other side of the aisle relative to the judicial nominees sent up by the President. One of those is the fact that filibustering Federal judges is not something that is new, and it is a contention of the other side of the aisle that Republicans initiated a filibuster on the nomination of Judge Abe Fortas back in the Johnson administration. I will once again set the record straight relative to exactly what happened, and I will quote because I want to make sure that we get this exactly right. This is from a statement made by the former chairman of the Judiciary Committee, Senator ORRIN HATCH, in some remarks that were made on the Senate floor on March 1, 2005. Senator HATCH stated as follows:

> Some have said that the Abe Fortas nomination for Chief Justice was filibustered. Hardly. I thought it was, too, until I was corrected by the man who led the fight against Abe Fortas, Senator Robert Griffin of Michigan, who then was the floor leader for the Republican side and, frankly, the Democratic side because the vote against Justice Fortas, preventing him from being Chief Justice, was a bipartisan vote, a vote with a hefty number of Democrats voting against him as well. Former Senator Griffin told me and our whole caucus there never was a real filibuster because a majority would have beaten Justice Fortas outright. Lyndon Johnson, knowing that Justice Fortas was going to be beaten, withdrew the nomination. So that was not a filibuster. There had never been a tradition of filibustering majority-supported judicial nominees on the floor of the Senate until President Bush became President.

I think that factual statement by Senator HATCH says it all relative to any issue concerning the contention that this is not the first time we have seen filibusters on the floor of the Senate. As we move into the consideration of these judges for confirmation, I am not sure what is going to come out from the other side.

I have great respect, first of all, for this institution in which we serve. I am very humbled by the fact, as is every one of the 100 Senators here, that our respective States have seen fit to send us here to represent them. But as I traveled around the country last year, campaigning for President Bush, as well as for Senate nominees, I continuously heard from individuals—whether it was in a formal gathering or whether it was in an informal gathering such as, on a lot of occasions, being in airports, or sometimes even walking down the street—it was unbelievable the number of Americans, and I emphasize that these were not Republicans or Democrats in every instance, they were just Americans who were very much concerned about what is happening with respect to the judicial nominees on the floor of the Senate.

The PRESIDENT pro tempore. The Senator now has 2 minutes left, at which time there will be 10 minutes left for the majority.

Mr. CHAMBLISS. I thank the Chair.

This body has a number of rules which have been in place for decades. Those are good and valid rules and need to be followed in most instances. But there comes a time when you have to look the American people in the eye and say: I know Americans sent a majority party to the Senate, and I know you want us to carry out the will of the American people but, unfortunately, even though it only takes 51 votes to confirm one of President Bush's judicial nominees, we have a Senate rule that says you have to have 60 votes before you get to the point where you only have to have 51 votes. It doesn't take a Philadelphia lawyer to figure out something is wrong with that rule, and it needs to be corrected.

As we move into the consideration of these judges, I hope we will reach an accord so the integrity of this institution will be maintained. Hopefully, our rules can be maintained intact. But it is imperative we do the will of the American people, which is move toward the confirmation of the President's judicial nominees as required by the Constitution of the United States.

I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Virginia.

ISSUES CONFRONTING THE SENATE

Mr. ALLEN. Mr. President, I rise to share with my colleagues my observations and urgings on two issues: One, following on the eloquent remarks of the Senator from Georgia, SAXBY CHAMBLISS, on the importance of judges and actions in the Senate; and the second has to do with our National Guard and Reserves who are being called up for duty and what the Federal Government can do to be helpful to them.

JUDGES

First, on judges, I look at four pillars as being essential for a free and just society: freedom of religion, freedom of expression, private ownership of property, and fourth, the rule of law. The rule of law is where judges come in, where you have fair adjudication of disputes, as well as the protection of our God-given rights.

It is absolutely essential we have judges on the bench at the Federal level, and at all levels, who understand their role is to adjudicate disputes, to apply the facts and evidence of the case to the laws, laws made by elected Representatives. We are a representative democracy. That means the judges ought to apply the law, not invent the law, not serve as a superlegislature, not to use their own opinions as to what the law should be but rather apply it. That is absolutely essential for the rule of law, for the credibility and stability one would want to be able to rely on in our representative democracy for investments and, as we advance freedom, to try to have the people of other countries around the world put into place these four pillars of a free and just society.

What we have seen is a break of precedent in the Senate. For 200 years judicial nominees from the President, when they were put forward, were examined by the Judiciary Committee very closely, as they should be, as to their temperament, philosophy, and scholarship. If they received a favorable recommendation from the committee, they would come to the floor and Senators would vote for them or against them. In the last 2 or 3 years, what we have seen is unprecedented obstruction, a requirement, in effect, of a 60-vote margin for judges, particularly at the appellate level. The most egregious in recent years, in my view, was Miguel Estrada. He is an outstanding individual, completely qualified—great scholarship, great experience—a modern-day Horatio Alger story, having come to this country from Central America, applying himself, doing well. Indeed, the American Bar Association unanimously gave him their highest recommendation and endorsement.

That went on for a year. Then it went on for another year. It went on for over 2 years, and he finally had to withdraw, notwithstanding the fact that a vast majority of Senators were actually for Miguel Estrada.

It is not unique to him. It has happened to roughly 10 or so appellate judges, including those nominated for the Ninth Circuit, which is the circuit where you have adventurous, activist judges who ignore the will of the people. For example, the recitation of the Pledge of Allegiance in schools, which they struck down because they are concerned about the words ''under God.'' That is the sort of activist judiciary that is ignoring the will of the people, who are the owners of this Government.

People say: What do we need to do, and they up come with this term, ''nuclear option.'' It is a constitutional option. It shows how out of touch people are in calling this a nuclear option, when all it is is the question of whether it is a majority vote to give advice and consent or to dissent on a particular judicial nomination. It is my view, in the event the minority party continues with the approach of obstructing the opportunity of a nominee to have fair consideration, then this constitutional option must be utilized. We should not be timid. We should not cower. I believe the obstructionist approaches are preventing me from exercising my duty and responsibility to the people of the Commonwealth of Virginia to advise and consent on these judicial nominations. I hope my colleagues will not continue this obstructionist approach. In the event they do, then we have to use the constitutional option. I do not think it is too much to ask Senators to get off their haunches and show the backbone or spine to vote yes or no, but vote, and then explain to their constituents why they voted the way they did on any particular man or woman who has been nominated to a particular judicial position.

I am hopeful we do not have to use it, but if we do, go for it. Do not cower. Do

not be timid. The people, as my colleague from Georgia said, all across this country, whether they are down in Cajun country in Louisiana, whether they are in Florida, whether they are in the Black Hills of South Dakota, or whether they are in the Shenandoah Valley of Virginia, expect action on judges. As much as people care about less taxation and energy security for this country and wanting us to be leaders in innovation, they really expect the Senate to act on judges. It is a values issue. It is a good government issue. It is a responsibility-in-governing issue that needs to be addressed.

AMENDMENT NO. 356

I would like to turn my attention to the amendment pending on the supplemental, one submitted by Senators DURBIN, MIKULSKI, and me. This amendment will eliminate the pay gap that many of our Federal employees who serve in either the National Guard or the Reserves suffer when they are called up for active duty. We need to do everything we can within reason to recruit and retain those who serve in the Guard and Reserves. We, as a Federal Government, and I, as a Senator, encourage private businesses to make up that pay gap.

Many times, when people get called up, their Active-Duty pay is less than they would be getting in the primary job. That is what the pay gap is. It is one of the key factors, top five factors in people not re-upping. It does have an impact on their families. On average, the pay-gap loss is about $368 a month. They still have housing payments, they still have food. Many of those who serve in the Guard and Reserve have families, and those expenses go on.

Out of the 1.2 million members of the National Guard and Reserves, 120,000 are also employees of the Federal Government. As of January 2005, 43,000 Federal employees have been activated since September 11, 2001, and are serving courageously and beneficially for our freedom and our security. Right now there are more than 17,000 on active duty.

There are those firms in the private sector who have made up this pay gap. There are over 900 companies, such as IBM, Sears, General Motors, UPS, Ford, that make up the pay differential. In fact, 23 States have enacted similar legislation to make up the pay difference. I am proud to say one of them is the Commonwealth of Virginia.

The Senate has supported this in the past. I think it makes a great deal of sense that we support not only the members of the Guard and Reserves who are called up to active duty who serve in the Federal Government, but also support their families. I think this amendment, which I am sponsoring along with Senators DURBIN and MIKULSKI, makes a great deal of sense. It is one I hope, when we get to voting on it sometime today, will enjoy the support of all the Members of the Senate. It is very important we do what we can, within reason, to help in the recruitment and retention of those who are serving our country, who are disrupting their lives and, in fact, are being called up more frequently and for longer duration than ever before.

I hope we will see that agreed to on the supplemental some time today. I also hope we will get back to the 200-year history of the Senate on consideration, treatment, and actual voting on outstanding judicial nominees who have come out of the Judiciary Committee with a favorable recommendation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, am I correct that we are in morning business and it is appropriate to address the Senate in morning business?

The PRESIDING OFFICER. The Senate is in a period of morning business. The minority side controls 30 minutes. The Senator is recognized.

THE NOMINATION PROCESS

Mr. NELSON of Florida. Mr. President, yesterday it live the nomination and confirmation process as envisioned by our Constitution with regard to two nominees. The Constitution, of course, provides that it is a two-step process: the President nominates and the Senate then confirms or rejects. In this case, there was quite a contrast between the two nominees.

In one of my committees, the Foreign Relations Committee, we have a highly contentious, highly divisive debate raging over the nominee of the President, Mr. John Bolton, to be the Permanent Representative of the United States to the United Nations. It is a very significant post representing the wishes of the American people, of the U.S. Government, to the world body, the United Nations.

While at the same time those confirmation hearings were occurring in the Senate Foreign Relations Committee, another one of my committees, the Commerce Committee, was considering the nomination of Dr. Michael Griffin to be administrator of NASA. Dr. Griffin's nomination is quite a contrast to Mr. Bolton's nomination, for it is embraced almost unanimously in a bipartisan way. The extraordinary support is shown even to the point that the chair of the Science and Space Subcommittee, Senator HUTCHISON of Texas, and I, the ranking member of that subcommittee, both requested that the chairman of the full committee, Senator STEVENS, accelerate the confirmation process. So that Dr. Griffin could be confirmed by the committee and we could get his nomination to the floor of the Senate this week, putting him in place as the administrator next Monday. NASA desperately needs to have a strong leader in place, particularly as we recover from the disaster to Columbia. We are also going to launch an expected flight for recovery somewhere about the middle of May. That is the contrast between two nominees.

I think one of the things that makes Dr. Griffin so attractive as the head of NASA is not only that he is literally a rocket scientist with six graduate degrees. Not only does he have exceptional experience in the Nation's space program, both the manned and unmanned programs, but he carries with him a demeanor that contains an element of humility, which will serve him well in the NASA family. NASA is a family. We have seen that borne out in the history of our space program in times of tragedy as we have had in the past. The NASA family comes together, and in times of triumph not only with the extraordinary space accomplishments we have had, but in times of extraordinary triumph where in fact it has been said that failure is not an option. The extraordinary success we had with Apollo 13 in which we thought we had three dead men on the way to the Moon when the Apollo module blew up, and how in real time people in a simulator back in Houston, people in mission control, the design engineers—all came together to figure out the fix. Since the main propulsion system had blown up, rapidly losing electricity, and how to design the circumstances which in a trajectory towards outer space they could get back home safely to Earth. And they did that.

That is another illustration of how the NASA family works when it comes together. It wants a leader who has an appreciation of that family, who knows something about the business of that family, and who in fact can comport themselves with humility.

Interestingly, this is a contrast to the other nomination being considered at the same time, on the very same day, in another one of my committees. This is a controversial nomination because of the alleged improprieties which stem not from a sense of humility but from a sense of entitlement, even bordering on arrogance in demanding one's way. Not one's personal beliefs and ideology—we can all debate those because those are differences of issues. But in this particular case, Mr. Bolton is alleged to have berated intelligence analysts and, according to the allegations from some former very high-ranking State Department officials, insisting that they be fired, dismissed, or transferred because their analysis of the intelligence differed with his. Contrast the personalities, the nominee to be NASA administrator and the nominee to be the U.S. Representative to the U.N., contrast of styles, contrast of attitudes, and contrast of capabilities. Thus, it leads to extraordinary differences in the nomination process.

I wish all of the nominations were as Dr. Griffin in NASA, except for one hiccup that I think we are taking care of with the junior Senator from Virginia. It is my hope that today Chairman STEVENS will call the committee, that