

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

GREGG and I returned our blue ships—that means approval slips—on September 20, 2001. There is no reason this nomination cannot have a hearing. There is no controversy here. He should have a hearing.

Jeff Howard has an impressive array of legal experience that well qualifies him to be a Federal appellate judge. He served as U.S. attorney for New Hampshire from 1989 to 1993. In that post, he litigated numerous cases at both the trial and appellate levels and was a member of the Attorney General's Advisory Committee of U.S. Attorneys. For his efforts, he received the Attorney General's Edmund Randolph Award as well as the U.S. Attorneys' Award.

He has Federal experience that includes a stint as principal associate deputy attorney general at the U.S. Department of Justice from 1991 to 1992. He performed this job at the request of former Attorney General Bill Barr. In addition to his work as U.S. attorney, he served as attorney general of New Hampshire from 1993 to 1997 and deputy attorney general in 1988 and 1989. In these State and Federal capabilities, Jeff Howard has been involved in thousands of litigated matters covering the full range of issues that are going to come before him as a Federal judge.

In particular, he has been either on the brief or lead counsel in more than 100 cases in the First Circuit, the court to which the President has nominated him. Over the last 10 years, he has performed approximately 2,500 hours of pro bono work for victims of domestic violence.

He grew up on his grandfather's dairy farm in Cornish, NH, and later graduated from Plymouth State College with a B.A. and later Georgetown Law School, and he was editor of the *American Criminal Law Review*.

This is a well qualified judge. He should be on the court. He does not deserve this kind of treatment. How are we going to get good people to come forth and take these jobs when their lives are put on hold for years, sometimes, let alone months and days?

The circuit court nomination pace is incredible. During the first year of the Clinton administration, only five court of appeals nominees were nominated. Of those five, three were reported out that same year. That is 60 percent of President Clinton's court of appeals nominees. In contrast, President Bush has nominated 29, and the committee has only reported 6. That is 21 percent. There were only two circuit court nominees left pending in committee at the end of President Clinton's first year in office. In contrast, there were 23 of President Bush's circuit court nominees pending in committee at the end of last year.

It is unfair to compare the first years of the second Bush administration and the Clinton administration by looking only at the mere number of nominees confirmed. This approach fails to take into account the fact that President

Bush chose to nominate 24 more circuit court nominees than President Clinton did. We can get lost in the numbers, and I don't want to go through it.

I just repeat that Jeff Howard is as highly qualified a judge for the First Circuit as any judge I have seen. Yet we still have the nomination pending without even a hearing. His life is on hold. His family's life is on hold. I appeal to the chairman of the Judiciary Committee to give this good, decent, honorable judge a hearing so we have the opportunity to bring his nomination forth and put him on the bench where he belongs and where I was proud to support him.

#### NOMINATION OF CHARLES PICKERING

Mr. SMITH of New Hampshire. Madam President, I rise to discuss the nomination of Charles Pickering. Senator SPECTER just spoke on it.

This is a tragedy, when we have to drag people through the mud when they get finally to the hearing process, as Charles Pickering has. He is a man whose name is being dragged through the mud, even though people in his hometown of all races and creeds are praising him and saying: Whatever mistakes he made in the past, we understand. He has moved beyond that. He is a good man. He ought to be on the bench. Yet here we are, stuck with probably seeing a situation where Charles Pickering will be defeated by one vote on a party-line vote and not be allowed to come to the floor.

Why not give the Senate a chance? It is done. Maybe it has not been done that often on circuit court matters, but it has certainly been done many times with Supreme Court Judges. I hate to say it because I will not get into the partisan rhetoric here, but this is a classic case of getting "Borked" again. We all know what Judge Bork went through, and Clarence Thomas. We know what John Ashcroft went through.

Is this the way to treat people? Just be fair about it. If we are going to hold people accountable for every single mistake they make in life, then we will have to have perfect people. I don't know too many perfect people walking around this Chamber. If there is anybody in this Chamber who has not made any mistakes, they probably should vote against Pickering.

This is ridiculous. He is a good man, a good judge. To have his name dragged through the mud is disgusting. I hate to see it. It reminds me of the Ashcroft hearing, of the terrible things said about Clarence Thomas and, of course, Robert Bork. Bork was probably one of the most qualified people ever to even be nominated for the Supreme Court. Whether you liked him or disliked him on his views, he was still qualified. The last time I looked, a President had the right to pick somebody of his choosing, of his philosophy.

I voted for I don't know how many Clinton nominations to the Supreme

Court, to the Federal court system. I didn't expect to get Reagan-type judges out of Bill Clinton, but he was the President. I supported most of them unless there was some particular thing that, in my view, made them not qualified.

To echo what Senator SPECTER said, it is my hope we will move this nomination to the Senate floor and let the Senate make the decision. That is not unreasonable. The committee is deadlocked on a partisan vote. Bring Judge Pickering out. If he loses, fine; if he wins, fine. But let him have a vote. He deserves that. At worst, we can say maybe some of the things are true. How do you know whether what he said and did 30 or 40 years ago is over now? Can you be the judge of that? Let all 100 Senators make that judgment. I would like to have a chance to have a vote on that.

#### THE NOMINATION OF JOE SCHMITZ

Mr. SMITH of New Hampshire. Madam President, the final item I rise to discuss involves another nomination, but not for the judiciary. It is the nomination of Joe Schmitz. I have already submitted a statement for the RECORD, but I want to say this in the Chamber because I believe strongly in it.

Joe Schmitz was nominated for the inspector general at the DOD. This is a position among the most important in the Department because the inspector general's office is responsible for ensuring accountability and efficiency, and therefore it is the heart of the integrity of the Pentagon.

There have been numerous scandals in the IG's office in the recent past. Essentially, the inspector general's office has been rudderless without a confirmed nominee now for 3 years. With the IG's office in disarray, there is the impression left that the Department is without proper and necessary oversight. It is more than impression; it is fact.

I am also told that the IG's office has been leaderless, headless, for some 10 years—over the past couple decades, which is a disgrace when you stop to think about it. Without strong leadership, direction, and motivation, no office can function efficiently and effectively.

Secretary Rumsfeld needs an inspector general. If you stop to think about the job Donald Rumsfeld has done as the Defense Secretary in this country, the way they have responded, the way they have conducted themselves in countless briefings, and the way they have administered the war and come back after the terrible events of 9/11, he deserves an inspector general. He deserves Joe Schmitz because that is his choice. We are, after all, at war. Remember that.

It doesn't seem to bother those who are deliberately holding up the nomination of this good man. He was the Secretary of Defense's choice, the