we can do it in a clean way. Particularly, western coal is low in Btu and low in CO<sub>2</sub>.

We need to be moving in that direction. We need a balanced bill, and there are things we can do to accomplish that. We are going to have to change the fuels over a period of time.

Some, particularly on the other side of the aisle, say: Oh, well, we have to start using alternatives up to 40 percent in the next 5 years.

Right now, of all of our energy production, 3 percent is produced by alternatives such as wind. We can do much more in the future, and we hope that we do, but we cannot turn that corner right away. It is a very difficult thing to do.

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

Mr. THOMAS. Mr. President, I certainly urge that we stop obstructing and move forward with an energy policy.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming yields the floor.

The Senator from Oregon is recognized for 10 minutes.

Mr. REID. Mr. President, I ask the Senator if he will yield for a unanimous consent.

Mr. SMITH. Yes, I yield to the Senator from Nevada.

Mr. REID. Mr. President, our remaining time will be yielded to the Senator from Wisconsin, Mr. FEINGOLD.

## THE DREAD OF ELECTION YEAR POLITICS

Mr. SMITH. Mr. President, as the new year arrived, I looked to coming back to Congress with, frankly, a sense of dread because I knew we were entering a political year, a year where the stakes are high, and the President stands for reelection. I knew there would be an awful lot of my work and the work of all of us tied up in partisan gamesmanship.

I will confess to my colleagues, I do not much enjoy it. I look at my friend from Nevada, Senator REID, and I see a great human being. When I look at Senator FEINGOLD, I see another great human being. I love the message of compassion of the Democratic Party. I know where their hearts are. This is not about good people or bad people. This is about competing ideas.

But because I had that view—my father was a Republican, and my mother, a Udall from Arizona—I understand good people can differ on these issues. Because of that sort of bipartisan approach to life I have always had, in my former life as a businessman, as candidates for public office would come to our company and ask to meet with us and our employees, I welcomed Democrats and Republicans alike equally.

Unfortunately, what I often came away with was the feeling those on the Democratic side loved my employees but they hated employers. That is because they would demand we create jobs and then they would say the way you do that is you raise the minimum wage, increase your regulations, and raise your taxes. I came to understand by doing the books, by doing accounting, one of my most significant costs was Government overhead.

All of them are well meaning. But all of them make it more difficult for capital to come together so labor can be given work to do.

As my colleagues have come to the floor and complained about various aspects of this current obstructionist period—you know, we talk about medical liability, the Senator from Wyoming talked about energy, others have talked about judges—I have to talk today about the whole issue of FSC/ETI and how critical it is we find a way through this morass of partisanship to getting this bill done. What we do by failing the American people is to impose on manufacturers a European tax and a penalty to American potential for creating jobs. I don't think that is what Senators intend, but that is what is happening if we don't get FSC/ETI through this process.

As I mentioned earlier, I love the compassion I hear from my Democratic friends. Yet when I look at some of the policies that are advanced, what I see are policies designed to make the United States more like Western Europe, more like socialist democratic welfare states.

I recently had an experience on a trip with Senator SHELBY and Senator CANTWELL when we had traveled to