Mr. LEAHY. Mr. President, if the Senator will yield further for a question, the Senator has stated he realizes Mr. Griffith practiced law illegally, first in one jurisdiction for 3 or 4 years, then in a second jurisdiction for 3 or 4 years. Neither is the President’s choice for going on the DC Circuit.

I am sure the Senator is aware that during the last administration, several nominees for that same seat were blocked by pocket filibusters by the Republicans—one was Elana Kagan, who now sits on the court of the Harvard Law School. Another was Allen Snyder, a former Supreme Court law clerk to Chief Justice Rehnquist.

I voted against Mr. Griffith because I felt on the second highest court of the land it is not a good example to have a person, whatever his other qualifications might be, who was so cavalier as to practice law illegally in two different jurisdictions.

I ask the Senator, is the Senator aware deeply wrong with the distinguished Chairman of the committee, Senator SPECTER, to allow the hearing to practice law illegally in two different jurisdictions?

I ask the Senator, is the Senator aware of the practice of law, primarily, and while, I felt concern that Chief Justice Rehnquist’s former law clerk and Dean Kagan were blocked by the Republican pocket filibuster. I ask the leader if he under the Constitution will certainly cause no objection nor do I know of any Democrat who would object to moving forward and having a real debate and the up-or-down vote that was denied to a Democratic President’s nominees? Does the Senator understand that not withstanding the fact that I would vote against that nominee, I would support him bringing this nomination forward?

I suspect he would get a majority of the votes in the Senate.

Mr. LEAHY. I am posing a question. Mr. REID. I am happy to yield to my friend for a question.

Mr. LEAHY. I would ask if the Senator would yield for the purpose of a question. When we talk about votes, 40 is the threshold on filibusters. Of course, the Senate sets the rules. The Senate could say: You require 95 votes. Or it could say: You require 2 votes. There is nothing magic about 50, 40, 60, or anything else. But be that as it may, I would ask, through the Chair, whether the Senator from Nevada is aware of numerous instances in which Democrats have proceeded to debate and vote on the President’s nominees against which there were more than 40 negative votes—I can think of three significant judicial nominations where there were 41 Democratic votes against allowing them to go forward: Timothy Tymkovich was confirmed to the Eighth Circuit although 41 Senators voted against him; Jeffrey Sutton was confirmed to the Sixth Circuit although 41 Senators voted against him; J. Leon Holmes was confirmed to the district court in Arkansas although 46 Senators voted against him. In addition, Senate Democrats proceeded to debate and vote on the controversial nomination of former Attorney General Ashcroft, who was confirmed although 42 Senators voted against his confirmation; Ted Olson, who was confirmed to be Solicitor General although 47 Senators voted against his confirmation; Victor Wolski, who was confirmed to the Court of Claims although 43 Senators voted against his confirmation.

Most recently, a number of us voted for cloture on the nomination of Stephen Johnson to head the EPA. He was confirmed with only 61 votes in support. I was one of those who voted for cloture so we could go forward with the President’s nomination.

Was the Senator from Nevada aware of all those?

Mr. REID. Mr. President, the answer is yes. As I said earlier, we know the difference between opposing nominees and blocking nominees. I believe this is the time to put all of this behind us. Eight years of President Clinton, four years of President Bush, let’s move forward. That is what this proposal is all about. Let’s move forward. After we finish that, let’s see where we are and see what else we can do. I think it is time to move forward. Again, I have no problem distinguishing between what happened to the 69 Clinton would-be judges who never showed up, never saw the light of day, and all those we have dealt with in the normal process in the 4 years President Bush has been President.

We have been very selective in those we have opposed. We think we are right on every one of them. Hindsight will tell.

This whole dispute is over 5 judges, 5 out of 218. It seems that people of goodwill can agree, as my distinguished friend from Nebraska Senator HAGEL indicated this weekend on television, when he said: We should be able to work this out. We should. The world is watching us. We should not be changing the rules by breaking the rules. We should not do that. I hope the distinguished Senator from Tennessee, the majority leader, my friend, will accept the gesture of goodwill we have made. It is a step in the right direction. I hope we can let bygones be bygones and move forward.

TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 3, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3) to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

Pending:

Inhofe amendment No. 567, to provide a complete substitute.

Salazar amendment No. 581 (to amendment No. 567), to modify the percentage of apportioned funds that may be used to address needs relating to off-highway vehicles.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. CORNYN. Mr. President, I ask unanimous consent to speak as in morning business.

Mr. LEAHY. Reserving the right to object—I will not object—I ask unanimous consent to follow the Senator from Texas as in morning business.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. REID. No.

Mr. LEAHY. Most recently, a number of us voted for cloture on the nomination of Stephen Johnson to head the EPA. He was confirmed with only 61 votes in support. I was one of those who voted for cloture so we could go forward with the President’s nomination.

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Mr. CORNYN. Mr. President, I think maybe 15 minutes.

Mr. REID. Just so we have a general idea. I ask unanimous consent then that the normal 10-minute rule be waived for the distinguished Senator from Texas and that he have up to 15 minutes to speak as in morning business.

Mr. LEAHY. And that I then be recognized for the same amount of time. The ACTING PRESIDENT pro tempore. That is correct.

Mr. REID. We have no morning business today.

The ACTING PRESIDENT pro tempore. That is correct.

Mr. REID. I amend my request to ask unanimous consent that the Senator from Texas be recognized for 15 minutes and the Senator from Vermont be recognized for 15 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Texas.

NOMINATION OF PRISCILLA OWEN

Mr. CORNYN. Mr. President, 4 years ago, the President nominated Texas Supreme Court Justice Priscilla Owen to serve on the United States Court of Appeals for the Fifth Circuit. Justice Owen is an exceptional jurist, a devoted public servant, and an extraordinary Texan. Yet after 4 years, she still awaits an up-or-down vote on the floor of the Senate. Four years today and we are still waiting for a vote.

Although a bipartisan majority of the Senate stands ready to confirm this outstanding nominee, a partisan minority obstructs the process and refuses to allow that vote on her nomination. What is more, the partisan minority may be the first time in history, that she must be supported by a supermajority of 60 Senators rather than the constitutional standard and the Senate tradition of majority vote.

I know Justice Owen personally, having served with her on the Texas Supreme Court for 3 years. She is a distinguished jurist and public servant who has excelled at virtually every level of law and our legal system. She takes her responsibilities seriously and carries them out diligently and earnestly.

Ms. Ploeger continued:

Justice Owen is not just intellectually capable and legally talented; she is also a fine human being with a big heart. The depth of her humanity and compassion is revealed through her significant free legal work and community activity.

Priscilla Owen enjoys significant bipartisan support. Three Democratic judges on the Texas Supreme Court and a bipartisan group of 15 legislators of the State Bar of Texas support her nomination.

The Houston Chronicle, in September of 2000, called Owen “clearly academically gifted,” stating that she “has the proper balance of judicial experience, solid legal scholarship and real-world know-how to continue to be an asset on the high court.

The Dallas Morning News wrote in support of Owen on September 24, 2002:

She has the brainpower, the experience and temperament to serve ably on an appellate court.

The Washington Post wrote on July 24, 2002:

She should be confirmed. Justice Owen is indisputably well qualified.

Lori Ploeger, Justice Owen’s former law clerk, wrote in a letter to Senator LEAHY on June 27, 2002:

During my time with her, I developed a deep and abiding respect for her abilities, her work ethic, and, most importantly, her character. Justice Owen is a woman of integrity who has profoundly shaped the rule of law and our legal system. She takes her responsibilities seriously and carries them out diligently and earnestly.

Mr. Ploeger continued:

Justice Owen is a role model for me and for women attorneys in Texas.

Mary O’Reilly, a lifetime member of the NAACP and a Democrat, in a letter to Senator DIANNE FEINSTEIN, dated August 14, 2002, wrote:

I met Justice Owen in January of 1998, while working with her on the Texas Supreme Court Gender Neutral Task Force. I worked with Justice Owen on Family Law 2000, an important state-wide effort initiated in part by Justice Owen. In the almost eight years I have known Justice Owen, she has always been refined, approachable, even-tempered and intellectually honest.

Justice Owen is not just intellectually capable and legally talented; she is also a fine human being with a big heart. The depth of her humanity and compassion is revealed through her significant free legal work and community activity.

Priscilla Owen has spent much of her life devoting time and energy in service of her community. She has worked to ensure that all citizens are provided access to justice as the court’s representative on the Texas Supreme Court Mental Health Task Force and to statewide committees, as well as in her successful efforts to prompt the Texas legislature to provide millions of dollars per year in legal services for the poor. She was instrumental in organizing a group of lawyers who spoke of known as Family Law 2000 which seeks to find ways to educate parents about the effect divorce can have on children and seeks to lessen the negative impacts it has on them. She also teaches Sunday school at St. Barnabas Episcopal Mission in Austin, TX, where she is an active member.

It is plain from these and so many other examples that Justice Owen is a fine person and a distinguished leader in the legal community. One would think that after 4 long years, she would be afforded the simple justice of an up-or-down vote. I remain optimistic. While I know the Democratic leader who has refused to consider the nomination of one of its most talented members being filibustered, I don’t see why that same principle would not apply to all of the justices, and we would just say that any nominee of any President, whether they be Republican or Democrat, who has a bipartisan majority stands ready to confirm them, should receive that up-or-down vote on the Senate floor. I remain hopeful the current 4-year violation of long-term Senate tradition, the imposition of this new supermajority requirement, will be laid aside in the interest of proceeding with the people’s business, a job my colleagues and I were elected to faithfully execute.

Formerly 200 years ago, it was a job that did indeed exemplify the work ethic, and, most importantly, her character. Justice Owen is a woman of integrity who has profoundly shaped the rule of law and our legal system. She takes her responsibilities seriously and carries them out diligently and earnestly.

Mr. REID. I amend my request to ask unanimous consent that the Senator from Texas be recognized for 15 minutes. The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LEAHY. And that I then be recognized for 15 minutes.

The ACTING PRESIDENT pro tempore. Whether it is somebody I opposed or support, and fight against any filibuster on a judge, the bipartisan minority obstructs the process and refuses to allow that vote on her nomination. That I would object to any filibuster on a judge, the bipartisan minority obstructs the process and refuses to allow that vote on her nomination. That I would object to any filibuster on a judge.

The filibuster is one of the justices currently being filibustered, I don’t see why that same principle would not apply to all of the justices, and we would just say that any nominee of any President, whether they be Republican or Democrat, who has a bipartisan majority stands ready to confirm them, should receive that up-or-down vote on the Senate floor.

I have stated over and over again on the floor that I would refuse to put an anonymous hold on any judge; that I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported; that I felt the Senate should just do its duty.

I could not agree more with these comments made by Senator LEAHY and Senator KENNEDY. But today we are doing a disservice to this fine nominee in our failure to afford her that up-or-down vote that they advocated a few short years ago. The new requirement this partisan minority is now imposing, that nominees won’t be confirmed without support of 60 Senators, is, by its own admission, wholly unprecedented in Senate history.

The reason for this is simple: The case for opposing this fine nominee is so weak that using a double standard and changing the rules is the only way they can defeat her nomination. What is more, they know it, too.

Before her nomination got caught up in this partisan fight, the ranking Democrat on the Judiciary Committee
predicted that Justice Owen would be swiftly confirmed. On the day of the announcement of the first group of nominees, 4 years ago, including Owen, he said he was “encouraged” and that “I know them well enough that I would assume they would all go right through.”

Notwithstanding the change of attitude by the partisan minority, this gridlock is not really about Priscilla Owen. It is not about Priscilla Owen the person. Indeed, just a few weeks ago, the Democratic leader announced that Senate Democrats would give Justice Owen an up-or-down vote, albeit only if other nominees were defeated or withdrawn or simply thrown overboard.

Obviously, this debate is not about principle. It is all about politics. It is shameful. Any fair examination of Justice Owen’s record demonstrates how unconvincing the critics’ arguments are.

For example, Justice Owen is accused of ruling against injured workers, against those seeking relief from employment discrimination, and other sympathetic parties on some occasions. Never mind, however, that good judges such as Judge Owen do their best to follow the law regardless of which party will win and which party will lose. That many of her criticized rulings were unanimous or near unanimous decisions of a nine-member Texas Supreme Court. Never mind that many of these rulings simply followed Federal precedent authorized and agreed to by appointees of Presidents Carter and Clinton or by other Federal judges unanimously conﬁrmed by the Senate. Never mind that judges often disagree, especially when the law is ambiguous and requires careful and difficult interpretation.

The Democratic leader raised the frequent objection and that is criticized Justice Owen for attempting to interpret and enforce a popular Texas law requiring parental notification before a minor can obtain an abortion. Her opponents alleged that in one parental notification case, then-Justice Alberto Gonzales accused her of judicial activism. That charge is untrue. I read myself the opinions again this weekend and the charge is simply untrue. Gonzales did not accuse Owen of judicial activism. Not once did he say Justice Owen was guilty of judicial activism. To the contrary, he never mentioned, nor did he mention her opinion in the opinion the critics cite.

Furthermore, our current Attorney General has since testified under oath that he never accused Owen of any such thing. What is more, the author of the parental notification law in question supports Justice Owen, as does the pro-choice Democratic law professor who was appointed to the Texas Supreme Court’s advisory committee to implement that law. In other words, Owen simply did “what good appellate judges do every day. If this is activism, then any judicial interpretation of a statute’s terms is judicial activism.”

Mr. President, I ask unanimous consent this letter be printed in the Record at the close of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CORNYN. The American people know a controversial ruling when they see one, be it the redefinition of a traditional institution such as marriage, the expulsion of the Pledge of Allegiance, and other expressions of faith from the public square, the elimination of the “three strikes and you’re out” law, and other penalties for convicted criminals, or the forced removal of military recruiters from college campuses. Justice Owen’s rulings fall nowhere near this standard or category. There is a whole world of difference between struggling to interpret the ambiguous expressions of a legislature and refusing to obey a legislature’s directives altogether.

It is clear Justice Owen deserves the broad bipartisan and enthusiastic support she obviously enjoys across the political spectrum. It is equally clear her opposition comes only from a narrow band on the far left fringes of that political spectrum. The opposite were true.

Conberprised of 200 years of consistent Senate and constitutional tradition dating back to our Founders, there would be no question about her ability to be confirmed. She would be sitting on the Fifth Circuit Court of Appeals.

Legal scholars across the political spectrum have long concluded what we in this body know instinctively, and that is to change the rules of conﬁrmation as a partisan minority has done badly politicizes the judiciary and hands over control of the judiciary to special interest groups. One Professor Michael Gerhardt, who advises Senate Democrats on judicial conﬁrmation, and others have written that a supermajority requirement for conﬁrming judges would be “problematic, because it creates a presumption against conﬁrmation, shifts the balance of power to the Senate, and enhances the power of special interests.”

DC Circuit Judge Harry Edwards, a respected Carter appointee, has written that the Constitution forbids the Senate from imposing a supermajority rule for conﬁrmation. After all, otherwise, “the Senate, acting unilaterally, could thereby incapacitate the President at the expense of the President” and “essentially take over the appointment process from the President.” Judge Edwards thus concluded that “the framers never intended for the Congress to have such uncontrolled authority to impose supermajority voting requirements that fundamentally change the nature of our democratic process.”

Mr. President, I think I have about 5 more minutes of my remarks. I ask unanimous consent that I be given an additional 5 minutes and the Senator from Vermont be given the same.

Mr. LEAHY. I have no objection.
we to do when nominees are attacked for doing their jobs, when they are attacked for following precedents adopted and agreed to by Presidents Carter and Clinton, and when they are singled out for rulings agreed to by a unanimous, or near unanimous court? What are we to do when Senate and constitutional traditions are abandoned for the first time in more than two centuries, when both sides once agreed nominees should never be blocked by filibuster and then one side denies the existence of that very agreement, when their interpretation of Senate tradition changes based on who is in the Oval Office?

It is time to fix the broken judicial confirmation process. It is time to end the holdups, fix the problem and move on. And it is time to end the wasteful and unnecessary delay in the process of selecting judges that hurts our justice system and harms all Americans.

Mr. President, I thank the Chair. I thank my colleague from Vermont and yield the floor.

EXHIBIT 1
SOUTHERN METHODIST UNIVERSITY,
Dallas, TX, May 3, 2005.

Re Priscilla Owen

Senator JOHN CORNYN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR CORNYN: I write in support of the nomination of Priscilla Owen to the United States Court of Appeals for the Fifth Circuit. I write as a law professor who specializes in constitutional law. I write as a pro-choice Texan, who is a political independent and has supported many Democratic candidates. And I write as a citizen who does not want the abortion issue to so dominate the political debate that good and worthy judicial candidates are caught in its cross hairs, no matter where they stand on the issue.

Justice Owen deserves to be appointed to the Fifth Circuit. She is a very able jurist in every way that should matter. She is intelligent, measured, and approaches her work with integrity and energy. She is not a judicial activist. She does not legislate from the bench. She does not invent the law. Nothing new is said with a heavy heart and who, therefore, will be disappointed when a minor is involved who is constitutionally compromised by the arbitrary application of parental notification statutes.

But a judge has other important human values to make hard decisions when we give them the laws in order to help judges when issuing decisions for which she is being criticized had to make hard decisions when we give them the law. My involvement in this process made it clear to me that in drafting the parental notification statute, the Texas Legislature wanted a very strict parental notification law that would permit only infrequent judicial bypass of this notification requirement. The Fifth Circuit’s Advisory Committee that drafted the statute’s legislative history is not useful because it provides help to all sides of the debate on parental notification. Seven years had passed before the Texas Legislature recognized under unanimous consent that members of the Texas Legislature wanted to protect the minor from this harm. As a pro-choice woman, I applaud the seriousness of thisuction was a product of compromise with a confusing legislative history.

In her decisions in these cases, Justice Owen asserts that the Texas Legislature wanted the Texas statute to support parental rights. She is not wrong in making these assertions. There is legislative history to support her. Personally, I agree with the majority’s decision. With that understanding Justice Owen’s position and legal reasoning. It is based on sound and clear principles of statutory construction. Her decisions do not demonstrate judicial activism. She did what good appellate judges do every day. She looked at the language of the statute, the legislative history, and then decided how to interpret the statute to obtain what she believed to be the legislative intent.

If this is activism, then any judicial interpretation of a statute’s terms is judicial activism. Justice Owen did not invent the legislative history she used to reach her conclusion, just as the majority did not invent their legislative history. We ask our judges to make hard decisions when we give them statutes to interpret that are not well drafted. We cannot fault any of these judges who take on this task so long as they do their work with integrity and energy. Justice Owen did exactly this.

Second, we must be mindful that the decisions for which she is being criticized had to make hard decisions when we give them the law. She did exactly this.

The ACTING PRESIDENT pro tem, Mr. WYDEN addressed the Chair.

The ACTING PRESIDENT pro tem. The Senator from Vermont is recognized under unanimous consent.

Mr. LEAHY. Mr. President, I understand the Senator from Oregon wishes to make a unanimous consent request.

Mr. WYDEN. Mr. President, I ask unanimous consent that the notifications business after the distinguished Senator from Vermont has completed his remarks.

The ACTING PRESIDENT pro tem. Is there objection?

Mr. CORNYN. Reserving the right to object, I would ask the Senator to consider the following.

Mr. Wyden. I will modify my request, Mr. President, that after the distinguished Senator from Vermont has completed his remarks, I would be next for 20 minutes, and the Senator from Mississippi, Mr. Lott, would come after me.

The ACTING PRESIDENT pro tem. Without objection, it is so ordered. The Senator from Vermont.
Mr. LEAHY. Mr. President, could the Senate always be so agreeable in moving things along, we in the country would be better off.

I listened to this discussion of nuclear option and judges and all that. It may have been the nuclear option; it may have been something else. There is nothing in the Constitution that says 50 votes or 40 votes or 60 votes or 80 votes. It is up to the rules of the Senate. It is when the rules are either reviewed or ignored that you have a problem. As I mentioned earlier, when President Clinton was in office, the Republicans used the rules to say if one Republican, one objected, then you would not have a vote on the nominee. 61 of President Clinton's nominees for judgeships were not allowed to move because one Republican objected. Actually a couple hundred of his executive nominations, by the same token, because one Republican objected. So there they are requiring 100 votes to confirm somebody.

So you wonder when you are talking about the surplus of the budget deficit. The last President in history, from George Washington on, has ever gotten all judges through the Senate—why there is so much attention on this. I was thinking about it and I thought, you know, you'll all begin about 4 years ago when we started talking about this. Four years ago things were a lot different in this country. Let's look at the differences.

In the last 4 years—and maybe this is why we would rather talk about judges instead of talking about what's going on—in the last 4 years under President Bush, unemployment has gone up 26 percent. During this same time, this last 4 years, the price of gas has gone up 57 percent. You can hold hands with all the Saudi princes you want, but it has still gone up. The number of uninsured in this country has gone up 10 percent. The budget deficit has gone up $350 billion. Actually, President Clinton inherited the largest surplus of any President in the history of the United States. President Clinton had followed the Reagan and Bush administrations, which tripled the national debt and created huge deficits. President Clinton's administration not only balanced the budget, but created a surplus, and started paying down the debt. President Bush inherited the largest surplus of any President in our whole history and he has turned it into the largest deficit.

The trade surplus has gone up 57 percent. The number of uninsured has gone up 69 percent. I mention these things that have gone up under the Bush Presidency. Obviously they don't want to talk about it. It means the Saudis and the Chinese, Japanese, Koreans and others who are holding our debt thus influence our foreign policy.

We will not just be holding hands with Saudi princes, we will probably be holding hands with everybody from all these other countries, too, so they do not call our IOUs.

During those 4 years, unemployment has gone up by 26 percent, the price of gas has gone up by 57 percent, the number of uninsured Americans has gone up by 10 percent, the budget deficit has increased by $350 billion, and the trade deficit has gone up by 69 percent. But there is one indicator that has shown improvement: the number of judicial vacancies has dropped 48 percent.

So why are we not getting enough judges? During those 4 years of President Bush's Presidency, the number of judicial vacancies has gone way down because we confirmed so many judges. In fact, 4 years ago, the number of Federal court vacancies was nearly 10 percent, and now it is around 5 percent. Mr. President, 95 percent of the Federal judiciary is filled. Most people would consider 95 percent a pretty good record.

I remember talking with President Bush 4 years ago. I said: You might get 90, 95 percent of your judges through. He thought that was pretty good. He wished he had a record like that when he owned a baseball team.

President Clinton went to the White House in a gesture of cooperation to hear the President announce his first judicial nominations. Some criticized me for going, but I said I wanted to help. The President, during the aftermath of the 9/11 attacks when the airlines were shut down. We had a nominee volunteer to drive from Mississippi to Washington to be included in a hearing I was holding. We had the appelate court for the South and the midwest, the trial court, and all the rest, and we kept on going, and in 17 months we confirmed 100 of President Bush's judges.

The Republicans took nearly twice as long when they were in control to confirm exactly the same number of nominees for President Bush. They say we are the ones holding things up? They ought to be ashamed of themselves. Maybe they ought to work as hard as we did to get them through. In fact, when Congress adjourned last December, there were only 27 vacancies out of 875 Federal judgeships, the lowest number in over a generation. In President Bush's first term, 204 judges were confirmed—more than confirmed in either of President Clinton's two terms during the time when he had a Republican Senate. It was the term of the President's father, more than in Ronald Reagan's first term when he had a Republican Senate. We confirmed a couple more nominees before we broke a week ago, and the distinguished Democratic leader has suggested we bring up another one of President Bush's nominees for a vote.

We have seen the talking points that have come out from the Republicans. They say we are holding up Thomas Gores. The record is that I have—we have objected to him. After all, he did practice law illegally for 4 years in one jurisdiction and practiced law illegally in another jurisdiction, and the President wants him on the second highest court in the land.

They say: No, we cannot do that. They will break all the rules possible and make sure that we get rid of checks and balances.

This effort by the Republicans also, of course, belies what has happened. Back 4 years ago in June, with the change in the Senate, I became chairman of the Senate Judiciary Committee. Even though it was already June and the Republicans had been in charge of the Senate since the beginning of the year, there had not been a single judicial nomination hearing held on President Bush's nominations. I inherited what seemed to be an impossibly large number of 110 vacancies. There were so many because, of course, there had been pocket filibusters of over 60 of President Clinton's nominations. But we worked hard, and in 17 months we were able to whittle that number down to around 10 vacancies.

Incidentally, it is interesting that with the Republican majority, look how the vacancies skyrocketed in the judiciary. The Democrats came in and they shot down. Now, of course, they are heading back up under Republican leadership.

It takes a lot of work to lower the number of vacancies. I held hearings during recess periods and confirmed President Bush's nominees. Senator Daschle and I received a deadly anthrax attack, so deadly that people who touched the outside of the envelopes of letters addressed to us that we were supposed to open were killed. They were murdered, and we still held the hearings. We had to get the nominees to Washington, and in the aftermath of the 9/11 attacks when the airlines were shut down. We had a nominee volunteer to drive from Mississippi to Washington to be included in a hearing I was holding. We had the appelate court for the South and the midwest, the trial court, and all the rest, and we kept on going, and in 17 months we confirmed 100 of President Bush's judges.

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be confirmed. If he is confirmed, it shows what the standards are of this administration.

We can look at all the people turned down on the other side, but we never heard this complaint. We are prepared to make Mr. Mr. Mr. Mr. Mr. Mr. Aaron, a former clerk to Chief Justice Rehnquist, women, men, Hispanics, African Americans, and many others.

He warned about the Senate Majority Leader and I wrote to the President of-fering to help with the more than two dozen current judicial vacancies for which the President has not yet sent a nomination to the Senate. We urged him to disavow the “nuclear option” in favor of working with us to identify consensus judicial candidates who could be confirmed easily and who would be fair, impartial judges that would preserve the independence of the judiciary. The number of current judicial vacancies without a nominee has since risen to 29. It is now May, we are more than a third of the way through the year, and the President has presented only one new judicial nomination to the Senate all year. Meanwhile almost a month has passed and Senator Reid and I have yet to receive the courtesy of a reply to our offer to help and to work together. Unilateralism has become their standard operating practice, and abuse of power has become increasingly common. Indeed, to this day I have yet to meet, talk to or even receive a telephone call from the President.

The go-it-alone conduct of this Administration makes clear that this President has little use of the Senate’s role in the constitutional process of selecting federal judges.

Under pressure from the White House, over the last 2 years, the former Republican chairman of the Judiciary Committee led Senate Republicans in breaking with longstanding precedent and Senate tradition. With the Senate and the White House under control of the President, he has witnessed Committee rule after Com-
warned against the dangers of such factionalism, undermining the structural separation of powers. Republicans in the Senate have utterly failed to defend this institution’s role as a check on the President in the area of nominations. It surely weakens our constitutional system and hampers our ability to maintain a level of bipartisanship that are the hallmark of the Senate. It has acted to ignore precedents and reinterpret longstanding rules to its advantage. This practice of might makes right is wrong.

Now the White House’s hand-picked majority leader seems intent on removing the one Senate protection left for the minority, the protection of debate in accordance with the long-standing tradition of the Senate and its Standing Rules. In order to remove the last remaining vestige of protection for the minority, the Republican majority is poised to break the Senate Rules and end the filibuster with the enactment of majority rules. They seem intent on doing this to force through the Senate this President’s most controversial and divisive judicial nominees.

As the Reverend Martin Luther King wrote in his famous Letter from a Birmingham Jail: “Let us consider a more concrete example of just and unjust laws. An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not bind them. This is different from the law and custom or practice they do not like or they find inconvenient.

Some of these interpretations are so contrary to well-established understandings that it is like we have fallen down the rabbit hole in “Alice in Wonderland.” I am reminded that the impious Queen of Hearts rebuked Alice for having insufficient imagination to believe contradictory things, saying that some days she had believed six impossible things before breakfast. I have seen the most impossible things happen in the Judiciary Committee during the last few years, things impossible to square with the past practices of Committee and the history of the Senate. Our Committee is entrusted by the Senate to help determine whether judicial nominees will follow the law. It is unfortunate that the Committee that judges the judges has not followed its own rules but has bent or broken them to achieve a predetermined result.

Under our Constitution, the Senate has an important role in the selection of our judiciary. The brilliant design of our Founders established that the first two branches of government would work together to equip the third branch to serve as an independent arbiter of justice. As columnist George Will once wrote:

A proper constitution distributes power among legislative, executive and judicial institutions so that the will of the majority can be measured, expressed in policy and, for the protection of minorities, somewhat limited. The structure of our Constitution and our own Senate rules of self-governance are designed to protect minority rights and to encourage consensus. Despite the razor-thin margin of recent elections, the majority party is not acting in a measured way but in complete disregard for the traditions of bipartisanship that are the hallmark of the Senate. It has acted to ignore precedents and reinterpret longstanding rules to its advantage. This practice of might makes right is wrong.

How does the record of judicial confirmations for President George W. Bush compare to administrations before his? Very well. In President Bush’s first term, the 294 judges confirmed were more than were confirmed in either of President Clinton two terms, more than during the term of this President’s father, and more than in Ronald Reagan’s first term when he was being assisted by a Republican majority.

In contrast, under President Clinton, four of seven circuit court judges confirmed so far this year, the total number of confirmations of this President’s judicial nominees has risen to 208. It would rise further and faster yet, if the White House would only work with us to identify put forth consensus nominees for the 29 current vacancies without a nominee. The President has sent only one new nominee to the Senate so far this year, and it is already May. If the President wanted to pick judges instead of fights, he could work with us rather than divide us.

And what happened to those 11 nominees the President started us off with 4 years ago? Considering the strong ideological bent of this group, the President has been quite successful. One has been withdrawn from consideration and 8 of the remaining 10 have been confirmed, 80 percent. The confirmations of Clinton circuit court nominees during his second term, from 1997–2000, while a Republican Senate majority was in control, were marginally successful. Over those 4 years 35 of 51 Circuit Court nominees were confirmed, 69 percent.

If we looked at 1999 and 2000, the 106th Congress, the numbers are even worse. Fewer than half of the President’s circuit court nominees were confirmed, 15 of 34. Outstanding and qualified nominees were never allowed a hearing, a committee vote or Senate consideration of any kind. These nominees include the current dean of the Harvard Law School, a former attorney general from Iowa, a former clerk to Chief Justice Rehnquist and many others—women, men, Hispanics, African Americans, a wide variety of qualified nominees.

So on this anniversary, let us understand that 8 of the 10 nominees we will hear complaints about have been confirmed.

With respect to the remaining two, I should note that in the years that Republicans held the Senate majority and Senator HATCH was the committee chair, Judge Terry Boyle was one of...
the very few nominees he chose not to consider. Thus, Judge Boyle is still before the Judiciary Committee. Senator SPECTER held a hearing on that controversial nomination and the committee is still receiving copies of Judge Boyle’s unpublished opinions for its review.

The remaining nominee is one whose opinions were criticized by Alberto Gonzales when he served on the Texas Supreme Court. Indeed, many of her positions were too conservative and activist for her conservative Republican colleagues on the Texas Supreme Court. When I chaired the committee in 2002, in another gesture of good will, I proceeded on the controversial nominations in spite of the recent mistreatment of President Clinton’s nominees. One of those hearings was for Priscilla Olsen.

I was not required to schedule that hearing. I could have followed the example of my immediate predecessor and denied her consideration before the committee. It would have been a much easier path than the alternative I chose. Instead, I proceeded. Senator FEINSTEIN conducted the hearing in a fair manner. After the hearing, I then did something else that my predecessor as Chair so often did not: I proceeded to have the committee consider the nomination of its merits even though I knew I would not support it. The committee debated the nomination fairly and openly. Objections to her confirmation, based on her record as a Justice on the Texas Supreme Court, were aired and debated. A vote was taken and instead of hiding behind anonymous holds or hidden blue slips, Senators put themselves on the record. The result was that the Olsen nomination was rejected by a majority of the committee and not recommended to the Senate.

Since that time much of what has happened has been unprecedented. Despite the rejection of the nomination by the committee, the President submitted the nomination the next year. I do not believe that had ever been done before in our history. Then, on a party-line vote, Republicans forced the nomination to the floor. It was debated extensively and the Senate withheld its consent. After a series of cloture votes, cloture was not agreed upon in accordance with the rules of the Senate. Nonetheless, the President took further unprecedented action in, again, recourse to the Senate. That nomination is now pending, again, on the Senate Executive Calendar.

By any measure the President’s first nominees were treated fairly. Judge Park, Judge Shedd, Judge Clement, Judge Cook, Judge Sutton, Judge McConnell, Judge Gregory and Judge Roberts are each serving lifetime appointments on important circuit courts. The first slate of nominees has now been accorded hearings. All but Judge Boyle have been considered by the Judiciary Committee. All but one of those has been confirmed.

This is no basis on which to break the rules of the Senate. This is not justification to end the Senate’s role as a check and balance on the Executive. This is not reason for the majority to take the drastic and irreversible step of ending the role of the Senate as a check on the Executive. But that is precisely what the Constitution intends the Senate to provide. Supporters of an all-powerful Executive have gone so far as to seek to inject an unconstitutional religious test into the debate and to characterize those who oppose the most extreme of the President’s nominees as "against people of faith" and to call for mass impeachments of judges and other "bad actors." This is not an unprecedented action in, again, respect to the Senate.

Pat Robertson says that he believes that federal judges are "a more serious threat to America than Al Qaeda and the Taliban." He is called "more serious than a few bearded terrorists who fly into buildings" and "the worst threat America has faced in 400 years—worse than Nazi Germany, Japan and the Civil War." This is the sort of inflammatory rhetoric that is purporting the way to the "nuclear option." It is wrong, it is destructive and it is short-sighted.

Chief Justice Rehnquist is right to refer to the federal judiciary as the crown jewel of our system of government. It is an essential check on the law and balance, a critical source of protection of the rights of all Americans, including our religious freedoms. In "A Man For All Seasons" Sir Thomas More speaks about the rule of law and the need for its protections. When his family confronts him and demands that he break the law to get at the Devil, he replies: "What would you do? Cut a great road through the heart of the Devil's country? And when the last law was down, and the Devil turned "round on you, where would you hide, Roger, the laws all being flat?"

This country is planted thick with laws, from coast to coast. Man's laws, not God's! And if you cut them down ... . do you really think you could stand upright in the winds that would blow then? "Yes, I'd give the Devil benefit of law, for my own safety's sake!"

Our Federal judges are not the Devil and are not the service of the Devil. Democratic Senators are not the Devil and are seeking to uphold the Senate as a check on the most extreme actions of the Executive. I pray that Republican Senators will think about that and put aside the protections that our constitutional checks and balances provide. I trust that they will honor the protections of the minority that make this institution what it is. I hope that they will show the courage to protect the Senate and the minority that I was not required to schedule that hearing. I could have followed the example of my immediate predecessor and denied her consideration before the committee. It would have been a much easier path than the alternative I chose. Instead, I proceeded. Senator FEINSTEIN conducted the hearing in a fair manner. After the hearing, I then did something else that my predecessor as Chair so often did not: I proceeded to have the committee consider the nomination of its merits even though I knew I would not support it. The committee debated the nomination fairly and openly. Objections to her confirmation, based on her record as a Justice on the Texas Supreme Court, were aired and debated. A vote was taken and instead of hiding behind anonymous holds or hidden blue slips, Senators put themselves on the record. The result was that the Olsen nomination was rejected by a majority of the committee and not recommended to the Senate.

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harder to have a bipartisan break-through to producing a new energy policy. If ever there was a red, white and blue issue for our country, it is getting a new bipartisan energy policy that would shake us free of our dependence on foreign oil.

As I held open community meetings last week at home in Pendleton, Irrigon, Monroe, Fossil, Tillamook, and throughout my home State, there were no rallies and citizens calling for the use of a nuclear option. There were an awful lot of people asking: What are you going to do about health care costs that are going through the stratosphere? And I talked to them about the efforts that I and Senator Hatch have put in place.

They wanted to know about what is going to be done to deal with crumbling roads. I see our friend from Oklahoma who would like to pull together a bipartisan bill to deal with our country’s infrastructure.

So I have been talking about health care, creating jobs and a fresh energy policy. They know the only way the Senate is going to achieve any of that is through bipartisanship.

I also see the distinguished chairman of the Judiciary Committee, my friend Senator Specter. Today the Senate has a choice. Tomorrow or the next day there may not be a choice. I hope my colleagues will choose the conventional option we have been using in Oregon that Senator Hatfield and Senator Packwood assisted me with and that Senator Gordon Smith has assisted me with. I hope we will choose what I call the Oregon conventional option and seek a renewed bipartisan commitment to resolving this matter.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Mississippi is to be recognized.

Mr. LOTT. Mr. President, parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state his inquiry.

Mr. LOTT. I have been in the cloakroom waiting for the opportunity to speak on the highway bill and to speak on behalf of the commerce safety portion of that highway bill. Are we now going to turn to the highway legislation?

The ACTING PRESIDENT pro tempore. We are on the highway legislation. We were under a unanimous consent request, with the Senator recognized to speak next.

Mr. LOTT. Mr. President, I am pleased this afternoon to talk about title VII of this very important Surface Transportation Improvement Act of 2005. I remind my colleagues that the highway and transportation legislation, TEA–21, that we passed back in 1998, effectively expired September of 2003–not 2004 but 2003. We are now on the sixth extension of this very important legislation. This week we need to complete action on this very important bill.

It is about building decent highways and bridges and transit authorities, but it is about more than that. If we do not have decent infrastructure, if we do not have decent highways and bridges, if we do not have transit capability, if we do not have broadband, we are not going to have economic development. Most importantly, and that is why I am here as the chairman of the Surface Transportation and Merchant Maritime Subcommittee, safety provisions are not improved and extended. We should do something about this.

The safety portion of the legislation was reported out of the Commerce Committee, with the support of Chairman Ted Stevens and the ranking Democrat, who is referred to in our committee as cochairman, Senator Inouye. It is bipartisan, and I believe it is very strong legislation.

I care about the safety portion of it, and maybe I care about the safety provisions more than some people because I have had a family tragedy myself that has affected my thinking on this. My father was killed in an automobile accident, without a seatbelt, involving alcohol, on a narrow, two-lane, hilly road. This section of this legislation would actually give additional incentives for States to do more to stop driving while under the influence of alcohol. It would give incentives for people to use seatbelts. It would improve our roads and bridges and our transit needs. This is very personal with me, and I care a awful lot about it.

Before I get to that section of the legislation, I want to talk about the broader perspective. When we look at history and at infrastructure and the ancient Roman Empire, many would say it was their advanced infrastructure and efficient highways that allowed them to build the empire that they had. That highway system was critical to the defense and protection of their empire. It allowed rapid troop movement. It facilitated trade. It enabled ease of movement for diplomats and couriers. It provided rapid expansion of the Roman sphere of influence. It afforded military protection from invaders and facilitated communication between distant parts of the empire.

We do not want to replicate everything we saw in the Roman Empire, but it also is interesting to note that that empire eventually went away, and some people say it was partially attributable to the fact that they quit building the infrastructure; they let the country start decaying and the infrastructure go into disrepair. I think that is what we are beginning to experience in America.

One of the reasons why we have been able to continue to grow, do well, and move around this country is because of our infrastructure: highways, bridges, railroads and ports and harbors. The whole package is critical. It is what enables America to have our great system. Whether people are from Maine, Mississippi, California, Virginia, Florida or Washington, we have access to virtually all the same products, and it is because of our infrastructure.

On September 11 and in the days immediately following, we saw that our followed were about security to movement of goods and our people and that we need to have a balanced and complete infrastructure package. So it is time that we act. Our interstate system in America is 50 years old. Some States have been doing their part, but a lot of the States are struggling with their budgets and a lot of the highway departments have been living on these extensions. So we have lost an opportunity. We have only seized them.

Thirty-two percent of our major roads are in poor or mediocre condition, almost a third. Almost 30 percent of our Nation’s bridges are structurally deficient and obsolete. Quite frankly, I am afraid where we are headed. If we do not do something about this, there will be a loss of the jobs that would have been generated, and it would contribute to the slowing down of our economy.

TEA–21 did an awful lot for our country, but it is time that we move to the next step. The U.S. Department of Transportation has said that for every $1 billion in Federal transportation infrastructure investment, 47,500 jobs would be created. So just think about that when looking at what is involved in this bill. We are talking about many thousands of jobs being created. We need to have this 5-year extension. In the general sense, I urge my colleagues to work together in a bipartisan way and work with the administration to get this legislation completed before this next extension expires.

The portion of the bill that I am directly responsible for is from the Commerce Committee, and it is the safety provisions that would be in the reauthorization. I will describe what is in this Safety Improvement Act of 2005. It is a comprehensive reauthorization of many of the Department of Transportation safety programs that we passed in 1998. It includes trucking and bus safety, highway and vehicle safety and hazardous material safety. The bill also includes provisions to protect consumers from fraud in the moving industry and to reauthorize the boat safety and sport fishing programs. It is designed to improve the safety of all of our constituents and its enactment will save lives and injuries.

Just last month, the Department of Transportation released preliminary traffic fatality data for 2004. The good news is the fatality rate on our highways is down slightly, but that data should not be misinterpreted. The programs authorized in this bill are authorized to do that.

Through the leadership of Chairman Stevens, we have met with all of the interested parties in business, labor, safety advocates, as well as representatives. We made sure everybody had some input in the drafting of this legislation.
We still have to make note of the almost 18,000, or 56 percent, of the people who died last year in highway accidents were not wearing a seatbelt. The quickest and most effective way of increasing safety is to get people to wear their seatbelts. So we have included a program in the highway bill for States to receive grants to pass primary seatbelt enforcement laws. Some people would like to turn this around and say if States do not pass the seatbelt acts, we are going to take money away from them. That sort of approach has been tried in the past. It did not work, and it will not work now.

I believe in States such as mine, with an incentive to pass these primary seatbelt laws, there is a good chance we would comply. But if we are told we are going to be punished if we do not, the odds are we will not. So we have drafted this in a way that I believe every State will strive to have significant increases in their safety numbers and a reduction in the fatalities on their highways. So we will be supporting this provision in our part of the highway bill.

The data also shows that alcohol is a factor in almost 40 percent of all crashes. Funds are included for States to enforce drunk driving laws and include incentives to toughen their laws. These safety programs should have been authorized almost 2 years ago, but due to disputes we have not been able to improve our safety provisions, improve our safety incentives, and therefore some of the culpability for the amount and severity of accidents and the deaths should be placed at our doorstep. We need to work with the States to ensure these programs make sense and they are carried out effectively. We should have funding levels that reflect the commitment that we are making to highways and to safety on our highways.

I hope the Senate will pass this legislation this week and that Congress will pass the final conference report this month so the States do not miss the summer’s construction season.

I again thank my colleagues on both sides of the aisle for working with us to develop the safety provisions that will be included in the substitute package I believe the chairman will offer.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, we are over time and need to move on to the highway bill. We are preparing right now to offer a substitute amendment. We are prepared to do that, but Senator SPECTER had said he wanted to speak for a period of time as in morning business. He has been planning to do that, and I will yield 15 minutes to him for that purpose.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BOND. Mr. President, will the chairman yield? Mr. Chairman, we are ready. We are open to do business. There have been a great many discussions about the highway title. We have people ready to take those amendments who are ready to discuss those with our colleagues on the other side of the aisle to see which ones we can accept. Is it my understanding that we only have 15 days to complete work on this very complex bill. Is it only the EPW section but commerce, finance, and the other sections? Is that correct?

Mr. INHOFE. That is my understanding. You remained here with me last week inviting Members to bring their amendments down. We said we would be getting close. Who knows, we may even get a cloture vote, and then at the last minute hysteria will set in. Now is the time to bring them down and consider them.

Let me comment on the great work the chairman of the transportation subcommittee, Senator BOND, has done. We need to get to it now. This is probably very likely the most important single bill of this session that is going to—and I have to move very quickly if we are to finish this bill this week and stay on schedule to try to avoid another extension.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Pennsylvania is recognized for 15 minutes.

Mr. SPECTER. Mr. President, I thank the Chair for the recognition, but 15 minutes—if I could have the attention of the chairman of the committee, my colleague, Senator INHOFE?

Fifteen minutes is insufficient. I had been seeking time since last week and had been assured by the floor staff that I could have 45 minutes starting at 3:10. I understand the importance of the highway bill. I am here to talk about the constitutional or nuclear option in my capacity as chairman of the Judiciary Committee. I know the highway bill is important, and I have been pressing to bring it up, but the matter I wanted to speak on is perhaps of greater importance.

I had asked for 45 minutes and thought I might do it in 25, but it was reduced in a negotiating session with Senator INHOFE to 15, and I cannot do it in 15. So I will speak another time. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, in a few minutes it is our intention to bring up the substitute amendment, to have the pending amendment withdrawn and bring up the substitute amendment. We are not quite ready for that. We are waiting for a few things to be done in a few minutes. I think it will be worked out, but the Senate’s amendment is going to do a lot of things to offset some of the problems people had with the bill. When that time comes, we want a chance to go over it in detail and make this a reality.

The amendment is going to bring the total size of the bill up to $251 billion. This includes $199 billion for highways, $5.8 billion for highway safety, and $46.6 billion for mass transit. This amendment would add $6.8 billion in additional receipts to the highway account of the highway trust fund, all of which are offset in the amendment—also, thanks to the good work of Senator GRASSLEY and Senator BAUCUS of the Finance Committee. This would raise it to 91 percent in 2006 through 2008. This increases the growth ceilings so more States get to 92 percent more quickly.

In other words, we are to go to 91 percent immediately, and 92 percent in 2006, and then eventually all States will be at 92 percent in this period of time.

The donee States, the ones that are actually getting back an amount that is in excess of the amount that is paid in, would have a guaranteed minimum growth rate being increased from 10 percent to 15 percent every year. The average growth rate increases from just under 25 percent to almost 31 percent.

The amendment also includes firewalls to ensure the highway trust fund dollars are spent on this Nation’s transportation needs. There has been a problem over a long period of time. People have been very offended by the fact that these trust funds have been raided and somehow these moneys are diverted to other causes. Senator BOND and I, and I think the vast majority, and certainly 76 percent of this Senate, agree that we should have firewalls; we should protect that money and make sure it goes to highway spending.

Finally, the mass transit funding increased by $2.3 billion to $46.6 billion. This represents a dramatic increase in the transit share of the bill from 18.18 percent in 2003 under TEA-21 to 23 percent, which is what it was when we passed it 7 years ago—to 18.48 percent. The safety programs have increased, which Senator LOTT has talked about in the purview of his committee. They have increased their funding over levels in S. 272, last year’s bill, which was funded at $318 billion.

Last year, during consideration of the $318 billion Transportation bill, the Senate voted 76 to 21 in favor of funding the highway bill at $255 billion, in mass transit at $46.6 billion. This vote was even more robust than the funding victory for adequate funding levels for transportation, especially considering this bill is funded at a lower level.
I remind my colleagues of the vote on the Talent amendment to this budget resolution which received over 80 votes from Senators who voted to support it.

This amendment gave flexibility to increase the funding for the bill as long as it was offset, which is exactly what Senator Grassley and Barton have done in their portion of this amendment.

This is the amendment we do want to bring up. We are not quite ready to seek unanimous consent to bring it up.

I ask Senator BOND, the subcommittee chairman, if he seeks recognition now. Let me have him recognized. If he wants to yield to Senator INOUYE, he can do that.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Mr. President, I was going to do what the chairman of the full committee said, but I see our friend from Hawaii is here. We have already had a discussion of the commerce title. I am happy to defer to my colleague from Hawaii.

The ACTING PRESIDENT pro tempore. The Senator from Hawaii.

Mr. INOUYE. Mr. President, let me begin by thanking Surface Transportation Safety Improvement Act of 2005 on April 14 and reported this measure without amendment.

Our committee considered the Surface Transportation Safety Improvement Act of 2005 on April 14 and reported this measure without amendment.

Our national highway transportation network is a tremendous national asset and a first-class system. It allows us the freedom to travel and fosters economic growth. The benefits of mobility that our highways provide, however, come with a staggering cost of injury, property destruction, and death.

Recent safety trends indicate that the entities operating a vehicle on this network are still disturbingly high. According to the National Highway Traffic Safety Administration, highway fatalities and injuries increased from 2,643 in 2003 to 2,800 in 2004. Large truck crash fatalities increased at 3.7 percent from 4,986 in 2003 to 5,169 in 2004.

To put these numbers in context, the United States suffered more than 58,000 fatalities during the entire Vietnam War. We are now losing nearly 43,000 Americans on our highways every year.

As we consider ways to improve the infrastructure and operation of our highways, we must do more to increase the safety of cars and trucks, and their drivers.

The Commerce Committee’s section of H.R. 3 incorporates many of the administration’s recommendations, and those of safety advocates, regarding auto, the truck safety, as well as the safety of hazardous materials transportation. The bill also strengthens consumer protections for those who entrust their belongings to a moving company, and provides more robust, predictable funding for boating safety and spreadsheet transportation system for more than a year. I am hopeful that these disagreements can be resolved so that we may finalize this important safety bill this session. I support more resources for all of our surface transportation programs and believe that we should seek funding closer to the levels that a majority of this chamber supported last year.

If we do provide additional funding, a pro-rata share should be allocated to our Nation’s transportation safety programs.

The Commerce Committee’s titles of the highway bill have received broad support by incorporating many initiatives proposed by the administration, industry, and safety advocates. However, we are always searching for ways to improve the bill and to reduce the risk of death and injuries on our Nation’s highways.

I encourage those who might have amendments to offer to the Commerce Committee’s titles to come forward so that we may work to incorporate these requests, to the extent possible.

I urge my fellow Senators to support the significant safety provisions contained within our section. The safety of the traveling public depends on it.

Mr. President, I request unanimous consent to have printed in the Record a document which summarizes each of the bill’s key provisions.

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

**SUMMARY OF COMMERCE COMMITTEE TITLES**

**TITLE I—HIGHWAY SAFETY**

Title I of our truck and bus safety. The Federal Motor Carrier Safety Administration (FMCSA) is the federal agency responsible for truck safety through a strong enforcement of regulations targeting high-risk motor carriers and commercial motor vehicle drivers. While much progress has been made in motor carrier safety, accidents involving large trucks remain a significant safety and economic concern. To improve truck safety, our bill:

- Reauthorizes the Motor Carrier Safety Assistance Program (MCASP) for the years 2006 through 2009 at an average annual funding level of $200 million, more than double the Transportation Equity Act (TEA 21) level.

- Requires commercial motor vehicles to have been listed on the registry of qualified medical examiners. Medical examiners who perform the exams are required to be listed on the registry.

- Requires the FMCSA to issue a rule by 2008 that requires new safety standards for automobiles sold in the United States to have new stability control technologies that reduce the likelihood of rollover crashes, better door locks to reduce the likelihood of passenger ejection in a rollover crash, and stronger roofs to protect occupants in a rollover crash.

- Requires the FMCSA to issue a rule by 2008 that renews new safety standards for automobiles sold in the United States to better protect occupants in a side-impact crash.

- Provides $200 million to support research on reducing traffic deaths and injuries. States rely on this research to target safety strategies in the most cost-effective way.

- Requires the FMCSA to issue a rule by 2009 that requires new safety standards for automobiles sold in the United States to have new stability control technologies that reduce the likelihood of rollover crashes, better door locks to reduce the likelihood of passenger ejection in a rollover crash, and stronger roofs to protect occupants in a rollover crash.

- Requires the FMCSA to issue a rule by 2008 that

- **TITLE II—HAZARDOUS MATERIALS TRANSPORTATION SAFETY**

- Requirements for foreign commercial vehicles. It also requires a study of whether current or future Canadian and Mexican truck fleets that operate in the United States meet U.S. truck safety standards.
of hazardous materials. The hazardous materials (HAZMAT) transportation safety programs, now administered by the Pipeline and Hazardous Materials Safety Administration (PHMSA), have been unenforced since 1996. In 2004, there were 14,515 HAZMAT incidents, resulting in 8 deaths and 206 injuries and in the aftermath of recent HAZMAT accidents in South Carolina and heightened security concerns in this new era of global terrorism, reauthorization of these programs is a Committee priority. Title III:

Reauthorizes the Secretary of Transportation's (DOT) HAZMAT safety programs at $23 million in FY 2005, $29 million in FY 2006, and $30 million for each fiscal year from FY 2007–2009.

Provides $21,810,000 annually for community HAZMAT planning and training grants and allows states flexibility to use some of their planning money for training programs as needed. Additionally, the bill provides $4 million annually for HAZMAT “train the trainer” grants, and allows these funds to be used to train HAZMAT employees directly.

Requires Mexican and Canadian commercial motor vehicle operators transporting HAZMAT in the U.S. to undergo a background check similar to those for U.S. HAZMAT drivers. Additionally, the bill improves current HAZMAT background check procedures and requires a study on background check expediency.

Increases civil penalties to up to $100,000 for HAZMAT violations that result in severe injury or death and raises the minimum penalties for violations related to training. Authorizes $5 million for FY 2005–2009 for the Operation Respond Emergency Information System that provides the real time delivery of information about HAZMAT in transportation to first responders. Authorizes the Secretary of Transportation to establish a program of random inspections to determine the extent to which undeclared HAZMAT is transported in commerce through U.S. points of entry. It also creates a HAZMAT research cooperative through the National Academy of Sciences’ Transportation Research Board.

Streamlines federal responsibilities for ensuring the safety of food shipments. Primary responsibility is transferred from DOT to the Department of Health and Human Services (HHS) which would set practices to be followed by shippers, carriers, and brokers engaged in food transport. Highway and railroad safety inspectors would be trained to spot threats to food safety and to report possible contamination.

Title IV—HOUSING GOODS

The purpose of Title IV is to provide greater protection to consumers entrusting their belongings to a moving company. While most movers operate reputable businesses, a small number of “rogue” movers continue to defraud thousands of consumers annually. The oversight of the interstate household goods transportation industry is the responsibility of the Federal Motor Carrier Safety Administration (FMCSA). FMCSA is tasked with issuing regulations, conducting oversight activities, and enforcing sanctions for consumer complaints that have averaged about 3,000 per year since 2001. Title IV:

Allows a state authority that enforces state regulations to enforce federal laws and regulations governing the transportation of household goods in interstate commerce.

Authorizes a penalty, of not less than $10,000, for a broker who provides an estimate to a shipper before entering into an agreement and later moves the shipper’s goods. A $10,000 penalty and up to a 24-month suspension of registration are authorized also for failure to give up possession of a shipper’s household goods, and if convicted, that person shall be fined or imprisoned for up to five years.

Authorizes the Secretary of Transportation to register a person to provide transportation of household goods only after that person meets certain requirements. In addition, the bill authorizes a penalty, of not less than $25,000, for carriers and brokers who transport household goods but do not register with DOT.

Codifies existing regulations that require a carrier to give up possession of the household goods provided the shipper pays the charges or 110% of the non-binding estimate of the charges. The bill permits a carrier to charge only a prorated amount for the partial delivery of a shipment in the case of a lost or damaged shipment, and limits the amount of impracticable charges that must be paid upon delivery.

Establishes that a carrier is liable for the pre-determined total value of goods shipped unless otherwise authorized by the shipper. The current standard liability is at a rate of 60 cents per pound’s goods.

Directs the Secretary of Transportation to modify existing regulations to require a carrier’s on-line proof of delivery of the charges or 110% of a non-binding estimate of the charges. The bill permits a carrier to charge only a prorated amount for the partial delivery of a shipment in the case of a lost or damaged shipment, and limits the amount of impracticable charges that must be paid upon delivery.

Establishes that a carrier is liable for the pre-determined total value of goods shipped unless otherwise authorized by the shipper. The current standard liability is at a rate of 60 cents per pound’s goods.

Directs the Secretary of Transportation to add a new section to the Federal Motor Carrier Safety Administration’s (FMCSA) regulation requiring a pre-determined total value of goods shipped unless otherwise authorized by the shipper.

Title V—AQUCATIC RESOURCES TRUST FUND

Title V reauthorizes activities funded by two of the Nation’s most effective “user-pay, user-benefit” programs—the Sport Fish Restoration and Boating Trust Funds. Title V reauthorizes the Sport Fish Restoration Act, 2.0%; Boating Infrastructure Act, 2.0%; Outreach, 2.0%; Clean Vessel Act, 2.0%.

The growing popularity of recreational boating and fishing has created safety, environmental, and access needs that have been addressed successfully by the Sport Fish Restoration and Boating Safety and Sport Fish Restoration programs. The Trust Fund program reauthorizations and funding adjustments contained in Title V are important for the safety of boaters, the continued enjoyment of fishermen, and improvement of our coastal areas and waterways.

The ACTING PRESIDENT pro tem-more. The Senator from Missouri.

Mr. BOND. Mr. President, I thank my colleague from Hawai'i. I am hoping we can get started on this bill as quickly as possible because this time during this week has been set aside for the bill without the threat of the tit-for-tat, commerce—and we have a very complex bill. We need to work on these amendments right away.

There is discussion about holds on both sides. I hope if anybody has a problem with the bill they will come down and work with us and not hold up the bill because we cannot do our job and get this measure passed if we are blocked from bringing it up by people phoning in their holds.

I would like to have any Member who has a problem to talk to our staffs, realize there are lots of things that many people want to change, but that is what this whole process is about. We are trying to craft a bill that has been reported out of several different committees. Our highway title has been out there for 10 days, and everyone has had a chance to work on it. We have cleared numerous amendments on both sides of the aisle to take care of needs that various Members have. I cannot get this bill completed if people phone in holds and say: No, we are not going to let you go to the floor. It is very important that Members come down. This is going to be a very difficult bill. Mr. LOTT. Will the Senator yield?

Mr. BOND. I am happy to yield. Mr. LOTT. What is the present situation that would block the Senate from moving forward with this legislation without these amendments being offered? Can’t you just suck in-state go to the legislation?

Mr. BOND. My understanding from the cloakrooms is there are Members who have phoned in their concerns about moving it.

Mr. LOTT. Mr. President, if the Senator will further yield, who is the cloakroom—is he a Senator? This is highway legislation that has been held up for 2½ years that is causing people to be killed, that is keeping us from creating jobs.

The Senator from Missouri and the Senator from Oklahoma and all other
Senators trying to manage this legislation have been very effective, very helpful of everyone, very considerate, but it is time we get this legislation going. The very idea that a Senator on Monday afternoon is calling in here or hiding out in his office or calling from somewhere to say that they object to this going to this legislation—I would like for them to explain that to their constituents. The Senate has been playing around long enough this year delaying everything, slow-walking everything.

By the way, this is not partisan; it is on both sides. This legislation is critical. It is time the Senate starts acting as a Senate instead of a kindergarten. I hope the Senators will give the consent this Senator from Missouri needs to get on this legislation and get it out of here. If we do not, our constituents are going to know who is the problem and why we are not getting this job done. It is time we get some Senators by the nape of the neck and tell them to pull their weight because this legislation is critical. It is time to get it done. We ought to be having votes on amendments this afternoon. The very idea of Senators hiding in their offices saying, I am not ready, or I don’t want to come, or I object—get over here and legislate and start acting like adults.

I thank the Senator from Missouri for yielding to me for that calm expression of concern.

Mr. BOND. I certainly hope the Senator from Mississippi feels better. I feel better because he has expressed my sentiments very clearly. We have been waiting 2½ years to have this bill in the Senate, and we have plenty to work on. I hope we are ready to move forward.

I will add to what the chairman of the EPW committee, my colleague from Oklahoma, has said. Recognize that last year during the consideration of the Transportation bill, the Senate voted in favor of funding the highway bill at $255 billion, mass transit at $56 billion. This vote was a strong signal that the Members of the Senate believe we need to spend more dollars for safety, for our economy, for jobs, for our long-term growth and future on highways.

We did adopt in this budget resolution the provision presented by my colleague, Senator TALENT, and the Senator from Michigan, to give the Finance the opportunity to increase funding for the bill as long as it was properly offset, and 80 Senators voted in support of it. That is exactly what the chairman and the ranking member, Senators GRASSLEY and BAUCUS, have done in their amendment.

I urge we support this amendment because we are still going to be short of where we were last time. No one is going to be able to get, for their particular areas of interest, their particular priorities, the same amount of money that would have been available under $318 billion. This measure does increase the funding somewhat over the figure written into the budget, but it is in pursuant to the provision included in the transportation section of the highway bill that there could be an add-on.

I hope people will see this is a critical time to move forward on this. People who have some excellent ideas and amendments, I hope they will be ready to come forward.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma. Mr. BAUCUS. Will the Senator yield? Mr. INHOFE. Yes, I yield for a question.

Mr. DURBIN. Just for a question.

I came to the Senate and heard Senator LOTT. He was exasperated and frustrated. He said Members were not offering amendments, so I came to the Senate quickly to find out the extent of it.

Would the Senator from Oklahoma clarify, is it not true that we now have, in effect, a new bill—about 1,000 pages, the substitute—that is being copied now and being shared for the first time? Members and Members' managers' substitute. We are not going to have any real streamlining of environmental reviews. We are not going to have any real savings. It is going to do anything to improve safety on the highways. The Senator from Vermont is very concerned about doing something for donor States, we are not going to do it with an extension because it is going to be the same thing as we have been having under TEA–21 as of 7 years ago.

Our concern is about the Safety Corps. The Senator from Mississippi is right. It is his committee that deals with the Safety Corps programs. Certainly the State of Oklahoma is high on the list of deaths on the highways. We have to get this done.

I suggest it is a matter of life and death that we get a bill because if we operate off of extensions, we are not going to do anything to improve safety on the highways. The Senator from Mississippi made that very clear. We are not going to have any real streamlining of environmental reviews. We have some good elements in this bill that are going to be able to help us build roads faster than we could on an extension. If we are operating on an extension and do not have a bill, we are not going to have any increase in our ability to have innovative financing thereby giving the States more tools.

What we have tried to do in this bill is to give a lot more of the power back to the States. It has been my belief, and I think shared by most members of my committee, that the closer you get to home, the more people are aware of their specific needs. There are a lot of people who have some excellent ideas on innovative financing that the States are going to be able to do. This is in the bill.

The Safe Routes to School Program—the Senator from Vermont is very much interested in that. It is one that is handled in this bill. However, if we do not go on an extension, extension No. 7, we are not going to have the Safe Routes to School Program.

The States are considered to have uncertainty. We have come back from
about a 7-day recess. I talked to our people, our highway people, our department of transportation in Oklahoma, and they cannot have any kind of planning for any kind of certainty as to knowing what is going to happen in the next year and the year after that and for the 5-year plan unless we have this bill. They are begging, pleading: Why can’t you get this done because it has to be done in order for us to plan for the future.

I am particularly concerned about this because as to bridges, for example, in my State of Oklahoma, we are dead last in the Nation in terms of the condition of our bridges. And we cannot get anything done and plan for the future unless we get a bill.

There are a lot of people in a lot of States who are concerned about the borders program. It is critical to the border States that are dealing with the NAFTA traffic. This bill deals with that. With an extension, it is not going to happen. If we do not do this bill, we will have a delay in the establishment of this national commission to explain new ways to fund transportation.

I can tell you we have not done it any differently than when Dwight D. Eisenhower was President of the United States. He came along and recognized a problem in our transportation system as a result of the problem he had during World War II in moving troops and equipment around. Looking at transportation then, the first thing he did when he became President of United States was to set up a National Highway Program and get it started. We have been funding our roads and our highways and our improvements and our bridges and infrastructure the same as we did during the Eisenhower administration. The bill sets up a national commission to go over some creative types of changes in funding where we can do a better job.

Right now, we are looking at the consideration, short of the managers’ amendment. If we do, it has been reported that even that amount, which is higher than the amount that was reported out of my committee, is going to do nothing more than just maintain what we have today. It is not really going to provide anything new. So we need to recognize that.

I have to say this, too. There are a lot of misconceptions that are represented in this Chamber. I am one of the most conservative Members. Yet there are some areas where conservatives do spend more money, and one is in infrastructure, which is what we are supposed to be doing here. We do not want to delay this national commission we set up in this legislation. I believe it is time to make a change for the better.

With the bill, we have increased the opportunity to address the chokepoints for intermodal transportation. This is kind of interesting. People do not realize this is not just a roads bill. This is an intermodal bill that considers chokepoints between channels and railroads and roads. We deal with that. It is an intermodal bill. A lot of people are not aware of the fact that in my State of Oklahoma, we are actually navigable. We have a navigation channel. This bill deals with the chokepoints between rail, road, water, and other air transportation.

And there is the firewall. If there is one thing that has bothered me over the years I have been on this committee, it is that these people are offended by is that there are always raids on the highway trust fund. People have their own programs, they may be good programs, but they try to go in and get money out of the highway trust fund to support those. This is not going to happen over and over again in establishing policies in the Senate, that they highway fund it. How should we fund it? Let’s fund it with transportation funds.

I believe the issue. When the American people go to the pump, they do not mind paying a tax, but when they find out that tax is not going to highway construction and highway improvements and highway maintenance and intermodal transportation, they are understandably very nervous and very offended.

We have the firewall protection of the highway trust fund to make sure that these raids are not going to be vulnerable to raids in order to pay for other programs. I know there are a lot of people who feel they are not as excited about the way the formula was put together. I would like to say something about that. This is significant.

There are two ways to do a highway bill. I know one of the ways that was a little more prevalent in the other body was to come up with projects. You have people who have projects of significance. Instead, we believe that decisions on the priority of expenditure of transportation dollars should be made at the local level. In other words, it is easy to come up here and pass something and go home and say: Look what I got for you; I am bringing this home. What we prefer is to have an equitable distribution of moneys that come into the highway trust fund to go back to the States and let the States make the decisions. I believe that with this bill.

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I encourage Members to offer their amendments and to discuss the highway bill. I know there are some Members who were requesting time for that purpose.

I yield the floor and suggest the absence of a quorum.

The Acting President pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The Acting President pro tempore. Without objection, it is so ordered.

Mr. Kennedy. Mr. President, I see the floor manager of the highway bill. Mr. Inhofe. Will the Senator yield for a question?

Mr. Kennedy. I will.

Mr. Inhofe. Can you hold it to, say, 25 minutes?

Mr. Kennedy. Yes.

Mr. Inhofe. It is my understanding you want to speak as in morning business.

Mr. Kennedy. Yes.

Mr. Inhofe. Further ask unanimous consent that the time you take be the time, following you, given to Senator Specter, who is wanting to have about that amount of time.

The Acting President pro tempore. Without objection, it is so ordered.

Mr. Inhofe. It is my understanding then that the Senator from Massachusetts will go for 25 minutes. Then the Senator from Pennsylvania will go for 25 minutes.

The Acting President pro tempore. That was the Chair's understanding.

The Senator from Massachusetts.

Mr. Kennedy. Mr. President, I thank the floor manager. This is very important legislation, enormously important to my State as other States. We need the kinds of investments in our roads and bridges to ensure their safety and security and that they will continue to be the vital avenues for an expanded and growing economy. I look forward to working with the committee.

Iraq Supplemental

I appreciate having the opportunity to address the Senate on what I anticipate will be the matter that will be before the Senate later this evening and through tomorrow, and that is the Iraq supplemental conference report. As I mentioned, I expect that it will be laid down in the next few hours, and I expect there will be a final resolution of this supplemental.

I welcome the opportunity to address some of the important provisions that are included in the conference report and bring them to the attention of our colleagues and to the American people. I intend to support the Iraq spending bill. Although I disagree strongly with some of the bill's provisions, these funds are clearly needed for our troops. All of us support our troops. We obviously want to do all we can to see that they have proper equipment, vehicles, and everything else they need to protect their lives as they carry out their missions. It is scandalous that the administration has kept sending them into battle in Iraq without proper equipment, and sending the Congressional Appropriations Committee's supplemental to the field faster. They have a plan to meet the future need, but what about the urgent need today?

We do not have the luxury of time to wait for this national vehicle roll off a future assembly line. The need for armored humvees is now. The hillbilly armor they scavenge for and add to their unprotected humvees does not provide adequate protection.

The Army says of the new requirement approved this month, none of it is designated for the Marine Corps. The Pentagon refuses to make this a top priority. They continue to drag their feet.

In a report to Congress this month, the Government Accounting Office describes month after month of mismanagement by the Pentagon in supplying the armored humvees our troops urgently need to carry out their missions and stay alive.

The GAO report found the Army still had no long-term plan to increase the number of armored humvees. The war in Iraq has been going on for 2 full years. Our troops are under fire every day, and the Pentagon still does not have a plan to protect them.

I have in my hand an April 2005 GAO report, "Defense Logistics Agency, Actions Needed to Improve Availability of Critical Items during Current and Future Operations." On page 123, it states that there were two primary causes for the shortages of uparmored vehicles and add-on armor kits. First, a decision was made to pace production rather than use the maximum available capacity.

This is the General Accounting Office in their report of April of this year.

Second, the funding allocations did not keep up with rapidly increasing requirements.

That is the General Accounting Office about whether we need to have more uparmored humvees and whether we have to give it a higher priority and whether there is a need in Iraq today. Our troops are under fire every day, and the Pentagon still does not have a plan to protect them.

In a briefing prepared by marines for Congress, they specifically state, in their vehicle hardening strategy, that "funding assistance is required to achieve optimum levels of armor protection."

The GAO report clearly points out that the Pentagon's bureaucratic mentality infected its decisions. They tried to solve the problem in a slow and gradual manner instead of solving it quickly. And the GAO report states, there are two primary causes for the shortages: "First, a decision was made to pace production," translated into layman's language, that means there for the coming fiscal year to develop and produce new armored vehicles to avoid these deadly threats.

The need is so clear that the request was submitted under the Marine Corps Urgent Universal Needs Statement which was created to streamline the supplemental appropriations process for equipment to the field faster. They have a plan to meet the future need, but what about the urgent need today?

The urgent need today?
was not a sense of urgency by the Pentagon. That is what "pace production" means. And then "rather than use the maximum available capacity" means they didn't get off their tail and increase production. And "Second, funding allocations did not keep up with rapid increases in requirements."

I am going to come to the statements by the responsible DOD officials before the Armed Services Committee on which I serve.

It is equally obvious that in addition to the bureaucratic mentality of the Pentagon, their cakewalk mentality is also a major part of the problem. Week after week, month after month they refuse to believe that the insurgency will continue. They want to believe it will soon be over. They do not feel they need to waste dollars on armored humvees that soon will not be needed in Iraq. So month after month, our troops keep paying with their lives. The light the Pentagon sees at the end of the tunnel turns out to be the blinding flash of another roadside bomb exploding under another unprotected humvee in Iraq.

They cannot even get their story right. Armor Holdings, the company that produces armored humvees, informed my office recently that its current contract with the Army will actually mean sharp cutbacks in production. Right now, they produce 550 armored humvees a month. Their contract reduced to 230 in July and then back to 40 in August and 71 in September. The company is now negotiating for slightly higher levels of production in June, July, and August, but it still expects to decrease production to 71 by September.

What possible justification can there be for the Pentagon to slow down current production so drastically in the months ahead when armored humvees are so urgently needed? The Pentagon keeps saying: We will work it out. On nine different occasions, we have asked the Pentagon for their requirements for humvees, and nine times they have been wrong. Nine times they have made their presentation before the Armed Services Committee, and nine times they have been wrong in under-estimating the importance of needs, and American service men and women have been paying with their lives.

This bill tells the Department of Defense, "no, it is not a 2-year fix, and without it many businesses will be forced to shut their doors. I appreciate the support of our colleagues on this issue. It will help many hard-working small businesses and industries across the country."

Unfortunately, not all the immigration provisions included in the bill have this kind of broad support. Included in the conference agreement are the so-called REAL ID immigration provisions that are highly controversial, harmful, and unnecessary. The Intelligence Reform Act we approved overwhelmingly last year provides real border security solutions. The so-called REAL ID immigration provisions included in the bill are a false solution to the current visa crisis. The bill is a 2-year fix, and without it many businesses will be forced to shut their doors. I appreciate the support of our colleagues on this issue. It will help many hard-working small businesses and industries across the country.

Another important part of this bill will be the periodic report it requires on the progress our forces are making in Iraq. Our military is performing brilliantly under enormously difficult circumstances, but they do not want, and the American people do not want, an open-ended commitment. After all the blunders that took us into war, we need to be certain that the President has a strategy for success.

The $5.7 billion in this bill for training Iraqi security forces is a key element of a successful strategy to stabilize Iraq and withdraw American forces. The report will provide the straight answer that we have not had before about how many Iraqi security forces are adequately trained and equipped.

We are obviously making progress, but it is far from clear how much. The American people deserve an honest assessment that provides the basic facts, but that is not what we have been given so far.

According to a GAO report in March, U.S. Government agencies do not report reliable data on the extent to which Iraqi security forces are trained and equipped. The General Accounting Office says U.S. Government agencies do not report reliable data on the extent to which the Iraqi security forces are trained and equipped.

The American people do not know the answer. When they do not know, it means pretty clearly that they are not getting the kind of training and priority they should, and the longer it takes to train them the longer American servicemen are going to be over there risking their lives.

The report goes on to say that the Departments of State and Defense no longer report on the extent to which Iraqi security forces are equipped with their required weapons, vehicles, communications, and body armor. Imagine that. According to the General Accounting Office, the Departments of State and Defense no longer report on the extent to which the Iraqi security forces are equipped with their required weapons, vehicles, communications, equipment, and body armor.

It is clear from the administration's own statements that they are using the notorious "pace production" tactic to avoid an honest appraisal.

On February 4, 2004, Secretary Rumsfeld said: "We have accelerated the training of Iraqi security forces, now more than 200,000 strong.

A year later, on January 19, 2005, Secretary of State Condoleezza Rice said: "We think the number right now is somewhere over 250,000."
been forced into this conference report is flawed and unacceptable. The Republican leadership in the House and Senate told Democrats out of the conference negotiations. Why? Because the House bill has controversial provisions that have questionable support in the Senate. Strongarm tactics are offensive and do a great deal of disservice to the important issues of our time. The White House too, once rejected these provisions, yet, they now support them. What will win will the White House flip-flop on next?

Those who pushed through these REAL ID provisions continue to say that loopholes exist in our immigration and asylum laws that are being exploited by terrorists. They claim these provisions will close them. In fact, they do nothing to improve national security and leave other big issues unresolved. They want us to believe that its changes will keep terrorists from being granted asylum. But current immigration laws already bar persons engaged in terrorist activity from asylum. Before they receive asylum, all applicants must also undergo extensive security checks through all terrorist and criminal databases at the Department of Homeland Security, the FBI, and the CIA.

Asylum seekers will find no refuge. Battered women and victims of stalking will be forced to divulge their addresses in order to get driver’s licenses, potentially endangering their lives. Many Americans will have other problems with their driver’s license. All legal requirements, including labor laws, can now be waived to build a wall. For the first time since the Civil War, habeas corpus will be prohibited. The REAL ID provisions contain other broad and sweeping changes to laws that go to the core of our national identity.

Each year, countless refugees are forced to leave their countries, fleeing persecution. America has always been a haven for those desperate for such protection. At the very beginning of our history, the refugee Pilgrims seeking religious freedom landed on Plymouth Rock. Ever since, we have welcomed refugees, and it has made us a better Nation. Refugees represent the best of American values. They have stood alone, at great personal cost, against government-imposed, unconstitutional principles like freedom of speech and religion. We have a responsibility to examine our asylum policies carefully, to see that they are fair and just.

But, the REAL ID bill tramples this noble tradition and will be devastating for legitimate asylum-seekers fleeing persecution. It will make it more difficult for victims fleeing serious human rights abuses to obtain asylum and safety, and could easily lead to their return to their persecutors.

Another section of conference report contains a provision that would complete the U.S.-Mexico border fence in San Diego. But it goes much farther than that. It gives the Department of Homeland security unprecedented and unchecked authority to waive all legal requirements necessary to build such fences, not only in San Diego, but anywhere along the U.S. border. Building such fences will cost hundreds of millions of dollars, and they will still not stop illegal immigration. What we need are safe and legal arrangements to come here and work, not more walls.

A major additional problem in the REAL ID provisions is that it could result in the deportation even of long-time legal permanent residents, for lawful speech or associations that occurred 20 years ago or more. It raises the burden of proof to nearly impossible levels in numerous cases.

A person who made a donation to a humanitarian organization involved in terrorist activity supported in the organization or any of its affiliates was ever involved in violence. The burden would be on the donor to prove by clear and convincing evidence that he knew nothing about any of these activities. The bill would apply to legal permanent resident who had once supported the lawful, nonviolent work of the African National Congress in South Africa, Sinn Fein in Northern Ireland, the Northern Alliance in Afghanistan, or the Contras in Nicaragua would be deportable. It would be no defense to show that the only support was for lawful nonviolent activity. It would be no defense to show that the United States itself supported some of these groups.

The driver’s license provisions do not make us safer either. Let me explain what these provisions really do. They repeal a section of the Intelligence Reform Act which sets up a process for States and the Federal Government to work together to establish Federal standards for driver’s licenses and identification cards. Progress is already being made to implement these important measures, but this bill replaces them with highly problematic and burdensome requirements. The National Conference of State Legislatures says that these provisions are “unworkable, unproven, costly mandates that compel States to enforce Federal immigration policy rather than advance the paramount objective of making State-issued identity documents more secure and verifiable.”

Indeed, it is a costly unfunded mandate on the States. The CBO estimate on the implementation of the driver’s license provisions is $20 million over a 5-year period to reimburse States for complying with the legislation. But, that is not all; the provisions require States to participate in an interstate database that would share information at a cost of $80 million over 3 years.

The driver’s license provisions do nothing to address the threat of terrorists or to address legitimate security concerns. It would not have prevented the single 9/11 hijacker from obtaining a driver’s license, or a single terrorist from boarding a plane. All 13 hijackers could have obtained licenses or IDs under this proposal, and foreign terrorists can always use their passports to travel abroad.

The result of these restrictive driver’s license provisions will be raised insurance rates, higher numbers of fatalities on America’s roadways, and an increased black market for false and fraudulent documents. The REAL ID actually undercuts the original purpose of traffic safety. It is better to have licensed, insured, and trained drivers on our roads.

To see if real immigrants from obtain- driver’s licenses undermines national security by pushing people into the shadows and fueling the black market for fraudulent identification documents.

The REAL ID provisions do nothing to combat the threat of terrorists or to deal with legitimate security concerns. They have taken away precious time that could have been used to address genuine pressing issues.

Hundreds of organizations across the political spectrum continue to oppose this legislation. A broad coalition of religious, immigrant, human rights, civil liberties and state groups have expressed their own strong support.

In these difficult times for our country, we know that the threat of terrorism has not ended, and we must do all we can to enact genuine measures to stop terrorists before they act, and to make it clear that law enforcement officials have the full support they need. The provisions of the REAL ID bill in the conference report today will not improve these efforts. They will not make us safer or prevent terrorism. They are an invitation to gross abuses, and a false solution to national and border security.

The REAL ID bill with its controversial provisions should have been considered by the Senate through debate and discussion, not attached to a critical piece of legislation needed by our troops.

I urge the Senate to get serious about immigration reform that will make genuine improvements where they are needed, and not in the piecemeal fashion that is contained in this report.

This bill also provides nearly $12 billion in 5-year period to reimburse States for unfunded mandates. The CBO estimate on the implementation of the driver’s license provisions is $20 million over a 5-year period to reimburse States for complying with the legislation. But, that is not all; the provisions require States to participate in an interstate database that would share information at a cost of $80 million over 3 years.

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must do more to enhance judicial security. This is a matter of the highest urgency.

The tragic deaths of Judge Lefkow's family demonstrate that judges may be safe inside the walls of our well-guarded courthouses, but they are vulnerable to disgruntled litigants in other places, even in their homes. In fact, judicial security in the homes of judges has long been a concern for the Judicial Conference, the principal decision-making group for the Federal courts. Sadly, three judges had previously been killed in their homes: Judge John Wood of Texas, in 1979; Judge Richard Daronco of New York, in 1988; and Judge Robert Vance, of Alabama, in 1989.

The vast majority of threats are received from people who are angry with the outcome of a case in court. In the 10 years while the first world trade center bombing, the Federal judiciary has handled an increasing number of "high threat" matters. Judge Lefkow was the victim of an act of domestic terrorism stemming from what should have been a routine civil matter. Matthew Hale, the leader of a White Supremacist group known as the World Church of the Creator, was convicted in April 2004 of soliciting an undercover FBI informant to murder Judge Lefkow in retaliation for her ruling against him in a trademark dispute. Highlights of this case illustrate the environment in which our Federal judges toil every day.

The Marshals Service, underfunded and understaffed as it is, struggles to keep up with security needs in the new high-risk age, but there is no reason why our judges should continue to remain vulnerable 16 years after Judge Lefkow was killed in his home. We need to stand up for an independent judiciary. We can do so by providing the funds to make their homes safe.

"There were provisions in this legislation to do that. It says something about the nature of the powers we have to provide the kind of extraordinary additional security to judges because of the nature of the political dialog. Words have consequences. Words have results. Words have meanings. The idea that individuals in responsible positions continue to threaten members of the judiciary too often can result in serious consequences to those judicial members. We have attempted to provide some additional security to protect those individuals. The best protection would be for more restraint on the part of those who talk about an independent judiciary.

Mr. President, I ask unanimous consent that an article dated April 25, 2005, from the New York Times be printed in the RECORD.

There being no objection, it was so ordered.

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

(From the New York Times, Apr. 25, 2005)

**BLOODED MARINES SOUND OFF ABOUT WANT OF ARMOR AND MEN**

*(By Michael Moss)*

On May 29, 2004, a station wagon that Iraqi insurgents had packed with 14 explosives blew up on a highway in Ramadi, killing four American marines who died for lack of a few inches of steel.

The four marines were returning to camp in an unarmored Humvee that their unit had rigged with scrap metal, but the makeshift shields rose only as high as their shoulders, photographs show, and the shrapnel from the bomb shot over the top. "The steel was not high enough," said Staff Sgt. Jose S. Valerio, 28, who lost both legs and an arm.

Sgt. Jose E. Valerio, their motor transport chief, who along with the unit's commanding officers said the men would have lived had their vehicle been properly armored. "Most of the vehicles had been armored," he said. Among those killed were Rafael Reynosa, a 28-year-old lance corporal from Santa Ana, Calif., whose wife was expecting twins, and body S. Calavas, a 19-year-old private first class from Lake Stevens, Wash., who had the Marine Corps motto, Semper Fidelis, tattooed across his back.

They were removed from their post only days before they began leaving Ramadi, accused by his superiors of being dictatorial, records show. His defenders counter that his commanding staff saw a necessity in the extreme circumstances of his unit's deployment.

Company E's experiences still resonate today both in Iraq, where two more marines were killed last week in Ramadi by the continuing insurgency, and in Washington, where Congress is still struggling to solve the Humvee problem. Just on Thursday, the Senate voted to spend an extra $213 million to buy more fully armored Humvees. The Army's procurement system, which has supplied the Marines, has come under fierce criticism for underperforming in the war, and to this day it has only one small contractor in Ohio armor new Humvees.

Marine Corps officials disclosed last month in Congressional hearings that they were now going their own way and had undertaken a crash program to equip all of their more than 2,800 Humvees in Iraq with stronger armor. The effort went into production in November and is to be completed at the end of this year.

Defense Department officials acknowledged that Company E lacked enough equipment and men, but said that those were problems experienced when the insurgency intensified last year, and that vigorous efforts had been made to improve their circumstances.

Lt. Gen. James N. Mattis of Richland, Wash., who commanded the First Marine Division to which Company E belongs, said he had taken every possible step to support Company E. He added that he had received more factory- armored Humvees than any other unit in Iraq.

"We could not encase men in sufficiently strong armor to deny success," General Mattis said. "The tragic loss of our men does not necessarily indicate failure—it is war."

**TROUBLE FROM THE START**

Company E's troubles began at Camp Pendleton when, just seven days before the unit left for Iraq, it lost its first commander. The captain who led them through training was relieved for reasons declined to discuss. "That was like losing your quarterback on game day," said First Sgt. Curtis E. Winfree.

In Kuwait, where the unit stopped over, an 18-year-old private committed suicide in a chapel. Then en route to Ramadi, they lost
the few armored plates they had earmarked for their vehicles when the steel was bor- rowed by another unit that failed to return it. Company E tracked the steel down and took it back.

Even at that, the armor was mostly just scrap and thin, and they needed more for the unarmored Humvees they inherited from the Florida National Guard.

“It was pitiful,” said Capt. Chae J. Han, a member of a Pentagon team that surveyed the Marine camps in Iraq last year to document the condition. “Everything was just slapped on armor, just homemade, not armor that was given to us through the normal logistical system.”

The company they produced was classified, but Captain Royer, who took over command of the unit, and other Company E marines say they had to build barriers at the camp— a former junkyard—to block suicide drivers, improve the fencing and move the toilets under a thick roof to avoid the insurgent shelling. Even some maps they were given to plan routes were riddled with naive notions of how to handle an insurgency, where in fact there were homes, said a company intelligence expert, Cpl. Charles V. Lauersdorf, who later went to work for the Central Intelligence Agency. There, he discovered up-to-date imagery that had not found its way to the front lines.

Ramadi was the first reality check on the company’s duties. So many of the marines, like Corporal Winn, were under the impression that sweeping roads for bombs was one of its main logistical chores, Sergeant Valerio said. He oversaw Company E as the commander of its Second Battalion, Fourth Marine Regiment. Before the company’s first month was up, Lance Cpl. William J. Wiscowiche of Victorville, Calif., lay dead on the main road, which was its first casualty. The Marine Corps issued a statement saying only that he had died when the bomb was set off. In the logbook of the Humvee in which he died, the company’s platoon leader said the Humvee lacked even the improvised steel on the back where most of the marines sat, Company E lacked even the improvised steel on the back where most of the marines sat, Company E lacked even the improvised steel of the armor, but that no one ever did. Even then, the unit had none. Defense Department officials have withstood the barrage, he said, but the unit had none. Defense Department officials have said they favored Humvees over tanks in Iraq because they were less imposing to civilians. The Humvee that trailed behind that day, which did have improvised armor, was hit with less powerful munitions, and the man who was wounded was hunkering down. “The rounds were ping,” Sergeant Sheldon said. “Then in a lull they returned fire and got out.”

Captain Royer said that he photographed the Humvee in which his men died to show any official who asked about the condition of their armor, but that no one ever did. Sergeant Valerio redoubled his effort to clarify the Humvees by begging other branches of the military for scraps. “How am I going to leave those kids out there in those Humvees,” he said. “It’s a dilemma.”

The company of 185 marines had only two Humvees and three trucks when it arrived, so just getting them into his shop was a logistical chore, he said. He also worried that the steel could come loose in a blast and become deadly shrapnel. For the gunners who rode atop, Sergeant Valerio stitched together bulletproof shoulder pads into chaps to guard the legs.

“That guy was amazing,” First Sgt. Bernard Coleman said. “He was under a vehicle when a mortar landed, and he caught something in the leg. When the mortar fire stopped, he went right back to work.”

A CAPTAIN’S PATE

Lt. Sean J. Schickel remembers Captain Royer as an earnest but battle-tested Marine Corps visitor whether the company would be getting more factory-armored Humvees. The official said they had not been requested and that there were production constraints, Lieutenant Schickel said.

Recalls Captain Royer: “I’m thinking we have our most precious resource engaged in combat, and they’re trying to get these half-assembled marines on the ground. They’re wasting our time.”

“Halfway through the deployment marines began getting good at spotting little things,” Sergeant Sheldon added. “We had marines riding those things at 60 miles an hour, and when they would spot a copper filament sticking out of a block of cement.” General Mattis said troops in the area now have hundreds of the electronic devices to foil the I.E.D.’s.

In parcelling out Ramadi, the Marine Corps leadership gave Company E more than ten marines in need of more armor than the battalion’s other companies. Captain Royer said he had informally asked for an extra platoon, or 44 marines, and had been told the battalion was all it had. “We are understaffed,” he said, but added, “I have been told we have no more than 100 marines.” The battalion’s operations officer, Maj. John D. Harrill, said the battalion had received sporadic assistance from the Army and had recently received near-full control, Cpl. Paul J. Kennedy said. “We thought that would be satisfactory to the Senator from Pennsylvania.”

Mr. INHOFE. Reserving the right to object.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I suggest a quorum call be rescinded.

Mr. INHOFE. Mr. President, I ask unanimous consent that the quorum叫 be rescinded. The ACTING PRESIDENT pro tempore. The bill clerk will call the roll.

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

Mr. INHOFE. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, may I proceed then?

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, a few minutes ago we had an agreement that we would allow the Senator from Massachusetts to speak up to 25 minutes in as much time as I may consume.

Mr. INHOFE. Reserving the right to object.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, a few minutes ago we had an agreement that we would allow the Senator from Massachusetts to speak up to 25 minutes in as much time as I may consume.

Mr. INHOFE. Reserving the right to object.

Mr. SPECTER. Mr. President, I ask unanimous consent that I may proceed as in normal business for as much time as I may consume.

Mr. INHOFE. Reserving the right to object.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, may I proceed?

The ACTING PRESIDENT pro tempore. As in normal business.

JUDICIAL NOMINATIONS

Mr. SPECTER. Mr. President, I have sought recognition to urge my colleagues to explore ways to avoid a Senate contest on the nuclear, or constitutional, option. It is anticipated that we may vote this week or this month to reduce from 60 to 51 the number of
votes to invoke cloture or cut off debate on judicial nominations. If the Senate roll is called on that vote, it will be one of the most important in the history of this institution.

The fact is that all or almost all Senators or the crisis in which I repeatedly heard colleagues on both sides of the aisle say it is a matter of saving face. But as yet we have not found the formula to do so.

I suggest the way to work through the current impasse is to proceed to bring to the floor circuit nominees, one by one, for up-or-down votes. There are at least five and perhaps as many as seven pending circuit nominees who could be confirmed or at least voted up or down. If the straitjacket of party loyalty were removed by the Democrats, even more might be confirmed.

As a starting point, it is important to acknowledge that both sides, Democrats and Republicans, have been at fault. It is claimed they have been treating their party's nominees and that their party's nominees have been treated worse than the other's. Both sides cite endless statistics. I have heard so many numbers spun in so many different ways that even my head is spinning. I think even Benjamin Disraeli, the man who coined the phrase, "there are lies, damned lies, and statistics," would be amazed at the creativity employed by both sides in contriving the numbers in this debate.

The history of Senate practices has demonstrated that it is possible to make the Senate function. The fact is that all or almost all Senators and found several circuit nominees and fight out the remaining nominees and fight out the remaining district Court vacancies on another day. The Michigan Senators do make a valid point on the need for consultation on the other Michigan vacancies, and that can be accommodated. The exchange of offers and counteroffers between Senator Frist, the majority leader, and Senator Harry Reid, the Democratic leader, Democrats have made an offer to avoid a vote on the nuclear or constitutional option of party line voting. If the four filibustered judges—Priscilla Owen, Janice Rogers Brown, William Pryor, or William Myers—with a choice to be selected by Republicans. An offer to confirm any one of those four nominees as a minority an explicit statement that each is qualified for the court, and they are being held hostage as pawns in a convoluted chess game which has spiraled out of control.

The Democrats believe each one is qualified, a deal for confirmation for any one of them is repugnant to the basic democratic principle of individual fair and equitable treatment and further violates Senators' oath on the constitutional confirmation process. Such dealmaking would further confirm public cynicism about what goes on in Washington behind closed doors.

Instead, let the Senators consider each of the four without the constraints of party line voting. Let us revert to the tried and tested method of evaluating each nominee individually.

I then set out to solicit others' views on Myers, including ranchers, loggers, miners, and farmers. In those quarters I found a significant enthusiasm for Myers. I met with those groups to have their members contact Senators who might be swing votes. I then followed up with personal talks to many of those Senators and found several prospects to vote for cloture. Then the screws of party loyalty were applied and tightened and the prospects for obtaining the additional few votes to secure cloture vanished.

I am confident if the party pressure had not been applied, the Myers filibuster would have ended and he would have been confirmed. That result could still be obtained if the straitjacket of party loyalty were removed on the Myers nomination.

Informally, but authoritatively, I have been told the Democrats will not filibuster Thomas Griffith or Judge Terrence Boyle. Griffith is on the calendar now awaiting floor action, and Boyle is on the next agenda for committee action. Both could be confirmed by the end of this month.

There are nine nominations to three circuit nominees from the State of Michigan for the Sixth Circuit—Richard Griffin, David McKeague, and Susan Bakke— but their confirmations are being held up because of objections to a fourth nominee. I urge my Democratic colleagues to confirm the three uncontested Michigan Sixth Circuit nominees and fight out the remaining four pending Michigan Sixth Circuit Court vacancies on another day. The Michigan Senators do make a valid point on the need for consultation on the other Michigan vacancies, and that can be accommodated.
that Supreme Court decisions are in many cases final because the Supreme Court grants certiorari in so few cases, the circuit courts sit in panels of three so that no one of these nominees could unilaterally render an unjust decision since at least one other circuit judge on the panel must concur. While it would be naive to deny that "quid pro quo" and "logrolling" are not frequent congressional practices, those approaches are not the best way to achieve policy in government decisions. The Senate has a roadmap to avoid "nuclear winter" in a principled way. Five of the controversial judges can be brought up for up-or-down votes on this state of the record. The others are entitled to individualized treatment on the filibuster issue. It may be that the opponents of one or more of these judges may persuade a majority of Senators that confirmation should be rejected. A group of Republican moderates has, with the backing of Florida, joined Democrats to defeat a party-line vote. The President has been explicit in seeking up-or-down votes as opposed to commitments on confirmations.

The Senate has arrived at this confrontation on confirmation as each side has ratcheted up the ante in delaying and denying confirmation to the other party's Presidential nominees. A policy of consultation/conciliation could diffuse the situation. The panel already been offered by the Democrats informally, signaling their intentions not to filibuster Griffith or Boyle, and by offering no objections to the three Michigan nominees. Likewise, it has been reported that Senator Reid has privately told Republicans he does not intend to block votes on any Supreme Court nominee except in extreme cases. A public statement of confirmation with an amplification on what constitutes "extreme case" could go a long way to diffusing the situation.

Senator SCHUMER praised White House Counsel Gonzales during his confirmation hearings for times in which now-Attorney General Gonzales con- sidered with Senator SCHUMER on Presi- dent Bush's judicial nominees affecting the State of New York. On April 11 of this year, a nominee pushed by Senator SCHUMER, Paul Crotty, was confirmed for the federal court in New York. Both New York Senators, Senators TORRICELLI and CORZINE, approved all five district court nominations for their State in the 107th Congress. And in that Congress, Florida's Democratic Senators, Bob Graham and Bill Nelson, appointed representatives to a commission which recommended federal judges to President Bush. President Bush recently nominated Minority Leader HARRY REID's pick for the District Court for the District of Ne- vada.

So there have been some significant signs of consultation and conciliation by the Republicans on choices by Democratic Senators.

I have reason to believe the President is considering consultation with the Michigan Senators on some federal judicial vacancies in their state and perhaps beyond.

One good turn deserves another. If one side realistically and sincerely takes the high ground, there will be tremendous pressure on the other side to follow suit. So far, the offers by both sides have been public relations maneuvers to appear reasonable to avoid blame and place it elsewhere. Meanwhile, both sides were urging each side to shun compromise. "Pull the trigger," one side says. "Filibuster forever," the other side retorts. Their approaches would lead to extreme judges at each end of the political spectrum as control of the Senate inevitably shifts from one party to another.

The Senate today stands on the edge of an abyss. Institutions such as our Senate are immortal but not invulnerable. If history has taught us anything, it is that we must guard against the possibility that our Senate will descend into a dark protracted era of divided partisanship. But if we cease this aimless and endless game of political chicken, we could re- store the Senate to its rightful place as the world's most deliberative body. That will require courage, courage from each Senator, courage to think and act with independence.

Our immortal Senate is depending on that courage. Now the question re- mains as to how we can achieve it. Since the United States and the Union of Soviet Socialist Republics avoided the nuclear confrontation in the Cold War by concessions and confi- dence-building measures, why couldn't Senators do the same by crossing the aisle in the spirit of compromise?

As a result of the time constraints, I have abbreviated the oral presentation of this statement. I ask unanimous consent that a full text be printed in the CONGRESSIONAL RECORD, including my statement which I now make that the text is necessarily repeated to a substantial extent of what I have delivered orally, but it is included so that a full text may be printed in the RECORD. There being no objection, the mate- rial was ordered to be printed in the RECORD, as follows:

Mr. SPECTER. Mr. President, I seek recog- nition to urge my colleagues to explore ways to avoid the use of the nuclear or constitutional option. It is anticipated that we may vote this week or this month to reduce from 60 to 51 the number of votes re- quired to invoke cloture on judicial nominations. If the Senate vote is the called on that vote, it will be one of the most important in the history of this institution.

The fact is that all, or almost all, Senators want to avoid the crisis. I have had many conversations with my Democratic col- leagues about the filibuster of judicial nomi- nees. Many of them told me that they do not personally believe it is a good idea to filibuster President Bush's judicial nomi- nees. They believe that this unprecedented move became one of the big issues of the Senate are immortal but not invulnerable. Both sides cite examples of their party's nominees having been treated worse than the other's. Both sides cite endless statistics. I have heard so many numbers spun so many different ways that my head is spinning. I think even Benjamin Disraeli, the man who coined the phrase, "carte blanche," would be amazed at the creativity employed by both sides in contriving numbers in this debate.

In 1967, upon gaining control of the Senate and the Judiciary Committee, the Democrats denied hearings to seven of President Rea- gent's circuit court nominees and denied floor votes to two additional circuit court nomi- nees. As a result, the confirmation rate for Reagan's circuit nominees fell from 89 per cent prior to the Democratic takeover to 65 per cent afterwards. While the confirmation rate decreased, the length of time it took to confirm judges increased. From the Carter administration, through the Reagan administration, the length of the confirmation process for both district and circuit court seats consistently hovered at approximately 50 days. In the final months of the Congress, however, the number doubled to an average of 120 days for these nominees to be confirmed.

The pattern of delay and denial continued through 4 years of President George H.W. Bush's administration. President Bush's lower court nominees waited on average, 100 days to be confirmed, which was about twice as long as had historically been the case. The Democrats also denied committee hearings for 16 nominees who had 10 nominees who did not receive hearings. For President Reagan, the number was 30. In the Bush Sr. administration, the number jumped to 70.

When we Republicans won the 1994 election and gained the Senate majority, we exacer- bated this pattern by blocking President Clinton's nominees. Over the course of President Clinton's presidency, the average number of days for the Senate to confirm judicial nominees increased even further. For district court nominees 362 days for circuit court nominees. Through blue slips and holds, 60 of President Clinton's nominees were blocked. When the Republicans took control of the Senate, they would not allow the nomi- nations to move forward. President Clinton
Informally, but authoritatively, I have been told that the Democrats will not filibuster Thomas Griffith or Judge Terrence Boyle. Griffith is on the Senate calendar awaiting a vote. The others are on the next agenda for committee action. Both could be confirmed by mid-May.

There are three nominees from the State of Michigan for the Sixth Circuit: Richard Griffin, David McKeague and Susan Bakke Nelson; but their confirmations are held up because of objections to a fourth nominee. I urge my Democratic colleagues to back each of the three nominees and have them confirmed by the end of June. The Michigan Senators make a valid point on the need for consultation on the other Michigan circuit vacancies and that can be accommodated.

In the exchange of offers and counteroffers between Sen. Frank, majority leader and Sen. Harry Reid, the Democrat leader, Democrats have made an offer to avoid a vote on the nuclear or constitutional option by confirming one of the four filibuster nominees: Judge Roger Vinson, Judge Brown, William Pryor, or William Myers with the choice to be selected by Republicans.

An offer to confirm any one of the four nominees, instead of this recess appointment, that each is qualified for the court and that they are being held hostage as pawns in a convoluted chess game which has spiraled out of control. There is no better and unqualified, a “deal” for confirmation for anyone of them is repugnant to the basic democratic principle of individual, fair, and equitable treatment expected of senators on the constitutional confirmation process. Such “deal-making” confirms public cynicism about what goes on behind Washington’s closed doors.

Instead, let the Senate consider each of the four without the constraints of party line voting. Let us revert to the tried and tested method of evaluating each nominee individually. By memorandum dated April 7, 2005, I circulated an analysis of Texas Supreme Court Justice Priscilla Owen’s record demonstrating she was not hostile to Roe v. Wade and that her decisions were based on solid judicial precedent. No one has challenged that analysis.

By memorandum dated January 12, 2005, I distributed an analysis of decisions by Judge William Pryor that shows his concern to protect a state’s initiative to legal system. Similarly, no one has retested that analysis. California Supreme Court Justice Janice Rogers Brown has been pilloried for her speeches. If political or judicial officials were rejected by provocative/extreme ideas in speeches, none of us would hold public office.

The fact is that the harm to the Republic, at worst, by the confirmation of all pending circuit court nominees is infinitesimal compared to the harm to the Senate, whatever way the vote would turn out, on the nuclear or constitutional option. None of these circuit judges could make new law because all are bound, and each one agreed on the record, to follow U.S. Supreme Court decisions. While it is frequently argued that circuit court opinions are in many cases final because of the Supreme Court grants certiorari; in so few cases, circuit courts sit in panels of three so that no one of these nominees can unilaterally render an unjust decision since at least one other circuit judge on the panel must concur.

While it would be naive to deny that the “guillotine” and “logrolling” are not frequent among senators, these approaches are not the best way to formulate public policy or make governmental decisions. The Senate has a roadmap to avoid “nuclear winter” in a principled way. Five of the controversial judges can be brought up for up-or-down votes on this state of the recess appointment this September. A “nuclear winter” would not only contaminate the Senate, but would be enormously difficult to diffuse.

The Senate has arrived at this confrontation between the acrobatics of political chess; the parties have been told to refrain from further recess appointments.

Against this background of bitter and angry recriminations, with each party increasingly trumping the other party to “get even” or, really, to dominate, the Senate now faces dual threats, one called the filibuster and the other the constitutional or nuclear option. Both are unpleasant. We could postpone mutually assured destruction. Both situations are accurately described by the acronym, “MAD.”

We Republicans are threatening to employ the constitutional or nuclear option to require only a majority vote to end filibusters. The Democrats are threatening to use the Senate on a host of matters. Each ascribes to the other the responsibility for “blowing the place up.”

The gridlock occurs at a time when we expect a United States Supreme Court vacancy within the next few months. If a filibuster were to leave an 8 person court, we could expect to see in the Senate, the Court, and Congress many more recess appointments.

The Democrats are threatening to use the Senate on a host of matters. Each ascribes to the other the responsibility for “blowing the place up.”

As the Senate is a debating assembly, I suggest the absence of filibusters to allow for serious debate. The deadlock is broken when President Bush agrees to withdraw 12 of those nominations and chose not to re-nominate 16.

After the 2002 elections, with control of the Senate returning to Republicans, the Democrats were a filibuster on circuit court nominations, which was the most extensive use of the tactic in the Nation’s history. The filibuster started with Mitch McConnell, one of the most talented and competent appellate lawyers in the country. The Democrats followed with filibusters against nine other circuit court nominees. During the 108th Congress, there were 20 cloture motions on 10 nominations. All 20 failed.

To this unprecedented move, President Bush responded, for the first time in the Nation’s history, two recess appointments of nominees who had been successfully filibustered by the Democrats. That impasse was broken by President Bush’s commitment to refrain from further recess appointments.

Against this background of bitter and angry recriminations, with each party increasingly trumping the other party to “get even” or, really, to dominate, the Senate now faces dual threats, one called the filibuster and the other the constitutional or nuclear option. Both are unpleasant. We could postpone mutually assured destruction. Both situations are accurately described by the acronym, “MAD.”

We Republicans are threatening to employ the constitutional or nuclear option to require only a majority vote to end filibusters. The Democrats are threatening to use the Senate on a host of matters. Each ascribes to the other the responsibility for “blowing the place up.”

The gridlock occurs at a time when we expect a United States Supreme Court vacancy within the next few months. If a filibuster were to leave an 8 person court, we could expect to see in the Senate, the Court, and Congress many more recess appointments.

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As the Senate is a debating assembly, I suggest the absence of filibusters to allow for serious debate. The deadlock is broken when President Bush agrees to withdraw 12 of those nominations and chose not to re-nominate 16.

After the 2002 elections, with control of the Senate returning to Republicans, the Democrats were a filibuster on circuit court nominations, which was the most extensive use of the tactic in the Nation’s history. The filibuster started with Mitch McConnell, one of the most talented and competent appellate lawyers in the country. The Democrats followed with filibusters against nine other circuit court nominees. During the 108th Congress, there were 20 cloture motions on 10 nominations. All 20 failed.

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As the Senate is a debating assembly, I suggest the absence of filibusters to allow for serious debate. The deadlock is broken when President Bush agrees to withdraw 12 of those nominations and chose not to re-nominate 16.
The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. NELSON of Florida. I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT NO. 518, WITHDRAWN

Mr. NELSON of Florida. Mr. President, on behalf of Senator SALAZAR, I ask unanimous consent that amendment No. 581 be withdrawn.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Florida is recognized.

The remarks of Mr. NELSON of Florida pertaining to the introduction of S. 980 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions."

Mr. NELSON of Florida. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

AMENDMENT NO. 560 TO AMENDMENT NO. 567

Mr. TAIENT. Mr. President, I have an amendment at the desk.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri [Mr. TAIENT], for himself, and Mr. DODD, proposes an amendment numbered 560 to amendment No. 567.

Mr. TAIENT. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require notice regarding the criteria for small business concerns to participate in Federally funded projects)

At the end of subtitle H of title I, add the following:

SEC. 18. NOTICE REGARDING PARTICIPATION OF SMALL BUSINESS CONCERNS.

The Secretary of Transportation shall notify each State or political subdivision of a State to which the Secretary of Transportation awards a grant or other Federal funds of the criteria for participation by a small business concern in any program or project that is funded, in whole or in part, by the Federal Government under section 155 of the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (15 U.S.C. 657c).

The ACTING PRESIDENT pro tempore. The Senator from Missouri is recognized.

Mr. TAIENT. Mr. President, I wish to take a few minutes to discuss this amendment which I am offering with Senator DODD. It has been accepted by the managers on both sides, and I am grateful for that.

The amendment is the next step in lifting a very significant burden off minority contractors around the country who want to do business with the Government. Very simply, it would direct the Secretary of Transportation to inform State and local governments that receive Federal dollars through the highway bill of a new law, a law that provides that minority contractors who have already been certified as 8(a) contractors under Federal law are automatically certified under State and local law as minority contractors on any contract that is funded in whole or in part by Federal dollars. Let me explain the background.

As Senators know, the 8(a) Program is one of the programs that small businesses use to get certified as a minority contractor in doing business with the Federal Government. State and local governments have similar certifications for doing business as a minority contractor with their governments. This has presented a serious obstacle for minority small businesses that want to do business or take advantage of goals or setaside programs because they have in the past been required to get additional certifications at both the State and local levels after already having been certified under the Federal Government's 8(a) Program. As a result, countless small minority-owned businesses have spent thousands and thousands of dollars and countless hours getting certified at the State and local levels just to learn that the contracting opportunity they originally sought was, by the time they were certified, no longer open.

In short, getting multiple certifications at the State and local levels after you have already done it at the Federal level is a time-consuming, expensive, and unnecessary process that in the past has left many highly qualified minority small business contractors shut out from the competition of Government contracts. So last year, I added an amendment on the JOBS bill that provides that section 8(a) contractors, those who have already been certified on the Federal level, are automatically certified as minority contractors at the State or local levels of the State or local program funded in whole or in part by Federal dollars.

I have already heard from small businesses from Missouri and around the country. I am pleased to report this provision is saving minority small business people thousands of dollars and many hours and a lot of headaches. In many cases, it is making it possible for them to participate in programs and projects that they would not have been able to participate in in the past without maneuvering through the obstacles of getting additional State or local certifications. Now we need to get the word out about the new law.

So today, the amendment of Senator DODD and myself directs the Secretary of Transportation to inform State and local governments of the new law that prohibits them from requiring federally certified 8(a) minority firms from obtaining State and local certifications on any State or local project that receives Federal funding.

This amendment is the natural follow-up to last year's law. It should not cost money. It has the support of minority small business associations around the country. I am pleased that it has majority and minority support on the Senate floor, and I am very pleased that the handlers on both sides of the aisle have accepted the amendment.

I thank the National Black Chamber of Commerce, the United States Chamber of Hispanic States Chamber of Commerce, as well as the Hispanic Chamber of Greater Kansas City, the Minority Business Council of St. Louis, and the Hispanic Chamber of Metropolitan St. Louis for their continued support in providing 8(a) contractors equal access to all projects receiving Federal funding.

I also want to thank the Senator from Connecticut for his work and effort on behalf of the amendment and his continued leadership on behalf of small business issues. I urge the Senate to adopt the amendment. I understand that the handlers are desirous of a roll call vote so I ask for the yeas and nays on the amendment.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The ACTING PRESIDENT pro tempore. The minority leader.

Mr. REID. Mr. President, what was the request?

The ACTING PRESIDENT pro tempore. Ordering the yeas and nays.

Mr. TAIENT. My understanding was that the handlers wanted the yeas and nays on the amendment. I will withdraw the request if that is not the case.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. INHOFE. I ask unanimous consent that at 5:30 this evening the Senate proceed to a vote in relation to the Talent amendment, with the time equally divided until the vote and no second-degree amendments in order to the amendment prior to the vote.

The ACTING PRESIDENT pro tempore. Is there an objection?

Mr. REID. Reserving the right to object.

The ACTING PRESIDENT pro tempore. The minority leader.

Mr. REID. I have no problem voting on this Talent amendment. I am disappointed that we have not been able to clear a resolution expressing support for the withdrawal of troops from Georgia on President Bush. I will withdraw the request if that is not the case.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

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The ACTING PRESIDENT pro tempore. Is there an objection?

Mr. REID. Reserving the right to object.
it can be approved in the immediate future. It would have tremendous significance with our President being there at this present time.

So I have no objection to the request by my friend from Oklahoma. The Acting President pro tempore. The majority leader withdraws his reservation.

Without objection, the unanimous consent request is agreed to.

The Senator from Mississippi (Mr. Enzi), the Senator from Arizona (Mr. McCain), the Senator from North Dakota (Mr. Dorgan), the Senator from Iowa (Mr. Harkin), and the Senator from Maryland (Mr. Sarbanes) are necessarily absent.

The President. The following Senators in the Chamber desiring to vote?

The result was announced—yeas 89, nays 0, as follows:

[Roll Call Vote No. 116 Leg.]

YEAS—89

MORNING BUSINESS

Mr. DeWine. Mr. President, I seek unanimous consent that there now be a period of morning business.

The President. The Senator from Ohio.

60TH ANNIVERSARY OF END OF WWII IN EUROPE

Mr. DeWine. Mr. President, yesterday was the 60th anniversary of the end of World War II in Europe. It was also, of course, Mother's Day. My speechwriter Ann O'Donnell shared a letter with me from her grandfather that is a fitting remembrance of both occasions. It is a letter from a young Army private, 121st Armored Division, named Glenn H. Waltner. Stationed in Germany at the time, he wrote to his mother, Mrs. J. J. Waltner in Freeman, SD.

The letter is postmarked 60 years ago today, May 9, 1945, though it was written, actually, on May 3, 1945. It reads as follows:

Dearest Mother,

Mother's Day is only a short time away. Since we cannot be together, I'm taking this opportunity to thank you for being my mother. You've always been all that any son could ever ask a mother to be—kind, patient, loving, considerate, and forgiving. Though Mother's Day comes but once yearly, don't think you're not appreciated the other [days of the year]. I thank God daily for the privilege of having been your son.

I am well—have been moving so swiftly and far that mail still hasn't reached us, nor can we mail letters often. Shaved today for the first time in a long while. Haven't had my hair cut for months, I guess. Hear peace rumors daily, but apparently, the Germans don't know a thing about it.

Happy Mother's Day—Love from your son, Glenn.

Mr. President, I imagine that many hundreds of letters just like this went out 60 years ago to mothers all across our country. Letters that went out which waited patiently, praying for the safe return of their dear, beloved sons serving overseas during the war. Fortunately, just a few short days after this particular letter was written, the rumors about peace did become a reality as Hitler's Germany surrendered to Allied forces, bringing to an end almost 6 years of brutal, bloody battle and an unparalleled threat to mankind in the Nazi's attempt to destroy the Jewish race.

When I think about all those who served during World War II, I am reminded of a famous speech in William Shakespeare's play "Henry V". The title character attempts to rally his men with a St. Crispin Day speech, a moving appeal to soldiers facing a vastly superior French force. Shakespeare's Henry assures his men of their place in history, creating the bond that links them all. An excerpt from that speech reads as follows:

And Crispin Crispian shall ne'er go by. From this day to the ending of the world, But we in it shall be remembered; We few, we happy few, we band of brothers.

Stephen Ambrose, of course, in his book, "Band of Brothers," also wrote about this fraternal bond that connects all warriors to one another. Ambrose documented the journey of the men of Easy Company, E Company, 506th Regiment, 101st Airborne Division through their journey through World War II. While the men of the 506th seem at times lost in the confusion and tragedy of war, Ambrose ends his book with a poignant reflection on what they encountered during the war. He wrote as follows:

They found combat to be ugliness, destruction, and death, and hated it. Anything was better than the blood and carnage, the grime that had always been a part of war. This was the impossible demands made on the body—anything, that is, except letting it have a rest. These men had fought their way through the war. They had been the closest brotherhood they ever knew. The war had changed them, making them men of honor and honor among men.

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Over the last couple of years, my staff and I have had the great privilege of getting to know a group of World War II veterans who, like the men of Easy Company, are, indeed, a band of brothers. They served with a boundless, patriotic, quiet heroism to this day, 60 years after the end of the war, remain in close contact, staying in touch