

of a political process, one where it appears that judges who are sworn to uphold the law, and who will be that impartial umpire—it has made them part of an inherently political process.

Now, I want to be clear. It is the Senate's obligation to ask questions and to seriously undertake our obligation to perform our duty under the Constitution to provide advice and consent. But, ultimately, it is our obligation to vote, not to obstruct, particularly when we have distinguished nominees being put forward for our consideration, when they are unnecessarily besmirched and, really, tainted by a process that is beneath the dignity of the United States. Certainly none of these individuals who are offering themselves for service to our Nation's courts in the judiciary deserve to be treated this way.

So, basically, Mr. President, what we are talking about is a process that works exactly the same way when Democrats are in power as it does when Republicans are in power. That, indeed, is the only principled way we can approach this deadlock and this obstructionism. I hope the Democratic leader—who I know has a very difficult job because he, no doubt, has to deal with and reflect the views of his caucus on this issue—I hope he will encourage his caucus, the Democrats in the caucus, and we will all, as a body, look at the opportunity to perhaps view this as a chance for a fresh start, a chance for a fair process, one that is more likely to produce an independent judiciary that is going to call balls and strikes regardless of who is at bat.

Mr. President, I thank you for the opportunity. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Journal clerk proceeded to call the roll.

The PRESIDING OFFICER. In my capacity as a Senator from the State of South Dakota, I ask unanimous consent that the order for the quorum call be dispensed with.

Without objection, it is so ordered.

#### RECESS

The PRESIDING OFFICER. In my capacity as a Senator from the State of South Dakota, I ask unanimous consent that the Senate stand in recess until 4 p.m. today.

There being no objection, the Senate, at 3:02 p.m., recessed until 4 p.m. and reassembled when called to order by the Presiding Officer (Mr. COBURN).

The PRESIDING OFFICER. The Senator from Massachusetts.

#### THE NOMINATION PROCESS

Mr. KENNEDY. Mr. President, before going up to the 3 o'clock briefing, I heard my friend—he is a friend and col-

league of mine—Senator CORNYN make comments about our leader, Senator REID, accusing him and Democratic Senators of obstruction in the judicial nomination process earlier today.

That sort of rhetoric may be good for sound bites, but it doesn't match the reality of the Senate's tradition or the Founding Fathers' vision in creating the checks and balances of our constitutional system.

In the Constitutional Convention, they considered four different times who should have the authority about naming justices. On three of those four times, it was unanimous that the Senate of the United States was named. The last important decision the Constitutional Convention made was dividing the authority between the President and the Senate of the United States. Any reading of those debates will reaffirm that.

With all respect to my colleague making comments about our leader, the Senator from Nevada, he clearly has not read carefully that Constitutional Convention. It says that we have a responsibility, a constitutional responsibility to exercise our will on these matters. Historically, the record shows more than 98 percent of the President's nominees have been approved. In fairness to my friend who can speak for himself and does that very well and does not need me here, as to these attacks on Senator REID, it is important to understand the facts and get them correct if we are going to have those interventions in the Senate.

The PRESIDING OFFICER. The Senator from Wyoming.

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

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

#### GENETIC INFORMATION NONDISCRIMINATION ACT OF 2005

Mr. ENZI. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 3, S. 306, the Genetic Information Nondiscrimination Act of 2005; provided that there be 90 minutes of debate equally divided between the chairman and ranking member of the HELP committee; provided further that the only amendment in order, other than the committee-reported amendment, be a substitute which is at the desk, and following the use or yielding back of time the substitute amendment be agreed to, the committee-reported amendment, as amended, be agreed to, the bill, as amended, be read a third time, and the Senate proceed to a vote

on passage without any intervening action or debate at a time determined by the majority leader, after consultation with the Democratic leader.

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

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 306) to prohibit discrimination on the basis of genetic information with respect to health insurance and employment.

The Senate proceeded to consider the bill which had been reported from the Committee on Health, Education, Labor, and Pensions with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 306

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

#### [SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

[(a) SHORT TITLE.—This Act may be cited as the "Genetic Information Nondiscrimination Act of 2005".

[(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

[Sec. 1. Short title; table of contents.

[Sec. 2. Findings.

#### [TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE

[Sec. 101. Amendments to Employee Retirement Income Security Act of 1974.

[Sec. 102. Amendments to the Public Health Service Act.

[Sec. 103. Amendments to the Internal Revenue Code of 1986.

[Sec. 104. Amendments to title XVIII of the Social Security Act relating to medigap.

[Sec. 105. Privacy and confidentiality.

[Sec. 106. Assuring coordination.

[Sec. 107. Regulations; effective date.

#### [TITLE II—PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF GE- NETIC INFORMATION

[Sec. 201. Definitions.

[Sec. 202. Employer practices.

[Sec. 203. Employment agency practices.

[Sec. 204. Labor organization practices.

[Sec. 205. Training programs.

[Sec. 206. Confidentiality of genetic information.

[Sec. 207. Remedies and enforcement.

[Sec. 208. Disparate impact.

[Sec. 209. Construction.

[Sec. 210. Medical information that is not genetic information.

[Sec. 211. Regulations.

[Sec. 212. Authorization of appropriations.

[Sec. 213. Effective date.

#### [TITLE III—MISCELLANEOUS PROVISION

[Sec. 301. Severability.

#### [SEC. 2. FINDINGS.

[Congress makes the following findings:

[(1) Deciphering the sequence of the human genome and other advances in genetics open major new opportunities for medical progress. New knowledge about the genetic basis of illness will allow for earlier detection of illnesses, often before symptoms have