

to filibuster Republican nominees today opposed filibustering Democratic nominees only a few years ago. In a letter dated February 4, 1998, for example, the leftwing urged confirmation of Margaret Morrow to the U.S. District Court for the Central District of California. They urged us to ‘‘bring the nomination to the Senate, ensure that it received prompt, full and fair consideration, and that a final vote on her nomination is scheduled as soon as possible.’’ Groups signing this letter included the Alliance for Justice, Leadership Conference on Civil Rights, and People for the American Way. As we all know, these leftwing groups today lead the grassroots campaign behind these filibusters that would deny this same treatment to President Bush’s nominees. Their position has changed as the party controlling the White House has changed.

Let me make it easy for the ‘‘hypocrite patrol’’ to check out my position on the Morrow nomination. In the February 11, 1998, CONGRESSIONAL RECORD, on page S640, three pages before that letter from the leftwing groups appears, I opened the debate on the Morrow nomination by strongly urging my fellow Senators to support it. We did, and she is, today, a sitting Federal judge, as I believe she should be. The same Democrats who today call for filibusters called for up-or-down votes when a Democrat was in the White House.

Let me refer to chart 10 here. I will just give some illustrations. In 1999, my dear friend from California, Senator FEINSTEIN, a person I have great love and respect for, a Member of the Senate Judiciary Committee, said of the Senate:

It is our job to confirm these judges. If we don’t like them, we can vote against them.

She said:

A nominee is entitled to a vote. Vote them up, vote them down.

Let me go to chart 11. Another committee member, Senator SCHUMER, properly said in March 2000:

The President nominates and we are charged with voting on the nominees.

He was right.

Let me refer to chart 12. I have already quoted the Senator from California, Senator BOXER once, but in 2000 she said that filibustering judicial nominees:

. . . would be such a twisting of what cloture really means in these cases. It has never been done before for a judge, as far as we know—ever.

I appreciate what another member of the Judiciary Committee, Senator KOHL, said in 1997:

Let’s breathe life back into the confirmation process. Let’s vote on the nominees who have already been approved by the Judiciary Committee.

Well, let me go to chart 14. The Senator from Iowa, Senator HARKIN, who fought so strongly against the legislative filibuster in 1995, said, 5 years later, about the judicial filibuster:

If they want to vote against them, let them vote against them. But at least have a vote.

The same view comes from three former Judiciary Committee chairmen, members of the Democratic leadership. Let me refer to chart No. 15. A former committee chairman, Senator BIDEN, said in 1977 that every judicial nominee is entitled:

To have a shot to be heard on the floor and have a vote on the floor.

Former chairman, Senator EDWARD KENNEDY, said in 1998:

If Senators don’t like them, vote against them. But give them a vote.

And my immediate predecessor as chairman, Senator LEAHY, said a year later, judicial nominees are: entitled to a vote, aye or nay.

Now, the assistant minority leader, Senator DURBIN, had urged the same thing in September 1998:

Vote the person up or down.

Vote the person up or down.

Finally, Mr. President, the minority leader, Senator REID, expressed in March 2000 the standard that I hope we can reestablish:

Once they get out of committee, bring them down here and vote up or down on them.

The majority leader, Senator FRIST, recently proposed a plan to accomplish precisely this result. But the minority leader dismissed it as—I want to quote this accurately now—

A big fat wet kiss to the far right.

I never thought voting on judicial nominations was a far-right thing to do.

These statements speak for themselves. Do you see a pattern here? The message at one time seems to be let us debate and let us vote. That should be the standard, no matter which party controls the White House or the Senate.

Mr. President, as I close, let me summarize these 10 top most ridiculous judicial filibusters in this way. Blocking confirmation of majority-supported judicial nominations by defeating cloture votes is unprecedented. In the words of the current Judiciary Committee chairman, Senator SPECTER:

What Democrats are doing here is really seeking a constitutional revolution.

We must turn back that revolution. No matter which party controls the White House or Senate, we should return to our tradition of giving judicial nominations reaching the Senate floor an up-or-down vote. Full, fair, and vigorous debate is one of the hallmarks of this body, and it should drive how we evaluate a President’s judicial nominations.

Honoring the Constitution’s separation of power, however, requires that our check on the President’s appointment power not highjack that power altogether. This means debate must be a means to an end rather than an end in itself. Senators are free to vote against the nominees they feel ex-

treme, but they should not be free to prevent other Senators from expressing a contrary view or advising and consenting. In this body, we govern ourselves with parliamentary rulings as well as by unwritten rules. The procedure of a majority of Senators voting to sustain a parliamentary ruling has been used repeatedly to change Senate procedure without changing Senate rules, even to limit nomination-related filibusters.

I have tried to deal with the substance of our filibuster proponents’ arguments, albeit with some humor and maybe a touch of sarcasm. A few days ago, as the Salt Lake Tribune reported, the minority leader was in my State: . . . stopping just short of calling Utah Senator ORREN HATCH a hypocrite.

That is at least how the newspaper described it. That is not what I consider to be a substantive argument. Perhaps those who dismiss their opponents as liars, losers, or lap dogs have nothing else to offer in this debate. Yet debate we must, and then we must vote.

Mr. President, how much remaining time do I have?

The ACTING PRESIDENT pro tempore. The Senator has 1 minute remaining.

Mr. HATCH. Let me just make this point. We confirmed, in 6 years of Republican control of the Senate, 377 judges for President Clinton. That was five less than the all-time confirmation champion Ronald Reagan. All of these people who are up have well-qualified ratings from the ABA, all had a bipartisan majority to support them. What is wrong with giving them an up-or-down vote and retaining 214 years of Senate tradition? What is wrong with that? I think it is wrong to try and blow up that tradition the way it is being done.

With that, I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. 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. SCHUMER. Will the Chair advise as to how much time remains on this side?

The ACTING PRESIDENT pro tempore. One-half hour remains on the Senator’s side.

#### RULES OF THE SENATE

Mr. SCHUMER. Mr. President, I yield myself such time as I may consume.

As the Senate convenes this week, we stand on the edge of dramatic change. Change is usually a good thing, but the change that the other side is trying to invoke is not a good thing. We all know it. Most Americans know it. Most Democrats know it. Most Republicans

know it. Even most Senators on the other side know it. Yet they are torn because of a small group way out of the mainstream. The same people who believe their message, which may come from the heavens, dictates to them what is right for everybody else seem to be in control. It is a crucial time for America. The age-old checks and balances that are at the center of this Republic, at the center of our Constitution, are hanging at the precipice.

It is the Senate where the Founding Fathers established a repository of checks and balances. It is not like the House of Representatives where the majority leader or the Speaker can snap his fingers and get what he wants. Here we work many times by unanimous consent where you need all 100 Senators to go along. In some instances, we work where 67 votes are needed, in some with 60, and in most with 51. But the reason we don't always work by majority rule is very simple. On important issues, the Founding Fathers wanted—and they were correct in my judgment—that the slimmest majority should not always govern. When it comes to vital issues, that is what they wanted.

The Senate is not a majoritarian body. My good friend from Utah spoke. He represents about two million people in Utah. I represent 19 million in New York State. We have the same vote. You could have 51 votes for a judge on this floor that represents 21 percent of the American people. So the bottom line is very simple. This has not always been a 50.1 to 49.9 body. It has been a body that has had to work by its rules and by the Founding Fathers' intent. Even when you are in the majority, you have to reach out and meet not all, not most, but some of the concerns of the minority.

I understand why my colleague from Utah would get up and make such ridiculous arguments. He is torn. He knows this is wrong. Most of the Members on the other side of the aisle know it is wrong. Some have had the guts—a handful—to say no. Some have had the strength to resist the calls of that extreme group or groups. Some are true believers. But some, and my guess is my friend from Utah is one of those, know it is wrong but decide: I am going along anyway.

When my friend from Utah lists the 10 most ridiculous arguments against keeping the filibuster and says checks and balances is a ridiculous argument, please. I care a great deal about my friend from Utah. He is a fine man. We are friends. We have worked together on many things. But he has more respect for the Constitution than to say checks and balances is a ridiculous argument. He knows darn well that a 51-to-49 vote does away with certain kinds of checks and balances.

When my friend from Utah talks about no extremists, it seems to me the very same people who are calling the shots are the people who said that judges are worse than terrorists. That

seems pretty extreme to me. That is the type of person importuning my friend from Utah.

Another one said: Judges, in their black robes, are like the Ku Klux Klan in their white robes. These are officials of the American Government, most of whom now are Republicans. Sixty percent of the court of appeals are Republican appointees. Seven of the nine Supreme Court members are Republican appointees.

When my friend from Utah doesn't think those statements are extreme and listens to the solution that people who make those statements prescribe, what else can one conclude than that he is sort of tying himself in a pretzel to try and make an argument that he must know in his heart is wrong.

Unprecedented? Well, it was my good friend from Utah who played a leading role in blocking a large number of the Clinton judges. He will say it wasn't by filibuster. The American people are a lot smarter than that. Whether it is by not bringing them up for a vote in committee or by requiring that they get 60 votes to choke off debate on the floor, the effect is the same. The President, the incumbent, is denied his choice. By the way, that is how our Senate has functioned.

The President, when he gets 51.5 percent, as George Bush did, or even when he gets over 65 percent, as Franklin Roosevelt did in 1936, shouldn't always get his way with every single judge.

He says that this will not doom the legislative filibuster, that is an absurd argument. A year ago, if we would have heard that the Republican majority was considering having the Vice President sit in the chair and rule by fiat his own interpretation of the Constitution, coming out of nowhere because the Constitution doesn't mention any of this, certainly a narrow reading wouldn't allow us to address this issue from the Constitution, and he says that we will rule by fiat from the Chair and there should be no more filibusters of judges, even though that has been allowed for 200 years, even though it was done in 2000 by our colleagues on the Republican side of the aisle for Ms. Berzon and Mr. Paez, and then he is saying, well, it is absurd that we do it for other things. I say this: Allow them to do it for judges today, they will do it for Social Security tomorrow. The same exact procedure could be used to block filibusters of legislation and of every single other thing that comes before this body. There is no difference. The Constitution doesn't mention the word "filibuster."

I don't know where it is divined in the heads of some of my colleagues from the other side of the aisle: It says it is for judges, but not for legislation. That is an activist reading of the Constitution if you ever heard one.

The bottom line is simple: We are appealing to those Members of the other side of the aisle who, unlike my friend from Utah, have thus far resisted the

entreaties of the hard, hard, hard right, who have resisted the entreaties of the narrow few who are way out there and say to them: Have strength, have courage.

The basic makeup of our Senate is at stake. The checks and balances that Americans prize are at stake. The idea of bipartisanship, where you have to come together and can't just ram everything through because you have a narrow majority, is at stake. The very things we treasure and love about this grand Republic are at stake.

I, for one, am saddened by what is happening. I, for one, am surprised at what is happening. I, for one, hope and pray that it will not come to this. But I assure my colleagues, at least speaking for this Senator from New York, I will do everything I can to prevent the nuclear option from being invoked not for the sake of myself or my party but for the sake of this great Republic and its traditions.

I yield the remaining time to my colleague from Illinois, our great whip.

Mr. DURBIN. Mr. President, how much time remains in morning business?

The ACTING PRESIDENT pro tempore. There is 19 minutes 30 seconds.

Mr. DURBIN. If I might make an inquiry of my colleague from New Jersey, if he is going to seek recognition, I want to be sure and leave enough time for him to speak.

Mr. CORZINE. Mr. President, I believe 10 minutes, maybe a little bit less.

Mr. DURBIN. If the Chair would advise me when there are 10 minutes remaining, I will yield the remaining time to the Senator from New Jersey.

Let me first thank my colleague from New York for his excellent statement. Senator SCHUMER and I serve on the Senate Judiciary Committee. It is a committee where judges are initially considered. It is a tough assignment. When I came to the Senate from the House, I knew I would be voting on legislation, but more so in the Senate, you vote on people. That is a tougher call because it isn't in black and white. It isn't a matter of compromising, taking half of this and a quarter of the other. It is a question of making a judgment about a person. I find that a little more difficult—a lot more difficult, to be honest—and when it comes to judges, even more complicated because you aren't just putting a person in a temporary position. You are saying: Based on your life to this point, we are prepared to put you on the Federal bench for the rest of your natural life and trust your judgment that you will do the right thing by the Constitution and the American people.

Overwhelmingly, we find whether the President is a Democrat or Republican, the Senate says: Fine, we approve. The nominee is a good person. We will go forward.

What has happened here is interesting. We have, so far with President Bush in the White House, considered on

the floor of the Senate 218 nominees by President Bush for the Federal judiciary. The President has that power. The Senate has the power to advise—that is, review and consider—and consent, if it chooses. Out of the 218 names sent by President Bush to the floor of the Senate, we have approved 208 of those names. So we are at a point now where we have 10 out of those 218 who have not been approved. More than 95 percent of the President's nominees have been approved.

You would say to yourself: This President is doing well. Whether he sends us conservatives of one stripe or the other, the Senate has approved them. We have sent them to the bench to lifetime appointments.

The President, after his reelection, comes to the Congress and says: That is not good enough. I want them all. I want every single one of them. I don't believe I should be held to the standard that every other President has been held to.

What is that standard? It is not just a simple majority vote. The Senate is a different place. It was created by the Constitution as a different institution. States large and small have the same number of Senators. States large and small send Senators to the Chamber, men and women who have the authority under our rules to demand an extraordinary vote.

People on the outside say: When I go to the city council meeting, it is a majority vote. When I go to the garden club, it is a majority vote. Why isn't it a majority vote in the Senate?

Because the Senate is a different place. When the Founding Fathers wrote the Constitution, they said the Senate, more than any institution in the Government of America, will be a place that respects and recognizes the rights of a minority.

For those who follow classic movies, Jimmy Stewart in "Mr. Smith Goes to Washington," one Senator, idealistic and determined, took to the floor of the Senate and started a speech and, frankly, finally crumbled because he was so tired and had to end his speech. But he demonstrated the reality of the Senate, that one Senator, regardless of where they are from, a State large or small, regardless if they are the only Senator who holds that point of view, can stand up and argue that point of view. That was built into our Constitution, certainly into the tradition of the Senate. That is why 10 of President Bush's nominees have not been approved because, in this situation, they couldn't find 60 Senators who would stand up and say: Stop the debate, vote on that nominee. That is the rule of the Senate.

President Bush has said: I want to change it, to change the rules of the Senate in the middle of the game. I want to go after this whole concept of the power of the Senate, the power of checks and balances, I want more power in the White House, I want more power in the Presidency. That is not

new. Presidents throughout history have always said they wanted more power than they had. Usually, the Congress stood up to them and said no.

The Constitution is more important than any single President. Thomas Jefferson, when he was elected to his second term, came to the Senate and said: I want the power to remove those Federalist judges from the Supreme Court; They disagree with my political philosophy; I want to get rid of them.

His own party said: No, President Jefferson. As important as you are, as much as we agree with you, the Constitution and traditions of the Senate are more important. And they voted him down.

President Roosevelt, one of our greatest Presidents, in the beginning of his second term, with the power of the national mandate behind him, said to the Senate: Do something about that damnable Supreme Court that won't approve my New Deal. Allow me to put more Justices on the Court until I can have my way politically.

His political body in this Senate said: Mr. President, we are Democrats, we respect you, we voted for you, we are for the New Deal, but you are wrong. You cannot come to us and ask for more Presidential power at the expense of the Constitution, at the expense of Senate traditions and values. They turned him down.

Look what happens today. President Bush, fresh from a victory of 51.5 percent in this election, comes to this body and says: I want more power in the Presidency.

What does he hear from his own party in the Senate? Sadly, it is: Whatever you want, Mr. President.

Mickey Edwards, a former Congressman from Oklahoma, who was quoted in the Washington Post this morning, gets it right. He said what amazes him about this debate is that Congress isn't standing up for its own constitutional responsibilities and rights. Congress is acquiescing in this effort by the President to take on more power so that he cannot be questioned and challenged when he puts people on the Federal bench for a lifetime.

Mr. President, I will submit for the RECORD a list of over 50 newspapers that have endorsed President Bush in 2000, 2004, or both, and have said that the President is wrong when it comes to this effort to increase Presidential power in the White House.

I ask unanimous consent to have that printed in the RECORD.

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

Albuquerque Journal [NM], The Albuquerque Tribune [NM], The Arizona Republic [Phoenix], Arkansas Democrat & Gazette, Austin American-Statesman [TX], Bangor Daily News [ME], Birmingham Post Herald [AL], Chicago Tribune, The Cincinnati Enquirer [OH], and The Cincinnati Post [OH].

The Clarion-Ledger [Jackson, MS], Columbia Daily Tribune [MO], The Commercial Appeal [Memphis, TN], Contra Costa Times

[CA], Corpus Christi Caller-Times [TX], Courier-Post [Camden, NJ], The Daily Camera [CO], The Dallas Morning News [TX], and The Day [New London, CT].

The Denver Post, Easton Star-Democrat [MD], Fort Worth Star Telegram [TX], The Grand Island Independent [NE], The Hartford Courant [CT], The Herald [Bradenton, FL], Houston Chronicle [TX], The Idaho Statesman, The Indianapolis Star [IN], and Journal Star [Peoria, IL].

Kalamazoo Gazette [MI], The Knoxville News-Sentinel [TN], La Crosse Tribune [WI], Lincoln Journal Star [NE], Loveland Daily-Reporter Herald [CO], The Morning Call [Allentown, PA], The Muskegon Chronicle [MI], Muskogee Daily Phoenix & Times-Democrat [OK], New Haven Register [CT], and The News Leader [Staunton, VA].

The Omaha World-Herald [NE], The Oregonian, Orlando Sentinel [FL], The Oshkosh Northwestern [WI], The Palladium-Item [IN], The Plain Dealer [Cleveland, OH], Poughkeepsie Journal [NY], Quad City Times [Davenport, IA], The Record [Troy, NY], and Salt Lake Tribune.

San Antonio Express-News [TX], Savannah Morning News [GA], Seattle Times [WA], San Diego Union Tribune, The State [Columbia, SC], The Tri-City Herald [WA], Ventura County Star [CA], The Wichita Eagle [KS], Winston-Salem Journal [NC], and York Daily Record [PA].

Mr. DURBIN. Mr. President, let me tell you, I listen to the talk shows, and I hear people say that until these judicial nominees were challenged with extended debate or filibuster, it never happened before. I will also submit for the RECORD, for the third time, this chart which shows on 11 or 12 different occasions when a filibuster was invoked on judicial nominees throughout history, including Supreme Court Justices. This is not new, not novel. It is certainly not earth shattering. It has happened before.

I ask unanimous consent that it be printed in the RECORD.

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

#### HISTORY OF FILIBUSTERS AND JUDGES

Prior to the start of the George W. Bush administration in 2001, the following 11 judicial nominations needed 60 (or more) votes—cloture—in order to end a filibuster:

1881: Stanley Matthew to be a Supreme Court Justice

1968: Abe Fortas to be Chief Justice of the Supreme Court (cloture required 2/3 of those voting)

1971: William Rehnquist to be a Supreme Court Justice (cloture required 2/3 of those voting)

1980: Stephen Breyer to be a Judge on the First Circuit Court of Appeals

1984: J. Harvie Wilkinson to be a Judge on the Fourth Circuit Court of Appeals

1986: Sidney Fitzwater to be a Judge for the Northern District of Texas

1986: William Rehnquist to be Chief Justice of the Supreme Court

1992: Edward Earl Carnes, Jr. to be a Judge on the Eleventh Circuit Court of Appeals

1994: H. Lee Sarokin to be a Judge on the Third Circuit Court of Appeals

1999: Brian Theodore Stewart to be a Judge for the District of Utah

2000: Richard Paez to be a Judge on the Ninth Circuit Court of Appeals

2000: Marsha Berzon to be a Judge on the Ninth Circuit Court of Appeals

Because of a filibuster, cloture was filed on the following two judicial nominations, but was later withdrawn:

1986: Daniel Manion to be a Judge on the Seventh Circuit Court of Appeals Senator Biden told then Majority Leader Bob Dole that "he was ready to call off an expected filibuster and vote immediately on Manion's nomination."—Congressional Quarterly Almanac, 1986.

1994: Rosemary Barkett to be a Judge on the Eleventh Circuit Court of Appeals "... lacking the votes to sustain a filibuster, Republicans agreed to proceed to a confirmation vote after Democrats agreed to a day-long debate on the nomination."—Congressional Quarterly Almanac, 1994.

Following are comments by Republicans during the filibuster on the Paez and Berzon nominations in 2000, confirming that there was, in fact, a filibuster:

"... it is no secret that I have been the person who has filibustered these two nominations, Judge Berzon and Judge Paez."—Senator Bob Smith, March 9, 2000

"So don't tell me we haven't filibustered judges and that we don't have the right to filibuster judges on the floor of the Senate. Of course we do. That is our constitutional role."—Senator Bob Smith, March 7, 2000

"Indeed, I must confess to being somewhat baffled that, after a filibuster is cut off by cloture, the Senate could still delay a final vote on the nomination."—Senator Orrin Hatch, March 9, 2000, when a Senator offered a motion to indefinitely postpone the Paez nomination after cloture had been invoked

In 2000, during consideration of the Paez nomination, the following Senator was among those who voted to continue the filibuster:

Senator Bill Frist—Vote #37, 106th Congress, Second Session, March 8, 2000.

Mr. DURBIN. Mr. President, let me tell you something else that troubles me. How much time do I have?

The ACTING PRESIDENT pro tempore. Almost 12 minutes.

Mr. DURBIN. So I will be notified in 2 minutes.

There is something more at stake here that is even more important than the power of the President and the tradition of the Senate, and that is the independence of the judiciary. You cannot turn on the television or radio without hearing from some special interest group criticizing the Federal judiciary. I have been critical of individual decisions. I can point to some, including one that was made in the State of Florida in 2000. But to come to the floor and say let's get rid of the people making the decisions, take the power of Congress and control the judiciary, that is a mistake. An independent, fair, and balanced judiciary is critical for America.

When I hear Members of Congress and special interest groups saying they want to use this nuclear option, the power of Congress, to take control of the Federal judiciary, I am concerned. That is a power grab far beyond violating the traditions and rules of the Senate. It says they are going to try to show control and exert authority over a branch of the Government which has always been independent.

I will submit a transcript of a program on May 1 from "This Week With George Stephanopoulos." It is an interview with Pat Robertson.

I ask unanimous consent that it be printed in the RECORD.

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

[ABC News Transcripts, May 1, 2005]

THIS WEEK WITH GEORGE STEPHANOPOULOS

PAT ROBERTSON INTERVIEW

President George W. Bush, United States: "Role of religion in our society, I view religion as a personal matter. I think a person ought to be judged on how he or she lives his life, lives her life, and that's how I've tried to live my life through example. Faith plays an important part in my life individually, but I don't ascribe a person's opposing my nominations to an issue of faith."

George Stephanopoulos, ABC News: (Off Camera) That was President Bush in his prime time press conference Thursday night talking about religion and public life and now for more on this I'm joined from Virginia Beach by reverend Pat Robertson. Good morning reverend Robertson.

Pat Robertson, Chairman, Christian Broadcasting Network: Good morning, George.

George Stephanopoulos: (Off Camera) You know, the president seemed to be putting some distance between himself and people like you, allies like you who have cast this battle over judges in more religious terms. Do you now accept the president's belief that those who want to preserve the filibuster for judges are not fighting against people of faith?

Pat Robertson: George, I've never said that. I've said some things about the judges, but I think this filibuster thing strictly is an attempt to please the People for the American Way and the ultra left. I think the Democrats are catering to them, but, you know, in the entire history of the United States of America, there has never been a judge who has been refused a vote when there was a majority of Senators willing to vote for his confirmation, never in history. This filibuster in the last two years is unprecedented in our history.

George Stephanopoulos: (Off Camera) But, sir, you have described this in pretty, this whole battle in pretty apocalyptic terms. You've said that Liberals are engaged in an all-out assault on Christianity, that Democrats will appoint judges who don't share our Christian values and will dismantle Christian culture, and that the out-of-control judiciary, and this was in your last book "Courting Disaster" is the most serious threat America has faced in nearly 400 years of history, more serious than al Qaeda, more serious than Nazi Germany and Japan, more serious than the Civil War?

Pat Robertson: George, I really believe that. I think they are destroying the fabric that hold our nation together. There is an assault on marriage. There's an assault on human sexuality, as Judge Scalia said, they've taken sides in the culture war and on top of that if we have a democracy, the democratic processes should be that we can elect representatives who will share our point of view and vote those things into law.

George Stephanopoulos: (Off Camera) But, sir, let me just stop you there. How can you say that these judges are a more serious threat than Islamic terrorists who slammed into the World Trade Center?

Pat Robertson: It depends on how you look at culture. If you look over the course of a hundred years, I think the gradual erosion of the consensus that's held our country together is probably more serious than a few bearded terrorists who fly into buildings. I think we're going to control al Qaeda. I think we're going to get Osama bin Laden. We won in Afghanistan. We won in Iraq, and we can contain that. But if there's an erosion at home, you know, Thomas Jefferson

warned about a tyranny of an oligarchy and if we surrender our democracy to the tyranny of an oligarchy, we've made a terrible mistake.

George Stephanopoulos: (Off Camera) You know, President Bush at that press conference also said that he believes you're equally American whether you're Christian, Muslim, or Jew, and I wonder if you fully accept that, because in the past, you've said that you believe that only Christians and Jews are qualified to serve in the government. Is that still your belief?

Pat Robertson: Well, you know, Thomas Jefferson, who was the author of the Declaration of Independence said he wouldn't have any atheists in his cabinet because atheists wouldn't swear an oath to God. That was Jefferson and we have never had any Muslims in the cabinet. I didn't say serve in government. I said in my cabinet if I were elected president, and I think a president has a right to take people who share his point of view, and I would think that would be . . .

George Stephanopoulos: (Off Camera) Well, wait a second. Let me just stop you there. 'Cause in your book "The New World Order" you wrote, "'How dare you maintain that those who believe in the Judeo-Christian values are better qualified to govern America than Hindus or Muslims.' My simple answer is, 'yes, they are.'" Does that mean no Hindu and Muslim judges?

Pat Robertson: Right now, I think people who feel that there should be a jihad against America, read what the Islamic people say. They divide the world into two spheres, Dar al Islam Dar al Harb. The Dar al Islam are those who've submitted to Islam, Dar al Harb are those who are in the land of war and they have said in the Koran there's a war against all the infidels. So do you want somebody like that sitting as a judge? I wouldn't.

George Stephanopoulos: (Off Camera) So I take it then the answer to the question is that you believe that only Christians and Jews are qualified to serve in the Federal judiciary?

Pat Robertson: Um, I'm not sure I'd make such a broad, sweeping statement, but I just feel that those who share the philosophy of the founders of this nation, who assent to the principles of the Declaration of Independence, who assent to the principles that underlie the constitution, such people are the ones that should be judges, and the thing that I'm opposed to about judges is the thought that this is a living document that can be manipulated at the will of five out of nine judges, nonelected judges. It's the tyranny of an oligarchy that I'm concerned about.

George Stephanopoulos: (Off Camera) You said also that you believe Democrats appoint judges who "don't share our Christian values" and will "dismantle Christian culture." So do you believe that Justice Breyer and Justice Ginsburg, who were appointed by President Clinton, are trying to dismantle Christian culture?

Pat Robertson: Justice Ginsburg served as a general counsel for the American Civil Liberties Union, ACLU. That was founded, as you probably know, by about three members of the Communist Internationale. Their leader, Baldwin, said that he wanted to be a Communist and wanted to make this . . .

George Stephanopoulos: (Off Camera) So she's a Communist?

Pat Robertson: He was. He said, it's in my book. I mean, he said it. He made a declaration. He said I want to make America a workers' state, breed Communists.

George Stephanopoulos: (Off Camera) But I was asking about Justice Ginsburg. And you now seem to be trying to equate her with these Communists.

Pat Robertson: Well, she was the general counsel for this organization whose purpose right now is to rid religion from the public square. That's they are announced. We've had Nadine Strasser down here to our university in a debate. She's a very pleasant lady but that's what she said was her avowed goal, to take all religion from the public square. That's their initiative and Justice Ginsburg served as their general counsel, so . . .

George Stephanopoulos: (Off Camera) Let's turn to some broader issues. You spoke at the beginning of the year on "The 700 Club" and said that you had been praying and God had given you some predictions about President Bush's second term. Let me show you that.

Pat Robertson: What I heard was that Bush is now positioned to have victory after victory. He'll have Social Security reform passed, that he'll have tax reform passed, that he'll have conservative judges on the courts.

George Stephanopoulos: (Off Camera) So that's what you heard on January 3rd. Do you think you might have misinterpreted?

Pat Robertson: No, I think he's got a winning hand on Social Security. George, despite what Nancy Pelosi says. The Social Security, as you know is going into deficit in 2018. It's not 2042 or '52. What they've been doing is taking a surplus of the money that we all pay into Social Security and they've used it to fund the Federal deficit and there is no trust fund. That's an illusion and it's going into deficit. There won't be any more excess for the Federal Government in 2018. We're hitting into a crisis mode and I think the president as far as younger workers concerned, he has a winning hand, and I think the Democrats are holding on to something that Franklin Delano Roosevelt did in the '30s and they look like a bunch of mossbacks. It is time they, they, they, they, they get some new ideas. You said it right when you were interviewing her.

George Stephanopoulos: (Off Camera) You know reverend Robertson, the God you describe is taking a very active direct role in our lives. One of the earlier clips we showed, said, you had Him saying I am removing justices from the supreme court and I'm just wondering why does a God who is so involved in our daily life, so directly involved allow something like a tsunami to kill several hundred thousand people in Asia?

Pat Robertson: I don't think He reverses the laws of nature. The reason for that tsunami was the shifting of tectonic plates in the Indian Ocean. I don't think He changes the magma in volcanoes and I don't think He changes the wind currents to bring about hurricanes, so I don't attribute that to God or His lack or otherwise but in terms of human affairs I do think he answers prayer and I think there have been literally millions of people praying for a change in the supreme court. The people of faith in this country feel they're on a tyranny and they see their liberties taken away from them and they've been beseeching God, fasting and praying for years, so I think he hears and answers their prayers.

George Stephanopoulos: (Off Camera) You know, let's look ahead to 2008. The jockeying has already begun and of all the candidates looking for the nomination on the Republican side, which one do you believe is best positioned to get the support of religious conservatives like you?

Pat Robertson: You know, it's really hard to pick a winner right now. There's an outstanding Senator from Kansas who I think would be looking for it. He certainly represents the . . .

George Stephanopoulos: (Off Camera) Sam Brownback?

Pat Robertson: Brownback, he's a super guy. I think George Allen from Virginia was a distinguished governor, he's a distinguished senator and head of the senatorial campaign committee and won some significant victories. He is a very attractive guy and would make a tremendous president. So there are a couple. I don't know who else is out there jockeying, I'm sure Karl Rove has a candidate that he hasn't told us about.

George Stephanopoulos: (Off Camera) You didn't mention Bill Frist. I'm surprised about that.

Pat Robertson: Uh, Bill is a wonderfully compassionate human being. He is a humanitarian. He goes on medical missions. He is a delightful person. I just don't see him as a future president. And I think he said he didn't want to run for president. Maybe I'm putting words in his mouth.

George Stephanopoulos: (Off Camera) I think he's looking at it. Let me ask you one other question on that and then I'll let you go.

Pat Robertson: Okay.

George Stephanopoulos: (Off Camera) If the party chooses a moderate like John McCain or Rudy Giuliani, do you think religious conservatives will split off and form a third party movement?

Pat Robertson: I don't think so. Rudy is a very good friend of mine and I think he did a super job running the City of New York and I think he'd make a good president. I like him a lot, although he doesn't share all of my particular points of view on social issues. He's a very dedicated Catholic and he is a great guy. McCain I'd vote against under any circumstance.

George Stephanopoulos: (Off Camera) Reverend Robertson, thank you very much.

Pat Robertson: Okay, thank you.

George Stephanopoulos: (Off Camera) The roundtable is next. George will, Terry Moran, and Linda Douglass weigh in on the president's first 100 days, and in "The Funnelies" it's Laura's turn.

Laura Bush, First Lady: I was a librarian who spent 12 hours a day in the library, yet somehow I met George.

Mr. DURBIN. Mr. President, this is a strident voice among some in this country who came out and said he believed that the real threat to America was not terrorism but men and women wearing judicial robes. He thought that was a much greater threat. That gives you an idea of the extreme rhetoric. We cannot let this happen. Whether the Democrats are in control or out of control, whether Republicans control today or tomorrow is secondary. We all swear to uphold the Constitution.

I will yield the floor to my colleague from New Jersey at this point. I hope those following this debate will consider the constitutional issues at stake.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New Jersey is recognized.

Mr. CORZINE. Mr. President, I also believe we must defend the independence of the judiciary, and I think the comments of both the Senator from Illinois and the Senator from New York regarding this subject are ones that need to be understood and need to be brought forward on the floor as we consider the potential for what I believe is changing the basic nature of how our courts are put together and their independence.

#### GENOCIDE IN DARFUR

Mr. CORZINE. Mr. President, this morning I rise to speak about the tragedy and human crisis—yes, the genocide—in Darfur, Sudan, and the failure of our Nation to do everything we can do to stop the killing and save the lives of the well over 2 million people who are displaced in Darfur. Just a few weeks ago on the Senate floor, we passed the Darfur Accountability Act offered by Senator BROWNBACK and myself, an amendment to the supplemental appropriations bill which we will be voting on, and I will be supporting today, or in the next several days as it comes out of conference.

The Darfur Accountability Act provided the tools and sets out the policies needed to confront this grave humanitarian crisis that exists in the Sudan. It also had broad bipartisan support and 30 cosponsors from both sides of the aisle.

It passed by unanimous consent on the floor of the Senate. Yet, inexplicably, the amendment was stripped from the bill in conference—all of it, including support for African Union forces, the call for a military no-fly zone, the extension of the arms embargo to the Government of Sudan, and the authority to freeze the assets and deny visas to those responsible for genocide and crimes against humanity. Even the Senate's statement that the atrocities in Sudan are genocide was removed.

Mr. President, I find it hard to comprehend how these policies, which hold the possibility of saving thousands, if not hundreds of thousands of lives, could be opposed by the House, the administration, or whoever. Sadly, the people of Darfur will be paying for the indifference and, in turn, we will be ignoring the values of the American people who hold us accountable for calling genocide what it is and pushing to stop it.

The contrast between our words and deeds seems to grow almost by the hour. Just today, in Georgia, President Bush stated:

We are living in historic times when freedom is advancing, from the Black Sea to the Caspian, and to the Persian Gulf and beyond.

I guess that is not happening in the Sudan. At the same time we are challenging autocrats around the world, it seems we are seeking accommodation with what I consider a barbarous government in Sudan.

At the same time we are saying we are standing with those who stand for freedom, we are turning our backs on the human rights of the people of Darfur. It is not enough to say that because the Sudanese Government shows some signs of cooperation on some fronts, this justifies our turning our backs on that Government's criminal attacks on their own people. It sounds almost like a speech I heard over the weekend. How can we ignore our own values when it comes to Africa? Is not every human life of equal worth?

One of this generation's great moral voices, Elie Wiesel, understood that