

their retirement, Social Security and the basic retirement through their employer, that they would be well served to have the confidence and assurance of knowing what they are going to do and not be on the Wall Street roulette wheel as to what their retirement benefits will be?

Mr. NELSON of Florida. The Senator has said it very well, and Social Security is a social safety net. The retirees, the senior citizens of this country, should know that it is a defined benefit that is going to be there when they need it and it is not subject to the roulette wheel, as the Senator has suggested, in the case that the stock market is suddenly in a downward trend. So, too, the State retirement system of the State of Florida was a defined benefit in the past, when the two of us had the opportunity of being part of the governing body of the board of trustees, and it gave confidence because there was a defined benefit.

So there is an exact parallel between what we have seen in the State of Florida and what we want to talk about tonight, which is President Bush wanting to privatize a part of Social Security and transfer a trillion dollars out of the Social Security trust fund over to private individual accounts that the individual would then invest in the stock market. That sounded like a good idea to a lot of people when the stock market was going up, but now that the stock market is going down, it is beyond me that the President is still insisting, as recently as last week, that he have Social Security privatized.

That is what I wanted to talk about tonight, and I am so delighted I came to the Chamber before my colleague from Florida left so that he could engage in this colloquy and dialogue with me. I thank him for that.

Mr. GRAHAM. I thank the Senator.

Mr. NELSON of Florida. Madam President, I will summarize my remarks because Senator GRAHAM and I have pretty well covered it in the discussion we had, that one only has to look back a couple of years. The Nasdaq has fallen by 75 percent, and the broader S&P has dropped more than 40 percent, and given this market downturn, as we say in the South, it is beyond me, I am surprised that the Bush administration is sticking by its proposal to allow workers to divert some of their Social Security into private accounts of the stock market instead of there being a defined benefit that would give the Social Security retiree the security, the knowledge, the confidence that when their retirement years came, they knew they had a certain amount they could rely on, even though most retirees are going to have to supplement that Social Security benefit, but at least they would know that benefit was there and was not going to evaporate if, in fact, the Social Security privatized account was invested in stocks that had suddenly taken a turn going down.

That is the essence of what I wanted to share. I will be speaking frequently

on this matter when we resume in September, because this issue has had scant attention—an article here, an article there, about how the Bush White House is so intent that it wants to privatize these accounts. Clearly, if the times had not been of the economic downturn and the suffering that so many people have had in the stock market, perhaps they would have been lulled into a false sense of security. But with the stock market doing what it has done—a reflection, by the way, of the corporate scandals that have come to light and therefore a lessening of the confidence of the investing public of America in those corporations—if that had not come, the governmental decision process might have been seduced into going for this privatized part of Social Security. Clearly, that is not, in my judgment, in the best interest of our senior citizens.

That is what I wanted to share tonight. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. NELSON of Florida). Without objection, it is so ordered.

LEGISLATIVE ACTION

Mr. NICKLES. Mr. President, as we wrap up this summer session prior to the August break, I want to make a few comments. Several of my colleagues have discussed different issues.

First, let me state that I am very pleased that this Congress was successful in passing trade promotion authority and the Andean Trade Preferences Act. Both of those are vitally important and long overdue. The Andean Trade Preferences Act should have been passed by the end of last year. Unfortunately, the majority said it had to be packaged with trade promotion authority and with trade adjustment assistance. I have no objection to passing trade adjustment assistance; I think we should. We have always done it. I happen to agree with it.

Unfortunately, the majority—in this case the Democrats—said, in addition to trade adjustment assistance, we want to put in new entitlements and expand trade adjustment assistance not only for individuals who might directly lose their job to imports, they also said indirectly. That is an expansion. They also said we want to include agricultural workers. You might have every agricultural worker in America who says they lost a job, that it was due to imports because we are in an international market and prices go down. Now they want Federal assistance.

Then we also made a mistake because there was a new benefit added that said, in addition to trade adjustment

assistance, in other words, being trained to pick up a new job, now the Federal Government is going to pick up 65 percent of the health care cost, an advanceable, refundable tax credit. We don't do that for somebody employed. We don't do that for a lot of people. But we will do it for somebody who says, I was unemployed because of trade. And they will be eligible to receive that for 2 years.

Then in conference, inexplicably, it was suddenly altered to qualify those now receiving benefits under the Pension Benefit Guarantee Corporation, if they are between ages 55 and 65, to receive the tax credit. That little amendment which didn't pass the Senate is going to cost over \$2 billion.

So the entitlement portion of the trade adjustment assistance has more than doubled, and I am constantly amazed at the number of people who always say: Wait a minute. Spending is going up, we should not be spending here, but it is fine if we do it in entitlements. They insist we do it in entitlements. That is real money. And a lot of times entitlements are hard to roll back.

I wanted to express my displeasure with the almost frivolous way we have greatly expanded the Trade Adjustment Assistance Program and then held trade promotion authority hostage to get this kind of expansion.

That being said, the good of trade promotion authority and the Andean Trade Preferences Act outweighed the negative of the expansion of the entitlement. So I voted for it. I am pleased we were able to pass it. It is a very significant accomplishment.

Chairman Greenspan said we could do two things to advance the economy in this country, one of which was to show fiscal discipline—we have not done that—two, he said, to expand trade. By passing trade promotion authority, we have made it possible for this country to regain its leadership which we had lost. We lost it during the Clinton administration. Every previous President, going all the way back to Jerry Ford in 1974, had trade promotion authority. Bill Clinton had it in his first 2 years of office. He did not get it extended in 1996.

He was running for office. It expired in 1994. He didn't ask for an extension until after his reelection in 1996. At that time he couldn't get it through the House. The House was controlled by the Democrats. It was controlled by the Democrats when he was in power the first 2 years. He didn't get it extended then, and he couldn't get it extended later. In the Senate we had the votes to extend it. He wasn't able to get it.

Now this President, President Bush, is going to get it. I am glad. I think that will help expand trade and again regain our leadership role as it has been, as it should be, as really the promoter, the leader, the cheerleader, frankly, for international free trade. Ronald Reagan helped expand it in the

early 1980s, and that has certainly been a benefit to our economy and the economy of the free world.

A couple of other issues have been brought up. I want to touch on them.

I heard some of my colleagues say we need to pass a Patients' Bill of Rights, and maybe there will be an attempt to appoint conferees to conference on the Patients' Bill of Rights. I will probably be a conferee.

I have been involved in that issue for several years now. I look forward to working with our colleagues on both the House and the Senate sides to pass a good Patients' Bill of Rights package. But I do find it kind of curious that we passed the bill over a year ago. Let me repeat that. We passed Patients' Bill of Rights over a year ago. The House passed it a year ago tomorrow, on August 2 of last year. We are just now appointing conferees. This was the most important item on the agenda for the Democrats who regained control of the Senate last summer—the first major legislative item we passed. However the House passed it a year ago.

We could have appointed conferees a year ago. We are just now getting around to doing that. I find that kind of curious. I still want to pass a bill. I might be able to refresh my memory enough to see if we can't negotiate a positive package. Let me restate that I don't want to pass a package that will greatly increase health care costs for patients. Unfortunately, that is what passed the Senate 13 months ago—a bill that would increase health care costs, estimated by the CBO, by 4 or 5 percent. I think at one time they scored it at 4.7 percent. And this is an increase over and above the increases already coming in on health care inflation and insurance costs, and health care insurance costs are exploding.

The California health care plan, CalPERS, may be one of the largest plans in America. I remember reading the headline that their health care insurance costs are going up 25 percent. Small business insurance costs are going up 15 to 20 percent. Nationally, almost everybody's is going up 12 to 14 percent. This is going to add another 4, 5 percent on top of it.

I don't want to do that. I will work energetically to see that we don't pass a bill that would greatly increase health care costs. Also, I don't want to pass a bill that will increase the number of uninsured. If I remember the Senate bill accurately, the bill also had new causes of action where people could sue not only the big, bad HMO, but employers as well. Some of us wanted to protect employers. We know if you make them liable for health care costs, employers don't have to provide them, and a lot of employers won't provide health care costs. The net result will be more people joining the ranks of the uninsured.

We should do no harm. We should not pass any bill that will increase costs dramatically or increase the number of

uninsured. I am afraid that will happen if we pass the Senate bill. I am happy to work with my colleagues on both sides of the aisle. If you are looking at what the major changes are—when I was chairman of the task force—and I was chairman of the conference committee for over a year, which dealt with this issue—we had internal appeals in the bill we passed in the Senate at one time; we had external appeals. So if somebody is denied coverage, they can get an immediate response and get it overturned if it was unfairly denied by a big, bad HMO bureaucrat. That decision can be final. We can make a penalty if somebody doesn't abide by the external appeal. We can make that binding, where it would be ridiculous, or expensive, for somebody not to comply with the appeal so they can get health care when they need it.

Some people don't want to have that be the final solution. They think the real solution should be in court. Oh, yes, they want unlimited damages, or damages that, frankly, are so high it would scare a lot of employers away. I don't want to do that—pass a bill that will increase the number of uninsured, or the cost of health care beyond the reach of countless businesses and individuals across the country.

I am happy to work with our colleagues. I don't know why it has taken us a year to appoint conferees. I find it almost ironic. I look forward to working with my friends on both sides of the aisle to do it.

Mr. President, next I want to touch on the issue of prescription drugs. Some of our colleagues who were proposing an amendment yesterday came to the floor tonight and were implying that colleagues who opposed that proposal were not truthful. I was reading the remarks and thought, wait a minute, is he talking about me? I opposed the proposal. And I think I was right. I remember hearing a colleague saying that you are entitled to your own opinion, but you are not entitled to your own facts. I use that, also. I thought, he is using that against me or my colleagues.

That bothers me. I would do anything before I would mislead my colleagues. If I ever mislead colleagues, I will be more than happy to come and apologize, correct the record, you name it. I want to win badly, but I never want to win so badly that I would distort the truth—ever. I think that was implied. I hope it wasn't. If it was, I believe it is in violation of rule XIX of the Senate. That should not happen.

Certainly, nobody should be misled. The issue at hand was on Medicaid costs. I am happy to talk about the facts of that. I did see a chart that was shown on the floor of the Senate. I saw a chart that showed that a lot of States would pay a lot more money in Medicaid costs. Where did that chart come from? Somebody said it is some anonymous chart, and I guess it didn't have any identification on it. It wasn't

handed had out to every Senator. It was handed out to a lot. It was available in the Chamber. It came from the administration, from the Department of Health and Human Services, to try to get kind of an estimate on what the impact of the last Graham proposal offered because we are trying to figure it out. Senator GRAHAM read a comment that was made. I thought it was made by me, but it turned out to be made by Senator GRASSLEY. He implied that it was incorrect. I looked at that. I happen to know CHUCK GRASSLEY, and he would never misstate anything intentionally, and I don't think he misstated one word.

I am bothered that somebody would quote somebody in the Record—when he is not here to defend himself—and imply that he didn't tell the truth in order to win the debate. That bothers me. I love the Senate and I hate to see this kind of almost accusation.

Let's look at the facts. Senator GRAHAM's amendment was introduced yesterday. We never saw a copy of it until it was introduced. It was held overnight. I think it was brought to the floor at 2, 3 o'clock in the afternoon on Tuesday. We voted on it Wednesday morning. Granted, overnight, the Department of Health and Human Services looked at it and gave us some estimates.

I know in my State it would cost a lot. The Medicaid Director, Mike Fogerty, said Oklahoma would not be able to do it without cutting the program's financing. If there is any cost, the only way you can find the money is other places in the program.

We did find some serious problems with the Graham amendment. It said we are not going to just expand Medicare, we are going to have a low-income benefit, and do it through Medicaid. Medicaid happens to be, factually, a Federal-State program. The Federal Government pays a portion and the State pays a portion. In some States it is 50/50. In some States, it is 70/30. The Graham amendment said we are going to provide a brand new drug benefit with very small copays from the beneficiary—\$2 and \$5—and we are going to provide this benefit for anybody who makes less than 200 percent of poverty. Well, State Medicaid drug benefits for most States—31 States, maybe 30—I counted them yesterday, and I think I counted 31, but it may be plus or minus. This had to be done very quickly. It may not be 100 percent accurate because it was done quickly. Every State has to provide a prescription drug benefit for Medicaid up to 74 percent of poverty. They do that on the State match.

So, again, for this drug benefit, whatever benefit the State has—in my State, you get three prescriptions per month and the State pays its share—in my case, 30 percent—and the Federal Government pays 70 percent. That is up to 74 percent of poverty. The Graham amendment says let's make that 120 percent of poverty. In other words, we

greatly expanded the pool of eligible people because our State, right now, is only 74 percent. So we greatly expanded it to 120, and the State is still liable for its share.

Well, that is a big new unfunded mandate for which the State has to pay. That will cost millions and millions of dollars because there is no limit on the number of drugs. The State will have to make its match, depending on what the State match is. Between 120 and 150 percent, a State still has to pay.

There is an enhanced match. The State would get S-CHIP. S-CHIP usually has a reimbursement rate of 78 percent, I believe, on average. The State would still have to put in 22 percent. So you are expanding the eligible pool of people who are going to receive the benefit, and you are also expanding what the State has to pay. Those are facts. Those are in the Senator's bill.

Between 150 percent and 200 percent of poverty, the Federal Government would pay 100 percent. The Federal Government pays that, so I guess that is not an unfunded mandate. It is just a cost to the Federal Government.

Below 150 percent of poverty, between, frankly, 74 percent and 150 percent of poverty, there is a big new mandate on the Federal Government and on the State government. The State would have to pay its share, and that would cost—

Mr. GRAHAM. Mr. President, will the Senator yield for a series of questions?

(Mr. NELSON of Florida assumed the Chair.)

Mr. NICKLES. I will be happy to yield in just a moment. That is a great big cost. That has to be accounted for somehow. Someone might say: There might be savings because we have catastrophic on the other end. Right now, maybe the State is paying that—that may be—but that may not get there.

Mr. President, 80-some percent of the people do not have drug costs that exceed \$2,000. Catastrophic did not kick in until \$3,300. No doubt some people would benefit, but maybe the majority of the people would not. It looked to me as though it was a real loser for the States. I think OMB happens to agree. They estimate it would cost my State something like \$62 million. I would not be a bit surprised if it cost more than that. Our State cannot afford that. We have a Medicaid Program that is already going bankrupt.

My point being—and I mention this with my friend from Florida here. I have respect for my colleagues, but always I think it is important we not impugn the integrity of Senators.

Mr. GRAHAM. Mr. President, I ask the Senator to yield.

Mr. NICKLES. I will be happy to yield for a question.

Mr. GRAHAM. I think my integrity was impugned when it was suggested yesterday that we had slipped into this amendment, hoping it would go undiscovered, a provision that would end up

costing the States some \$70 billion over the next 10 years. That is close to a verbatim statement.

That was made on the basis of this sheet which was printed and distributed on the Senate floor without a source and without anyone accepting personal responsibility. This is what I call Enron accounting. You only accounted for the additional cost to the States without any reference to the savings the States would get as a result of the Federal Government picking up substantial costs the States are currently incurring which the Congressional Budget Office has stated to be approximately equal to what the States would have to expend in terms of these new obligations. No reference was made—

Mr. NICKLES. Mr. President—

Mr. GRAHAM. No reference was made on this chart to the fact there were very substantial savings to the States in addition to the costs.

The PRESIDING OFFICER. The Senator from Oklahoma has the floor.

Mr. NICKLES. Mr. President, I regain the floor. I looked at the chart. The chart does not have all States. Maybe some States were not impacted as much. Maybe they highlighted the States that have the most additional cost.

I mentioned my State. I know my State would be out of a lot of money. We offered a drug benefit that goes up to 74 percent of poverty, and we are going to put a new mandate between 74 and 150 percent of poverty. The State has to make that match. I know it is going to cost my State millions. HHS said it cost \$68 million. They said the cost for the first year is over \$5 billion. Maybe some States are pluses, maybe some are winners. Maybe they did not include all this.

I will say a couple words about the legislative process. I happen to be a believer in the legislative process, and I think my colleague from Florida knows that. We did not abide by the legislative process.

We did find his amendment greatly increases Medicaid costs for a lot of States. Yes, we exposed that. That happens to be factual. This was not just a Medicare expansion. It was a Medicaid expansion, and the States have to match Medicaid.

Did we find it? Yes. Did we find in the original Graham proposal that the proposal limited the prescription drugs to one, up to two, drugs for therapeutic class? We did. I think it probably is one of the reasons that proposal did not pass—because it is such a limitation.

Did we find it? Yes, it was in the language. Did we have a whole lot of time? No, we told people about it. I do not back off that a bit. I think we have a right to point out the weaknesses of arguments. As always, my colleague can point out this was not a complete chart. We did not have time to get a complete chart. I did not. Maybe there is a complete chart around, but the amendment was offered in the after-

noon and we were voting on it in the morning.

One of the things that is really wrong is to try to legislate in a manner such as this. I believe in the legislative process. I believe in hearings. I would love to have a hearing on the proposals we voted on this week. I would love to have experts testify on the pluses, the strengths, the weaknesses, the gaps, the minuses on the various proposals. We have had some good proposals. We have had some that are not so good. I heard my colleague from Florida say that CBO by e-mail said this is a net wash for the States. HHS shows me that some States, or these States that are listed, would have a net loss of \$5 billion in 1 year. This is a 10-year program.

Mr. GRAHAM. Will the Senator yield for a question?

Mr. NICKLES. The point I am making: It would be nice to go through the process, have a bipartisan markup, have hearings, have experts, and not be relying on e-mails that came from somebody in CBO.

Incidentally, I noticed in CBO's scoring of the proposal, it was scored and was estimated to be \$394 billion, but there is an asterisk: Scoring done by estimates, not by the language of the bill. In other words, they did not have the language of the bill on which to do the scoring. This is the most important expensive expansion of an entitlement that we have dealt with in decades. It is the most expensive important expansion of any entitlement, and we are doing it with CBO not even having legislative language to look at.

I find that to be a pretty crummy way to legislate. I am offended by this process. I am offended by being a member of the Finance Committee and not even being able to offer an amendment in the markup of the bill. I am offended by the fact—I looked at the history of the Finance Committee, which is one of the great committees of the Senate. I waited 16 years to get on that committee. It took a long time. It is a great committee. I thought it would be worth the wait because we would be marking up very substantive legislation, such as Social Security, Medicare, Medicaid, welfare reform, and taxes. Yet the committee is bypassed, so we have 20 members of the committee who did not get a chance to offer an amendment.

We have an amendment that was created somewhere and scored overnight not by legislative language. No one gave us a chart and said here is the impact of your State. I would love to see the impact to my State. My State Medicaid director says this is going to be a real problem; we cannot do it.

We exposed that a lot of States would have a problem doing that. There is no reason to apologize for doing that. I just want to make sure that Senate debate never improperly impugns the integrity—I believe my colleague who was quoted was Senator GRASSLEY—I do not ever want anybody's integrity

to be impugned on either side of the aisle. That is below the Senate, and there happen to be Senate rules against it. I wanted to make that point.

I will just assume and take for granted no one meant to do that. But we have to be very careful not to do that. We have to be careful that we are factual. Sometimes maybe in the heat of the debate things get going.

I want to move on to one other subject.

Mr. GRAHAM. Mr. President, before the Senator does that, will he yield since we are on this subject?

Mr. NICKLES. I yield just for a question.

Mr. GRAHAM. Does this chart in any of the columns contain the offset savings which the States would have secured as a result of the passage of the underlying Graham-Smith amendment?

Mr. NICKLES. The chart does not show any offsetting. It shows a total cost increase of the new Medicaid mandate. I think the Senator is trying to imply there may be some savings for some areas if a State had a lot of catastrophic and the Federal Government were going to pick up 100 percent of that cost, I guess. That may be correct, but it does not have a column that shows that. Maybe if we would have had a little more time—the answer is no.

I ask my colleague, though, since CBO did some work for the Senator, did they do a State-by-State analysis on what the impact of the State of Oklahoma would be?

Mr. GRAHAM. They did not do a State-by-State analysis. I do not know who did the analysis of the State-by-State costs presented by my Republican colleagues so I cannot have any means of even determining who to go to talk to about where these numbers came from. But the answer to the question, which is relevant, is there are very substantial savings to the States. In fact, according to the Congressional Budget Office, the savings to the States as a result of the passage of this prescription drug amendment would be equal to—

Mr. NICKLES. I have the floor.

Mr. GRAHAM. These additional costs.

Mr. NICKLES. The Senator can answer the question. I have the floor and I will state again, some States lose under the Senator's proposal big time. I am not sure all States do; some States lose big time.

The Senator stated that he did not have a State-by-State analysis, so every fact that is on this chart may well be accurate. The Senator also stated that CBO did not do a State-by-State analysis, and I will say if we are going to be changing Medicaid formulas, or if we are going to be changing Medicaid programs and States have to make a certain percentage match, it is only prudent that we would do an analysis of what the impact would be on a State-by-State basis.

Unfortunately, CBO did not do that. Fortunately, the Department of HHS did. The States that are included on this list are the States that get hit the hardest, and we expose that.

Now, there may be some offsets, but I tell my colleague from Florida, I can almost assure him, since 80 percent of seniors have prescription drug costs that are \$2,000 or less, that catastrophic program savings would not come near to offset the increased costs of utilization. And the fact that they have to make matches up to 50 percent, almost to 100 percent, for the program, minus a small deductible for people under 200 percent of poverty, it would not come too close to make it. It would not come close in the State of Nebraska or the State of Oklahoma. I know that. There are not near that many people who would have the savings through the State.

In our State program, the individual who gets three prescriptions per month is not going to come close to \$3,000. That program is not that generous in my State so the savings on the catastrophic side would not come close to making the savings or the increased costs that is on the low-income side.

Mr. GRAHAM. Could I ask the Senator another question?

Mr. NICKLES. Yes.

Mr. GRAHAM. What leads the Senator to believe that the only way in which the States would secure savings under the Graham-Smith amendment would have been through the catastrophic savings?

Mr. NICKLES. Well, I will tell my colleague, all we had from CBO on the Senator's amendment was one page that said, one, it never went State by State and, two, it said \$394 billion and it said it was not based on legislative language. We had nothing to score off of from what was provided for by CBO or by the Senator, except for the Senator's word that he had an e-mail that said the States net out about even.

I did have work that was done by HHS, and it may not have included every extrapolation, but they did compute the cost of the low-income benefit and how much that would cost the States to make the match, and it is in the billions of dollars, to the tune of \$5 billion for some States. Maybe some States would come out better. I am not sure. But that is my point. This is not the way to legislate.

This is legislating as if we are going to legislate on the back of an envelope. It is almost as if Senator DASCHLE said, do not go to committee, do not have a markup, here is \$400 billion, \$500 billion, \$600 billion, or \$800 billion and can we not cobble together 60 votes?

That is a crummy way to legislate. We could have passed a prescription drug bill if we had done two things. If we would have passed a budget, this Senate—the House passed a budget. Incidentally, the House passed a budget with a prescription drug amount of \$350 billion. The Senate passed a budget a year ago, I might mention when Repub-

licans were in control of the Senate, and it was a \$300 billion total Medicare change. It could be prescription drugs or it could be for something else.

That is what we are relying on in the Senate today. Why? That is a year old. Because the Senate Democrats, or the leadership of the Senate, did not pull up a budget. We do not have a budget. We did not pass a budget, first time since 1974, and because we did not, a budget point of order lay against anything that was over \$300 billion.

If we had passed a budget, gone to conference with the House and resolved whatever amount that would be—and let's presume the House would prevail—then the committees would have been instructed to pass a bill, if the House prevailed, up to \$350 billion. It could be passed if it went through the Finance Committee. Any bill could be reported out that would be up to \$350 billion, and it could pass with a majority vote. No budget point of order would lay against it. We could have passed a prescription drug benefit this week. Unfortunately, that did not happen.

So the committee did not mark up any proposal that came out that was over \$300 billion. Last year's level had a budget point of order, had to have 60 votes, had to have a supermajority. The real fault of that came because we did not pass a budget earlier.

Again, I love the Finance Committee but I hate the way the Finance Committee has been trampled on. I hate the fact that the Finance Committee is being ignored, the fact they did not mark up the bill, the fact I did not have a chance to offer one amendment, the fact I did not get to have the chance to ask the Medicaid director: How does this impact you? Is this a good proposal? Do you mind if we put on this new requirement, oh, yes, below 150 percent of poverty? Here is this brand new benefit. It is going to cost you a ton of money. How much does it cost? Can you afford it? Could you pay for it? I am afraid the answer would be, no, no, no, no.

We did not have a chance. Instead, we had to try to write the bill on the floor, and in this case we had to take up this amendment and we had less than 24 hours to deal with it.

Again, my purpose in expanding this is not to redebate the amendment. My purpose is to defend my colleague, Senator GRASSLEY, whose integrity I value more than anything. I would not—and I know he would not—misstate a fact to win a debate for anything.

I came to the Senate with Senator GRASSLEY in 1980. That was 22 years ago. We have cast thousands of votes together. I know him very well. I agree with him most of the time—not all the time—but I would defend his integrity every day of the year.

I am going to start making points of order, rule XIX, if people imply or impugn the integrity of another Member. I am going to do it, and those words will be stricken from the RECORD and

the Senator will not be allowed to get access to the floor for the rest of the day; and maybe other penalties. We have not done that, but maybe we need to do it. So that is my purpose for coming to the floor.

I want to make a couple of other comments.

Mr. GRAHAM. Will the Senator yield for another question?

Mr. NICKLES. I am not going to yield. I am going to make one other comment on a different subject.

JUDICIAL NOMINATIONS

Mr. NICKLES. Mr. President, earlier today we confirmed a total of eight judges. A lot of people said, boy, didn't we do great? We have done more in the last 12 months than anybody has done in the last 12 months.

I thank Senator DASCHLE, Senator LEAHY, and others because we did confirm a few more circuit court judges, but let me state my disappointment in the fact that we have not done near enough. I want to put out facts. We have now confirmed 13 circuit court judges. President Bush submitted 32. We are in the second year of his Presidency. We are not quite finished, but we have confirmed 40 percent of his circuit court nominees. I looked at the first 2 years of the Clinton administration, and this Senate confirmed 19 of 22. That is 86 percent. I looked at the first 2 years of the first President Bush, the 101st Congress, and we confirmed 22 of 23 circuit court judges. That is 95 percent.

I looked at the first 2 years of President Reagan, 97th Congress, we confirmed 19 of 20 of his circuit court nominees. That is 95 percent.

So for the three previous Presidents we confirmed over 90 percent of their circuit court nominees in their first 2 years.

This Congress—and granted, the first several months, the first 6 or 7 months of this Congress was controlled by Republicans and we did not confirm any judges because the President was just sending his nominees through and they did not have time, and that is not unusual. We usually do not confirm very many in the first 6 months of any administration.

So far this year, we have done 13 out of 32; that is 40 percent. That is less than half the percentage of what we did in three previous Presidencies. Those are just facts. I heard someone said we confirmed 72 judges. Great, 72 is a lot more than we confirmed in the last 2 years of the Clinton administration. Granted, we usually don't confirm very many in the last year of a President's terms, but in the first 2 years we usually do, and we are way behind.

Some of the individuals were nominated 449 days ago—over a year ago. They were nominated last May—a year ago May. Some of these are the most outstanding nominees I have ever seen. John Roberts, nominated for the DC Circuit, has argued 37 cases before the

U.S. Supreme Court. Is this individual qualified? He was nominated a year ago in May, and he has yet to have a hearing. He has argued 37 cases before the Supreme Court. How do you get more qualified? Miguel Estrada argued 15 cases before the Supreme Court and was unanimously rated well qualified by the ABA. He emigrated to the United States as a teenager from Honduras and spoke virtually no English. He graduated magna cum laude from Harvard Law School, editor of the Harvard Law Review, law clerk to Justice Kennedy, a former assistant solicitor general and assistant U.S. attorney. He has not received a hearing.

I guess you can say, we have confirmed 72 this year, how is it fair to have 2 individuals such as John Roberts and Miguel Estrada not even have a hearing, having been nominated over a year ago? Senator LEAHY made a commitment we would do Miguel Estrada. I am waiting.

Priscilla Owen: We had a hearing in July of this year but no vote. The Republicans asked that be postponed because we are not sure where the votes are. Texas Supreme Court justice since 1994; unanimously rated well qualified by ABA; Baylor Law School graduate; member, Baylor law review; highest scorer on the Texas bar exam; eminently qualified.

Maybe some people are now putting a litmus test in the committee. We did not used to do that. People used to rail against having a litmus test, and now people are trying to come up with a litmus test. If she is not confirmed, that is a travesty.

Terrence Boyle was nominated in May, a year ago chief judge of the U.S. District Court, District of North Carolina, since 1997; unanimously rated well qualified. He worked as counsel in the House Subcommittee on Housing; was a legislative assistant in the Senate; prior district judge, 1984 to 1987; very well qualified and still no hearing and certainly has not had a vote.

Michael McConnell, nominated to the Tenth Circuit; presidential professor of law, University of Utah; unanimously rated well qualified by ABA; one of the country's leading constitutional law experts; argued 11 cases before the U.S. Supreme Court; prior assistant solicitor general; law clerk for Justice Brennan and cannot even get a hearing.

Deborah Cook, nominated to the Sixth District; justice to the Supreme Court of Ohio since 1994; unanimously rated well qualified by ABA. The Sixth Circuit is almost half vacant, with 7 out of 16 seats empty in the Sixth Circuit; exceptionally well qualified and no hearing.

Jeffrey Sutton, nominated to the Sixth Circuit as well; rated well qualified by ABA and qualified by ABA; graduated first in his class, Ohio University College of Law; law clerk to Supreme Court Justices Powell and Scalia, and argued 9 cases and over 50 merits and amicus briefs before the Su-

preme Court; and prior State Solicitor of the State of Ohio. He has yet to have a hearing in the Judiciary Committee.

Dennis Shedd, nominated to the Fourth Circuit; a judge in the U.S. District Court of South Carolina since 1991; rated well qualified by ABA; 20 years of private practice and public service prior to becoming a district judge; law degree from the University of South Carolina; master of law degree from Georgetown. He received a hearing on June 27—still not reported out of committee.

I thank my colleagues for the fact we have confirmed 72 judges, but I mentioned 8 nominees who were nominated in May of last year; a couple have had a hearing, and the rest have not had hearings and have not been voted on in committee, and we have not had a chance to have a vote on the floor. A year and a half, how much is enough? This is an outrage. I don't think this should be done, Democrat or Republican.

I plan on being back in the majority, and I tell my friends and colleagues on the other side of the aisle, I plan on treating judicial nominees fairly. Regardless of who is in the White House, we should treat them fairly. If there is a judge really out of the mainstream, let's debate it. But to hold up these individuals who have argued 30, and 15, and 9, and 10 cases before the Supreme Court and we do not even give them a hearing in committee, that is not fair. That is an injustice. That is an abuse of power.

Maybe we are confirming district judges, and that is great, and district judges have sponsors of Senators. These are appellate court judges, circuit court judges, next to the highest court in the land, next to the Supreme Court, and they cannot get a hearing. I don't think that is right. I don't think it is fair. I am not saying there have not been injustices before by Republicans. Enough of this nonsense: You did not treat us right, we are not going to treat you right.

Again, the tradition of the Senate: We do not usually confirm a lot of nominees in a President's last year or so. We certainly do his first year or so, as evidenced by the fact—and I will put this in the Record—that 95 and 96 percent of the three previous Presidents' circuit court nominees were confirmed in the first 2 years—almost all of them—and this year we are at 40 percent on circuit court nominees.

That is totally unsatisfactory. That is not fair to those individuals. It is not fair to the judicial system. It is certainly not fair to the Sixth Circuit Court, which is almost half vacant.

I tell my colleagues, we have made some progress, and my compliments. But we have a lot more to do, especially on circuit court nominees and on individuals such as John Roberts and Miguel Estrada. Let's lower the rhetoric and get some people confirmed. Let's treat them like individuals, with dignity. They have been nominated to