I hope the Commission's report is a clarion call. Let's get our act together. Again, this is not a partisan issue. This should not instigate fighting with one another. We should just do it.

I wish the White House in their budgets had allocated more money. When people in the Senate, both Democrat and Republican, said, We need to do this, that, and the other, had the President said, Yes, sir, right on—but we do not have that. We do not have leadership on homeland security. That is what the Commission's report shows.

Being a great leader and being a strong leader does not just mean fighting wars overseas in this brave new post-September 11 world; it means tightening things up at home. The bottom line is simple: Why aren't we protecting our airplanes from shoulder-held missiles which we know the terrorists have? Why aren't we saying more than 5 percent of the big containers that come to our ports on the east coast, the west coast, the gulf coast, should be inspected to see if they might contain materials that could hurt us? Why aren't we doing more to protect the borders? My State of New York has a large northern border. They have not allocated the dollars, the bottom line is they do not have enough manpower at the borders to prevent terrorists from sneaking in. They are doing a great job with the resources they have, but Lord knows they don't have them. We are not doing any of these things.

I point out one other thing the Commission has mentioned—here, Congress is as much to blame as the White House—and that is the allocation of homeland security funds. The Commission is very strong on this issue. The moneys that go to police, fire, and the others who are our first responders—we learned in New York how valuable they were. The report today will show the number of people who died below where the planes hit the World Trade Center towers was few—too many, but few—because of the great job the police and the firefighters did. Yet we are treating that money as pork barrel.

My State has greater needs than, say, the State with the smallest population, Wyoming. Yet Wyoming gets much more money on a per capita basis. To the credit of the administration, that did not happen the first year we allocated homeland security money. Mitch Daniels, a true conservative, the head of OMB, says he does not want to waste these dollars. He is sending dollars to the places of greatest need. I might have wanted more dollars, but at least the dollars that were allocated were allocated fairly. But now we have slipped away from that. Frankly, we do not hear the voice of Tom Ridge, who was the successor as we created a new Homeland Security Department, saying, allocate this money fairly. We do not hear the voice of the President, and we do not hear the voices of the House and Senate.

This wonderful report is very critical of what our Nation is doing on homeland security. It is saying we are not doing enough in area after area. I hope and pray this report will be a wakeup call. We do not want to be in the ''what if'' situation. God forbid there is another terrorist attack and the next morning we say: What if? What if we had done the job? What if the attack was by shoulder-held missiles? And we say: What if we had done the job. What if the attack was from ships and ports? We say: What if we had done the job on port security or on the rails? Or because someone got across our borders and shouldn't have? We do not want to be in a ''what if'' situation.

JUDICIAL NOMINATIONS

Mr. SCHUMER. Mr. President, my colleague from Michigan is here, and I know she will probably want to speak on the three votes on judges.

The first point I make is, I would much rather be debating the Homeland Security bill than these judges. Where are our priorities in this body? What are we doing? We have had weeks and weeks where many have called for bringing Homeland Security appropriations to the Senate. Instead, we have been debating all the political footballs. I know it is a Presidential election year, I know it is election season, but some things should have a higher calling.

On this particular issue, I make one point before yielding the floor to my colleague from Michigan. Anyone who thinks this is a tit-for-tat game at least misreads the Senator from New York. Were there bad things done on judges when Bill Clinton was President by the Republican-controlled Senate? You bet. But that does not motivate me in terms of what we ought to do in the future.

What motivates me is that in the issue of appointing judges—and I remind the American people that now 200 judges have been approved and 6 have been rejected. My guess is the Founding Fathers, given that they gave the Senate the advice and consent process, would have imagined a greater percentage should be rejected.

I am always mindful of the fact that one of the earliest nominees to the U.S. Supreme Court, Mr. Rutledge, from the neighboring State of the Presiding Officer, South Carolina, nominated by President George Washington, was rejected by the Senate because they didn't like his views on the Jay Treaty. That Senate, which had a good number of Founding Fathers in it—the actual people who wrote the Constitution, many of them became Senators the next year or two—didn't have any qualms about blocking a judge they thought was unfit.

Now all of a sudden when this body stops 6 of 200, we hear from the other end of Pennsylvania Avenue: That is obstructionist.

That is not obstructionist. That is doing our job. The Constitution didn't give the President the sole power to appoint judges. It was divided. In fact, for much of the Constitutional Convention the Founding Fathers thought the Senate ought to appoint the judges and only at the last minute did they say the President, with the advice and consent of the Senate.

This President—regretfully, in many instances—has not consulted the Senate. The two Senators from Michigan—they happen to be of a different party than the President but we know they enjoy working with the other party—were not consulted. I know it can be done. We have done it in my State of New York. We don't have a single vacancy in either the district courts or the Second Circuit because finally, after I said I was not going to allow judges to go through unless I was consulted, the White House came and consulted, and there is a happy result. All the vacancies are filled. The judges tend to be conservative, but they are mainstream people. I may not agree with them on a whole lot of issues, but they have all gone forward. In Michigan we have had no consultation.

Today when I vote against these three nominations, I am not just backing up two Senators from Michigan; I am defending the Constitution. That is what all of us who vote this way will do. Because for the President to say on judges, it is my way or the highway, no compromise, is just not what the Founding Fathers intended. It is not good for America. It tends to put—whoever is President—extreme people on the bench instead of the moderate people we need.

I regret that we have come to vote on these judges, but I have no qualms that I will vote and recommend to my colleagues that we vote against all three.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. DOLE). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. REID. Would the Chair advise the Senator from Nevada what the status of the floor is at this time?

The PRESIDING OFFICER. There are 2 minutes remaining under morning business.

Mr. REID. I yield that time back.

The PRESIDING OFFICER. Time is yielded back.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF HENRY W. SAAD TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session and resume consideration of Calendar No. 705, which the clerk will report.

The assistant legislative clerk read the nomination of Henry W. Saad, of Michigan, to be United States Circuit Judge for the Sixth Circuit.

The PRESIDING OFFICER. Under the previous order, the time until 11

a.m. shall be equally divided between the chairman and the ranking member or his designee.

Mr. REID. Madam President, on behalf of Senator LEAHY, I designate 5 minutes to the Senator from Michigan, Mr. LEVIN. If there is any time remaining on our side, following his presentation, the Senator from New York is yielded the remainder of the time.

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

The Senator from Michigan.

Mr. LEVIN. Madam President, the issues which we are going to vote on today relate to a principle. The principle is that we should provide hearings to people who are nominated by Presidents. When those hearings are denied in order to preserve vacancies so that a subsequent President can make the appointments, that is wrong. That is what happened with Clinton appointees to Michigan judgeships. Two women, highly qualified, were appointed. One was denied a hearing over 4 years, the longest time in the history of the Senate, never given a hearing by the Judiciary Committee. The second nominee, highly qualified, was denied a hearing for over a year and a half by the Judiciary Committee.

This happened in a number of States. It happened to a nominee from Ohio, whose name was Markus, who testified as to why he was denied a hearing because he asked the Republicans on the Judiciary Committee who were in the majority as to why he was never given a hearing. He was nominated for an Ohio vacancy to the Sixth Circuit. There are four States in our circuit: Ohio, Kentucky, Tennessee, and Michigan. He testified in front of the Judiciary Committee as to what happened, why he was never given a hearing.

. . . Senator DEWINE and his staff and Senator HATCH's staff and others close to him were straight with me. Over and over again they told me two things: There will be no more confirmations to the 6th Circuit during the Clinton Administration, and this has nothing to do with you; don't take it personally—it doesn't matter who the nominee is, what credentials they may have or what support they may have.

. . . On one occasion, Senator DEWINE told me ''This is bigger than you and it's bigger than me.'' Senator KOHL, who had kindly agreed to champion my nomination within the Judiciary Committee, encountered a similar brick wall. . . . The fact was, a decision had been made to hold the vacancies and see who won the presidential election. With a Bush win, all those seats could go to Bush rather than to Clinton nominees.

That is not an acceptable tactic. It should not be allowed to succeed. That is the fundamental issue with these nominees, as to whether that tactic of denying hearings—in one case for over 4 years and another case for a year and a half, to two highly qualified women appointed by President Clinton—is going to work. Senator STABENOW and I are determined that it should not work. But we are also determined to try to accomplish a bipartisan solution.

There is a rare opportunity here, because of the number of vacancies to the Sixth Circuit—there are four Michigan vacancies on the Sixth Circuit—to have a bipartisan solution. Two have been proposed to the White House. Senator STABENOW and I have proposed that there be a bipartisan commission appointed in Michigan to make recommendations on these nominations. Whether these two women succeed in getting those recommendations is not the point and it is not assured. We don't know. Recommendations would not be binding upon the President, nor on the Senate. They are simply recommendations. That has been rejected by the White House.

When Senator LEAHY was the chairman, when Democrats were in the majority in the Senate, he made a suggestion, a proposal to the White House as to how to solve this problem. The White House rejected that one as well.

Senator STABENOW and I have pursued bipartisan solutions to this deadlock. We are going to continue to pursue solutions. But what we will not do and the Senate should not do, in terms of the principle involved here of denying hearings year after year after year to nominees in the Judiciary Committee in order to keep those seats vacant so the next President can make the appointment, this principle, it seems to me, is not in all of our interests.

Even Judge Gonzales has acknowledged there were wrongs. He said: That was wrong. That was wrong to deny Judiciary Committee hearings. That is not right.

And he is right. We are going to try to correct that wrong. It can be corrected in a bipartisan way. But for these nominations to simply be approved and for cloture to be invoked is not the way to achieve a bipartisan solution.

One final comment, if I have another minute. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 1½ minutes remaining.

Mr. LEVIN. I thank the Presiding Officer.

Madam President, for over 4 years, we made efforts to get hearings first for Judge White, who is a court of appeals judge in Michigan, and for Kathleen McCree Lewis, who is a noted appellate lawyer from Michigan in the Sixth Circuit. Two pages of efforts were made to get hearings. I am not going to read them all. All I can say is, month after month after month Senator DASCHLE, Senator LEAHY, and others pleaded with the Republican majority, the majority leader, and the chairman of the Judiciary Committee for hearings. We came to the floor and made speeches, even after the blue slip was returned from Senator Abraham.

There is a blue-ship issue here because Senator Abraham did not originally return the blue slip on these judges. But even after the blue slip was returned, there were no hearings provided.

There is a huge issue always, whether blue slips were returned or returned with objections, whether two Senators from a State who have objections should be overridden and the nomination should proceed. That is an issue which affects all of us, and all of us should give a great deal of thought as to whether, if two Senators from a State object to a nominee, that nomination should proceed. That gets to the advise and consent clause of the Constitution. But when blue slips are returned, which is the case with these two judges, there was still a refusal to hold hearings. That is unacceptable. That tactic should not work, and I hope cloture will not be invoked on these three nominations.

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

Mr. LEAHY. Madam President, the handling of the nominations of Henry Saad, Richard Griffin, and David McKeague in the Judiciary Committee and here on the Senate floor sets an unfortunate precedent, and will be long remembered in the annals of this Chamber for the double standard it embodies. In collusion with a White House of the same party, the Senate's Republicans have engaged in a series of changed practices and broken rules. The home-State Senators of these nominees opposed proceeding on them any further until and unless they are able to reach a bipartisan solution with the White House, but their interests have been disregarded. In the process Republicans have trampled on years of tradition, practice and comity. This sort of behavior may not easily be repaired, but must be exposed.

Before I discuss the specifics of the Michigan nominations, I would like to review the recent history of Republican rule breaking, bending, and changing with regard to nominations for lifetime judicial appointments. Over the last 3½ years, the good faith efforts of Senate Democrats to repair the damage done to the judicial confirmation process over the previous 6 years has been sorely tested and met with nothing but divisive partisanship. Rule after rule has been broken or twisted until the process so long agreed upon is hardly recognizable anymore.

The string of transparently partisan actions taken by the Senate's Republican majority took a wrong turn in January of last year. It was then that one hearing was held for three controversial circuit court nominees, scheduled to take place in the course of a very busy day in the Senate. There was no precedent for this in the years that Republicans served in the majority and a Democrat was in the White House.

Then, two of the nominees from that hearing were voted out of the committee in clear violation of committee rules. Despite his prior statements acknowledging the proper operation of rule IV in February, which should operate to preserve the minority's right to debate, the chairman declared that Rule IV no longer applied. I spent months working to reach an agreement

to move forward the nominees voted out in violation of rule IV and reach an understanding that this important rule would not be violated again. However, in connection with the nomination of William Pryor to the Eleventh Circuit the chairman again overrode the rights of the minority in order to rush to judgment on a controversial circuit court nominee. The assurances given to us that minority rights would be respected and the Senate would not take up nominations sent to the Senate floor in violation of our rights were broken.

The Republican majority also supported and facilitated the unprecedented renomination and consideration of Priscilla Owen to a seat on the U.S. Court of Appeals for the Fifth Circuit, for which she already had been rejected by the Judiciary Committee. That, too, was unprecedented.

The other rule breaking I want to discuss is the one directly relevant to the Michigan nominees. It is the tradition of the ''blue-slip,'' the mechanism by which home-State Senators were, until the last 2 years, able to express their approval of or opposition to judicial nominees from their home States.

For many years, at least since the time of Judiciary Committee Chairman James Eastland, the committee has sought the consent of a judicial nominee's home-State Senators by sending them a letter and a sheet of blue paper asking whether or not they approve of the nominee. This piece of paper, called a blue slip, formalized a courtesy long extended to home-State Senators. It was honored without exception when Chairman HATCH chaired the Judiciary Committee during the Clinton administration. Not once during those six years when the committee was considering the nominations of a Democratic President, did the chairman proceed on a nominee unless two approving, or positive blue slips had been returned. One non-returned blue slip, let alone one where a Senator indicated disapproval of the nominee, was enough to doom a nomination and prevent any consideration. For that matter, it seemed that so long as one Republican Senator had an objection, it was honored, even if they were not home-State Senators like Senator Helms of North Carolina objecting to an African-American nominee from Virginia, or Senator Gorton of Washington objecting to nominees from California.

When President Clinton was in office, the chairman's blue slip sent to Senators, asking their consent, said this:

> Please return this form as soon as possible to the nominations office. No further proceedings on this nominee will be scheduled until both blue slips have been returned by the nominee's home state senators.

When President Bush began his term, and Senator HATCH took over the chairmanship of this committee, he changed his blue slip to drop the assurance he had always provided Republican Senators who had an objection. He eliminated the statement of his consistent practice in the past by striking the sentence that provided: ''No further proceedings on this nominee will be scheduled until both blue slips have been returned by the nominee's home state senators.'' Now he just asks that the blue slip be returned as soon as possible, disregarding years of tradition and respect for the interests of the home-State Senators. Can there be any other explanation for this other than the change in the White House? It is hard to imagine.

This change in policy has worked a severe unfairness on the interests of Senators LEVIN and STABENOW. They objected to the nominations of Henry Saad, Richard Griffin, and David McKeague for reasons they have explained in detail. From the very beginning, they have been crystal clear with the President and the White House about their objections, and they have done everything possible to reach a compromise. Their concerns ought to be respected, not rejected in favor of partisan political rule-bending.

This is not the first time the blue slip rule has been broken. Last year the Judiciary Committee, under Republican leadership, took the unprecedented action of proceeding to a hearing on President Bush's controversial nomination of Carolyn Kuhl to the Ninth Circuit, over the objection of Senator BOXER. When the senior Senator from California announced her opposition to the nomination at the beginning of a Judiciary business meeting, I suggested that further proceedings on that nomination ought to be carefully considered and noted that the committee had never proceeded on a nomination opposed by both home-State Senators once their opposition was known. Nonetheless, in one in a continuing series of changes of practice and position, the committee was required to proceed with the Kuhl nomination, and a divisive vote was the result. The Senate has withheld consent to that nomination after extended debate.

Continuing with the Saad nomination, and going further with Griffin and McKeague, the committee made more profound changes in its practices. When a Democratic President was doing the nominating and Republican Senators were objecting, a single objection from a single home-State Senator stalled any nomination. There is not a single example of a single time that Chairman HATCH went forward with a hearing over the objection or negative blue slip of a single Republican home-State Senator during the years that President Clinton was the nominating authority. But now that a Republican President is doing the nominating, no amount of objecting by Democratic Senators is sufficient. Republicans overrode the objection of one home-State Senator with the Kuhl nomination. Republicans outdid themselves when they overrode the objections of both home-State Senators and forced the Saad, McKeague and Griffin nominations out of committee.

We will hear a lot of arguments from the other side about the history of the blue slip, and of the practices followed by other chairmen, including Senator KENNEDY and Senator BIDEN. What I doubt we will hear from the other side of the aisle is the plain and simple truth of the two conflicting policies the Republicans have followed. While it is true that various chairmen of the Judiciary Committee have used the blue-slip in different ways—some to work unfairness, and others to attempt to remedy it—it is also true that each of those chairmen was consistent in his application of his own policy—that is, until now.

In addition, I think the Senate and the American people need to recall the party-line vote by which Senate Republicans defeated the confirmation to the District Court in Missouri of an outstanding African-American judge named Ronnie White. In connection with that vote, a number of Republican Senators who voted against Judge White justified their action as being required to uphold the role of the Missouri home-State Senators who opposed the nomination. Any Senator who voted against the nomination of Ronnie White and does not vote with Senators LEVIN and STABENOW today will need to find another explanation for having opposed Judge White or explain why suddenly the rules that applied to Judge White do not apply today.

I know Republican partisans hate being reminded of the double standards by which they operated when asked to consider so many of President Clinton's nominees. I know that they would rather exist in a state of ''confirmation amnesia,'' but that is not fair and that is not right. The blue slip policy in effect, and enforced strictly, by Republicans during the Clinton administration operated as an absolute bar to the consideration of any nominee to any court unless both home-State Senators had returned positive blue slips. No time limit was set and no reason had to be articulated.

Remember also that before I became chairman in June of 2001, all of these decisions were being made in secret. Blue slips were not public, and they were allowed to operate as anonymous holds on otherwise qualified nominees.

A few examples of the operation of the blue slip process and how it was scrupulously honored by the committee during the Clinton Presidency are worth remembering. Remember, in the 106th Congress alone, more than half of President Clinton's circuit court nominees were defeated through the operation of the blue slip or other such partisan obstruction.

Perhaps the most vivid is the story of the United States Court of Appeals for the Fourth Circuit, where Senator Helms was permitted to resist President Clinton's nominees for 6 years. Judge James Beaty was first nominated to the Fourth Circuit from North Carolina by President Clinton in 1995,

but no action was taken on his nomination in 1995, 1996, 1997, or 1998. Another Fourth Circuit nominee from North Carolina, Rich Leonard, was nominated in 1995, but no action was taken on his nomination either, in 1995 or 1996. The nomination of Judge James Wynn, again a North Carolina nominee to the Fourth Circuit, sent to the Senate by President Clinton in 1999, languished without action in 1999, 2000, and early 2001 until President Bush withdrew his nomination.

A similar tale exists in connection with the Fifth Circuit where Enrique Moreno, Jorge Rangel and Alston Johnson were nominated but never given confirmation hearings.

Perhaps the best documented abuses are those that stopped the nominations of Judge Helene White, Kathleen McCree Lewis and Professor Kent Markus to the Sixth Circuit. Judge White and Ms. Lewis were themselves Michigan nominees. Republicans in the Senate prevented consideration of any of President Clinton's nominees to the Sixth Circuit for years.

When I became chairman in 2001, I ended that impasse. The vacancies that once plagued the Sixth Circuit have been cut in half. Where Republican obstruction led to 8 vacancies on that 16-judge court, Democratic cooperation allowed 4 of those vacancies to be filled. The Sixth Circuit currently has more judges and fewer vacancies than it has had in years.

Those of us who were involved in this process in the years 1995–2000 know that the Clinton White House bent over backwards to work with Republican Senators and seek their advice on appointments to both circuit and district court vacancies. There were many times when the White House made nominations at the direct suggestion of Republican Senators, and there are judges sitting today on the Ninth Circuit and the Fourth Circuit, in the district courts in Arizona, Utah, Mississippi, and many other places only because the recommendations and demands of Republicans Senators were honored.

In contrast, since the beginning of its time in the White House, this Bush administration has sought to overturn traditions of bipartisan nominating commissions and to run roughshod over the advice of Democratic Senators. They attempted to change the exemplary systems in Wisconsin, Washington, and Florida that had worked so well for so many years. They ignored the protests of Senators like Senator BOXER who not only objected to the nominee proposed by the White House, but who, in an attempt to reach a true compromise, also suggested Republican alternatives. And today, despite the best efforts of the well-respected Senators from Michigan, who have proposed a bipartisan commission similar to their sister state of Wisconsin, we see the administration has flatly rejected any sort of compromise.

The double standards that the Republican majority has adopted obviously depend upon the occupant of the White House. The change in the blue slip practice marks only one example of their disregard for the rules and practices of committees and the Senate. In the Judiciary Committee, the Republican majority abandoned our historic practice of bipartisan investigation in the Pryor nomination, as well as the meaning and consistent practice of protecting minority rights through a longstanding committee rule, rule IV, that required a member of the minority to vote to cut off debate in order to bring a matter to a vote. Republicans took another giant step in the direction of unbridled partisanship through the hearings granted Judges Kuhl, Saad, Griffin and McKeague.

During the past year and a half we have also suffered through the scandal of the theft of staff memoranda and files from the Judiciary computer by Republican staff, a matter which is now under criminal investigation by the Department of Justice. It is all part of a pattern that has included bending, changing and even breaking this committee's rules to gain partisan advantage and to stiffen the White House's influence over the Senate.

The partisan Republican motto seems to be ''by any means necessary.'' If stealing computer files is helpful, do it. If rules protecting the minority are inconvenient, ignore them. If traditional practices are an impediment, break them. Partisan Republicans seem intent on turning the independent Senate into a wholly-owned subsidiary of the Presidency and our independent Federal judiciary into an activist arm of the Republican Party.

Senate Republicans are now intent on violating ''the Thurmond Rule'' and the spirit of the cooperative agreement reached earlier this year by which 25 additional judicial nominees have been considered and confirmed. The Thurmond Rule dates back at least to July 1980 when the Reagan campaign urged Senate Republicans to block President Carter's judicial nominees. Over time, Senator Thurmond and Republican leaders refined their use of and practices under the rule to prevent the consideration of lifetime judicial appointments in the last year of a Presidency unless consensus nominees. Consent of the majority and minority leaders as well as the chairman and ranking member of the Judiciary Committee came to be the norm. The agreement earlier this year on the 25 additional judicial nominees considered and confirmed was consistent with our traditions and the Thurmond Rule.

Senate Republicans abused their power in the last year of President Clinton's first term, in 1996. They would not allow a single circuit court nominee to be considered by the Senate that entire session and only allowed 17 noncontroversial district court nominees confirmed in July. No judicial nominees were allowed a vote in the first 6 months of that session or the last 5 months of that Presidency.

In 2000, we had to work hard to get Senate Republicans to allow votes on judicial nominees, even in the wake of searing criticism of their obstructionism by the Chief Justice of the United States Supreme Court. After July 4, 2000, the only judicial nominees confirmed were by consensus.

In stark contrast to their practices in 1996 and 2000, the Republican leadership of the Senate is now seeking to force the Senate into confirmations of judicial nominees they know to be highly controversial. That is wholly inconsistent with the Thurmond Rule and with their own past practices. Republican partisans seem intent on another contrived partisan political stunt. They insist on staging cloture votes on judicial nominees late in a Presidential election year knowing that they have broken rule after rule and practice after traditional practice just to force the controversial nominations before the Senate. They are manufacturing confrontation and controversy. Like the President, they seek division over cooperation with respect to the handful of most controversial judicial nominees for lifetime appointments.

Reports this week are that the Republican leadership is setting up unilaterally to change the Senate's historic rules to protect the minority. According to press accounts, some Republicans leaders are planning to have Vice President CHENEY, acting as President of the Senate, declare that the Senate's longstanding cloture rule is unconstitutional and then have his fellow party members sustain that partisan power grab. When this radical might-makes-right approach was advocated last year, some Republican had reservations about sacrificing the Senate's rights to freedom of debate. Traditional conservatives who understand the role of the Senate as part of the checks and balances in our Constitution recognized the enormity of damage that would be caused to this institution by empowering such a partisan dictatorship. From this week's reports, sensible Senate Republicans are being cast aside and overridden by the most strident.

Norm Ornstein observed: ''If Republicans unilaterally void a rule that they themselves have employed in the past, they will break the back of comity in the Senate.'' Republicans call this the so-called ''nuclear action,'' because it would destroy the Senate as we know it. It is unjustified and unwise. It is ironic that Republicans blocked nearly 10 times as many of President Clinton's judicial nominees as those of President Bush denied consent. Apparently, clearly Republican partisans will apparently stop at nothing in their efforts to aid and abet this White House in the efforts to politicize the Federal judiciary.

Both of the Senators from Michigan are respected Members of the Senate. Both are fair-minded. Both are committed to solving the problems caused

by Republican high-handedness in blocking earlier nominees to the Sixth Circuit. Both of these home-State Senators have attempted to work with the White House to offer their advice, but their input was rejected. They have suggested ways to end the impasse on judicial nominations for Michigan, including a bipartisan commission along the lines of a similar commission in Wisconsin. This is a good idea and a fair idea. I am familiar with the work of bipartisan screening commissions. Vermont and its Republican, Democratic and Independent Senators had used such a commission for more than 25 years with great success. I commend the Senators representing Michigan for their constructive suggestion and for their good faith efforts to work with this White House in spite of the administration's refusal to work with them.

Some Senators have said we need to forget the unfairness of the past on nominations and start on a clean slate. But the way to wipe that slate clean is through cooperation now, and moving forward together—not with the petulant, partisan unilateralism that we have seen so often from this administration.

Although President Bush promised on the campaign trail to be a uniter and not a divider, his practice once in office with respect to judicial nominees has been more divisive than those of any President. Citing the remarks of a White House official, The Lansing State Journal reported, for example, that the President is simply not interested in compromise on the existing vacancies in the State of Michigan. It is unfortunate that the White House is not willing to work toward consensus with all Senators.

Under our Constitution, the Senate has an important role in the selection of our judiciary. The brilliant design of our Founding Fathers established that the first two branches of Government would work together to equip the third branch to serve as an independent arbiter of justice. As columnist George Will has written, ''A proper constitution distributes power among legislative, executive and judicial institutions so that the will of the majority can be measured, expressed in policy and, for the protection of minorities, somewhat limited.'' The structure of our Constitution and our own Senate rules of self-governance are designed to protect minority rights and to encourage consensus. Despite the razor-thin margin of recent elections, the Republican majority is not acting in a measured way but in disregard for the traditions of bipartisanship that are the hallmark of the Senate.

When there was a Democratic President in the White House, circuit court nominees were delayed and deferred, and vacancies on the Courts of Appeals more than doubled under Republican leadership from 16 in January 1995, to 33 when the Democratic majority took over part way through 2001.

Under Democratic leadership, we held hearings on 20 circuit court nominees in 17 months. Indeed, while Republicans averaged 7 confirmations to the circuit courts every 12 months for the last President, the Senate under Democratic leadership confirmed 17 in its 17 months with an historically uncooperative White House.

With a Republican in the White House, the Republican majority shifted from the restrained pace it had said was required for Clinton nominees, into overdrive for the most controversial of President Bush's nominees. In 2003 alone, 13 circuit court judges were confirmed. This year more hearings have been held for nominees in just 5 months than were held in all of 1996 or all of 2000. One hundred and ninety-eight of President Bush's nominees have been confirmed so far—more than in all 4 years of President Reagan's first term, when he had a Republican Senate to work with, more than in the Presidency of the first President Bush and more than in the last term of President Clinton.

Many of the 198 nominees who have been confirmed for this President have proceeded by consensus out of committee and on the Senate floor. I would have hoped that the scores of nominees agreed upon by home-State Senators of both parties, voted out of committee unanimously and confirmed without opposition in the full Senate would have been a lesson for the President. I would have hoped that the Michigan Senators' principled and reasoned opposition to the way the Sixth Circuit nominations have occurred would have been a starting point from which to reach a compromise. But, as with so many other nominees and so many other issues, compromise was not forthcoming from this White House. Instead, they have refused to acknowledge the wrong done to President Clinton's nominees to the very same court, and they have refused to budge. It is a shame.

The Judiciary Committee has now reported more than 200 of President Bush's judicial nominees. Most have been reported with the support of Democratic Senators. Some have been contentious and some have been so extreme that they have not garnered bipartisan support and have been problematic. We have demonstrated time and again that when we unite and work together we make progress. Republicans have too often chosen, instead, to seek to pack the courts and tilt them out of balance and to use unfounded allegations of prejudice to drive wedges among Americans for partisan political purposes.

We have more Federal judges currently serving than at any time in our Nation's history and we have succeeded in reducing judicial vacancies to the lowest level in decades. Even Alberto Gonzales, the White House Counsel, conceded that: ''If you look at the total numbers, I think one could draw the conclusion that we've been fairly successful in having a lot of the president's nominees confirmed.'' The Republican leader in the Senate has termed our efforts ''steady progress.'' The White House would be even more successful if they would work with us to resolve this situation in the Sixth Circuit.

Senate Democrats had demonstrated our good faith in confirming 100 of President Bush's judicial nominees in our 17 months in the Senate majority. We have now cooperated in the confirmation of more judicial nominees for President Bush than President Reagan achieved working hand in hand with a Republican Senate majority. We have already confirmed more judges this Congress than were confirmed before the presidential elections in 1996. We fulfilled our commitment in accord with the agreement reached with the White House to consider 25 additional judicial nominees already this year. We have demonstrated not only our willingness to cooperate but we have done so to achieve historic confirmation numbers and historically low numbers of judicial vacancies. I have come to recognize that no good deed we do in correcting the Republican abuses of the past goes unpunished.

Unfortunately, this President has also chosen to nominate for some important circuit court seats some candidates who on their merits are not deserving of lifetime appointments. It appears that Judge Saad is one of those nominees. Clearly the Senators from Michigan have grave concerns.

I also have concerns about the nominee, his legal judgment, and his ability to be fair. While Judge Saad was an attorney his practice primarily consisted of defending large corporations against employees' claims of race discrimination, age discrimination, sexual harassment and wrongful termination. A review of Judge Saad's cases on the Michigan Court of Appeals raises concerns because he frequently favored employers in complaints brought by workers, even in the face of extremely sympathetic facts.

For example, in Cocke v. Trecorp Enterprises, a young Burger King employee was aggressively and repeatedly sexually harassed and assaulted by her shift manager. More than once, she reported this treatment to her other shift managers who promised to take care of it. The trial court prevented her case from going to the jury but Judge Saad dissented from an appellate decision reversing the trial court. Judge Saad ignored the legal standard of review followed by the majority and would have protected the corporation from responsibility for the shift manager's notorious and unlawful behavior.

Also, in Coleman v. Michigan, a female corrections officer brought a sexual harassment suit against her employer, the State of Michigan. This officer was assaulted and nearly raped by an armed prisoner. According to the officer's complaint, after this terrible attack, her supervisor insinuated that she provoked the attack because of her attire. The supervisor made the officer

come to his office on a regular basis to check the appropriateness of her clothing and he frequently called her to discuss personal matters, such as her relationship with her boyfriend. Despite these serious allegations, the trial court granted summary disposition in favor of the State of Michigan. Judge Saad joined in the Michigan Court of Appeals' per curiam opinion affirming the trial court's grant of summary disposition. The corrections officer appealed his decision to the Michigan Supreme Court, which reversed and held that her claims constituted sufficient evidence to go to trial.

In another case, Fuller v. McPherson Hospital, a jury who heard live testimony was persuaded to conclude that a woman had endured sexual harassment from her immediate supervisor and other superiors. The trial court vacated the jury findings because it found that the plaintiff had not complained of the harassment while working at the hospital. On appeal, the panel reinstated the jury's finding of sexual harassment but Judge Saad dissented. Unfortunately, his dissent in this case was only two sentences and failed to address his colleagues' legal conclusions.

I cannot speak in open session about all concerns but I can note a temperament problem, as evidenced by an e-mail he sent, a copy of which he mistakenly sent to Senator STABENOW as well. In Judge Saad's e-mail he displays not only shockingly bad manners, but appalling judgment and a possible threatening nature.

In the e-mail exchange, Judge Saad is writing to someone named Joe, forwarding him a copy of another e-mail sent by Senator STABENOW in response to a letter of support for Saad's nomination. In her response Senator STABENOW politely and reasonably explains the basis for her continuing objection to the nomination, explaining that she understands the writer's ''concerns and frustrations,'' thanking them, and offering her help in the future. Apparently this type of courteous explanation was too much for Judge Saad. Here is what he wrote in response to the Senator's explanation:

> She sends this standard response to all those who inquire about this subject. We know, of course, that this is the game they play. Pretend to do the right thing while abusing the system and undermining the constitutional process. Perhaps some day she will pay the price for her misconduct.

I know that Senator STABENOW does not need me to defend her, and I doubt that sort of personal threat concerns her, but I think Judge Saad's message deserves some attention. It shows a shocking lack of good judgment, a pronounced political viewpoint, and a total absence of respect for the process undertaken by Senators of good faith and good will.

As soon as they saw this e-mail message, both Michigan Senators wrote to the President's Counsel, Alberto Gonzales, alerting him to the offensive comments. While I do not believe Judge Gonzales or the President ever responded, 2 weeks later Judge Saad did get around to sending a ''non-apology.'' He wrote:

> I write regarding your and Senator LEVIN's recent letter to Alberto R. Gonzales, Counsel to the President (a copy of which you sent to me), relating to an e-mail message that I meant to send only to a close personal friend of mine. Unfortunately, this e-mail, which commented on my pending nomination, was inadvertently sent to your office. I regret that the e-mail was sent to you and certainly apologize for any personal concern this may have caused you. I have a great deal of respect for our political institutions and meant no lack of respect to you.

He cannot bring himself to say he is sorry for his words, to apologize for accusing a Senator of abusing the system she so respects, or even for expressing the hope that she would ''pay for her conduct.'' Instead he is sorry that he was caught, and if what he said may have caused Senator STABENOW ''personal concern.''

Apart from all of the procedural problems with this nomination, I have serious concerns about giving lifetime tenure to someone with this stunning lack of judgment.

I also have concerns about parts of the record of Richard Griffin. As a judge on the Michigan Court of Appeals since 1989, Judge Griffin has handled and written hundreds of opinions involving a range of civil and criminal law issues. Yet, a review of Judge Griffin's cases on the Michigan Court of Appeals raises concerns. He has not been shy about interjecting his own personal views into some of his opinions, indicating that he may use the opportunity, if confirmed, to further his own agenda when confronted with cases of first impression.

For example, in one troubling case involving the Americans with Disabilities Act (ADA), Doe v. Mich. Dep't of Corrections, Judge Griffin allowed the State disability claim of disabled prisoners to proceed, but wrote that, if precedent had allowed, he would have dismissed those claims. Griffin authored the opinion in this class action brought by current and former prisoners who alleged that the Michigan Department of Corrections denied them certain benefits on the basis of their HIV-positive status. Although Judge Griffin held that the plaintiffs had stated a claim for relief, his opinion makes clear that he only ruled this way because he was bound to follow the precedent established in a recent case decided by his court. Moreover, he went on to urge Congress to invalidate a unanimous Supreme Court decision, written by Justice Scalia, holding that the ADA applies to State prisoners and prisons. He wrote, ''While we follow Yeskey, we urge Congress to amend the ADA to exclude prisoners from the class of persons entitled to protection under the act.''

In other cases, he has also articulated personal preferences that favor a narrow reading of the law, which would limit individual rights and protections. For example, in Wohlert Special Products v. Mich. Employment Security Comm'n, he reversed the decision of the Michigan Employment Security Commission and held that striking employees were not entitled to unemployment benefits. The Michigan Supreme Court vacated part of Judge Griffin's decision, noting that he had inappropriately made his own findings of fact when ruling that the employees were not entitled to benefits. This case raises concerns about Judge Griffin's willingness to distort precedent to reach the results he favors.

In several other cases, Judge Griffin has gone out of his way to interject his conservative personal views into his opinions. The appeals courts are the courts of last resort in over 99 percent of all Federal cases and often decide cases of first impression. If confirmed, Judge Griffin will have much greater latitude to be a conservative judicial activist.

It is ironic that Judge Griffin's father who, as Senator in 1968, launched the filibuster of the nomination of Supreme Court Justice Abe Fortas to serve as Chief Justice. Former Senator Griffin led a core group of Republican Senators in derailing President Johnson's nomination by filibustering his nomination on the floor of the United States Senate. Eventually, Justice Fortas withdrew his nomination. I know that the Republicans here will call any attempt to block Judge Griffin's nomination ''unconstitutional'' and ''unprecedented,'' but his father actually helped set the precedent for blocking nominees on the Senate floor.

Finally, I turn to David McKeague, his record, and questions. In particular, I am concerned about Judge McKeague's decisions in a series of cases on environmental issues. In *Northwoods Wilderness Recovery* v. *United States Forest Serv.*, 323 F.3d 405 (6th Cir. 2003), Judge McKeague would have allowed the U.S. Forest Service to commence a harvesting project that allowed selective logging and clear-cutting in areas of Michigan's Upper Peninsula. The appellate court reversed him and found that the Forest Service had not adhered to a ''statutorily mandated environmental analysis'' prior to approval of the project, which was dubbed ''Rolling Thunder.''

Sitting by designation on the Sixth Circuit, Judge McKeague joined in an opinion that permitted the Tennessee Valley Authority (TVA) broadly to interpret a clause of the National Environmental Policy Act in a way that would allow the TVA to conduct large-scale timber harvesting operations without performing site-specific environmental assessments. *Help Alert Western Ky., Inc.* v. *Tenn. Valley Authority*, 1999 U.S. App. LEXIS 23759 (6th Cir. 1999). The majority decision in this case permitted the TVA to determine that logging operations that covered 2,147 acres of land were ''minor,'' and thus fell under a categorical exclusion

to the environmental impact statement requirement. The dissent in this case noted that the exclusion in the past had applied only to truly ''minor'' activities, such as the purchase or lease of transmission lines, construction of visitor reception centers and on-site research.

Judge McKeague also dismissed a suit brought by the Michigan Natural Resources Commission against the Manufacturer's National Bank of Detroit, finding that the bank was not liable for the costs of environmental cleanup at sites owned by a ''troubled borrower.'' See *Kelley ex rel. Mich. Natural Resources Comm'n* v. *Tiscornia*, 810 F. Supp. 901 (W.D. Mich. 1993). The bank took over the property from Auto Specialties Manufacturing Company when it defaulted on its loans. The Natural Resources Commission argued that the bank should be responsible for taking over the cost of cleanup because it held the property when the toxic spill occurred, but Judge McKeague disagreed.

In *Miron* v. *Menominee County*, 795 F. Supp. 840 (W.D. Mich. 1992), Judge McKeague rejected the efforts of a citizen who lived close to a landfill to require the Federal Aviation Administration to enjoin landfill cleanup efforts until an environmental impact statement regarding the efforts could be prepared. The citizen contended that if the statement were prepared, the inadequacies of a State-sponsored cleanup would be revealed and appropriate corrective measures would be undertaken to minimize further environmental contamination and wetlands destruction. Holding that the alleged environmental injuries were ''remote and speculative,'' Judge McKeague denied the requested injunctive relief.

In *Pape* v. *U.S. Army Corps of Engineers*, 1998 U.S. Dist. LEXIS 9253 (W.D. Mich.), Judge McKeague seems to have ignored relevant facts in order to prevent citizen enforcement of environmental protections. Dale Pape, a private citizen and wildlife photographer, sued the U.S. Corps of Army Engineers under the Federal Resource Conservation and Recovery Act of 1976 (RCRA), alleging that the Corps mishandled hazardous waste in violation of RCRA, destroying wildlife in a park near the site. Despite the Supreme Court's holding in Lujan v. Defenders of Wildlife that ''the desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purpose of standing,'' and even though RCRA specifically conferred the right for citizen suits against the government for failure to implement orders or to protect the environment or health and safety, Judge McKeague dismissed the case, holding that plaintiff lacked standing to sue.

Judge McKeague found plaintiff's complaint insufficient on several grounds, in particular plaintiff's inability to establish which site specifically he would visit in the future. Plaintiff had stated in his complaint that he ''has visited the 'area around' the RACO site 'at least five times per year' and that he has made plans to vacation in 'Soliders Park' located 'near' the RACO site in early October 1998, where he plans to spend his time 'fishing, canoeing, and photographing the area.''' Comparing Pape's testimony with that of the Lujan plaintiff, who had failed to win standing after he presented general facts about prior visits and an intent to visit in the future, Judge McKeague rejected Pape's complaint as too speculative, based on the Court's holding in Lujan that:

> [Plaintiffs'] profession of an ''intent'' to return to the places [plaintiffs] had visited before—where they will, presumably, this time, be deprived of the opportunity to observe animals of the endangered species—is simply not enough to establish standing. . . . Such ''some day'' intentions—without any description of concrete plans, or indeed, even any specification of when the some day will be—do not support a finding of the ''actual or imminent'' injury that our cases require.

In concluding that ''the allegations contained in plaintiff's first amended complaint fail to establish an actual injury because they do not include an allegation that plaintiff has specific plans to use the allegedly affected area in the future,'' Judge McKeague seemed to ignore completely the detailed fact description that Pape submitted in his amendment complaint. The judge further asserted that there was no causal connection between the injury and the activity complained of, and that, in any case, the alleged injury was not redressable by the suit.

On another important topic, that of the scheme of enforcing the civil and constitutional rights of institutionalized persons, I am concerned about one of Judge McKeague's decisions. In 1994, (*United States* v. *Michigan*, 868 F. Supp. 890 (W.D. Mi. 1994)), he refused to allow the Department of Justice access to Michigan prisons in the course of its investigation into some now notorious claims of sexual abuse of women prisoners by guards undermines the long-established system under the Constitutional Rights of Institutionalized Persons Act. That law's investigative and enforcement regime is unworkable if the Department of Justice is denied access to State prisons to determine if enough evidence exists to file suit, and Judge McKeague's tortured reasoning made it impossible for the investigation to continue in his district.

I know that concern for the rights of prisoners who have often committed horrendous criminal acts is not politically popular, but Congress enacted the law and expected its statute and its clear intent to be followed. It seems to me that Judge McKeague disregarded legislative history and the clear intent of the law, and that sort of judging is of concern to me.

I also note my disappointment in his answer to a question I sent him about a presentation he made in the fall of 2000, when he made what I judged to be inappropriate and insensitive comments about the health and well-being of sitting Supreme Court Justices. In a speech to a law school audience about the impact of the 2000 elections on the courts, Judge McKeague discussed the possibility of vacancies on the Court over the following year. In doing so he felt it necessary to not only refer to—but to make a chart of—the Justices' particular health problems, and ghoulishly focus on their life expectancy by highlighting their ages. He says he does not believe he was disrespectful, and used only public information. There were other, better ways he could have made the same point, and it is too bad he still cannot see that.

The people of the Sixth Circuit deserve better than this. And the American people, the independent Federal judiciary, the U.S. Senate, all deserve better than the double standard that is now squarely on display for all to see.

Mr. SCHUMER. Madam President, I yield the time remaining to me to the Senator from Michigan.

The PRESIDING OFFICER. All time has expired on the Democratic side.

Mr. LEVIN. Parliamentary inquiry: I thought there was 15 minutes on each side.

The PRESIDING OFFICER. There is 7 minutes on each side.

Mr. SCHUMER. Madam President, I ask unanimous consent, since nobody is here and we are voting at 11, that Senator STABENOW be given 4 minutes to discuss this issue.

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

Ms. STABENOW. I thank the Chair. Madam President, I thank my colleague and friend from New York.

I rise to support the distinguished senior Senator from Michigan, my friend and colleague, who has spoken very eloquently about what we are about to vote on.

Today we will be asked to vote to close debate and proceed to a final vote on three judges who have been nominated by the President to the Sixth Circuit in Michigan. We are asking that colleagues vote no and give us an opportunity to work out this situation in a bipartisan way. We have been very close. I appreciate Chairman HATCH's efforts to work with us, Senator LEAHY, and others who have worked with us and proposed bipartisan solutions. I still believe we can develop a solution if we do not proceed with this vote today. If we do not vote for cloture, I believe we can continue to work together in a bipartisan way to resolve this issue.

It is always difficult when the President nominates people for the bench. Oftentimes people will say: Why not give the President his nominees? We know this is different from the Cabinet. I have voted to give the President his team, his Cabinet, because they are with him for his 4-year term, and they are part of his team. Except for those few exceptions I believed were too extreme, I supported individuals I personally would not select to be in a Cabinet, but it is his team.

In the case of the judiciary, this is the third branch of Government. As we learn from reading simple high school government books, in the beginning of the debate of our Founders, those at the Constitutional Convention gave the full authority to the Senate. Then there was further discussion and they said possibly the President should appoint the third branch of Government. In the end, they said this is so important that this judiciary, this third branch of Government, be independent of the other two branches that we are going to split the authority in half. We are going to give half to the President of the United States to make nominations, and the other half to the Senate to consult and to confirm.

Our concern is that in the case of Michigan, working together has not been happening. It is not about two Senators; it is about the people we represent. We represent 9 million people in the State of Michigan whose voices are heard through our input to the President.

My distinguished colleague from New York spoke about the fact that he and his colleague from New York, opposite parties of the President, have worked with him and have had agreement on judges they believe were mainstream, who were appropriate for the bench, and they have been able to work together to do that.

Why in New York and not Michigan? Why in California and not Michigan? Why in Washington but not Michigan? Why in Wisconsin but not Michigan?

The issue for us today on behalf of the people of our State is we are asking for the same consideration, the same ability to have input about people who will serve us long past this President, people who will serve us long past the next President, people who have lifetime appointments and make decisions that affect our lives in every facet of the laws that affect us, from the workplace to the home to the environment to civil rights. These judges make decisions that affect each of us, and it is our responsibility to be involved and make sure we are working with the White House, whoever that is, to have the very best choices that are balanced and mainstream and will continue on long beyond most of us who are serving in the Senate.

This is important, and it is with great disappointment that I rise today to ask for a ''no'' vote on cloture because we have been attempting to work this out now for almost 3 years. Unfortunately, this move to get this vote at this time does not help us get to a fair bipartisan conclusion. It is an effort that will only get in the way of that happening.

I ask colleagues to join with us in saying no to the motion to close debate and invoking cloture, and I ask colleagues to give us an opportunity, that same opportunity that anyone on this floor would ask, the same opportunity that others have been given, to work together with this White House to develop recommendations on the Sixth Circuit and nominees we all believe are in the best interest of the people of Michigan and in the best interest of the people of the country.

I yield back my time, Madam President, and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Madam President, as chairman of the Judiciary Committee, I will take a couple of minutes before the vote to express my views with regard to Judge Saad. There is no question in my mind that Judge Saad is competent, decent, and honorable—a person of great temperament, great legal ability and great capacity. That is what all of the people who know him best say. He also has a ''very good'' recommendation from the American Bar Association. So he has fit the bill there.

The real problem has been in the prior administration, we were unable to get two judges through, Judge Helene White and Kathleen McCree Lewis, both of whom are nice people. I tried to do my best to get them through, but we could not because there was zero consultation at the time, and by the time we got to the end, it got into another set of problems and, frankly, they did not get confirmed.

The two Senators from Michigan have been very upset about that, and if I were to put myself in their shoes I would feel the same way, perhaps.

The fact of the matter is these are three excellent people who could do a very good job on the bench, and Judge Saad certainly in this particular case is very capable of doing the job. So are Judge Richard Griffin and Judge David W. McKeague. I will continue to work to try and resolve the problems that exist with the Michigan Senators, but these people deserve up-or-down votes and should have up-or-down votes.

Some have said if two Senators are against a nomination in their State, that should be the end of it. That is not true, and it never has been with regard to a circuit court of appeals nominees. Every administration has guarded its right to nominate and put forth circuit court of appeals nominations, and in most cases at least one or two of the Senators have been cooperative in helping.

In this particular case, both Senators feel aggrieved because of the prior two judges and in the process have had some difficulty with Judge Saad. I assure the Senate that Judge Saad is an excellent person. He deserves this position. There is no question about Griffin and McKeague. They are two excellent judges and have great reputations in the State of Michigan. They deserve to be voted up or down today. I hope the people will vote for cloture. It is the right thing to do.

We should not be filibustering Federal judges. It has never been done before, and I recommend to all of our colleagues to vote for cloture in all three cases.

I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the hour of 11 a.m. having arrived, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 705, Henry W. Saad, of Michigan, to be United States Circuit Judge for the Sixth Circuit, Vice James L. Ryan, retired.

Bill Frist, Orrin Hatch, Lamar Alexander, Charles Grassley, Mike Crapo, Pete Domenici, Lincoln Chafee, Mitch McConnell, Ted Stevens, George Allen, Lindsey Graham, John Warner, Jeff Sessions, John Ensign, Trent Lott, Jim Talent, Pat Roberts.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on Executive Calendar No. 705, the nomination of Henry W. Saad, of Michigan, to be United States Circuit Court Judge for the Sixth Circuit, shall be brought to a close.

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The PRESIDING OFFICER (Mr. ENSIGN). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 52, nays 46, as follows:

[Rollcall Vote No. 160 Ex.]

YEAS—52

Alexander	Dole	Miller
Allard	Domenici	Murkowski
Allen	Ensign	Nickles
Bennett	Enzi	Roberts
Bond	Fitzgerald	Santorum
Brownback	Frist	Sessions
Bunning	Graham (SC)	Shelby
Burns	Grassley	Smith
Campbell	Gregg	Snowe
Chafee	Hagel	Specter
Chambliss	Hatch	Stevens
Cochran	Hutchison	Sununu
Coleman	Inhofe	Talent
Collins	Kyl	Thomas
Cornyn	Lott	Voinovich
Craig	Lugar	Warner
Crapo	McCain	
DeWine	McConnell	

NAYS—46

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

NOT VOTING—2

Edwards	Kerry

The PRESIDING OFFICER. On this vote, the yeas are 52 and the nays are 46. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. REID. I move to reconsider the vote.

Mr. BOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NOMINATION OF RICHARD A. GRIFFIN TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order and pursuant to rule XXII, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 789, Richard A. Griffin of Michigan, to be U.S. circuit judge for the Sixth Circuit.

Bill Frist, Orrin Hatch, Lamar Alexander, Charles Grassley, Mike Crapo, Pete Domenici, Lincoln Chafee, Mitch McConnell, Ted Stevens, George Allen, Lindsey Graham, John Warner, Jeff Sessions, John Ensign, Trent Lott, Jim Talent, Pat Roberts.

Mr. HATCH. Mr. President, I am pleased that we are considering the nominations of Judge Richard Griffin and Judge David W. McKeague, who have been nominated by President Bush to serve on the United States Court of Appeals for the Sixth Circuit. These individuals each have a sterling resume and a record of distinguished public service. So I rise today to express my enthusiastic support for the confirmation of Judge Richard Griffin and Judge David W. McKeague to the Sixth Circuit Court of Appeals.

It is unfortunate that we have to continue coming to the floor to vote on cloture motions, to end debate on these nominations, rather than the Senate being able to vote up or down on the merits of the nomination. This unprecedented abuse of the process, by filibuster, to prevent a majority of the Senate from exercising its will is truly disturbing. What is going on is a hijacking of the constitutional process of advice and consent.

This abuse of the process isn't just being used on these two nominees. Unfortunately, we have now reached double-digit filibusters. There are ten judicial nominees who have been subjected to a filibuster. They are Miguel Estrada, D.C. Circuit; Priscilla Owen, 5th Circuit; William Pryor, 11th Circuit; Charles Pickering, 5th Circuit; Carolyn Kuhl, 9th Circuit; Janice Rogers Brown, D.C. Circuit; Williams Myers, 9th Circuit; Henry Saad, 6th Circuit; David McKeague, 6th Circuit; and Richard Griffin, 6th Circuit. In addition to these ten individuals, there are five additional Circuit Court nominations that are threatened to be filibustered—Claude Allen, 9th Circuit; Terrence Boyle, 4th Circuit; Susan Neilson, 6th Circuit; Brett Kavanaugh, D.C. Circuit; and William Haynes, 4th Circuit.

These individuals being filibustered represent a cross section of America and include men and women as well as members of various minority groups. And they are decent individuals with outstanding records in the law, in public service and in their States and communities.

It appears that these nominations are being tied up as some sort of payback for the way President Clinton's nominees were treated. However, a review of the record will demonstrate that this contention is without merit. What is happening is the creation of a stalemate for political purposes.

The current controversy surrounding the nomination of Henry Saad to be United States Circuit Judge for the Sixth Circuit dates back a decade. At the end of President George H.W. Bush's administration two Michigan nominees to the federal courts were denied hearings by the Democratic Senate and failed to attain confirmation. Those nominees were John Smientanka and Henry Saad, whose nomination we are considering again today.

As President Clinton named his nominees to fill judicial vacancies, there was no expectation, let alone demand, that the two previous nominees be renominated by a new administration. Accordingly, President Clinton did nominate Michigan nominees to both the Sixth Circuit and the district courts. In fact, nine of those nominees were confirmed. A majority were confirmed during Republican control of the Senate.

Two nominees, Helene White and Kathleen McCree Lewis, failed to attain confirmation. The primary circumstance for their failed nomination was the lack of consultation with one of the home State senators. In his letter to then White House Counsel Beth Nolan, Senator Abraham wrote to express his astonishment and dismay that President Clinton forwarded the nomination for a Sixth Circuit seat without any advance notice or consultation.

What was particularly troubling was that Senator Abraham had worked with the previous White House Counsel, Mr. Ruff, to improve the consultation process. In fact, despite previous difficulties, Senator Abraham had fully cooperated with the administration in advancing the nominations of a number of Michigan nominees. Unfortunately, the situation again deteriorated and the White House reverted to its previous pattern of lack of consultation. In fact, Senator Abraham was not consulted and in fact was told by the White House Counsel that despite earlier representations, the administration felt under no real obligation to do anything of the kind.

Because of the White House's lack of consultation, the nominations of the two individuals did not move forward. This was consistent with my well stated policy, communicated to Mr. Ruff, that if good faith consultation has not taken place, the Judiciary Committee will treat the return of a negative blue slip by a home state Senator as dispositive and the nominee will not be considered.

At the end of the Clinton presidency, the nominations of Ms. White and Ms. Lewis were returned to the President unconfirmed. Their renomination was urged by Senators LEVIN and STABENOW at the beginning of President Bush's administration. During the spring and summer of 2001, there was considerable consultation by the President with the Michigan Senators regarding nominations to judicial vacancies, and the Sixth Circuit in particular.

While the White House protected its constitutional prerogative to nominate individuals to the judiciary, there was an offer to consider nominating both of the two individuals to Federal judgeships in Michigan in an effort to advance the process. These overtures were not only rebuffed, but in fact holds were requested to be placed on all Sixth Circuit nominations.

This was an unfortunate escalation of the dispute, and was particularly unfair to other States in the Sixth Circuit. In addition, this left the circuit at half-strength. Fortunately, we have been able to confirm non-Michigan judges to the circuit court.

I regret that the cycle of acrimony and partisanship has escalated over the past decade. I believe the Bush administration made a good faith offer and regrets that the compromise was not accepted. However, even as the Judiciary Committee gives appropriate consideration to the views of home State senators, it is not in the public interest to permit this partisan obstructionism to continue.

So let me summarize regarding the treatment of Michigan judicial nominees. During the current Bush presidency the Senate has confirmed no Michigan judges. Six nominations are pending. During the Clinton presidency the Senate confirmed nine Michigan judges. Although two Michigan nominees were left unconfirmed at the end