nominating a Virginian to fill a traditional Maryland vacancy on the Fourth Circuit.

Most regrettably as well, the White House fanned the flames and refused to tamp down hateful and unfounded claims that amounted to religious McCarthyism. Senate Democrats refused to be cowed by Republican's false charges that they were anti-Hispanic, anti-African American, anti-Christian, antiwoman or antiman. We were none of these things. The fact of the matter is that Democrats were antijudicial zealot, period. Democrats stood up for the independence of the Federal courts and fair, nonpartisan judges for the American people.

These past 2 years we have witnessed the Senate Judiciary Committee and the Senate break with longstanding precedent and Senate tradition. With the Senate and the White House under control of the same political party we have witnessed rule after rule broken or misinterpreted away. The Framer's of the Constitution warned against the dangers of such factionalism, undermining the structural separations of power. Republicans in the Senate have failed to defend the institutional role of this branch as a check on the President in the area of nominations. It weakens our Constitution to have such collusion and forfeits the strength and protections of our separation of powers that was designed to protect all Americans.

From the way that home State Senators are treated to the way hearings are scheduled, to the way the Committee questionnaire was altered unilaterally, to the way our Committee's historic protection of the minority by Committee Rule IV has been violated, to the theft of computer files, Republicans destroyed virtually every rule, precedent, custom and courtesy that used to help create and enforce cooperation and civility in the confirmation process. Their approach to our rules and precedents follows their own partisan version of the golden rule, which is that ''he with the gold, rules.'' It is as if those currently in power believe that they are above our constitutional checks and balances and that they can reinterpret any treaty, law, rule, custom or practice they do not like or they find inconvenient.

Some of these interpretations are so contrary to well-established understandings that it is like we have fallen down the rabbit hole in Alice in Wonderland. I am reminded that the imperious Queen of Hearts rebuked Alice for having insufficient imagination to believe contradictory things, saying that some days she had believed six impossible things before breakfast. I have seen things I thought impossible on the Judiciary Committee and in the Senate, things impossible to square with the past practices of Committee and the history of the Senate.

Under our Constitution, the Senate has a vital role in the selection of our judiciary. The brilliant design of our Founders established that the first two branches of government would work together to equip the third branch to serve as an independent arbiter of justice. 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, Republicans are not acting in a measured way but in complete disregard for the traditions of bipartisanship that are the hallmark of the Senate. Theirs is a practice of might makes right is wrong. One of the great strengths of the Senate is its role as a continuing body with continuing rules that have, until the 108th Congress, been respected and followed under either Democratic leadership or Republican control. Our rules must not change to give whoever is in the majority the power to jerry rig whatever result is desired.

As the Rev. Martin Luther King wrote in his famous Letter from a Birmingham Jail, ''Let us consider a more concrete example of just and unjust laws. An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not make binding on itself. This is difference made legal. By the same token, a just law is a code that a majority compels a minority to follow and that it is willing to follow itself. This is sameness made legal.''

Fair process is a fundamental component of the American system of law. If we cannot have a fair process in these halls or in our courts, how will the resulting decisions be viewed? If the rule of law is to mean anything it must mean that it applies to all equally.

No man and no party should be above the law. That has been one of the strengths of our democracy. Our country was born in reaction to the autocracy and corruption of King George, and we must not forget our roots as a nation of both law and liberty. The best guarantee of liberty is the rule of law, meaning that the decisions of government are not arbitrary and that rules are not discretionary or enforced to help one side and then ignored to aid another. James Madison, one of the Framers of our Constitution, warned in Federalist No. 47 of the very danger that has threatened our great nation during the 108th Congress, a threat to our freedoms from within: ''[The] accumulation of all powers legislative, executive and judiciary in the same hands . . . may justly be pronounced the very definition of tyranny.''

The American people deserve better governance than we have seen with the destruction of rule after rule by a majority willing to sacrifice the power and precedents of the Senate. Our freedoms as Americans are the fruit of too much sacrifice to have the rules ignored in the United States Senate by partisans colluding with the White House to try to appoint unfit loyalists to courts who have been chosen with the hope that they will re-interpret our great precedents and overturn the very laws that have protected our most fundamental rights as Americans.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

INTERNATIONAL GRANT PROGRAM

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to immediate consideration of Calendar No. 818, S. 2635.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant bill clerk read as follows:

A bill (S. 2635) to establish an intergovernmental grant program to identify and develop homeland security information, equipment, capabilities, technologies, and services to further the homeland security needs of the United States and to address the homeland security needs of Federal, State, and local governments.

There being no objection, the Senate proceeded to consider the bill which was reported from the Committee on Governmental Affair with an amendment.

(Strike the parts shown in black brackets and insert the part printed in italic.)

S. 2635

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. TECHNOLOGY CLEARINGHOUSE.

[Section 430 of the Homeland Security Act of 2002 (6 U.S.C. 238) is amended—

[(1) in subsection (c)—

[(A) by redesignating paragraphs (7) and (8) as paragraphs (8) and (9), respectively; and

[(B) by inserting after paragraph (6) the following:

[''(7) establishing a program to identify, develop, or modify existing or near term homeland security information, equipment, capabilities, technologies, and services to further the homeland security of the United States and to address the homeland security needs of Federal, State, and local governments;'';

[(2) by redesignating subsection (d) as subsection (e); and

[(3) by inserting after subsection (c) the following:

[''(d) HOMELAND SECURITY INFORMATION, EQUIPMENT, CAPABILITIES, TECHNOLOGIES, AND SERVICES GRANT PROGRAM.—

[''(1) IN GENERAL.—In developing the program established under subsection (c)(7), the Secretary, acting through the Director of the Office for Domestic Preparedness and in consultation with the Under Secretary for Science and Technology, shall—

[''(A) conduct a needs assessment of Federal, State, and local governments and first responders to identify—

[''(i) the homeland security needs of Federal, State, and local governments and first responders; and

[''(ii) areas where specific homeland security information, equipment, capabilities, technologies, and services could address those needs;

[''(B) survey near term and existing homeland security information, equipment, capabilities, technologies, and services developed