

2002, is an appropriate nominee for the circuit court. If Charles Pickering were still a State Senator in the 1970s, I would vote against him because his civil rights record at that time was not good. But today he is a different man. This is a different time.

The opposition raised against Judge Pickering, in large measure, is about what he was as a Mississippi State Senator in the 1970s.

It is my hope that at a minimum we will send Judge Pickering's nomination to the floor of the Senate for a vote by the full Senate. The Constitution provides for confirmation by the Senate—not by the Senate Judiciary Committee. There are solid indicators that if Judge Pickering reached the floor, there would be 51 or more votes for his confirmation.

When you take into account an analysis of the comments within the beltway by those who oppose Judge Pickering vociferously, and those in Mississippi who know him best, they are for him. Those who talk about him in Mississippi talk in specifics about how he took a courageous stand against a leader of the Ku Klux Klan, about how he sided with an African American who was a defendant in a case where there was a white victim, something which was frequently not the case in the South.

This may be a warmup for the next Supreme Court nomination. We have already seen some indicators of that with some members of the Judiciary Committee saying that a litmus test should be applied, and, if a nominee will not pledge to uphold *Roe v. Wade*, that nominee is not appropriate for confirmation.

This is an effort, in effect, to equate *Brown v. Board of Education* on segregation, with *Roe v. Wade*. It is obvious that if someone did not support *Brown v. Board of Education* and desegregation, that person would not be considered fit for the Federal bench today. But to apply a litmus test more broadly is very troublesome, in my opinion.

It is my hope that if Judge Pickering receives a negative vote in committee along party lines, which seems almost certain, that at a minimum he would be sent to the floor for full floor consideration.

We ought to establish a truce—an armistice—on the partisan in-fighting which has been ongoing on nominations. When we had a Democrat in the White House and a Republican-controlled Senate, it was the mirror image of what we have today with Republican President Bush in the White House and a Senate Judiciary Committee in the Senate controlled by the Democrats. I said the same thing when we had President Clinton in the White House and a Republican-controlled Senate. I crossed party lines to vote for Judge Paez and Judge Berzon, Judge Gregory and Bill Lann Lee for Assistant Attorney General for the Civil Rights Division.

It is my hope that we will establish a protocol.

I think Senator MCCONNELL was right when he said yesterday in the Judiciary Committee hearing that we are facing an "institutional crisis."

The American people do not like the partisan bickering—Democrats versus Republicans—especially when it comes to the selection of Federal judges and there is a judicial emergency in many circuits.

It is my hope that we will move ahead to try to end this partisanship.

There is solid precedent for submitting nominees to the full Senate when there is a negative or tied vote in committee. Judge Bork was defeated 8 to 5 in committee. Yet his nomination was sent to the floor for consideration as a Supreme Court nomination.

Justice Clarence Thomas had a tie vote in the committee of 7 to 7, but by a vote of 13 to 1 his nomination was sent to the floor.

Six nominees for district court or circuit courts have been sent to the full Senate when they did not receive an affirmative vote in committee—since 1951.

We still have time to revise the thinking on Judge Pickering. We still have time for an analysis on an appropriate way to handle Judge Pickering. But I submit that we ought to establish a principle from the Judiciary Committee that, if the vote is strictly along party lines, the matter be put before the full Senate for consideration.

I thank my distinguished colleague from New Hampshire for allowing me to precede him on the floor.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

#### METHYL TERTIARY BUTYL ETHER

Mr. SMITH of New Hampshire. Madam President, I want to speak briefly on four issues this morning. Let me start, first, with the issue of MTBE, which is probably not a household word in many States. It is methyl tertiary butyl ether. I will be calling it MTBE from now on in these remarks.

Over the past few years, countless families and businesses in my State and throughout the Nation have learned firsthand the devastating effect of this gasoline additive known as MTBE. It is in our drinking water. People can't shower because of the smell. They cannot drink the water. Their homes have to have three or four huge tanks with filters in order to be able to drink and use their water. It depreciates the value of their home. This is a real problem nationally.

Fortunately, there is help on the way. I am very pleased that the energy package we are now considering finally contains a solution.

I thank the majority leader for including my legislation in the Federal Reform Leaded Fuels Act in the energy package that we are debating. This legislation was voted out of committee

both last Congress and this Congress. I am pleased that it will finally get a vote, I hope, on the Senate floor.

I thank a lot of people who helped. This does not come easy. We all have strong views. We have a number of different interests: Those who produce the MTBE, those who produce ethanol, those who refine gasoline, those regions of the country that can't use ethanol for various reasons, and those who are worried about the higher cost, if they do.

It took a lot of compromise and a lot of negotiations, which we have been working on now for many months—particularly Senator REID of Nevada, Senator VOINOVICH, Senator JEFFORDS, Senator INHOFE, Senator KAY BAILEY HUTCHISON, Senator HAGEL, and Senator MURKOWSKI—there are others, but in particular their hard work and cooperation with my staff.

I also want to say that the refiners, the ethanol producers, the environmental groups—all of them—have worked with me over the last few years to reach a consensus. It was not easy, that is for sure, with so many diverse issues and views.

I thank all of them for negotiating in good faith and keeping the work product to ourselves as we went through this.

The result is good. It is a comprehensive legislative package that protects our drinking water while preserving air quality and minimizing negative impacts on gasoline prices and supply.

Understanding where we are, it is worth taking a step back to discuss how and why we got to this point.

In 1990, the Clean Air Act was amended to include a reformulated gasoline program. This program requires clean burning gasoline in specified areas with high levels of air pollution. Four counties in southern New Hampshire chose to participate. The program has been successful in achieving the air quality benefits beyond our requirements.

Unfortunately, one provision of the program mandates the use of an oxygenate in areas that use reformulated gas, requiring States to use MTBE or ethanol. Because New Hampshire is far from ethanol production, economics dictated that MTBE be chosen as the oxygenate. There was also concern with the impact ethanol could have on the air quality of New Hampshire, particularly the potential of increased smog.

So the State chose MTBE. Of course, at that time no one was aware of the looming nightmare as a result of that choice. What we put in the gasoline to clean up the air has now contaminated our water.

How does that happen? Because the tanks underground that hold the gasoline leak, or after you fill up your tank with gasoline and you take the nozzle out, a drop or two of the gasoline may hit the pavement, and then it washes away into our ground water.

I remind all who are listening to me now, think about that when you put

that nozzle back: Don't let any of that gasoline drip, not even a drop, because it goes so quickly into the water supply.

MTBE is a clean, cheap gasoline additive that boosts octane. It is a very effective product. But it migrates through the ground and into the water table and the aquifer very quickly and diffuses quickly. At even low levels of contamination, MTBE renders water unusable because of its foul odor and taste.

Particularly hard hit by the MTBE contamination are the communities in the southern tier of New Hampshire, such as Salem, Derry, and Raymond. I have come to the Senate Chamber on several occasions to speak specifically about these families and small businesses that have been impacted by the MTBE contamination, continuing to reiterate the desperate need that the Senate take action. Time after time, in committee, month after month, I have almost begged the Senate to take action on this matter because it isn't fair that people, in the interests of making a profit, selling one product, should do it at the expense of those whose health is being impacted by contaminated water.

I spoke to the Miller family—Christina and Greg, and their son Nathan—who live in Derry, NH. This young family has been struggling for over 3 years with MTBE contamination in their well—not being able to drink the water, not being able to shower. I have spent time at the Four Corners Store and surrounding homes in the town of Richmond. Gasoline in those tanks spread from that location into the aquifers of the surrounding homes. This plume has contaminated a number of private wells near that store. I visited some of those families who have those wells. We went down in the basements and saw these large tanks with filters. When a prospective buyer comes to look at the house, what are they going to think? The first question is: What is this?

The Goulas and Frampton families were kind enough to invite me into their homes and show me this massive treatment system that had been installed by the State. The answer is, yes, we are getting the filters, we are getting the help, the remediation we need, but that does not take care of the problem.

We do not want more homes contaminated. Once we remove the MTBE, then it is not going to get anymore into their wells. Once it is cleaned up, they will be able to use their water again.

We take for granted, in this country, the fact we can turn that faucet on and get a clean drink of water or take a shower and not have to smell the water. These are cumbersome systems that have to be set up, and costly to operate, not to mention the concerns and fears they face on a daily basis.

There are hundreds, maybe thousands, of stories similar to these New Hampshire examples of nightmares

that are the result of MTBE contamination.

We made a mistake. The Government made a mistake. They put MTBE in gasoline to clean up the air, not knowing the harm they were doing. We did not do enough research and science, and we made a terrible mistake. We have to correct it. We have to do it now.

To help understand the magnitude of the problem in New Hampshire alone, it is worth noting just a couple of statistics.

The State Department of Environmental Services in New Hampshire estimates that up to 40,000 private wells in New Hampshire have some MTBE contamination.

In the year 2000, over 16 percent of the public water supplies had detected levels of MTBE. Almost 20 percent of that public water with MTBE contamination is at levels above the State drinking water standard.

The State has had to buy bottled water. I mentioned the installation of the expensive treatment equipment with contaminated wells.

Currently, New Hampshire has two dedicated State funds and a federally funded program that are used to address MTBE problems.

During discussions with State officials, I learned that the money is running low and will soon run out if new sources of funding are not found. This is a crisis. We have to deal with it.

New Hampshire is not alone. Many other States have had to address problems from MTBE contamination. I know the distinguished Senator from California, Mrs. FEINSTEIN, and I have talked about this a number of times.

This is a bipartisan issue. It is not a partisan issue. This is a national problem. It has to be addressed at the national level because to not do so would force communities to say, we are going to ban MTBE, and they would be in violation of the Clean Air Act.

So this legislation I have written is an effective solution. I am pleased that the energy package includes the text of that legislation. Specifically, it bans MTBE, provides money for the cleanup of MTBE, eliminates the oxygen mandate in the RFG program, and maintains the current level of air quality protection. There is no backsliding.

In addition, the legislation requires the EPA to conduct an expedited review of State petitions to suspend the oxygen mandate in the RFG program. If the EPA fails to complete the review of a State petition within 30 days, the petition will automatically be granted. This provision could allow New Hampshire to begin to eliminate MTBE from the fuel system even before the oxygen mandate is lifted.

I have promised to help New Hampshire in any way possible to stop the use of MTBE and I promise those families the same thing. We owe it to them. The Senators who are not from New Hampshire owe it to them, as I would help those in other States who have

similar problems. And there are those in other States who have similar problems.

Finally, the language includes \$2 million for the research of techniques to clean up bedrock contamination and to establish a clearinghouse for sharing the information. This is a huge increase beyond the pilot study currently funded.

The greatest difficulty, according to Dr. Nancy Kinner, a scientist from the University of New Hampshire, is tracking and cleaning up MTBE in fractured bedrock. This research will help to address that problem. It has not been an easy deal to reach, but a lot of people participated. They came in with the right approach, understanding the desperate need those families have.

Again, I thank the majority leader, and all of the Senators involved. I particularly thank Chris Hessler and Melinda Cross from my staff for their help, and Dave Conover, of course, for his assistance in helping me to work through this.

Madam President, I see there are no other Senators in the Chamber. I ask unanimous consent to speak for an additional 10 minutes.

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

#### NOMINATION OF JEFFREY HOWARD

Mr. SMITH of New Hampshire. Madam President, there has been a lot of discussion about the Pickering nomination and about the delay in approving judges. It seems to be a perennial issue. Senator SPECTER just spoke about it. But there are times when we need to put some of these partisan feelings behind us and look at some of these nominations.

I rise to discuss the nomination of Jeffrey Howard to be a justice for the First Circuit Court of Appeals. Attorney Howard is like many other of President Bush's nominees who have yet to even receive a hearing. These men and women whom we nominate, their lives go on hold. They have law practices. They have responsibilities. They have families. What do you do?

Jeff Howard is a young man. He has a family. He was nominated on August 2, 2001. I was pleased to have been the prime mover and sponsor of that nomination because Jeff Howard is extremely well qualified for this position. But his nomination, with all due respect to the chairman of the Judiciary Committee, has now been pending for 217 days.

The vacancy he was nominated to fill was formerly held by Judge Norman Stahl. This vacancy was created on April 16, 2001. You may want to keep this in mind. We are almost to the first-year anniversary of the creation of the vacancy, and yet, how does he conduct his law practice? How does he take on new clients? What does he do?

His paperwork has been complete since September 20, 2001. Both Senator