In fact, when the committee was scheduled to vote on the Leavitt nomination, the vote was boycotted by the Democrats. Not a single committee Democrat showed up, including the Senator from Delaware. It was part of the boycott.

The three Administrators previous to Mike Leavitt took an average of 8 days to confirm. Mike Leavitt's confirmation took 50 days, 50 days to confirm a Cabinet-level position for an individual who clearly is qualified.

So this is nothing new for a qualified EPA Administrator nominated by President Bush. It has been nearly a month that Steve Johnson has awaited confirmation. The time has come to confirm Mr. Johnson.

During the debate we will likely hear some negative comments about the President's record on the environment. What you hear from the Democrats will likely be a very distorted view. The facts are very plain, very easy to understand. By virtually every measure, under this President's stewardship, our air, our water, and our land are cleaner. We have a cleaner and healthier environment than we did prior to George W. Bush taking over as President. That is simply the simple truth.

Just to highlight a few of the actions by the President, he signed into law historic bipartisan legislation that has accelerated the cleanup of brownfields—all of the States are concerned about that—better protecting public health, creating jobs, and revitalizing communities. George W. Bush is the first President ever to require the reduction of mercury emissions by powerplants. I can remember when there were full-page ads during the campaign saying that this President is lowering the emissions. There were no restrictions before he came in. He is the one who made the first reduction in our history. This President has imposed a mandatory 70-percent reduction in mercury emissions from these sources.

Just a year ago, the President announced an aggressive new national goal, moving beyond the policy of no net loss wetlands to a new policy of an actual net increase for wetlands each year. His Great Lakes Legacy Program will help to clean up one of the largest systems of freshwater on Earth, roughly 18 percent of the world's supply. His Clear Skies initiative would have reduced SO_X, NO_X and mercury emissions by 70 percent—the largest mandated reduction of any President in the history of America. It wasn't Bill Clinton. It was George W. Bush.

Despite all the rhetoric to the contrary, the environment and our families are healthier because of George W. Bush. The facts don't lie.

I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Oregon.

Mr. WYDEN. Mr. President, I ask unanimous consent to speak for up to 10 minutes as in morning business.

Mr. INHOFE. Reserving the right to object, let me say to my good friend from Oregon that the leader is coming down to make a statement. Would he withhold his request until the leader gets here and makes his statement?

Mr. WYDEN. If I could engage my colleague in a colloquy, I assume the leader is going to speak relatively briefly as well. If that is the case, I certainly want to be courteous. I ask unanimous consent, then, that I have up to 10 minutes to speak after the majority leader has spoken and that my colleague from Rhode Island, Senator REED, have the opportunity to speak for up to 10 minutes after me.

The PRESIDING OFFICER. Is there objection?

Mr. INHOFE. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. WYDEN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mr. FRIST. Mr. President, again, we find ourselves with an objection to a committee meeting and doing its work. There is objection on the other side of the aisle to the Judiciary Committee meeting. Therefore, we need to recess the Senate to allow the committee to meet.

I ask unanimous consent that the Senate stand in recess until 2 p.m. today.

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. With that objection, I ask unanimous consent that when the Senate reconvenes at 2 p.m., following the remarks of the two leaders, Senator WYDEN be recognized for up to 10 minutes as in morning business, to be followed by Senator THUNE for up to 10 minutes, to be followed by Senator REED for up to 10, to be followed by Senator SALAZAR for up to 10.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. FRIST. Mr. President, I move that the Senate stand in recess until 2 p.m. today, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Montana (Mr. BAUCUS) is necessarily absent.

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

The result was announced—yeas 98, nays 1, as follows:

[Rollcall Vote No. 112 Leg.]

YEAS—98

Akaka	Domenici	McCain
Alexander	Dorgan	McConnell
Allard	Durbin	Mikulski
Allen	Ensign	Murkowski
Bayh	Enzi	Murray
Bennett	Feingold	Nelson (FL)
Biden	Feinstein	Nelson (NE)
Bingaman	Frist	Obama
Bond	Graham	Pryor
Boxer	Grassley	Reed
Brownback	Gregg	Reid
Bunning	Hagel	Roberts
Burns	Harkin	Rockefeller
Burr	Hatch	Salazar
Byrd	Hutchison	Santorum
Cantwell	Inhofe	Sarbanes
Carper	Inouye	Schumer
Chafee	Isakson	Sessions
Chambliss	Jeffords	Shelby
Coburn	Johnson	Smith
Cochran	Kennedy	Snowe
Coleman	Kerry	Specter
Collins	Kohl	Stabenow
Conrad	Kyl	Stevens
Cornyn	Landrieu	Sununu
Corzine	Lautenberg	Talent
Craig	Leahy	Thomas
Crapo	Levin	Thune
Dayton	Lieberman	Vitter
DeMint	Lincoln	Voinovich
DeWine	Lott	Warner
Dodd	Lugar	Wyden
Dole	Martinez	

NAYS—1

Clinton

NOT VOTING—1

Baucus

The motion was agreed to.

RECESS

The PRESIDING OFFICER. The Senate stands in recess until the hour of 2 p.m.

Thereupon, the Senate, at 12:51 p.m., recessed until 2:03 p.m. and reassembled when called to order by the Presiding Officer (Mr. ALEXANDER).

The PRESIDING OFFICER. The majority leader.

JUDICIAL NOMINATIONS

Mr. FRIST. Mr. President, throughout the judicial obstruction debate, emotions have run high on both sides. This should remind us all, once again, of the need to return to civility in our Nation's Capitol. The American people want their elected leaders to work together to find solutions. To them, doing what is Republican or Democrat matters far less than doing what is right for America.

Let me briefly discuss how we got here. Never, in 214 years—never, in the history of the Senate—has a judicial nominee with majority support been denied an up-or-down vote until 2 years ago. In the last Congress, the President submitted 34 appeals court nominees to the Senate. A minority of Senators denied 10 of those nominations and threatened to deny another 6 up-or-down votes. They would not allow votes because they knew the nominees would be confirmed and become judges. The nominees had the support of a majority of Senators.

Now, in this new Congress, the same minority says it will continue to obstruct votes on judges. Even worse, if they don't get their way, they threaten to shut down the Senate and obstruct Government.

Throughout this debate, we have held firm to a simple principle: Judicial nominees deserve up-or-down votes. Vote for them, vote against them, but give them the courtesy of a vote. Yet judicial nominees have not been given that courtesy. They have gone 2, 3, or even 4 years without a vote. Now, 46 seats on the Federal bench are vacant as case after case and appeal after appeal stack up.

One nominee, Priscilla Owen, has served 10 years as a justice on the Texas Supreme Court. She won reelection with 84 percent of the vote in Texas. Yet she can't get the courtesy of a vote to be confirmed by the Senate.

Judicial nominees are being denied; justice is being denied. The solution is simple. Allow the Senators to do their job and vote.

In a spirit of civility, and with sincere hope for solution, I make an offer. This offer will ensure up-or-down votes on judicial nominees after fair, open, and some might say exhaustive debate. It is a compromise that holds to constitutional principles.

First, never in the history of the Senate had a judicial nominee with majority support been denied an up-or-down vote until 2 years ago. However, it was not unprecedented, either for Republicans or Democrats, to block judicial nominees in committee. Whether on the floor or in committee, judicial obstruction is judicial obstruction. It is time for judicial obstruction to end, no matter which party controls the White House or the Senate.

The Judiciary Committee will continue to play its essential oversight and investigative roles in the confirmation process, but the committee, whether controlled by Republicans or Democrats, will no longer be used to obstruct judicial nominees.

Second, fair and open debate is a hallmark of the Senate. Democrats have expressed their desire for more time to debate judicial nominees. I respect that request and honor it. When a judicial nominee comes to the floor, we will set aside up to 100 hours to debate that nomination. Then the Senate, as a whole, will speak with an up-or-down vote. The Senate operated this way before we began to broadcast debates on television in 1986. This would provide more than enough time for every Senator to speak on a nominee, while guaranteeing that nominee the courtesy of a vote.

Third, these proposals will apply only to appeals court and Supreme Court nominees. Judges who serve on these courts have the awesome responsibilities of interpreting the Constitution. So far, only up-or-down votes on appeals court nominees have been denied. I sincerely hope the Senate minority does not intend to escalate its judicial obstructions to potential Supreme Court nominees. That would be a terrible blow to constitutional principles and to political civility in America. I hope my offer will make it unnecessary for the minority to further escalate its judicial obstruction.

Fourth, the minority of Senators who have denied votes on judicial nominees are concerned that their ability to block bills will be curbed. As majority leader, I guarantee that power will be protected. The filibuster, as it existed before its unprecedented use on judicial nominees in the last Congress, will remain unchanged.

The Democratic leader and I have been talking on this issue almost every day. I am hopeful he will accept my offer as a solution. It may not be a perfect proposal for either side, but it is the right proposal for America. For 70 percent of the 20th century, the same party controlled the White House and the Senate. Yet no minority ever denied a judicial nominee with majority support an up-or-down vote until the last Congress. These minorities showed self-restraint. They treated judicial nominees with fairness, and they respected the Senate's role in the appointments process, as designed by the Framers of the Constitution. Resolving the judicial obstruction debate for me is not about politics. It is about constitutional principles. It is about fairness to nominees. It is about Senators doing their duty and doing what is right for our country.

Arbitrarily voting on just a few judicial nominees, as some have proposed, will fail to restore the Senate's 214-year practice of up-or-down votes for all judicial nominees who come to the Senate. Senators have a duty to vote up or down on judicial nominees. Confirm them or deny them but give them all the courtesy of a vote.

I yield the floor.

The PRESIDING OFFICER. The Democrat leader.

Mr. REID. Mr. President, first, I express my appreciation to the distinguished Republican leader for his proposal. I am happy to see we are working toward a solution to this very difficult issue that now faces the Senate.

I say to my distinguished friend, no matter how many times you say it, if something is wrong, it does not become true. Over the course of this country's history there have been many filibusters of judges from the very beginning of our Republic. Until 1917, there was no way to stop a filibuster, so a number of judges fell by the wayside as a result.

As I said previously, in 1917, the Senate changed its rules, and two-thirds of the Senators elected could stop a filibuster. Then, in 1964 at the height of the civil rights battle, it was changed to 60 on most everything. Only one thing is still different, and that is as it relate to rules where it takes 67. Without getting into the numbers game, there have been a lot of filibusters of judges where a majority of the Senators liked a nominee. Abe Fortas is a good example of that. We do not need to reinvent history. It is simply the way it is. I am not going to get into the individual judges. We can do that, we can go over them one by one, but I don't think that is what the country needs at this stage.

We have heard in the Senate that 69 judges of President Clinton never made it to the Senate. We continually hear my friends on the other side of the aisle say: We need a vote on these judges. They had a vote in keeping with the rules of the Senate.

I agree with my friend, the distinguished Senator from Tennessee, for whom I have so much respect and admiration. He said that the circuit court and Supreme Court are more important than the lower courts. I believe that, in fact, is the case. That being so, we need to focus more attention on them rather than less.

You have to break the rules to change them in this instance because if you follow the rules, you cannot do it with a simple majority. If you can break the rules to change the rules on a judge, then what about the other nominations of the President? We have a matter in the Senate now that is in the newspaper every day, regarding a man by the name of Mr. Bolton. I don't know him. I recognize him because he has a very uncharacteristic mustache, which I kind of like. My point is, that may be something that people will wish to talk a long time on. I don't know that to be the case. The hearings have not been completed. But I do know that the administration really likes this man. The Secretary of State likes him. She has said so. Does that mean the rules will be changed because this is one of the President's fair-haired persons he wants to become his ambassador to the United Nations? We cannot go down that slippery slope.

This proposal of Senator FRIST is not exactly new. We had a proposal like this last Congress by my friend, the distinguished Senator from Georgia, Zell Miller. It was very similar to this proposal. I don't mean to demean the proposal, and I will take a close look at it and see if there is a way we can work with it. I would say, for lack of a better description, it is a big fat wet kiss to the far right. It just is not appropriate. The rules are the rules.

It is unacceptable for a number of reasons. First, this is slow-motion nuclear option. After 100 hours, the rights of the minority are extinguished. This has never been about the length of the debate. This is about constitutional checks and balances.

No. 2, this is probably worse than the nuclear option because it also speeds up the committee's consideration. I am happy to look at that. As the distinguished majority leader knows, I talked to him earlier about trying to do something in the committee system to make it better. I am happy to take a look at that. We will talk in more detail. I don't think this is appropriate.

Third, this deals with only half of the advice and consent. We have to deal with the pesky little document called the Constitution. This is something you take as a whole. This is very short, but we have to stick with this and advise and consent.

We have failed to recognize we have the future ahead of us, not what went on in the past. I am not here to criticize what went on in the Clinton years. I am not here to condone or criticize what went on in the last 4 years. I am here to look forward.

I say to my friends on the other side of the aisle, any proposal I have made said let's look forward. Let's take this nuclear option off the table, and let's work on these judges we have ahead of us. I can never say there will never be a filibuster because I cannot say that, but I don't think this Senate is in the mood for a number of filibusters. I don't think Members feel like it. We should go forward.

I told my distinguished friend, the Senator from Kentucky, I told my distinguished friend—and I say ''friend'' in the true sense of the word—from Tennessee, if we somehow fail on the good faith, and they think we filibuster too much, talk too much, you always have the next Congress. Let's try to look forward. Let's not look back.

I want to leave here today or tomorrow—whenever we leave—with a good feeling. People get locked in: this is not good enough. I am not going to berate him for this offer he has made. It is an offer. I appreciate that. It is the first offer we have had. I have had one. He has had one. Legislation is the art of compromise.

While this is not truly legislation, it is in keeping with what we do here. We try to build consensus. We try to work toward an end that is satisfactory. I hope we can do that. I hope calmer heads prevail. I say that on my side as well as the other side of the aisle. If we did it right, we would take his suggestion to the Rules Committee, have them come back on it, and we would vote on it here. That is how we change rules.

I had the good fortune—and I say that without hesitation or reservation—to serve for many years on the Ethics Committee. I was chairman; I was vice chair. Senator Bob Smith from New Hampshire and I worked a full year, we worked hard, trying to change the very difficult rules we have in the Ethics Committee, which is part of the Senate Standing Rules. We brought it to the Senate after our staff worked hundreds of hours. Bob Smith and I worked on it many hours. We were rejected. I felt so bad because I personally believe the Senate did the wrong thing. But they did it. We tried to comply with the rules. That is what we should do here. We both tried to make our case to the public. And I will speak for a while this afternoon, not specifically on the leader's proposal but about things in general. In the very worst way, I want to try to work our way through this.

Again, I do not really like the proposal given, but I am not going to throw it away. I am going to work on it and see if I can come back with something that is in keeping with what I think is the ''Mr. Smith Goes to Washington'' scenario. Because I really do believe that even though we are in the minority now—and I have thought about this a lot. I have thought about this. If someday in the future—and it will happen; I hope I am around to be part of that—I became the majority leader, I would not want this rule. I would not want this rule. I do not know if I would have the integrity, intellectual integrity to change it so that you folks could do what I thought was in keeping with the rules. But I have thought about that.

We are not always going to be in the minority here. I believe very seriously that this is something that every party should have. I say to my friends, and everyone within the sound of my voice, test us. Let's see how we can do in the future. I cannot say there will not be any filibusters, but I think we are going to have a much better situation. People are very concerned about the Supreme Court, and they should be. They should be. But let's not direct our attention to changing the Senate rules for fear of something that may never happen.

I repeat, what I would like to do is say there is no nuclear option in this Congress, and then move forward on this. And, as I say, they always have the power. I would like to think that a little miracle would happen and we would pick up five seats this time. I guess miracles never cease. But I say, respectfully, to everyone, I think the Republican Senators would have this power next Congress as they do now.

So I appreciate my friend making this offer. We have so much to do. We have the highway bill to work on today and finish when we come back. We have the budget, we have the supplemental appropriations bill. We need good feelings around here.

As we have indicated, there has been some talk about my closing down the Senate. I have recognized since the Newt Gingrich days that does not work very well. But I do think we would be working as much off our agenda as the majority's agenda—a big clash of heads. We would be talking about things we want to talk about and they want to talk about. I would hope we can get past that and go on to do some real legislative work in the months to come.

I would hope that the legacy I leave and that BILL FRIST leaves is that we had two leaders who, in spite of their tremendous political differences—and we have some different political philosophies—I hope people can look back at us and say: Those are two men who worked very hard to try to get this institution to work.

I am saying this in good faith. I want the other side, in good faith, to trust what we are going to do on the judges in the future. That is all I ask.

Mr. President, I ask unanimous consent that after I suggest the absence of a quorum I then be recognized when the quorum call is called off.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

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

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

Mr. REID. Mr. President, what is the order now before the Senate?

The PRESIDING OFFICER. The Senator has the right to recognition.

Mr. REID. Mr. President, under the order previously entered, it is my understanding when I have completed my remarks, Senator WYDEN will be recognized. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. REID. Mr. President, I have finished my remarks.

Thank you, Mr. President.

The PRESIDING OFFICER. Under the previous order, the Senator from Oregon is recognized for 10 minutes.

Mr. WYDEN. Thank you very much, Mr. President.

(The remarks of Mr. WYDEN pertaining to the introduction of S. 946 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS—Continued

AMENDMENT NO. 593 TO AMENDMENT NO. 567

The PRESIDING OFFICER. Under the previous order, the Senator from South Dakota is recognized.

Mr. THUNE. Mr. President, may I inquire as to the pending business before the Senate?

The PRESIDING OFFICER. The Senate is in morning business.

Mr. THUNE. Mr. President, I have an amendment to offer to the pending bill, H.R. 3, the transportation bill.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. THUNE] proposes an amendment numbered 593.

The amendment is as follows:

(Purpose: To retain current levels of State authority over matters relating to preservation, historic, scenic natural environment, and community values)

On page 230, strike lines 6 through 15 and insert ''Section 109 of''.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, the amendment I am offering would remove a substantive grant of authority the U.S. Department of Transportation