them to move forward on this bill, to come to some agreement to move forward.

It is disappointing to hear they still object. Of the extraneous amendments, one has to do with the highway trust fund and the fact that we are out of money and need to address that issue. It is addressed in a bipartisan way in this bill. It is badly needed for roads, bridges, and highway construction, and it is a responsibility with which we should proceed. The other one has to do with reimbursing New York for money from 9/11. This is not controversial. It was agreed upon after 9/11.

The budget the President sent to us says it is necessary, and it is in this bill because it is important that we get that done and move it forward. This legislation allows us the opportunity to do so.

These are not controversial issues. It is important that we move forward on this legislation. I hope our colleagues will agree to do that this afternoon.

Finally, I heard this morning that our Republican colleagues say that Democrats aren't going to deal with the gas tax issue. I assure everyone, we understand this issue. When we go home and see gas prices nearing $4 a gallon, when we hear from truck drivers and people who are trying to get to work or to grocery stores, the price is really hurting them. We are doing everything we can on this side—and have been—to try to move us forward in a way that addresses this crisis, but we recognize there are no short-term, easy, quick fixes. We know the same-old, same-old of promising drilling that would not produce anything for 10 years or giving away more money to the oil companies as an incentive is not the right way to get constituents to a place where they believe gas prices are again affordable. We are in the process of putting together a comprehensive piece of legislation that the Democratic leader will announce this week. I look forward to having our colleagues on the other side move forward with us on that comprehensive package to address the gas price issue facing our constituents.

With that, we will be now moving to a period of morning business. I look forward to addressing the Senate later on the FAA authorization bill.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to a period of morning business for up to 1 hour, with Senators permitted to speak for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the Republicans controlling the first half and the majority controlling the final half.

The Senator from Pennsylvania.

NOMINATION PROCESS

Mr. SPECTER. Mr. President, I have sought recognition to speak about the nomination process, to be followed by Senators CORNYN and KYL.

The situation is desperate at the present time, as the Senate has reverted to a longstanding policy in the last 2 years where the White House is controlled by one party and the Senate by another. The nominees of President Bush are being inappropriately blocked. During the course of the last 2 years of the Clinton administration, there were 15 circuit judges confirmed, 57 district judges, contrasted with only 7 circuit judges confirmed during the last 2 years of the Bush administration, and 38 district judges. For the entire 8 years, President Clinton has 65 circuit confirmations contrasted with only 58 for President Bush. President Clinton had 305 district confirmations contrasted with only 241.

Regrettably, this has been the pattern for the past 20 years—in the last 2 years of President Reagan's administration, when the Senate was controlled by Democrats; in the last 2 years of President Bush the first; and in the 6 years Republicans controlled the Senate during President Clinton's administration.

The issue has been raised by Democrats about the inappropriate blocking by Republicans of the Clinton administration. I have agreed with them. I voted to confirm the Clinton judges who were qualified. The action taken was not appropriate, and I disagreed with my caucus. But now my caucus is right.

An agreement had been reached—a good-faith agreement, so to speak—by leadership to confirm three circuit judges between now and Memorial Day. The Democrats had chosen three nominees: Judge Helene White, Mr. Kethledge, and Justice Agee, who are really out of turn. It would be much more appropriate to take up Judge Conrad who has been waiting 290 days for a hearing; Mr. Matthews, who has been waiting 240 days for a hearing; or Mr. Keisler, who has been waiting 675 days for a committee vote.

The chairman obviously has the right to make the selection on the calendar, but it is important to note that this selection was made without any consultation with the Republicans, which is a sharp shift in practice from what happened during the last Congress when I chaired the committee and Senator LEAHY was ranking. The White House wanted the confirmation hearings of Chief Justice Roberts to start on August 29. I had serious questions about the wisdom of doing that and consulted with Senator LEAHY extensively. Senator LEAHY was totally opposed. I made the decision to start the hearings after Labor Day, after due and appropriate consultation with the Democrats.

Similarly, on the nomination of Justice Alito, the White House wanted the confirmation completed by Christmas. Again, I had severe concerns about hurrying the process. I consulted extensively with Senator LEAHY, and then I made the decision to start the hearings in January. Let the record show after the confirmations were completed successfully, President Bush agreed with the judgment to hold the hearings when they were scheduled. That is the sort of comity which is indispensable if this body is to function.

There are grave concerns raised about the scheduling of the confirmation of Judge Helene White because, simply stated, there is not enough time to do it and do it right. Judge White was nominated on April 15, less than a month ago. Her questionnaire was not received until April 25. The FBI investigation was not begun until April 25. The ABA report cannot be completed until May 19 at the earliest. After Judge White's hearing, which is scheduled hastily for May 7, the committee typically leaves the record open for 1 week, which would close the record on May 14. If there are questions for the record, Judge White would have 1 week to answer those questions, which would bring us to May 21. If the nomination is held over for a week, that would put us into June. Assuming the nomination is not held over for a week, that leaves only 2 days before May 23 for the committee to review her answers, schedule and hold a committee vote, and for the full Senate to vote on her nomination. No circuit court nominee has had hearings prior to their ABA report being received. The ABA report is not expected until at least May 19.

In the past, the Democrats have been very vocal in opposing this kind of a schedule. When the schedule was set for Peter Keisler 33 days after his nomination, the Democrats cited the concern that the Keisler hearing should not be held so quickly in advance of the ABA recommendations: ''We should not be scheduling hearings for nominees before the Committee has received their ABA ratings,'' all of which is violated here.

Senator SCHUMER said:

> So let me reiterate some of the concerns we expressed about proceeding so hastily on this nomination. First, we have barely had time to consider the nominee's record. Mr. Keisler was named to this seat 33 days ago. So, we are having this hearing with astonishing and inexplicable speed.

Well, this hearing is even more astonishing and even more inexplicable. When we do not follow regular order,

we tend to get into trouble. The appropriate course would be to move to the nominations of Judge Conrad and Mr. Matthews in the Fourth Circuit where there is a judicial emergency.

How much time remains, Mr. President?

The ACTING PRESIDENT pro tempore. The Senator has 2 minutes 20 seconds.

FILIBUSTERING

Mr. SPECTER. I want to comment briefly about what I consider the disintegration of the standing of the Senate as the world's greatest deliberative body. There was a time, when someone wanted to filibuster, that they had to stand up and speak. The Democrats brought to the floor legislation to alter the Supreme Court decision which cut short the statute of limitations on women's pay. I voted for cloture to take up that issue. The issue came and went in the course of a few hours one day. Under the traditional rules of the Senate, when a matter is raised, it is presented. It is argued. If someone opposes and wants to object and filibuster, they have to speak.

The cost of a filibuster today is very cheap. All you have to do is say: I am going to filibuster. Then there is a cloture vote, and 60 votes are not obtained, and the issue goes away.

That is not the way the Senate has traditionally functioned. If the Democrats had been serious about trying to change the rule that the Supreme Court handed down, which I thought was a bad decision—bad on the law, and it certainly can be changed by legislation—they would have argued the matter. They would have compelled opponents to come to the Senate floor and oppose the matter. There would have been a public debate. Had there been an extended debate, the American people would have understood the wrong Supreme Court decision and insisted the Congress take corrective action.

Similarly, we have found the Senate has now been overwhelmed by procedural motions on filling the tree which preclude any meaningful, traditional Senate approach to our function where Senators should be able to offer amendments at any time on any issue. Senator REID, who now has the distinction of having the record on filling the tree the most times, has it in heavy competition. Senator Mitchell established a new record in the 103rd Congress with nine. Senator Lott tied him in the 106th Congress with nine. Senator Frist tied him in the 109th Congress with nine. But Senator REID is now the champion.

The problem with filling the tree is that Senators are precluded from coming to the floor and offering amendments. The American people do not understand what is happening in the Senate because nothing is happening in the Senate. Last week we had one cloture vote at 5:30 on Monday. We didn't vote on Tuesday, Wednesday, Thursday, or Friday—one vote, and not a peep in the news media about the inactive Senate. So what we are seeing—and I intend to speak at length on this at a later date—is the disintegration of what the Senate is supposed to be.

If legislation is needed to change the statute of limitations on enforcing women's employment rights for equal pay, let the Senate take it up and debate. If we are on the FAA Act, let's have Senators come forward and consider it.

It is time we declared a truce on the judge issue. It has been exacerbated continuously over the last 20 years. It is time for a truce because the American people are caught in the crossfire.

Mr. President, I ask unanimous consent that a survey of the filling of the tree, compiled by CRS, be printed in the RECORD. I urge my colleagues to study it to see how the business of the Senate has been thwarted, stymied, and eliminated by this procedural, inappropriate activity.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TABLE 1.—INSTANCES WHERE OPPORTUNITIES FOR FLOOR AMENDMENT WERE LIMITED BY THE SENATE MAJORITY LEADER OR HIS DESIGNEE FILLING OF PARTIALLY FILLING THE ''AMENDMENT TREE'': 1987–2008 [1]

Congress & Years	Senate Majority Leader	Measure(s)	Notes & Citations
100th (1987–1988)	Robert C. Byrd (D–WV)	S. 1420, Omnibus Trade and Competitiveness Act of 1987.	Sen. Byrd, working in concert with Sen. Howard M. Metzenbaum, filled the ''strike and insert'' tree with a series of amendments, SA435–439. (Congressional Record, vol. 133, July 8, 1987, pp. 18871–18876.) Media reports indicate the goal was to obtain a straight vote on a compromise proposal requiring advance notice of certain plant closings. (''Senate Passes Measure on Plant-Closing Notice,'' The Washington Post, July 9, 1987, p. E1.)
		S. 2, Senatorial Election Campaign Act of 1987.	Sen. Byrd, working in concert with Sen. David L. Boren, filled the ''motion to recommit'' tree with amendments, SA1403–1405. In debate, Sen. Byrd indicated his goal was to displace several non-germane amendments to S. 1 relating to funding for the Nicaraguan contras, thus returning the Senate to consideration of the subject of the underlying bill. (Congressional Record, vol. 134, Feb. 17, 1988, p. 1481.)
		S. 2488, Parental and Medical Leave Act of 1988.	Sen. Byrd filled the ''motion to recommit'' tree with amendments, SA3308–3310. In floor debate, Sen. Byrd indicated that he had done so in response to a continued inability to secure a time agreement on amendments, including a requirement for germaneness or relevancy. He characterized the motion and the amendments to it as an attempt to place S. 2488 back before the Senate in a form containing several specific policy provisions. (Congressional Record, vol. 134, Sep. 29, 1988, pp. 26523–26588.)
101st (1989–1990)	George J. Mitchell (D–ME)	None identified	None identified
102nd (1991–1992)	George J. Mitchell (D–ME)	S. Con. Res. 106, Concurrent resolution setting forth the congressional budget for FY 1993, 1994, 1995, 1996, & 1997.	Sen. Mitchell filled the ''insert'' tree with two amendments, SA1778–1779 offered to a substitute amendment for S. Con. Res. 106, SA1777, which appears to have been treated as an original text for the purposes of amendment. Floor debate suggests a unanimous consent agreement was entered into laying out this approach with the goal of controlling and structuring the consideration of policy alternatives relating to entitlement reform. (Congressional Record, vol. 134, Apr. 10, 1992, pp. 9283–9284.)
103rd (1993–1994)	George J. Mitchell (D–ME)	H.R. 1335, Emergency Supplemental Appropriations for FY 1993.	Sen. Robert C. Byrd, acting on behalf of the majority leader, filled the tree on the substitute to the measure, offering SA271–272. (Congressional Record, daily edition, vol. 139, Mar. 25, 1993, p. S3715.)
		S. 1491, FAA Authorization Act of 1994.	On multiple occasions during consideration of this measure, Sen. Mitchell or his designee offered second-degree amendments, for example, SA1776, 1779, and 1781, to non-germane first-degree amendments dealing with the subject of President William J. Clinton and the Whitewater Development Corporation. On each occasion, this action filled the ''insert'' tree and prevented a vote on the first-degree amendment. (Congressional Record, daily edition, vol. 140, June 15, 1994, pp. S6890–6894.)
104th (1995–1996)	Robert Dole (R–KS)	S.J. Res. 21, Constitutional Amendment to Limit Congressional Terms.	Acting as the designee of the majority leader, Sen. Fred Thompson offered a series of amendments, SA3692–3397, to the committee substitute for S.J. Res 21, filling the amendment tree. He then offered a motion to recommit the joint resolution and proceeded to offer amendments SA3698–3699 to the motion, filling the tree on the motion. In debate, Sen. Thompson indicated that he did so to prevent non-germane amendments from being offered to the measure and to ensure the Senate would debate only the subject of congressional term limits. (Congressional Record, daily edition, vol. 142, Apr. 19, 1996, pp. S3715–3717.)
		S. 1664, Immigration Control and Financial Responsibility Act of 1996.	Acting as the designee of the majority leader, Sen. Alan K. Simpson offered a series of second-degree amendments to a number of ''stacked'' first degree amendments, filling the amendment tree on them. He also filled the recommit tree on the underlying bill, offering SA3725–3726. In debate, Sen. Simpson indicated that he did so to prevent the offering of non-germane second-degree amendments on subjects such as the minimum wage and Social Security. (Congressional Record, daily edition, vol. 142, Apr. 24, 1996, pp. S4012–4016.)
		H.R. 2937, White House Travel Office Reimbursement.	Sen. Dole offered a series of amendments, SA3952–3956, first to the bill and then to a motion to refer the bill, filling the tree on both. Sen. Dole indicated that he took this action to prevent non-germane amendments to the measure. Sen. Dole filed for cloture on the measure and indicated his willingness to enter into negotiations on possibly permitting a non-germane amendment relating to the minimum wage to be offered. (Congressional Record, daily edition, vol. 142, May 3, 1996, pp. S4670–4672.)
		H.R. 1296, To provide for the administration of certain Presidio properties at minimal cost to the federal taxpayer.	On Mar. 26, 1996, Sen. Dole filled the tree on the motion to commit the bill SA3653–3654 and immediately filed cloture on the motion. The floor debate suggests that this action was taken in an attempt to block amendments to the measure on the subject of the minimum wage. (Congressional Record, daily edition, vol. 142, Mar. 26, 1996, pp. S2898–2899.)
105th (1997–1998)	Trent Lott (R–MS)	S. 25, Bipartisan Campaign Reform Act of 1997.	Sen. Lott offered a series of amendments, SA1258–1265, to the bill and to a motion to recommit the bill, filling both the ''strike and insert'' tree and the recommit tree. In debate, Sen. Lott indicated he did so to bar all amendments to the measure except those negotiated between himself and supporters of S. 25. The agreement provided for a modified form of the bill and one Lott amendment to it containing provisions of the ''Paycheck Protection Act,'' (Congressional Record, daily edition, vol. 143, Sept. 29, 1997, pp. S10106–10114.)
		S. 1663, Paycheck Protection Act	On Feb. 24, 1998, Sen. Lott offered a series of amendments SA1648–1650 along with a motion to commit, which he then filled with amendments SA1651–1653. The leader then filed cloture on the motion. (Congressional Record, daily edition, vol. 143, Feb. 24, 1997, pp. S939–940.)