motion to proceed prevailed by the most recent vote, and the result is now the regular order of the Senate would be the fast-track legislation. The Senator asked unanimous consent to go to morning business. I didn't object to that. We also have a unanimous consent for tomorrow's proceedings dealing with DOD authorization. At that point, does the Senator expect to go back to the legislation pending, or can the Senator inform us whether he will be propounding additional unanimous-consent requests with respect to Senate business?

Mr. NICKLES. To respond to my friend and colleague, I think the next order, after we pass the DOD authorization bill, would be to take up the District of Columbia appropriations conference report, or appropriations bill. In addition to that, we may well be taking up Amtrak reform legislation, which has also been working its way through, not exactly on a fast track, but it has been working its way through, and hopefully we can get it done as well.

Mr. DORGAN. When does the Senator expect us to get back to the fast-track legislation?

Mr. NICKLES. That remains to be seen. That is really Senator LOTT's call. It may well be Thursday. It may well be Friday. It may well be after the House would take it up.

Mr. DORGAN. Further inquiry. I will appreciate the Senator's response.

As I understand it, conference reports are privileged matters.

Mr. NICKLES. That is correct.

Mr. DORGAN. They can be brought to the floor of the Senate at any time. Amtrak and other intervening legislation will require unanimous consent, is that correct?

Mr. NICKLES. I would have to ask the Presiding Officer on Amtrak. My colleague is correct on the conference reports on appropriations bills. Yes, they could.

We have four appropriations bills that we are trying to get through. It happens to be that we are at a deadline by November 7, so our highest priority is try to complete the various authorization bills.

Mr. DORGAN. If I might just inquire further, the reason I ask the question is that because we are on the legislation dealing with fast track, there are a number of Senators who will be wanting to offer amendments. It will not be a pleasant experience to learn that we move to other things and then come back to fast track with some understanding there is no time for amendments. I am just inquiring to try to determine what the expectation of the leadership is with respect to the fast-track legislation.

Mr. KERRY. Mr. President, would the acting leader yield for a minute?

Mr. NICKLES. First, let me respond to my colleague, Senator DORGAN. I hear what the Senator is saying. I know that the Senator has some amendments he wishes to offer on fast track. I know that we wish to pass fast track. We also wish to pass Amtrak reform and we also wish to pass all the appropriations bills, and we only have a couple of days. So we are going to try to accommodate everybody's requests. But the highest priority I believe will be to pass the appropriations conference reports as soon as possible. I believe the D.C. bill will be the first one up. That is not a conference report. It is a bill. But I think we have an agreement on D.C., so we will get that one accomplished. Hopefully then we will have three other conference reports we will be able to do in the next day or two, and we will have, I am sure, some additional time for my colleague to spend on fast track as well.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER (Mr. FAIRCLOTH). The Chair recognizes the distinguished Senator from Massachusetts.

Mr. KERRY. Mr. President, if I might share with my friend from North Dakota information with respect to at least Amtrak. We have an agreement now reached with respect to Amtrak. The language is now in print, and I believe it is being hotlined on both sides.

So with respect to the Amtrak effort in terms of any interruption, we would anticipate that going through here in a minimal amount of time. I am not sure how much the chairman of the committee, Senator MCCAIN, wants, but I would not imagine it will take more than half an hour or so. And so I do not think that will interrupt the course of business with respect to fast track in any significant way.

Mr. DORGAN. If the Senator will yield, an agreement on Amtrak would be welcome news I think to all Members of the Senate, and it would not be my intention to try to obstruct that. I am simply trying to determine when we might get back to fast track so that we might entertain amendments.

NOMINATION OF BILL LANN LEE TO BE ASSISTANT ATTORNEY GENERAL FOR CIVIL RIGHTS

Mr. THURMOND. Mr. President, I rise today to express my opposition to the nomination of Bill Lann Lee to be Assistant Attorney General for Civil Rights. I have reached this conclusion only after much thought and careful consideration. But I am certain that this is the right course. I commend Senator HATCH for his leadership and the excellent statement he delivered on the floor yesterday in this regard.

When the possibility that Mr. Lee would be nominated for this position was first brought to my attention, I was impressed by what I heard. Mr. Lee was born to a hard-working, determined family of Chinese immigrants. His success at Yale and Columbia University Law School reflects that he inherited a commitment to succeed. I was also assured then, and continue to believe, that he is a man of character, honesty, and intellect. I relayed that impression to the White House.

After Mr. Lee was nominated, I met with him and made clear that I had an open mind regarding his nomination. I told him that his positions on the issues would be critical, and that the committee was eager to hear his answers to questions.

Before the hearing, some expressed alarm at many of the cases and positions that Mr. Lee had taken during his leadership in activist civil rights organizations. They were concerned about whether he would use his job and army of attorneys in the Justice Department to advance the same agenda he had pursued for the Legal Defense Fund. I understood this. But, at the same time, I have known since my days as a small town lawyer that a good attorney is a strong advocate for his client, regardless of whether he agrees with everything the client wants.

Mr. Lee had an obligation to convince us at the hearing that he could transfer from the role of creative advocate for activist civil rights organizations to neutral and objective enforcer of the Nation's civil rights laws. This he failed to do. He would not give any cases or positions that he had brought on behalf of the Legal Defense Fund that he would not bring as head of the Civil Rights Division. He would not cite any difference between himself and the last civil rights chief, Deval Patrick, who was an unwavering proponent of the civil rights agenda of the left. Unfortunately, it became clear during the hearing that Mr. Lee's advocacy is guided by a dedicated personal commitment to the positions he has advanced over the years.

Mr. Lee started by proclaiming that proposition 209 is unconstitutional. In proposition 209, the people of California voted to end all government preferences and set-asides on the basis of race, sex, or national origin. Then, with the active support of Mr. Lee and his organization, a Federal judge blocked the will of the people, saying the referendum was unconstitutional. The claim was that proposition 209 violated the 14th amendment, when in reality it mirrored the 14th amendment. Far from violating the Constitution, proposition 209 essentially states what the Constitution requires. The Ninth Circuit recognized this simple fact on appeal. Regardless, Mr. Lee is steadfast in his view that it was unconstitutional for the people of California to bring preferences to an end.

Another disturbing but related issue involves judicial taxation. I firmly believe that Federal judges do not have the Constitutional power to raises taxes or order legislative authorities to raise taxes. It is a simple issue of separation of powers. Taxes are a matter for the legislative branch, the branch that is responsive to the people. The organization for which Mr. Lee works was instrumental in the decision of a Federal judge in Missouri to order that taxes be raised. Mr. Lee would not disavow this approach. Although he stated that if confirmed he would not ask

a Federal judge to order a legislative authority to raise taxes in the school desegregation context, he refused to rule out such a request in other civil rights contexts. He fails to recognize that fundamental principles of separation of powers prohibit judicial taxation.

Mr. Lee's views on proposition 209 and judicial taxation represent support for a dangerous tactic of legal activists. They use the unelected, unaccountable Federal judiciary to accomplish what they cannot achieve through the democratic process. When they lost at the ballot box on proposition 209, they got a lone Federal judge to block the will of the people. When they wanted to implement their lavish desegregation experiment in Missouri, they got a lone Federal judge to raise taxes. They have pursued their solutions in utter disregard of the people.

Today, Mr. Lee and his allies are failing to find support even in the courts. The Federal judiciary, led by the Supreme Court, is fashioning a civil rights jurisprudence based on the merit of the individual rather than preferential treatment for groups. Mr. Lee has fought against and continues to be uneasy with this constructive, solidifying law. It is clear that he would use his position and arsenal of attorneys to dilute or circumvent this progress toward ending preferential treatment.

An excellent example of the failed approach of the past is forced busing of school children. At the hearing, Mr. Lee continued to express support for the use of forced busing in some circumstances, even in the 1990's. He would not back away from his unbelievable assertion in a Supreme Court brief that ''the term 'forced busing' is a misnomer.''

Mr. President, many of us in the Senate are concerned about judicial activism on the bench, and we have every reason to be. We must keep in mind that a judicial activist decision starts with a proposal by a legal activist. We cannot and should not stop private organizations from advocating legal activism if they wish. However, we have a duty to reject legal activism as the guiding principle for our Nation's top civil rights law enforcement officer.

I must strongly oppose this nomination.

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I rise today to express my deep dissatisfaction with the misguided views of President Clinton's nominee for Assistant Attorney General for Civil Rights.

As many of my colleagues have made clear, Mr. Lee is a fine man, with accomplished legal credentials. His story of hard work and success is truly inspiring. But, Mr. President, the position of Assistant Attorney General for Civil Rights should not be filled based on an inspiring story, but rather, on a nominee's commitment to the bedrock principle that every American should be seen as equal in the eyes of the law.

The nomination of Bill Lann Lee is in serious peril, and for good reason. Mr. Lee has a long, well-documented, and disturbing allegiance to the policy of government-mandated racial preferences. In spite of the Constitution and recent court decisions, Mr. Lee continues to assert that government jobs and contracts should be handed out based on the immutable traits of race and gender.

Mr. Lee's views, however, go one giant leap beyond simply allowing racial preferences. Mr. lee has argued that the Constitution, in fact, requires racial preferences. Let me restate that. Bill Lann Lee has filed papers in Federal court asserting that the very Constitution which prohibits discrimination based on race and gender, in fact, requires the government to engage in discrimination based on race and gender.

As absurd as this theory sounds that is what Bill Lann Lee argued in court briefs this year as he fought the will of the California voters in proposition 209. Thankfully, the Ninth Circuit Court of Appeals unanimously rejected the Lee theory. In simple, straightforward language, the court explained, ''the 14th Amendment, lest we lose sight of the forest for the trees, does not require what it barely permits.''

And, as expected, the Supreme Court this week refused to validate the Lee theory and allowed the ninth circuit ruling to stand.

THE CONSTITUTION DOES NOT REQUIRE DISCRIMINATION

Throughout Mr. Lee's lifetime of advocacy, he has consistently overlooked one profound point, that is: Every time the government hands out a job or a contract to one person based on race or gender, it discriminates against another person based on race or gender.

Mr. Michael Cornelius recently spoke poignantly to this point before the Constitution Subcommittee in the House of Representatives. He explained that his firm was denied a Government contract under ISTEA, even though his bid was $3 million lower than the nearest competitor. Mr. Cornelius' bid was rejected because the Government felt that the bid did not use enough minority or women-owned subcontractors.

If you think that's bad, think about this: The Cornelius bid proposed to subcontract 26.5 percent of the work to firms owned by minorities and women. Yet, 26.5 percent was not enough in the world of so-called goals and timetables that Mr. Lee thinks the Constitution requires. Mr. Lee's goals and timetables are more appropriately called quotas and set-asides.

You see, the Government took the contract away from Mr. Cornelius and awarded it to a bidder that proposed to contract 29 percent of the work to minority firms, and who charged the Government $3 million more than Mr. Cornelius.

And, unfortunately, it doesn't end there. When the Government denied the job to Mr. Cornelius, it also denied the job to all of Mr. Cornelius' employees—over 80 percent of whom are minorities.

So the Government, in its infinite wisdom, not only committed discrimination, but it paid $3 million in the process.

I have filed an amendment to ISTEA that would remove this pernicious practice of awarding jobs and contracts based on skin color. Racial preferences are discriminatory, unfair, and unconstitutional. This principle is being reaffirmed courtroom by courtroom, State by State all across this country.

But what does Mr. Lee think? Does he think the Constitution bars these kind of racial preferences? Absolutely not. So, I think it's fair to say that Mr. Lee's message to Mr. Cornelius is: ''Sorry about the discrimination against you, your family, and your employees. But, the Constitution requires it.''

JOINING THE CLINTON CORPS OF SOCIAL ENGINEERS

The Clinton administration is all too eager to add Mr. Lee to its army corps of social engineers. Civil rights lawyers like Norma Cantu and Judith Winston undoubtedly relish the opportunity to add a lawyer with the misguided views of Bill Lann Lee to their brigade.

Cantu and Winston, have helped lead the administration's battle against the courts and the Constitution. These lawyers, like Lee, have become skilled at establishing racial preferences behind the scenes through the jungle of Federal regulations and by way of the quiet camouflage of consent decrees.

Cantu and Winston, recently launched a politically motivated investigation of the University of California graduate schools. As you may remember, Mr. President, in 1995, the regents of the University of California voted to end heavy-handed racial preference policies in student admissions, opting instead to base admissions solely on merit. These policies had for years resulted in a two-tiered admissions system, by which students of preferred racial and ethnic backgrounds were admitted with inferior qualifications than those of other racial and ethnic backgrounds.

The regents recognized that this system embodied unconscionable discrimination which hurt not only those better-qualified applicants that were denied admission, including many Asian-American applicants who suffered severely under the preference policy, but it also hurt minority students who faced stigmatization as racial preference admittees.

Now, as a result of the regents' decision, the University of California will no longer punish or reward applicants based on their race, but will rely on widely accepted, long-standing admissions criteria that focus on individual achievements, such as grades, test scores, and life accomplishments.

Most Americans would applaud the regents for their prudent decision. But not Cantu and Winston. They are using their civil rights positions at the Department of Education to launch a Federal taxpayer-funded investigation to determine whether schools are discriminating by refusing to discriminate.

The Los Angeles Times reported that Winston has asserted that:

> The University of California may have violated federal civil rights law by dropping its affirmative action rules and relying on test scores and grades as a basis for selecting new students.

This baseless investigation turns the principle of nondiscrimination on its head by threatening schools that use race-blind admissions policies and objective measures of merit. This investigation has provoked criticism even from those who typically defend race preferences. For example, University of Texas Law School professor Samuel Issacharoff, recently stated that ''[Ms. Winston] is voicing a theory that does not have support in the courts.'' Professor Issacharoff went on to explain that he was ''not aware of any legal support for the idea that would say the Harvard Law School, for example, cannot accept only the cream of the crop if doing so would have an impact on a minority group.''

And in an editorial, the Sacramento Bee, a newspaper I might add that supports race preferences, referred to the administration's legal theory as ''an Orwellian misreading of the law.'' ''Equally important,'' the Bee concluded, ''the investigation is an abuse of federal power, designed to punish California and its citizens for [its] decision on affirmative action. * * *''

So where did this investigation originate? Who could muster the contorted legal arguments to justify these threats and these expenditures of taxpayer dollars?

Were these complaints filed by a student who alleged discrimination? A student organization? A family in California? No. I'll tell you who filed the complaint that launched this Federal investigation: Bill Lann Lee, as head of the Western Office of the NAACP Legal Defense and Education Fund.

And, it does not end there. The Labor Department has also joined the pile-on to punish California for its decision to push for a colorblind society. DOL is investigating the charge that U.C. graduate schools are committing employment discrimination against the minorities who are not accepted into U.C. graduate schools, and thus, not able to apply for campus jobs.

And where did this complaint originate? Again, it wasn't a student. It was Bill Lann Lee and his legal defense fund filing another complaint launching yet another federally funded investigation of race-neutral policies based on yet another legal theory that is outside the boundaries of both the Commission and the courts.

And, what is the administration's threatened sanction against the University of California for its race-neutral approach? The termination of hundreds of thousands of dollars in Federal funds.

And what does this pattern and practice tell us that Mr. Lee will do with an army of lawyers at the Justice Department? He will bring down the power of the Federal Government upon State and local governments that refuse to mandate racial preferences. This, Mr. President, is simply unacceptable.

Mr. Lee's views are neither moderate nor mainstream. And, his views are not isolated incidents. They are not glib, off-handed statements made during his youth. They are not dusty law review articles written by a starry-eyed graduate student. And, they are not creative theories espoused in the ivory tower of academia.

Mr. Lee's well-documented views are the voice of a man who exhibits an alarming allegiance to racial preferences and a disturbing disregard for the Constitution. This voice—this man—should not be entrusted with the noble task of upholding the equal protection clause of the U.S. Constitution.

Several days ago, I placed a hold on Mr. Lee's nomination, and today, I respectfully announce my formal opposition to his nomination. We must end the divisive practice of awarding Government jobs and contracts and opportunities based on the immutable trait of skin color and ethnicity. Respect for our Constitution, our courts, and—most importantly—our individual citizens, demands no less.

Mr. THURMOND. Mr. President, I wish to commend the able Senator from Kentucky for the excellent treatise he just made.

Mr. AKAKA addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. AKAKA. I thank the Chair.

(The remarks of Mr. AKAKA pertaining to the introduction of S. 1376 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. AKAKA. I yield the floor.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER (Mr. ABRAHAM). The Senator from Alabama.

NOMINATION OF BILL LANN LEE

Mr. SESSIONS. Mr. President, the position of Assistant Attorney General for Civil Rights is important to our Nation. The most important reason is what it signals about the direction the President plans to take on key civil rights issues of the day.

In my opinion, this Nation is moving in the right direction on civil rights. We have gone through a turbulent period where legal segregation has now been ended, and we are now ending a period during which the courts have used racial preferences and remedies to cure certain aspects of past discrimination.

While this procedure can be defended perhaps in the short run, particularly when it is directly attached to a specific prior discriminatory act, such a policy cannot be a part of a permanent legal and political system.

Our Supreme Court, which has led the drive to eliminate legal discrimination on a variety of fronts, is wisely taking a long-term view of the impact of racial preferences in America. After thoughtfully considering our future, the Supreme Court, in the Adarand case and in rejecting just this week the idea that California's civil rights initiative is unconstitutional and in other cases has clearly stated that this Nation must not establish a governmental system which attempts to allocate goods, services and wealth of this Nation on the basis of one's race, on the basis of the color of their skin. The result will be contrary to the equal protection clause of the great 14th amendment to our Constitution, and contrary to our goal of a unified America in which people are judged on the contents of their character and not on the color of their skin.

Mr. President, with regard to the nomination of Bill Lann Lee of California to be Assistant Attorney General for Civil Rights, I want to say with confidence that he is a skilled and able attorney, an honest man, a man who appears to have integrity and the kind of characteristics that make for a good attorney.

His entire career has been spent in skilled advocacy in the civil rights arena. He is a Columbia Law School graduate who could have practiced on Wall Street but chose public interest law instead, and he should be commended for that. Sadly, however, I must join the chairman of the Judiciary Committee, Senator Orrin HATCH, and the former chairman of that committee, Senator THURMOND, who is here tonight and just made an excellent series of comments on this issue, to announce my opposition to Mr. Lee. Simply put, Bill Lee, like President Clinton, is outside the mainstream of American civil rights law, the very laws he would be charged with enforcing.

While the American people and the Federal judiciary have steadily moved toward a color-blind ideal, Bill Lee has clung to a policy of racial preferences and spoils. Bill Lann Lee strongly advocates racial and gender preferences which are, in effect, virtually quotas in virtually every area of our society, including college admissions, congressional voting districts and employment.

I believe a nation that draws voting districts on the basis of race, that uses race as a factor in college admissions and hiring and promotion decisions is, in fact, destined to have unnecessary racial strife and hostility and it does not bind us together as a nation.

In my opinion, it would be unwise for the Senate to confirm Mr. Lee as Assistant Attorney General for Civil Rights. The Assistant Attorney General for Civil Rights is one of the most