

this shortage. If we don't have an adequate supply, it will affect the economy across the board. It is already affecting the chemical industry in my State, and the fertilizer industry. It is going to affect people's quality of life. This is so important. We need the whole package. We need more production. We need new technology. We need clean coal technology. That is just one example. We need more conservation of a responsible nature. We need to look at alternative fuels. I think a lot of these alternative fuels are, quite frankly, not very legitimate. But it is legitimate to try to find alternative fuels.

I urge my colleagues, let us work together. Let us get this done, get it into conference, and let us produce a national energy policy.

I think this issue is more important than any issue Congress is considering at this time. It is urgent that we get this work done.

I wanted to speak in support of the Bond-Levin amendment. I know very good work has been done on this amendment. I worked last year with Senator BOND and Senator LEVIN. They have given a lot of thought to how this should be designed. It bases decisions on these CAFE standards on science and solid data. I believe this idea of just plucking a number out of the air and saying that number is achievable is irresponsible. It may not even be achievable. Based on what? It makes somebody feel good? And what about the choices for the American people? What about the sacrifices in safety that we are asking them to make?

When you just pick a number, such as 32 miles per gallon or 37 miles per gallon, I don't think that is a wise decision, unless it has been based on thorough study and solid data. Of course, the organization to make that determination is the NHTSA. They have the expertise to analyze the numbers and consider all that should be involved, including the jobs that might be affected, the technology, how this improved fuel efficiency could be obtained, and, yes, safety. There are proposals out there which would adversely affect all these areas, including jobs, employment, consumer choice, and safety.

The National Academy of Sciences CAFE report declared there will be more deaths and injuries if fuel economy standards are raised too fast without proper consideration given to how that is being done and what impact it might have.

This amendment is supported by a broad coalition: labor, the UAW, the AFL-CIO, the Chamber of Commerce, the National Association of Manufacturers, the Farm Bureau, automobile dealers, and over 40 other organizations. That ought to tell you something. That type of broad support indicates that people are concerned about what might be done with this CAFE standard.

Yes, we should continue to work to improve fuel efficiency. We should have

incentives to move in that direction. But I am very worried we are going to cause some real damage. What about the choice made by Americans? This is still America, isn't it?

Is the Federal Government going to mandate that every driver drive an automobile like the one in this picture? Last year, I talked about the "purple people eater." Shown in this picture is a version of the "purple people eater." That might be fine around town in Washington, DC, but I can tell you, on some of the back roads in my State of Mississippi that will get you killed. That is not practical and people will not choose to drive it. They want an SUV or they want a pickup truck. And they don't want to be penalized by the Federal Government saying to them: You have to do this. And, by the way, if you don't do this, we will make you pay some kind of a price. This is ridiculous.

In my own case, my family is growing. We have our children and grandchildren. It is a wonderful deal. Then, in August, when we take our annual family vacation, I have a choice. I can have a bigger automobile with the three seats in it, where we can securely carefully fasten our grandchildren in these safety seats. We can take two automobiles, each being an SUV, or we can take three automobiles. Now, how much fuel is saved? And how much safety is given up?

Mr. President, this is ridiculous. It continues to be. It was last year. The American people are speaking with their choices. They are voting with their feet and their cash. They can buy these more fuel-efficient automobiles, but they are not doing it.

What percent is actually buying these smaller automobiles? I think, any way you slice it, not more than 14 percent. The American people are making other choices.

So I think what we are doing is very important. I think there are a lot of very substantive issues involved, and the least of which is not the American people's choices.

I do not think we should be forced to drive that automobile shown in the picture. I don't know who makes that automobile. I don't know where it is made, but it is probably reposing somewhere in France or Germany. I like the bigger vehicle shown in the picture behind it.

The American people have a need for vans or SUVs or pickup trucks. I understand there is going to be an amendment offered that will pick on particularly light trucks. Goodness gracious, light trucks use less fuel. Why pick on a light truck versus a heavy truck? This makes no sense.

I oppose the amendment that is going to be advocated by Senator MCCAIN and, I think, Senator FEINSTEIN. I oppose the Durbin amendment.

This amendment by BOND and LEVIN is bipartisan. It makes common sense. It moves us in the right direction. But it is based on commonsense science and

solid data. So I urge that we adopt this amendment, and let's leave the choice in the hands of the American people and not have the "Grand Poobah Government" tell us what we have to do in one more area. Don't make the American people drive this little grunt of a car shown here.

Mr. President, do I have any time remaining?

THE PRESIDING OFFICER. The Senator has 3½ minutes remaining.

Mr. LOTT. Mr. President, I yield the remainder of my time to the Senator from Missouri, keeping in mind that Senator BOND would have 2 minutes to close at the end of the debate on this section, I believe.

THE PRESIDING OFFICER. The Senator from Missouri.

Mr. TALENT. Mr. President, I doubt I will use the full 3½ minutes. It is just that I ran out of time before when I was in the middle of ranting and raving on this subject. I would hate to close my remarks on that tone, anyway.

Let me explain to the Senate why this is so important to me personally. I recently visited the Kansas City Ford plant where they make the new Ford 150 truck. It is a triumph of American engineering and the productivity of American workers.

The workers there are proud of that truck. And they should be proud of it. It means many people will be able to travel in this country safely and with comfort. I drive an SUV. I don't drive it because I am trying to hurt the environment or affect our energy independence. I drive it because we have small children. I used to drive a hatchback, but if we got in an accident in that hatchback, it would fold up like an accordion. That is why I drive an SUV. That is why millions of people do.

The Senator from Mississippi is right to say it is wrong to disparage these vehicles. People who make these vehicles in Missouri and around the country are proud of what they do. They are satisfied with their jobs. Let's not gamble with their jobs. We are trying to come out of a recession. We are trying to create jobs in this country.

Vote for the Bond-Levin amendment. It is a good, modern amendment and moves us forward. It protects people's jobs. I urge the Senate to support the amendment.

I thank the Senator from Mississippi for yielding me a few extra minutes. I yield back whatever time remains.

#### EXECUTIVE SESSION

NOMINATION OF PRISCILLA RICHMAN OWEN, OF TEXAS, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT—Resumed

THE PRESIDING OFFICER. Under the previous order, notwithstanding the provisions of rule XXII, there will now be 1 hour of debate equally divided between the Senator from Utah, Mr.

HATCH, or his designee, and the Senator from Vermont, Mr. LEAHY, or his designee.

The Senator from Nevada.

Mr. REID. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally between Senator HATCH and Senator LEAHY.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. VOINOVICH. 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, I know the Senator from Ohio has the floor, but through the Chair to him, I would note we are under a time constraint. If the Senator wishes to speak, I have no objection as long as it is charged off of Senator HATCH's time.

Mr. VOINOVICH. Mr. President, I would like permission to speak on the CAFE amendment.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, as I indicated, I object unless the time is charged to Senator HATCH.

The PRESIDING OFFICER. Time will be so charged, unless the Senator from Utah objects.

Mr. HATCH. Mr. President, I ask what the request is.

The PRESIDING OFFICER. The unanimous consent request is that the Senator from Ohio be able to speak on CAFE standards.

Mr. VOINOVICH. For 6 minutes.

The PRESIDING OFFICER. Charged to the time for the judge.

Mr. HATCH. I ask the Senator, could you keep it a little lower than that because we—

Mr. REID. I cannot hear the Senator from Utah.

Mr. HATCH. Do you think you could do it in less time than that because we have very little time.

Mr. VOINOVICH. I can do it in 6 minutes.

Mr. HATCH. That is fine.

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

The Senator from Ohio.

Mr. VOINOVICH. I thank the Senator from Utah.

(The remarks of Mr. VOINOVICH are printed in today's RECORD in legislative session.)

Mr. VOINOVICH. Mr. President, I thank the Senator from Utah for giving me this opportunity to speak on behalf of the Bond-Levin CAFE standards.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, what is the parliamentary order?

The PRESIDING OFFICER. We are under an hour of time equally divided. The Senator controls 24 remaining minutes.

Mr. HATCH. Mr. President, I rise today to speak on behalf of the nomination of Priscilla Owen for the United States Court of Appeals for the Fifth Circuit and to speak about the pattern of political tactics being used against President Bush's well-qualified judicial nominees.

We find ourselves at an important point in Senate history. History will show an effort by a minority of Senators to completely block well-qualified circuit court nominees during the 108th Congress. History will further show that this minority group of Senators was not asking for a full and open debate on the Senate floor. They were not asking for meaningful deliberation on these well-qualified nominees. Rather, this minority group of Senators was committed to reworking the meaning of advice and consent.

I think we can agree that the confirmation process is broken. I certainly do hope we can find a constructive way to restore the process, but recent events do not lead me to be overly optimistic—not when I hear injudicious talk about plans for more filibusters and not when I hear my colleagues characterize our advice and consent duty in terms of batting averages or quarterback completion rates. If anything, my colleagues on the other side haven't let Justice Owen even get up to the plate. This is not a matter of acquiring a certain win-loss record on the baseball field; this is a matter of whether we will be fair to our judicial nominees—the many talented men and women who have volunteered to serve our country through judicial service.

In Justice Owen's case, a handful of Senators blocked her nomination in committee last year, preventing a simple up-or-down vote on the Senate floor. Nearly a year later, Justice Owen still has not been afforded a vote by the full Senate. How much longer must she wait? One of my colleagues on the other side has already answered this question for himself, saying that there are not enough hours in the universe for sufficient debate, but I strongly disagree. We have debated long enough. Justice Owen has been on the Senate floor for 4 months. It has been 7 months since she was renominated by President Bush. It has been more than a year since her first hearing, and it has been more than 2 years since she was first nominated by President Bush on May 9, 2001—811 days in total. During all that time, she has not been afforded a vote. I think it is time Justice Owen was given the courtesy of an up-or-down vote. Keep in mind, she has the unanimous well-qualified rating of the American Bar Association.

Priscilla Owen could not be a better selection for the Federal court. She attended Baylor University and Baylor University School of Law, graduating cum laude from both institutions. She finished third in her law school class. Justice Owen earned the highest score on the Texas bar exam, and she has 17 years of experience as a commercial litigator.

Justice Owen is committed to legal services for the poor. She successfully fought with others for more funding for legal aid services for the indigent.

Justice Owen is committed to creating opportunities for women in the legal profession. She has been a member of the Texas Supreme Court Gender Neutral Task Force, and she is viewed as a mentor by younger women attorneys. She was one of the first women to sit on the Texas Supreme Court. Incredibly, this is the woman the liberal attack groups smear as "anti-woman." Give me a break.

Justice Owen's confirmation is supported by Texas lawyers such as E. Thomas Bishop, president of the Texas Association of Defense Counsel, and William B. Emmons, a Texas trial attorney and a Democrat who says that Justice Owen "will serve [the Fifth Circuit] and the United States exceptionally well." After a full review of Justice Owen's rulings, Victor Schwartz, a respected trial attorney and co-author of the leading torts textbook, concluded that she is a "moderate jurist," neither pro-plaintiff nor pro-defendant.

I ask unanimous consent that a copy of Mr. Schwartz's letter to the Judiciary Committee be printed in the RECORD.

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

SHOOK, HARDY, & BACON L.L.P.,  
Washington DC, July 18, 2002.

Re nomination of Texas Supreme Court Justice Priscilla Owen.

Hon. PATRICK J. LEAHY,  
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Throughout the past three decades, many members of your Committee have been kind enough to ask my views about tort law. I have taught in law school, and practiced on behalf of plaintiffs in the 1970s. I currently practice in the defense firm of Shook, Hardy & Bacon, L.L.P. and represent the American Tort Reform Association. You have appreciated that when I share my views with you, I try my utmost to be objective. Because almost anyone's views on judges are likely to be seen as having bias, I have refrained from commenting on any judicial nominee.

I am now writing you about Texas Supreme Court Justice Priscilla Owen because she has been attacked as being unfair in the very area of my expertise, tort or liability law. Since 1976, I have been co-author of the most widely used torts textbook in the United States, Prosser, Wade & Schwartz's Cases and Materials on Torts. I have also served on the three principal American Law Institute Advisory Committees on the new Restatement of Torts (Third). The study of tort law has been the love of my professional life.

Because of my academic and practice obligations, I have had a very deep interest in opinions of law in the field of torts. Naturally, I am familiar with state supreme court judges or justices who are thought to be "pro-plaintiff" or "pro-defendant." In that regard, when I heard about controversies surrounding Justice Owen, I was somewhat puzzled because I had not placed her in either group.

This past weekend, I reviewed most of her principal opinions in tort law. My review of

Justice Owen's opinions indicates that any characterization of Justice Owen as "pro-plaintiff" or "pro-defendant" is untrue. Those who have attacked her as being "pro-defendant" have engaged in selective review of her opinions, and have mischaracterized her fundamental approach to tort law.

Justice Owen's fundamental approach to tort law is to make it stable. On the one hand, she is not a judge who would be likely to jump to the front of a plaintiff's lawyers petition to expand the scope of tort law. Furthermore, she would be unlikely to allow claims for brand-new types of damages, such as hedonic damages, or create cutting-edge liability claims (e.g., allowing a lawsuit against a fast food chain, where there was no showing that an individual plaintiff's health was actually harmed by eating at that chain). On the other hand, she would not and has not arbitrarily thwarted the rights of plaintiffs under existing tort law.

Let me give you just a few examples. In *Merrell-Dow Pharmaceuticals, Inc. v. Havner*, 953 S.W.2d 706 (Tex. 1997), a decision for which she was roundly criticized by a group called "Texans for Public Justice," Justice Owen held that the evidence was legally insufficient to establish that a birth defect was caused by exposure to the drug Bendectin.<sup>®</sup> Bendectin<sup>®</sup> is the only drug that helps alleviate the severe symptoms of morning sickness. It is still approved by the U.S. Food and Drug Administration and regulatory agencies throughout the world. As Justice Owen recognized, the attempts by plaintiff's counsel to tie the birth defects of the plaintiff's child to Bendectin<sup>®</sup> in the *Havner* case were insufficient. The Supreme Court of the United States itself recognized, in a case involving that very drug, that judges should act as gatekeepers, and not permit juries to make judgments based on bad science. See *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

I am not surprised that the Association of Trial Lawyers of America (ATLA), the organized plaintiffs bar, and those who have empathy with that group criticized Justice Owen for her decision. They also criticized the United States Supreme Court when it rendered the *Daubert* decision. ATLA and its sympathizers believe that judges should not act as gatekeepers; rather, they believe that juries should be permitted to weight scientific evidence as they choose.

Here is the rather interesting point. In a case decided almost simultaneously with *Havner*, not mentioned by "Texans for Public Justice" or other groups criticizing Justice Owen, she would have allowed an adult to pursue a sexual abuse claim against an alleged abuser who purportedly did the wrongful acts when the plaintiff was a child. In the case *S.V. v. R.V.*, 933 S.W.2d 1 (Tex. 1996), expert testimony indicated that the plaintiff had "repressed memories" that arose when the plaintiff was an adult. The majority held that expert testimony was insufficient to warrant the application of the "discovery rule," which would have tolled the statute of limitations. It required "objectively verifiable" evidence of abuse to apply the discovery rule and toll the statute. Justice Owen noted, however, that such evidence was often unavailable, and the unavailability of the evidence is frequently due to acts done by the alleged abuser. She would have held that the repressed memory evidence was sufficient to toll the statute and allow the claim. I recommend that Members of this Committee read this case and note that Justice Owen wrote the sole dissenting opinion in the case.

In a later case, Justice Owen prevented another plaintiff from falling into a statute of limitations trap. A patient brought a malpractice case against a surgeon in his indi-

vidual capacity. The patient later amended his complaint, and named the surgeon's professional association as a defendant. The association moved to dismiss the case because the statute of limitations had expired by the time the suit was brought against the association. Writing for the Texas Supreme Court, Justice Owen held that the cause of action brought against the surgeon in his individual capacity preserved the potential of the claim against the association. See *Chilkewitz v. Hyson*, 22 S.W.3d 825 (Tex. 1999).

Justice Owen's views about product liability law strike the same balance. For example, Justice Owen joined in a Supreme Court of Texas opinion that considered a question certified by a federal court as to whether a manufacturer of a product used by adults—a cigarette lighter—might have a duty, in some situations, to childproof the product. Justice Owen joined with the Court in holding that a manufacturer may have such an obligation. See *Hernandez v. Tokai Corp.*, 2 S.W.3d 251 (Tex. 1999).

One finds the same sense of "balance" in Justice Owen's opinions in other areas of tort law. In a very interesting opinion, Justice Owen joined with the Texas Supreme Court to strip a defendant business of its defenses based on a plaintiff's fault when that defendant business had decided to opt out of the workers' compensation system. Justice Owen supported the sound public policy that would discourage businesses from opting out of workers' compensation and taking their chance on their vagaries of a tort lawsuit in the workplace. As you and Members of your Committee know, a fundamental reason why workers' compensation was adopted in the first place is so that a worker's fault does not preclude him or her from obtaining compensation for a workplace injury. See *Kroger Co. v. Keng*, 23 S.W.3d 347 (Tex. 2000).

I wish to reiterate that I am not suggesting that Justice Owen is a plaintiffs' lawyer's "dream judge." She is not. For example, when the Texas Supreme Court addressed the issue of whether jurors should be told that if they find a plaintiff more than 50% responsible for his or her own injury, the plaintiff might lose, Justice Owen dissented from the majority. The majority found that such information was allowed to go to the jury. Justice Owen believed such action could cause jurors to look more at the effect of the 50% rule than the facts of the case. See *H.E. Butt Grocery Co. v. Bilotto*, 985 S.W.2d 22 (Tex. 1998). While not everyone (including myself) would agree with Justice Owen's decision, it is anchored in logical judicial precedent and has a clear public policy basis. See Victor Schwartz, *Comparative Negligence*, §17-5(a) (3d Ed. 1994).

My fundamental point is that in the area of tort law, Justice Owen is a moderate jurist; she is neither a trailblazer for plaintiffs nor a captive of corporate interests.

I would be pleased to answer any questions or inquiries by Members of your Committee, and I value your taking the time to read this statement.

Sincerely,

VICTOR E. SCHWARTZ.

Mr. HATCH. Justice Owen is a consensus nominee. A bipartisan majority of the Senate supports her confirmation. Both of Justice Owen's home State Senators, Senators HUTCHISON and CORNYN, back her. The American Bar Association has awarded her a unanimous well-qualified rating, their highest rating, and the gold standard formerly used by many of my Democratic colleagues.

Former Texas Supreme Court Justices John Hill, Jack Hightower, and

Raul Gonzalez—all Democrats—say Justice Owen is unbiased and restrained in her decision-making. Alberto Gonzales, another former Texas Supreme Court colleague, says she will perform superbly as a Federal judge.

Fifteen past presidents of the Texas State Bar, both Democrats and Republicans, who hold a variety of views on important legal and social issues, agree that Justice Owen is an outstanding nominee. Those who know Justice Owen best support her confirmation.

Sure, the usual abortion-rights groups and highly partisan Texas trial lawyer interest groups have announced that they expect Senators to filibuster. But what else is new? They have done and will continue to do what they do best: distort, smear, and profile. As Rena Pederson wrote in an op-ed published in the Dallas Morning News, "The people who know Priscilla Owen the best all agree. They say the Texas Supreme Court judge is nothing like the person portrayed by critics of her appointment to the 5th U.S. Circuit Court of Appeals."

I ask unanimous consent that a copy of this editorial be printed in the RECORD at this point.

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

[From the Dallas Morning News, Feb. 2, 2003]

SENATE DIDN'T GET TO KNOW THE REAL  
JUDGE OWEN

(By Rena Pederson)

The people who know Priscilla Owen the best all agree. They say the Texas Supreme Court just is nothing like the person portrayed by critics of her appointment to the 5th U.S. Circuit Court of Appeals.

Democrats on the Senate Judiciary Committee voted along party lines in September and rejected her appointment. They contended she had an anti-abortion bias and was a tool of big businesses like Enron.

But if they had bothered to check with the people who grew up with her in Waco or worked with her in top law firms in Houston or clerked at the Texas Supreme Court, they would have gotten a different, more accurate picture.

Those sources describe Judge Owen this way: She is a doggedly dutiful legal scholar who couldn't care less about party labels or moneyed interests. Many cite her as a helpful mentor for other women in the legal profession. She prefers cooking for friends to the political or social circuit. Yes, they say, she's a devoted Sunday school teacher, but not what used to be called a "goody-two-shoes" or a narrow-minded religious zealot. She was known to enjoy a few beers with her friends at Baylor University and has a smart sense of humor. She's a water-skier and was spunky enough to try rollerblading in her kitchen a few years ago, breaking her ankle.

The American Bar Association gave the 48-year-old Texas judge its highest rating, "well qualified." Many prominent Democrats from Texas—including former Texas Supreme Court Chief Justice John Hill and former State Bar President Lynne Liberato—spoke up in Justice Owen's defense. But their voices were discounted. A public relations campaign was generated by several interest groups, using snippets from the hundreds of cases that had come before her bench, in order to make her look as bad as possible and snub President Bush.

What particularly dismayed those who know the Texas justice well is that she was made to look anti-abortion and anti-woman. They emphatically insist that, while conservative, she is not an activist or ideologue with an agenda.

Laura Rowe, who worked with Ms. Owen at the Andrews and Kurth law firm in Houston, said, "I came across her when I was a young lawyer starting out, and she was a great mentor for the other women. She was so smart, hardworking, but funny and normal at the same time. When I met her, I thought 'that's a woman I would like to be like.' She was one of the lawyers that people wanted to work for, tough but fair. It did disturb me to see her vilified."

Kristin O'Neal, who was a law clerk at the Texas Supreme Court, said, "I understand why people distorted her opinions, because it furthered their agenda, but to say she has some kind of activist agenda is absurd to me. She takes very logical, methodical approach to everything. They tried to make her look bad for writing an opinion that benefited Enron because she had received a campaign contribution from Enron some time earlier. What people didn't know was that it was a unanimous ruling—and the judges don't select the opinions they write. It's a random drawing. You might disagree with one of her rulings, but I never, ever sensed that she was using her position in an activist manner or to further any personal beliefs. She takes her job and her role very seriously."

Ruth Miller, who has known Ms. Owen since they were in high school in Waco, said, "I don't know how Priscilla remained so composed and calm, when some of the senators cut her off. I though she handled herself with dignity, even when she should have been able to continue. What people don't know is that she had to work for weeks and weeks on her own to prepare, on the weekends, no vacation. But she knew I was going through a serious health problem, and so she would call to check on me every week. And in the throes of the confirmation process, she went with me to my appointment at the hospital in Houston and just brought her portfolio with her."

Nancy Lacy, Ms. Owen's sister, attended the hearings in Washington and sat behind Justice Owen, as did the minister from the church Justice Owen attends in Austin. "It was eye-opening," she said. "It was a hard experience because no matter what she said, they were going to stick with the propaganda. It was obvious. I was hoping they were going to really give her a shot, try to get to know who she really is, ask her thoughtful questions. But the information they has was wrong to begin with. I felt sorry for them at times; their staff didn't do a very good job; it was obvious the special interest groups gave them the information, and they didn't research to see if it was true. The handwriting was on the wall. I just wanted to say to them, 'You're missing the boat. You're missing the opportunity to get to know a really neat person.'"

By all accounts, it was a wearing experience for the Texas judge. Although she understood she had been caught in a political spite match, she couldn't help but be pained by the attacks on her character. Still, her nomination has been resubmitted by Mr. Bush, so Americans may get a chance to see the rest of her story after all.

Mr. HATCH. Mr. President, Justice Priscilla Owen will be an excellent Federal judge.

We have a choice: Will we continue to block another highly qualified nominee for partisan reasons or will we allow each Senator to decide the merits of the nomination for himself or herself?

I know my choice. We should allow a vote. I hope my colleagues will do the right thing and make the same choice.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. How much time does the Senator need?

Mr. CORNYN. Five to seven minutes.

Mr. HATCH. Mr. President, I yield 5 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I thank the chairman of the Judiciary Committee, who has done yeoman's work in shepherding President Bush's highly qualified judicial nominees through the Judiciary Committee and to the floor of the Senate.

Chairman HATCH has mentioned a number of people on both sides of the aisle who support the nomination of this good woman to the Fifth Circuit Court of Appeals. I have a few comments—first, to echo those comments in terms of the consensus of opinion in my State of Texas as to the good work that Priscilla Owen has done as a justice in the Texas Supreme Court. But I also bring a personal perspective to this debate because I served with Priscilla Owen for 3 years on the Texas Supreme Court. Frankly, I do not recognize the caricature that has been painted of this good judge in the debate before the Senate.

In May of this year, I spoke on the floor regarding the 2-year anniversary of Justice Owen's nomination. That dismal anniversary showed us just how far our confirmation process had gone awry. And now it has gotten even worse.

Today's vote is just the first in a series this week. Over the next 4 days, we will see just how far the minority in this body is willing to go to block well qualified nominees and parrot the talking points provided by special interest groups who oppose this and other highly qualified judicial nominees. It is my hope that the Senate will do the right thing and provide an up-or-down vote for this judicial nominee.

As I said, Justice Owen and I served for 3 years together on the Texas Supreme Court—from the time she came in January 1995 until the time I left in October of 1997. During those 3 years, I had a chance to observe Justice Owen's work habits and her basic judicial philosophy at work, how she approaches her job, how she thinks about the law, and how she acts given that position of public trust that judges hold.

I can tell you from my personal experience that Justice Owen is an exceptional judge who understands her profound duty to follow the law and enforce the will of the legislature.

That is, of course, one reason the American Bar Association has given her a unanimous well qualified rating, and that is why she has such strong bipartisan backing. That is why she enjoys the enthusiastic support of the people of Texas, where she got 84 per-

cent in the last election from the people who know her the best.

Not once during my tenure with Justice Owen did I ever see her attempt to pursue some political or other agenda at the expense of the law as she understood it. I can tell you that Justice Owen believes very strongly, as I do and Americans do across this land, that judges are called upon not to act as another legislative branch, or as a politician, but as judges—to faithfully read statutes and to follow the law as written by the legislature and the precedents established by higher courts in earlier times.

Some of my colleagues have, unbelievably, taken the position that Justice Owen is to be criticized for disagreeing with other members of the Texas Supreme Court in some of her opinions. Some of my colleagues act shocked that appellate judges, particularly on the highest court in my State, will disagree with one another and have spirited debates in the form of opinions they write. But I firmly believe that is exactly the job that is expected of a judge and that Justice Owen has fulfilled that position well.

There are those who apparently believe a judge is not supposed to have a real debate about their interpretation of the law and is just supposed to assert his or her own will, regardless of what the law actually says. Perhaps these advocates believe a judge is supposed to follow the practice of what author James Lileks has called "teasing penumbras from the emanations of the glow of the spark of the reflection of the echo of the intent of the Framers."

I fundamentally disagree with that idea. If we did not have judges disagree with one another, it would mean somebody was not doing their job.

By the time cases get to the top echelons of our judicial system, they are the hardest cases. They are the cases that cannot be solved by lower levels of the judiciary or indeed by settlement between the parties. These are important issues and must be decided, through study and debate.

A judge, unlike a Member of this body, cannot choose to simply walk away and ignore a thorny legal issue. Judges are not supposed to make law. They are supposed to interpret and enforce the law written by the legislature.

In Texas, Justice Owen followed this duty to the letter. From experience and from observation, I know that Justice Owen believes strongly that judges are called upon to faithfully read the statutes on the books, read the precedents in the case, and then apply them to the case before the court.

Justice Owen did this job, and she did it well. She is a brilliant legal scholar and a warm and engaging person. To see the kind of disrespect the nomination of such a great Texas judge—and a great Texas woman—has received in this body is more than just disappointing. It is an insult to Justice Owen. It is an offense against the great

State of Texas. And it is beneath the dignity of this institution.

It is clear who is calling the tune repeated by the minority opposition here on this floor. The beltway special interest groups are not interested in trying to understand or evaluate Justice Owen by her real record because, if they were, they would see it as a sterling record of intelligence, accomplishment, and bipartisan support. The special interest groups are not interested in the confirmation of nominees who merely interpret the law and render judgment responsibly. They are only interested in confirming people who they believe are advocates of their interests, something that is totally at odds with the role a judge is supposed to perform.

Sadly, it is clear that these same special interest groups are interested in obstructing as many of President Bush's judicial nominees as they possibly can. Those who oppose Justice Owen's confirmation appear to have really no stomach for debate and talking about the facts. They choose instead to filibuster and engage in the worst kind of mean-spirited and destructive political attacks.

I can only hope that my colleagues will realize the truth of what is going on, and reject this special interest influence on the judicial confirmation process. I can only hope that ultimately we will all strive for a process that is fair and consistent with our constitutional duty.

And I can only hope my colleagues realize that by blocking a vote on Priscilla Owen, they make themselves allies to these groups, groups that rejoice at the prospect of a Senate in constant gridlock over these qualified nominees.

My colleagues should not think the American people do not know what is going on here. They see when a nominee's well-recognized abilities are ignored in favor of scare tactics and revisionist history, and they see some ignore the interests of the States from which they were elected, and instead kowtow to special interest groups.

I am confident that Members of the Senate are wise enough to reject this inhuman caricature that has been drawn of Justice Priscilla Owen by special interest groups intent on vilifying, demonizing, and marginalizing an admirable nominee. And I know that if we were allowed to hold a vote, a bipartisan majority of this body stands ready to confirm Justice Priscilla Owen to the Fifth Circuit Court of Appeals. The question is whether that vote will ever happen.

I hope that my colleagues will give these qualified nominees what they deserve, and allow them to have an up or down vote, today, tomorrow, and every day this week. For the sake of the Senate, the Nation, and our independent judiciary, I hope that we will not have 4 days of filibusters.

I hope my colleagues will vote to allow this fine judge an up-or-down vote.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

If neither side yields time, time will be charged equally to both sides.

Mr. HATCH. Mr. President, how much time does the Senator from Utah have?

The PRESIDING OFFICER. The Senator has 11 minutes.

Mr. HATCH. Mr. President, how much time does the Senator from Alabama desire?

Mr. SESSIONS. Five minutes.

Mr. HATCH. Mr. President, I yield 5 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 5 minutes.

Mr. SESSIONS. Mr. President, in the history of this country, we have not had a filibuster of a circuit judge or a district judge before and really never even one for a supreme court judge. This is an unprecedented obstruction of a nominee—something that really is unheard of.

It is particularly distressing to me, beyond words almost, that this fine nominee, Priscilla Owen, would be a person who would be blocked by a filibuster when she clearly has the votes, if given an up-or-down vote in this body, to be confirmed for the Fifth Circuit Court of Appeals. She is extraordinarily capable. She finished at the top of her class in law school. She made the highest possible score on the Texas bar exam. What a strong statement that is. She won her last race for the Supreme Court of Texas with 84 percent of the vote. She was unanimously rated well qualified, the highest possible rating the American Bar Association can give for this position, when they evaluated her. She has the support of 15 former presidents of the Texas Bar Association and is just extraordinary in every way.

As I looked through her record, I stumbled on this letter from a female attorney, Julie Woody, who clerked for the Texas Supreme Court. She noted she is a lifetime Democrat and she had the occasion to observe Justice Owen. She wrote these words. She went to Yale Law School, is a native of Pennsylvania, and practiced law in New York City. She said:

As a result of my encounters with Judge Owen during my clerkship, I came to regard her as a judge and legal scholar of the highest caliber. She has a brilliant legal mind that is matched by her legendary work ethic. Her analysis of any issue is rigorous and true to the letter and spirit of the law. Her impeccable ethics and honesty and lack of political motivation in her decisionmaking were apparent in her discussions of cases and the manner in which she decided them.

Justice Owen is among the best and the brightest—she will bring integrity, intelligence and the highest ethical standards to the Fifth Circuit.

She goes on to note that she got to know her later because her husband was in the seminary and at St. Barnabas, an Episcopal Church in Austin, a mission church. Priscilla was one of

the original leaders and a member of the altar guild where she teaches Sunday school. She said about her:

Priscilla worked incredibly hard behind the scenes, never seeking any attention or praise for her efforts. She exemplified servant leadership.

What is the complaint about this excellent, magnificent justice on the Texas Supreme Court? What is the objection? They do not like the fact that she affirmed lower court opinions concerning parental notification when children, minors, desire to have an abortion. Eighty percent of the American people believe parents should be notified before a minor child should be allowed to have an abortion. The Texas law is not an extreme law. It simply says the parents should be notified, and they do not have a right to object or stop an abortion from going forward—just one of the parents be notified, actually. If the minor does not like that, they can go to court. They go to court, and they have a hearing before a judge. A judge takes evidence on these issues and makes a decision at that point whether the child who does not want to notify even one of their parents should notify one of their parents.

If the judge concludes that she should notify a parent and the child and her lawyer are not happy, then the child can appeal to the Court of Appeals in Texas. Three judges will then hear the case. They will decide whether the trial judge who heard the evidence ruled correctly or not. If they rule that the child has to notify her parents that she intends to have an abortion, or at least one of the parents, only then does it go to the Supreme Court of Texas.

Priscilla Owen never heard one of these cases, never made an initial decision on one of these cases. She was one of a number of justices on the Texas Supreme Court. Her only responsibility was to review the record of judges who had already decided and concluded, based on facts and evidence, having seen the minor and heard the evidence and saw the witnesses in person, her question was: Should the decision be affirmed?

The opponents are unhappy that she voted to affirm both the trial judge and the three-court panel below the Texas Supreme Court. This is not good. This is a radical obsession with eliminating any restriction whatsoever, even for a minor child notifying her parent. It is not on any basis to object. Priscilla Owen would be a wonderful nominee.

I yield the floor.

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The 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, I yield myself whatever time I shall consume.

We have heard for several weeks the urgency of passing the Energy bill. As I said this morning, we accept that urgency, but we have also said for several weeks that we cannot complete the Energy bill with 382 amendments in a period of 1 week, 4 or 5 working days. It cannot be done. The majority leader has come to the floor and said we have been on the bill 16 days. That is not fair because a lot of those days have been late Thursday and Friday mornings and sometimes on Monday. We have probably had about 7 real days of work on this Energy bill.

Complicating matters, the leader is scheduling issues that are unnecessary. To have votes on these judges when cloture has been attempted on a number of occasions and has not worked, and will not work again, is wasting valuable time. We could be working on Senator DOMENICI's and Senator BINGAMAN's Energy bill.

If the majority wanted to move judges—and we have moved 140 judges—but if the majority wanted to move judges, we have some who have already been cleared from the committee, something that is very unique because a lot of them are being cleared. We would be able to work out agreements to have James Cohn of Florida to be a U.S. district judge; Frank Montalvo of Texas to be a U.S. district judge; Xavier Rodriguez of Texas to be a U.S. district judge. We could also work something out for H. Brent McKnight of North Carolina to be a U.S. district judge. We could work something out on James Browning of New Mexico to be a U.S. district judge.

I recognize there are intense feelings about Judge Owen, but the intense feelings have not changed during the period of time since we last failed to invoke cloture on this nomination.

When there is an urgent need, according to the majority leader, to move the Energy bill, it is almost beyond my ability to understand why we would go to something when everyone knows what the outcome will be. We lose momentum. Every time we go off a bill, as we have gone off the Energy bill again, and try to start again, it takes time. I think the majority leader should understand he is his own worst enemy in trying to move the Energy bill by going to all these extraneous issues that are doomed to failure before he starts.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. HUTCHISON. How much time is remaining?

The PRESIDING OFFICER. The Senator from Utah controls 4 minutes 21 seconds.

Does the Senator from Utah yield time?

Mr. HATCH. I yield the remainder of my time to the distinguished Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I rise to speak on behalf of my friend Priscilla Owen. I cannot think of a person who is being treated worse by the Senate than my friend Priscilla Owen. This is the nicest, gentlest person one could ever meet, and she also happens to be smart as a whip.

I watched her before the Senate committee. The chairman of the committee, Senator HATCH, took the extraordinary step of having two hearings because Priscilla Owen was nominated over 2 years ago. She had her hearing and went through the process and did very well in her first hearing. Then, after the new Senate came in, in January, the chairman brought her back before the committee, and she did an excellent job.

She knows exactly what she has done throughout her tenure on the Supreme Court of Texas, and she could cite the reasoning for all of the questions she was asked about the positions she has taken. She answered the questions in the most exemplary fashion. She showed exactly why she should be a Federal judge. She showed it by her brilliance.

We know she was a magna cum laude graduate from Baylor Law School as well as earning the highest score on the Texas bar exam that year, and she showed in that way that she is qualified to be a member of the Federal judiciary. Her demeanor also showed why she would be such an excellent Federal judge, because she has maintained the nicest and most patient demeanor I have ever seen of anyone who has been attacked in such a way. She has shown she has the temperament to be a good, honest, fair judge who also happens to be brilliant.

Priscilla Owen has been nominated for the Fifth Circuit. We have been talking about her now for over 2 years. Since May 9, 2001, Priscilla Owen has been before the Senate. She has handled herself beautifully. She has never shown any defiance. She has never shown any bitterness at the way she is being treated. She just answers the questions like a professional.

She is a wonderful member of the Texas Supreme Court. She has been elected in her own right to the Texas Supreme Court, and when she was running for the bench, the Dallas Morning News called her record one of accomplishment and integrity.

The Houston Chronicle wrote:

She has the proper balance of judicial experience, solid legal scholarship and real-world know-how.

She was endorsed by every daily newspaper in Texas that endorsed in Supreme Court races. She has a wonderful record. The ABA gave her a unanimously well qualified ranking when she went before their committee.

I will read the words of former Texas Supreme Court Chief Justice John Hill.

John Hill is a Democrat. John Hill was attorney general of Texas. He was chief justice of the Texas Supreme Court. He denounced the false accusations about Priscilla Owen's record, saying:

Their attacks on Justice Owen in particular are breathtakingly dishonest, ignoring her long-held commitment to reform and grossly distorting her rulings. Tellingly, the groups make no effort to assess whether her decisions are legally sound . . . I know Texas politics and can clearly say these assaults on Justice Owen's record are false, misleading, and deliberate distortions.

This is a judge who deserves to be confirmed, and I hope the Senate will stop the delaying tactics on this wonderful woman and this qualified judge, and vote for cloture on Justice Priscilla Owen.

I yield the floor.

The PRESIDING OFFICER. The chairman's time has expired.

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

The PRESIDING OFFICER (Mr. SESSIONS). Without objection, it is so ordered.

Mr. LEAHY. Mr. President, we are again being asked to consider the very controversial nomination of Justice Priscilla Owen to the United States Court of Appeals for the Fifth Circuit. The Senate has voted on this before.

One might ask what has changed since the last Senate vote? The only thing that has changed is that the administration, the Republicans, have ratcheted up their unprecedented partisanship in the use of judicial nominees for partisan political purposes.

Recently, they reached a new low through political ads and statements that should offend all Americans. The White House and the backers should understand with these ads they have gone far too far. They should withdraw and disavow.

Last week I urged our Republican Senate colleagues to disavow those despicable efforts. Unfortunately, they are choosing to continue the unfounded smear campaign of insult and division.

In that regard, I ask unanimous consent the articles in the New York Times of this past Sunday, both editorials from the Washington Post, the Boston Globe, Huntsville Times, Palm Beach Post, Atlanta Journal-Constitution, and Pittsburgh Post-Gazette, be printed in the RECORD at this point.

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

[From the New York Times, July 27, 2003]

ACCUSATION OF BIAS ANGERS DEMOCRATS

(By Robin Toner)

WASHINGTON, July 26.—The battle over judicial nominations has grown ever more bitter on Capitol Hill, but Democrats on the Senate Judiciary Committee say they are

particularly outraged over the latest turn: the accusation that their resistance to some conservative nominees amounts to anti-Catholic bias.

In a recent newspaper advertising campaign, run by groups supporting the Bush administration's judicial nominees, a closed courtroom door bears the sign "Catholics Need Not Apply." The advertisement argues that William Pryor Jr., the Alabama attorney general and a conservative, anti-abortion nominee to the federal appeals court, was under attack in the Senate because of his "deeply held" Catholic beliefs.

Democrats say they oppose Mr. Pryor because of his record, including what they assert is a history of extreme statements on issues like abortion and the separation of church and state. All nine Democrats on the Senate Judiciary Committee voted against Mr. Pryor's confirmation this week, while the 10 Republicans voted for it, sending the issue to the full Senate—and the likelihood of further Democratic opposition.

Republicans and their conservative allies argue that the Democrats have created a de facto religious test by their emphasis on a nominee's stand on issues like abortion. "It's not just Catholics," said Sean Rushton, executive director of the Committee for Justice, one of the groups that paid for these advertisements, which are running in Maine and Rhode Island. "I think there's an element of the far left of the Democratic Party that sees as its project scrubbing the public square of religion, and in some cases not only religion but of religious people."

Senator Orrin G. Hatch, Republican of Utah and chairman of the Judiciary Committee, sounded a similar theme this week, asserting that "the left is trying to enforce an antireligious litmus test" whereby "nominees who openly adhere to Catholic and Baptist doctrines, as a matter of personal faith, are unqualified for the federal bench in the eyes of the liberal Washington interest groups."

The accusation of anti-Catholic bias seemed especially galling to some of the Democratic senators who happen to be Catholic. Four of the Democrats on the Judiciary Committee are Catholic. In fact, 57 percent of the Catholics in the House and the Senate are Democrats, according to the forthcoming Vital Statistics on Congress, 2003-4 edition.

Like many Americans of Irish descent, Senator Patrick J. Leahy of Vermont, the ranking Democrat on Judiciary, said he grew up hearing his father talk about the bad old days when Irish Catholics were greeted with signs saying they "need not apply." He added, "It was a horrible part of our history, and it's almost like you have people willing to rekindle that for a short-term political gain, for a couple of judges."

Senator Richard J. Durbin, who is Catholic, said he reached his limit at a committee meeting on Wednesday when Senator Jeff Sessions, Republican of Alabama (and a Methodist), began explaining Mr. Pryor's positions as "what a good Catholic believes."

Mr. Durbin, an Illinois Democrat who personally opposes abortion but backs abortion rights, added, "I understand the painful process I have to go through with the elders of the church on many of these issues, explaining my position. But it is galling, to say the least, when my colleagues in the Senate, of another religion, start speaking ex cathedra."

Many Catholic elected officials are, perhaps, particularly sensitive to the line between religious faith and public responsibilities. It was a line drawn most vividly by President John F. Kennedy, the first Catholic president, who had to deal with widespread fears that a Roman Catholic

president would serve both Rome and the American people.

Kennedy responded by declaring, "I believe in an America where the separation of church and state is absolute, where no Catholic prelate would tell the president, should he be a Catholic, how to act, and no Protestant minister would tell his parishioners for whom to vote." In recent years, Gov. Mario M. Cuomo reasserted that line, particularly regarding abortion.

Behind the anger of many Democrats is the suspicion that this advertising campaign is part of the Republican Party's courtship of Catholics, an important swing vote. In general, Andy Kohut, director of the Pew Research Center for the People and the Press, said Mr. Bush was "doing pretty well with white Catholics" lately.

It is all part of a politics that has changed radically since 1960. Among the nine Democrats on the Judiciary Committee accused of working against the interests of Catholic judicial nominees is, of course, John Kennedy's brother, Senator Edward M. Kennedy.

[From the Boston Globe, July 28, 2003]

#### PRYOR'S BAD-FAITH BACKERS

Congressional supporters of Alabama Attorney General William Pryor have descended to low blows in promoting his nomination to the federal bench, recently an independent committee launched an advertising blitz in Rhode Island and Maine, two states with swing Republican senators, claiming that Pryor's opponents are motivated by anti-Catholic bigotry. In the Senate committee hearing last week that advanced Pryor's nomination to the floor, Republicans repeated the allegation that Pryor's opponents believe "No Catholics need apply." This canard is designed to muddy the only real issue—Pryor's fitness to be a federal judge. When the full Senate considers Pryor's nomination, it must not allow itself to be swayed by such intimidation tactics.

Pryor, a Catholic, opposes abortion even for victims of rape or incest not just as a religious view but as a legal principle. He has called *Roe v. Wade*, the 1973 Supreme Court decision legalizing some abortions "an abomination." He also supported the Texas law banning sodomy that was recently overturned by the Supreme Court. Pryor's backers now claim that anyone questioning these views—views that, after all, conflict with existing federal law—is really targeting his religion. "Some in the U.S. Senate are attacking Bill Pryor for having deeply held Catholic beliefs," the ad reads.

In trying to cloak Pryor's views in protective religious garb, the Republicans have covered themselves in hypocrisy. First of all, Pryor holds one view at odds with Catholic teaching: He ardently supports the death penalty, which Pope John Paul declared in 1995 was permissible only in cases of "absolute necessity" to maintain civil order, occasions the pope said were so rare as to be "practically nonexistent." Pryor supports capital punishment so fiercely he even fought state legislation to replace Alabama's electric chair with lethal injection.

The ironies don't stop there. Conservative Republicans are forever railing against "identity politics," when minorities seek special assistance from the government. But when it comes to stacking the federal bench with right-wing judges, these same folks reach for the race or religion card with impunity. Opponents of nominee Miguel Estrada were accused of being anti-Hispanic, for example, and Clarence Thomas called opposition to his Supreme Court appointment "a high-tech lynching."

It was Senator Orrin Hatch, a Republican supporter, who first inserted Pryor's reli-

gion into the committee proceedings, not opponents. Pryor and his pious backers should take heed of John Kennedy's remarks in 1960, just before he became the nation's first Catholic president: "I believe in an America where the separation of church and state is absolute." That should apply to political tactics as well as matters of law. It was Senator Orrin Hatch, a Republican supporter, who first inserted Pryor's religion into the committee proceedings, not opponents. Pryor and his pious backer should take heed of the John Kennedy's remarks in 1970, just before he became the nation's first Catholic president: "I believe in an America where the separation of church and state is absolute." That should apply to political tactics as well as matters of law.

[From the Washington, Post, July 29, 2003]

#### BAD FAITH ADVERTISING

(By Richard Cohen)

When Lance Armstrong took a spill during the Tour de France, the cyclists chasing him slowed until he could right himself and resume the race. Lucky for him his competitors were not conservative Republicans. They would have run right up his back.

For an example of how these conservatives play the game, it is probably best to live in Maine or Rhode Island. In those states, an organization called the Committee for Justice has been running newspaper ads accusing Senate Democrats of using a religion test for judicial nominations. The nominee in question is William H. Pryor Jr. of Alabama. The ad says that if Pryor were not a strict Catholic, the Democrats would have no problem with him.

The newspaper ads show a picture of a door labeled "Judicial Chambers." A sign says "Catholics Need Not Apply." The ad goes on to say that Pryor is being opposed because of his "deeply held" Catholic beliefs, omitting the awkward fact that some of the Democrats who oppose him are also Catholic. The ad—not to put too fine a point on it—is a lie.

What's more, it's an insult to Catholics. It employs a historically redolent phrase, once so familiar to New England's Irish Americans, to sidestep the real problem with Pryor's nomination to a Federal appeals court—not his "deeply held" religious convictions but his deeply held determination to impose them on others. The ad's sponsors deeply hope that Catholics react viscerally. I pray that they don't.

Pryor's record is unequivocal. As Alabama's attorney general, he not only made statements deploring Supreme Court decisions upholding the separation of church and state—"it seems our government has lost God"—but repeatedly expressed his conviction that the God he had in mind was the Christian one. "The challenge of the next millennium will be to preserve the American experiment by restoring its Christian perspective," he said in 1997.

On another occasion—his investiture as Alabama's attorney general—he concluded his remarks by saying, "With trust in God, and his Son, Jesus Christ, we will continue the American experiment of liberty and law."

Although a state official, Pryor chose to intervene in federal court cases on the side of Roy Moore, now the state's chief justice. As a trial judge, Moore opened court with a prayer delivered by a Christian clergyman. He displayed the Ten Commandments in his courtroom and later, when elected the state's chief judge, had a monster statue of the Ten Commandments placed before the courthouse. Higher courts told him to remove it.

Whatever Pryor's religious convictions, they are no business of the Senate. But they

are its business when he seeks to impose those beliefs on others—as he has repeatedly tried to do. This is what the Democrats on the Judiciary Committee object to. Yet the ads, sponsored by a committee led by C. Boyden Gray, the first President Bush's White House counsel, simply label Pryor's opponents as religious bigots. Gray lent his name to this cause, and so did former president George H.W. Bush, who lent his house for a fundraiser. This is a GOP operation, pure and simple.

Gray ought to be ashamed. Instead of battling religious prejudice, he is using the fear of it to stack the courts with conservative Republicans. At the same time, he has allied himself with those who traffic in their own kind of religious bigotry—a smug disdain for the beliefs of others, including dissenting Christians, non-Christians and people who have no religion at all. Pryor clearly feels his religion is the better religion—the one the state should support, the one with which to open a court session or to proclaim in stone on the courthouse steps.

This is dangerous stuff. We are a pluralistic society. I happen to think some religions are just plain weird. I also happen to think that Pryor cannot for a second explain through reason—reason, not faith—why his convictions are better, truer or closer to God's than mine. Such matters cannot be debated. Historically, they have been settled at sword's point. If you believe that a cow is sacred, I cannot argue with you. The same holds for the virginal birth, or, for that matter, the burning bush. You believe what you believe. It is that simple.

Gray and by extension former president Bush ought to repudiate the ad. At its core, it is a demagogic lie. As for Pryor, by statements and actions, he has disqualified himself for the federal bench. I don't care if he's a good Catholic. I do care that he'd make a bad judge.

[From the Washington Post, July 26, 2003]

#### BEYOND THE PALE

"Some in the U.S. Senate are attacking Bill Pryor for having 'deeply held' Catholic beliefs to prevent him from becoming a federal judge. Don't they know the Constitution expressly prohibits religious tests for public office?"

So reads a wildly inappropriate ad run in newspapers in Maine and Rhode Island by a group called the Committee for Justice. Mr. Pryor is the elected attorney general of Alabama and President Bush's choice to sit on the U.S. Court of Appeals for the 11th Circuit. We oppose the nomination—which the Senate Judiciary Committee this week reported on a party-line vote—and hope it will be defeated on the Senate floor. Yet some of Mr. Pryor's supporters seem unwilling even to debate this troubling nomination on its merits. So they have hit on an alternative: branding his opponents as motivated by anti-Catholic bigotry.

The tactic is not entirely new. Republican senators—including committee Chairman Orrin Hatch (R-Utah) and Majority Leader Bill Frist (R-Tenn.)—have been complaining for some time of what Mr. Frist has called "a religious test on the confirmation of our judges." And Democrats during the last administration complained of bias in the Senate's treatment of women and minority nominees—as, indeed, Republicans now complain of bias in the treatment of appeals court nominee Miguel Estrada. But the new ad campaign ratchets up this gross kind of politics a notch, and the unwillingness of key Republican senators to distance themselves from it is striking.

The Committee for Justice was formed by former White House counsel C. Boyden Gray

to support Mr. Bush's nominees. Its ad ran in states with large numbers of Catholics and moderate Republican senators. It shows a picture of a courthouse door with a sign hung on it saying, "Catholics Need Not Apply." And it asks "Why are some in the U.S. Senate playing politics with religion?" It goes on to describe the nominee as "a loving father" and "a devout Catholic" and insists that "it's time for his political opponents to put his religion aside and give him an up or down vote."

But who exactly is "playing politics with religion" here? We are aware of no instance in which any Senate opponent of Mr. Pryor has raised his religion—nor did the Committee for Justice produce an example in response to our inquiries. The only people raising Mr. Pryor's Catholicism, rather, seem to be his supporters. Mr. Pryor's nomination is controversial for the simple reason that he has never shied away from taking strident positions on matters of national moment: His record is replete with the sort of unblinking partisanship and ideological fervor that properly should raise questions about potential service on the bench. We have criticized liberal groups for smearing President Bush's nominees. Smearing senators is no better.

[From the Huntsville Times, July 25, 2003]

#### SHAM ISSUE INVOKED TO HELP PRYOR

(By David Person)

Bogus. That's the only word that accurately describes this week's dust-up on the Senate Judicial Committee over the nomination of Alabama Attorney General Bill Pryor to the Federal Appeals Court. Sens. Jeff Sessions of Alabama and Orrin Hatch of Utah, both members of the committee, suggested that other committee members were opposed to Pryor because he is a Catholic.

This criticism seems part of a larger strategy. According to National Public Radio, some ads have been running in Maine and Rhode Island that suggest the same thing. And according to NPR, it was Hatch who introduced Pryor's faith into the proceedings by asking Pryor about his religious affiliation during the nominee's June hearing before the committee.

Methinks the GOP doth protest suspiciously and a bit too much. Four of the nine Democrats on the committee—ranking member Patrick Leahy of Vermont, Dick Durbin of Illinois, Edward Kennedy of Massachusetts, and Joe Biden of Delaware—are Catholics.

That probably disqualifies them from being against Pryor due to his faith, you think?

My guess: The GOP knew that Pryor's right-wing views on Roe vs. Wade, Alabama Chief Justice Roy Moore's Ten Commandments monument and homosexuality would be lightning rods. So instead of going the stealth route—which would have been difficult since Pryor, to his credit, has been upfront about his views—why not spin out the ruse that opposition to Pryor's politics is actually opposition to his faith?

As a political strategy, it's clever. But discerning observers will know that the baloney-salami quotient is high.

Being anti-religion and opposing the insertion of religion into the public life are as different as being a meat-eater and vegan. The two aren't even remotely the same.

Pryor, a smart, competent, compassionate and honest elected official, has made it no secret that he follows one of Alabama's most practiced political traditions: fusing faith and politics. Again, to his credit, he's above-board. He doesn't pretend to be anything other than what he is. That's why many Democrats and liberals have supported him

here and even in his quest to be appointed to the federal bench.

But history shows that when religious dogma collides with public policy and practice, someone will be hurt. (Please turn in your history books to the chapters on the Crusades, the Reformation, and Salem witch trials, and the conflicts between Protestants and Catholics in Ireland, Muslims and Christians on the African continent, and fundamentalist Islamic regimes and their opposition.)

In fact, isn't the United States currently resisting attempts by fundamentalist Muslims to assume control in a reconstituted Iraq?

Pryor's fellow Catholics on the Senate Judiciary Committee oppose how he applies his religion, not the religion itself.

This shouldn't be hard to grasp. Religions, like political parties, often have competing ideological wings.

Some of my Catholic friends in town also oppose Pryor. They mince no words as they spit out their criticism of him.

Not one had anything to do with his faith. The committee, by the way, has voted along party lines to send Pryor's nomination to the full Senate for a vote. By the end of the summer, we may know if Pryor will get the appointment or if it will be derailed by a Democratic filibuster.

If the latter, I guess Leahy, Durbin and any others who will have opposed him will be called bigots by GOP extremists. But this will be a false charge. The only thing they will be guilty of is disagreeing in matters of faith.

Last time I checked, the Constitution gives them that freedom.

[From the Palm Beach Post, July 27, 2003]

#### NO DEFENSE FOR PRYOR'S CONVICTIONS

(By Randy Schultz)

As part of their ongoing effort to stack the federal courts, Republicans first accused Democrats of being anti-Hispanic. Now, they're accusing Democrats of being anti-Catholic. Here's the funnier part: Many of the Democrats in question are Catholics.

When it comes to judicial nominations, the Supreme Court obviously gets most of the attention. The highest court is the last word on issues that prompt fund-raising letters. In June, for example, the justices reaffirmed that race can be a consideration in college admissions and rules that sexual orientation can't be a consideration when states make laws about sex between consenting adults.

In fact, the highest court hears only about 100 cases each year. The 13 federal appeals courts, however, rule on nearly 30,000 cases in 2001. In practical terms, appeals court judges set most of the law. Also, they are the Supreme Court's farm teams. Seven of the nine justices—William Rehnquist and Sandra Day O'Connor are the exceptions—were promoted from the federal appeals courts.

So President Bush wants to put the youngest, most conservative people he can on those courts. The latest is 41-year-old William Pryor, and you can tell how unqualified he is by the lengths to which Republicans are going.

#### TO FLORIDA FROM ALABAMA? NO WAY

Mr. Pryor is Alabama's attorney general. He believes that the 1973 Supreme Court did greater harm by legalizing abortion than the 1857 court did by legalizing slavery. President Bush wants to put him on the 11th U.S. Circuit Court of Appeals, which hears cases from Florida, Georgia and Alabama. To maintain geographical balance, this vacancy on the 12-member court goes to Alabama.

But to William Pryor? No way. There's evidence that he solicited political donations



from companies that do business with his office. There's evidence that he wasn't straight about that when he testified before the judiciary committee last month.

So Democrats have objected, as they have when Mr. Bush has tried to put similarly ultra-orthodox conservatives such as Miguel Estrada and Priscilla Owen onto other appeals courts. When Democrats blocked Mr. Estrada's nomination, Republicans whooped that Democrats don't like Hispanics. Except that Republicans blocked Hispanics whom President Clinton had picked for the appellate bench.

Last week, the GOP kicked up the hysteria another notch. A group run by the first President Bush's chief counsel ran ads saying that Democrats want to keep Catholics such as Mr. Pryor off the court. The ads show a courthouse with a sign reading, "Catholics need not apply." Boston merchants used the same language in the 19th century, saying "Irish" instead of "Catholics." Sen. Jeff Sessions, R-Ala., parroted the ad Wednesday. "Are we saying that good Catholics can't apply?"

#### NON-CATHOLICS LECTURING CATHOLICS

How hilarious that must have sounded to the four out of nine Democratic committee members who are Catholic. As National Public Radio reported, one of them, Sen. Dick Durbin, D-Ill., first said, "This is disgusting." Then he remarked, "I want to express my gratitude to my colleagues who are members of the Church of Christ and the Methodist Church and the Church of Jesus Christ of Latter-Day Saints for explaining Catholic doctrine today."

Sen. Orrin Hatch, the Mormon in question, yelped that Democrats were opposed to any Catholic with "deeply held" beliefs or any nominee who opposed abortion. Sen. Durbin noted that the Catholic Church opposes the death penalty while Mr. Pryor supports it. Also, a Bush nominee who called abortion "evil" got a seat on another appeals court with Democratic support.

For all the Republican fussing, President Bush got more of his nominees through a Democratic Senate than President Clinton got through a Republican Senate. Nearly half of Mr. Clinton's appeals court nominees got no vote in the congressional term when they were nominated.

Now that Democrats are going all-out to block Mr. Bush's worst nominees, Republicans can't take it. They rant, and they pout. They can't argue the facts, and they can't argue the law. So they are trying to argue ethnicity and religion. The problem isn't their Democratic opponents. It's their president's nominees.

[From the Atlanta Journal-Constitution, July 25, 2003]

#### BRING ON THE FILIBUSTER AGAINST ULTRA-CONSERVATIVE

Southerners who care about the separation of church and state should hope Alabama Attorney General William Pryor never sits on the 11th Circuit appellate bench, which rules on appeals in cases from Alabama, Georgia and Florida. The ultraconservative Pryor, who preaches that Christianity should be more a part of American public life, was approved by the Senate Judiciary Committee Wednesday in a 10-9 vote along partisan lines.

If ever there were a nomination that merits a filibuster, it is this one. Not just because Pryor holds views far out of the mainstream, but also because of the unprecedented twisting of the Constitution's advise and consent process by President Bush's corporate pals. Misleading ads, funded by the deceitfully named "Committee for Justice," have already run in Maine and Rhode Island

to pressure moderate Republican senators into voting for Pryor's confirmation on the Senate floor. The despicable ads show a courthouse door with a sign across it saying "No Catholics allowed."

Sen. RICHARD DURBIN (D-Ill.), who is Catholic and opposes the Pryor nomination, is infuriated that he and others were being accused of discriminating against Pryor for his religion, a false charge. Sen. PATRICK LEAHY, the ranking Democrat on Senate Judiciary, said religion is irrelevant to consideration of a judicial candidate. "Just as we're supposed to be colorblind, we must be religion-blind," he said.

The committee funding the ads is headed by the White House counsel to former President Bush, C. Boyden Gray, and includes lawyers and lobbyists who represent huge tobacco, insurance and investment banking corporations with cases pending before the federal courts. Because it would be unseemly to campaign for judges who favor corporations, they have cleverly aligned with the Ava Maria List, a Catholic pro-life political action committee.

Pryor's record is sufficient to disqualify him from any judgeship. In addition to his extreme views on abortion (he opposes it for rape victims), he favors prayer in public school classrooms and the Ten Commandments in the Alabama courthouse. He was also the only attorney general in the nation to argue that the Violence Against Women Act is unconstitutional.

Georgians ought to let U.S. Sens. SAXBY CHAMBLISS and ZELL MILLER know their opposition to Pryor. He is simply unfit for the decision-making essential to a fair, independent and nonpartisan judiciary.

[From the Pittsburgh Post-Gazette, July 25, 2003]

#### PRYOR RESTRAINT: SPECTER SHOULD HAVE BALKED AT AN EXTREME NOMINEE

With Pennsylvania's Sen. Arlen Specter trying to have it both ways, the Senate Judiciary Committee on Wednesday sent to the floor an unacceptably extreme nominee to a federal appeals court—but not before some silly sniping over whether the nominee, Alabama Attorney General William Pryor Jr., has been the victim of anti-Catholicism.

The anti-Catholic canard, raised by a conservative pressure group and echoed by some Republican senators, would be laughable if anti-Catholicism weren't an ugly part of American history. Fortunately, excluding people from public life because they are "papists" is largely a thing of the past. Mr. Pryor himself is proof of that: Alabama, where he serves as the chief law enforcement officer, was historically home to Bible Belt anti-Catholicism.

But if some of Mr. Pryor's supporters are to be believed, opponents of his nomination to the 11th U.S. Circuit Court of Appeals are anti-Catholic bigots. A pro-Pryor group aired television ads showing a locked courthouse with a sign reading "No Catholics Need Apply." On the committee, Republican Sen. Jeff Sessions referred to his fellow Alabamian as "this solid Catholic individual" and offered a convoluted argument for the bigotry charge.

According to Sen. Sessions, Mr. Pryor's veils on abortion—he called the Roe vs. Wade ruling an "abomination"—are rooted in his church's teaching. Therefore senators who oppose Mr. Pryor because of his denunciation of Roe vs. Wade are really subjecting him to an unconstitutional "religious test" for office.

Well, not really. The concern isn't that any Catholic judge will repudiate Roe vs. Wade—Justice Anthony Kennedy, a Catholic, voted to reaffirm Roe in a 1992 ruling—but

that Mr. Pryor's vehement denunciations of Roe as bad law indicate that he is a man on a mission, despite his protestations that he would apply the law judiciously. The problem with Mr. Pryor isn't his religion; it's the fact that he is what we have called a "walking stereotype" of right-wing legal extremism.

(We wonder, by the way, if Sen. Sessions would rush to the defense of a liberal Catholic nominee who, citing pronouncements by the pope and America's Catholic bishops, denounced Supreme Court decisions upholding the constitutionality of capital punishment.)

Some Democrats on the Judiciary Committee who are themselves Roman Catholics objected to the Republicans' decision to play the Catholic card. Sen. Richard Durbin facetiously thanked Sen. Sessions, a Methodist, and Judiciary Committee Chairman Orrin Hatch, a Mormon, for elucidating his own church's doctrine for him.

The "anti-Catholic" discussion was an unseemly sideshow to the committee's decision, on partisan lines, to approve the Pryor nomination and send it to the floor. To his discredit, Sen. Specter, who faces a conservative challenger in next year's Republican primary, joined in that vote—while suggesting that he might vote against the nomination on the floor. That straddle is the opposite of a profile in courage. If Sen. Specter thinks Mr. Pryor unsuitable for the court, he should have voted no.

Mr. LEAHY. Mr. President, this has begun because the President renominated a divisive and controversial activist to another circuit court. That is regrettable. The Republican leadership in the Senate is forcing a confrontation at this time that is neither necessary nor constructive. I am sorry the White House has chosen to make these matters into partisan political fights rather than to work with Senate Democrats to fill judicial vacancies with qualified consensus nominees. There are thousands of qualified Republicans who would be endorsed by both Republicans and Democrats in this Senate. That would allow the American people to say we are not politicizing the courts. There would be a sigh of relief.

But we do not see that. We have a historic low level of cooperation from the White House. In fact, in the 29 years I have been here, through both Republican and Democratic administrations, I have never seen such a low level of cooperation.

Notwithstanding that, we have already confirmed 140 of President Bush's judicial nominees, including some of the most divisive and controversial sent by any President, Republican or Democrat. In fact, this year the Senate debated and voted on the nominations of three circuit court nominees who received far more than 40 negative votes.

If it were simply a case of filibustering judges, they would not have been confirmed. For example, Jeffrey Sutton's nomination to the Sixth Circuit received the fewest number of favorable votes of any confirmation in almost 20 years. He got only 52 votes.

When you have somebody who gets through the Senate with only 52 votes, you have to ask what kind of a signal that sends to the people of that circuit. Does it send a signal to the people of that circuit that we sent somebody

there who is representing all the people within that circuit, Republicans, Democrats, independents? Or are we sending somebody who is intended to be a partisan ideologue representing only one party on a court that is supposed to be independent of party politics?

In fact, the administration is seeking to force through the confirmation process more and more extreme nominees in its effort to pack the courts and tilt them sharply in a narrow ideological direction. Instead of uniting the American people, too many of this administration's nominations divide the American people and divide the Senate. How much greater service could be done to the country and to the courts if the President sought to unite us and not divide us?

In fact, the unprecedented level of assertiveness by the administration has led to more and more confrontation with the Senate. As Republicans in the Senate abandon any effort to provide a check or balance in the process, it falls to Senate Democrats to seek to protect the independence of the Federal courts and the rights of all Americans.

Our Democratic leadership in the Senate worked hard earlier this year to correct some of the problems that arose from some of the earlier actions of the Judiciary Committee. But, once again, just last week, Republican members of the Judiciary Committee decided to override the rights of the minority and violate longstanding committee precedent and actually violated—imagine this, the Judiciary Committee violating its own rules, the Judiciary Committee of all committees, the committee that should set the standards for everybody else—violated these rules and precedents in order to rush to judgment even more quickly this President's most controversial nominees.

It was a sad day in committee, but it was a devastating day in the Senate. Yet my friends on the other side of the aisle persist in their obstinate and single-minded crusade to pack the Federal bench with right-wing ideologues, regardless of what rules, what longstanding practices, what personal assurances, what relationships, or what Senators' words are broken or ruined in the process.

Republican partisans fail to recognize that Democrats worked diligently and fairly to consider President Bush's nominees, including nominees to the same court as that to which Justice Owen has been nominated. Two months ago, on May 1, the Senate confirmed Judge Edward Prado to the U.S. Court of Appeals for the Fifth Circuit. Senate Democrats cleared the nomination of Judge Edward Prado to the United States Court of Appeals for the Fifth Circuit without delay.

The irony is, we cleared Judge Prado immediately, but he was held up by one anonymous hold—and it came from the Republican side. At the same time the White House is excoriating Democrats

for holding up their nominees, we had a nominee of President Bush to the Fifth Circuit and for a month, while we are trying to have him confirmed, he is being held up by an anonymous hold, not even a hold somebody is willing to state for the record but an anonymous hold on the Republican side. Talk about rope-a-dope—if we clear the nominees, they hold them up and we get the blame. Interesting.

All Democratic Senators serving on the Judiciary Committee voted to report his nomination favorably. All Democratic Senators indicated they were prepared to proceed with the nomination. When Republicans finally lifted their hold on Judge Prado, he was confirmed unanimously.

When Democrats assumed Senate leadership in the summer of 2001, there had not been a Fifth Circuit nominee confirmed for 7 years. There had been a lot of nominees, but they were blocked by the Republicans. Indeed, Republicans blocked consideration of three qualified nominees to the Fifth Circuit in the years 1995 to 2001, along with 60 other judicial nominees of President Clinton.

In 2001, Democrats worked hard on the nomination of Judge Edith Brown Clement, a conservative judge nominated by President Bush, and with the efforts of Democrats she was confirmed. Thus, unlike the years 1995 to 2001 when Republicans were preventing action on every single one of President Clinton's nominees to the Fifth Circuit, Democrats have already cooperated in the confirmation of two of President Bush's nominees to that circuit, including one while we were in the majority.

In spite of the treatment by the Republicans of so many moderate nominees in the previous administration, we proceeded last July to the hearing on Justice Owen and we proceed to debate and vote on all three of President Bush's Fifth Circuit nominees, despite the treatment of President Clinton's nominees by the Republican majority.

The nomination of Priscilla Owen was rejected by the Senate Judiciary Committee. She was rejected as a judicial activist with extreme views. That is where it should have ended. Never, ever in our Nation's history has a President renominated somebody to the same judicial vacancy after rejection by the Judiciary Committee—never. In this case, of course, they did, to create a political point.

We tried very hard to work with the administration to fill judicial vacancies, in great contrast to the fate of many of President Clinton's nominees from Texas who were blocked and delayed by Republicans, including Enrique Moreno, nominated to the Fifth Circuit Court of Appeals, who never got a hearing or a vote; Judge Jorge Rangel, nominated to the Fifth Circuit Court of Appeals, who never got a hearing and never got a vote; and Judge Hilda Tagle, whose nomination was delayed nearly 2 years for no good reason.

All we are saying is let's have judges who are there for all the people. It is one thing for Republicans to control the White House. The President was inaugurated. He has that right. Republicans control both Houses. But the courts are supposed to be nonpartisan.

We have worked hard to try to balance the need to have enough judges to handle cases with the imperative that they be fair judges for all people, poor or rich, Republican or Democrat, of any race or religion. This has been especially difficult because a number of this President's judicial nominees have records that do not demonstrate that they will be fair and impartial.

The White House's allies have bombarded us with all sorts of misleading information to try to bully us into rolling over and rubber-stamping these nominees. They are playing politics with the judicial branch and using it for partisan political purposes. That is most regrettable. Their charges of prejudice are simply appalling and should be rejected by all Americans as the crass and base partisan politics that they are.

The plain fact is that this Senate has confirmed more judges at a faster pace than in any of the past six and one half years under Republican control with a Democratic President. With Democrat cooperation, this Senate has doubled the number of judicial confirmations and more than doubled the number of circuit court confirmations of President Bush's nominees compared to how the Republican-controlled Senate treated President Clinton's. The Senate has confirmed 40 judges already this year. That exceeds the number of judges during all of 2000, 1999, and 1997, and is more than twice as many judges as were confirmed during the entire 1996 session. It is more than the average annual confirmations for the 6½ years the Republican majority controlled the pace of confirmations from 1995 through the first half of 2001. Thus, in the first 7 months of this year, we have already exceeded the year totals for 4 of the 6 years the Republican majority controlled the pace of President Clinton's judicial nominees and the Republican majority's yearly average. One hundred and forty lifetime confirmations in 2 years is better than in any 3-year period from 1995 though 2000, when a Republican majority controlled the fate of President Clinton's judicial nominations.

We have already this year confirmed 10 judges to the Courts of Appeals. This is more than were confirmed in all of 4 of the past 6 years when the Republicans were in the majority—in 1996, 1997, 1999, and 2000. And in the 2 other years, the 10th circuit nominee was not confirmed until much later in the year. We have now confirmed 27 circuit court judges nominated by President Bush. This is more circuit court judges confirmed at this point in his presidency than for his father, President Clinton, or President Reagan at the same point. We have made tremendous progress and

I want to thank, in particular, the Democratic members of the Judiciary Committee for their hard work in this regard. These achievements have not been easy. The Senate is making some progress. More has been achieved than Republicans are willing to acknowledge.

So, as we repeat our vote on this nomination today and Republicans continue their drumbeat of unfair political recriminations, we should all acknowledge how far we have come from the 110 vacancies that Democrats inherited from the Republican majority in the summer of 2001. In addition to more confirmations and fewer vacancies, we have more Federal judges serving than ever before.

Under a Republican majority, circuit vacancies more than doubled and overall vacancies increased dramatically. Despite the fact that close to 90 additional vacancies have arisen since the summer of 2001, we have worked hard and cut those vacancies from 110 to less than 60. Earlier this year, until new judgeships were authorized, the vacancy rate on the Federal courts was at the lowest number in 13 years. Even with the 15 new judgeships effective this month, the vacancy rate is now well-below where Senator HATCH inherited it, and well-below the rate Senator HATCH called "full-employment." There are more full-time Federal judges on the bench today than at any time in U.S. history, in the last 214 years. And, if you add in the senior judges, there are more than 1,000 Federal judges sitting on the Federal courts.

With a modicum of cooperation from the other end of Pennsylvania Avenue and the other side of the aisle we could achieve so much more. As it is, we have worked hard to repair the damage to the confirmation process and achieved significant results. Republicans seem intent on inflicting more damage, to the process, to the Senate, and to the independence of the Federal courts.

Unfortunately, the nomination of Justice Owen is a nomination that should never have been remade. It was rejected by the Judiciary Committee last year after a fair hearing and extensive and thoughtful substantive consideration. The White House would rather play politics with judicial nominations than solve problems. This unprecedented renomination of a person voted down by the Senate Judiciary Committee is proof of that. That Senate Republicans are continuing to press this matter knowing the outcome of this vote shows what a charade this has become.

This nomination is extreme. This nominee has shown herself to be a judicial activist and an extremist even on the very conservative Texas Supreme Court where her conservative colleagues have criticized her judging as activist again and again.

The nomination process starts with the President. It is high time for the White House to stop the partisanship

and campaign rhetoric and work with us to ensure the independence and impartiality of the Federal judiciary so that the American people, all of the American people, can go into every Federal courtroom across the country and know that they will receive a fair hearing and justice under the law. It is time for Senate Republicans to stand up for the Senate's role as a check on the unfettered power of the President to pack the courts and for fairness.

## CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order and pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion.

The clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

## CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 86, the nomination of Priscilla R. Owen of Texas to be United States Circuit Judge for the Fifth Circuit.

Bill Frist, Orrin Hatch, John Cornyn, Michael B. Enzi, Jim Talent, Judd Gregg, Jeff Sessions, Ben Nighthorse Campbell, Craig Thomas, Chuck Grassley, Chuck Hagel, Thad Cochran, Richard Shelby, Wayne Allard, Elizabeth Dole, Conrad Burns, and Larry E. Craig.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived. The question is, Is it the sense of the Senate that debate on the nomination of Priscilla Richmond Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM) the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "nay."

The yeas and nays resulted—yeas 53, nays 43, as follows:

[Rollcall Vote No. 308 Ex.]

## YEAS—53

Alexander	Crapo	Lott
Allard	DeWine	Lugar
Allen	Dole	McCain
Bennett	Domenici	McConnell
Bond	Ensign	Miller
Brownback	Enzi	Murkowski
Bunning	Fitzgerald	Nelson (NE)
Burns	Frist	Nickles
Campbell	Graham (SC)	Roberts
Chafee	Grassley	Santorum
Chambliss	Gregg	Sessions
Cochran	Hagel	Shelby
Coleman	Hatch	Smith
Collins	Hutchison	Snowe
Cornyn	Inhofe	Strom
Craig	Kyl	Specter

Stevens	Talent	Voivovich
Sununu	Thomas	Warner

## NAYS—43

Akaka	Dodd	Levin
Baucus	Dorgan	Lincoln
Bayh	Durbin	Mikulski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Boxer	Harkin	Pryor
Breaux	Hollings	Reed
Byrd	Inouye	Reid
Cantwell	Jeffords	Rockefeller
Carper	Johnson	Sarbanes
Clinton	Kennedy	Schumer
Conrad	Kohl	Stabenow
Corzine	Landrieu	Wyden
Daschle	Lautenberg	
Dayton	Leahy	

## NOT VOTING—4

Edwards	Kerry
Graham (FL)	Lieberman

The PRESIDING OFFICER. On this vote, the yeas are 53, the nays are 43. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

## RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:15 p.m. having arrived, the Senate stands in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:52 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOIVOVICH).

ENERGY POLICY ACT OF 2003—  
Continued

Mr. CRAIG. Mr. President, 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. FEINGOLD. 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. FEINGOLD. Mr. President, I ask unanimous consent to speak as if in morning business.

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

The Senator from Wisconsin is recognized.

Mr. FEINGOLD. I thank the Chair.

(The remarks of Mr. FEINGOLD pertaining to the introduction of S. 1480 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. FEINGOLD. Mr. President, 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 the order for the quorum call be rescinded.

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

Mr. REID. Mr. President, there is an order floating around here on the floor that sets forth about 7 hours of debate on these two trade agreements, the