first name ''Ariel,'' and Prime Minister Sharon reciprocated by referring to President Bush as ''George.'' I think that signifies an unusually warm relationship.

It brings to mind comments by Prime Minister Begin who visited the United States back in June of 1982 and met with a group of Senators, and at that time made a comment that President Reagan had asked Prime Minister Begin to call President Reagan ''Ron.'' Prime Minister Begin said that he deferred, which led President Reagan to say to Prime Minister Begin: Well, Menachem, if you don't call me Ron, I won't call you Menachem.

Prime Minister Begin went through that circle but refused to call the President by his first name, referring to the President as a Head of State.

I think it is a very encouraging sign when the President of the United States and the Prime Minister of Israel are on a first name basis. That bodes very well for the relationship.

I note the time of 1 o'clock has arrived.

The ACTING PRESIDENT pro tempore. The time controlled by the Senator from Kentucky has expired.

Mr. SPECTER. Mr. President, I yield the floor in any event.

EXECUTIVE SESSION NOMINATION OF MIGUEL A. ESTRADA TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I believe the regular order is for the minority to be given a half hour on the proposal to proceed with the Estrada nomination; is that correct?

The PRESIDING OFFICER (Mr. HAGEL). The Senator from New York has one-half hour under his control.

Mr. SCHUMER. Mr. President, we are back to voting on whether to proceed with the Estrada nomination. Before I get into the merits of Mr. Estrada, I want the record to show that we have now confirmed 140 of the President's nominees. By the end of the week, it could be over 150. By the end of the week, we may be blocking as many as 4. So right now it is 140 to 4 and could be at the end of the week 150 to 4. That is a record that even Yankee fans would be jealous of.

We have this view of some, including the White House, that we are obstructionist because we have tried to block 4 out of 140 nominees. My guess is if James Madison or George Washington or Benjamin Franklin or any of the Founding Fathers were looking down on this Chamber, they would say: Why are they blocking so few? We wanted the President and the Senate to come together on judicial nominees.

It outlines in the Federalist Papers that the Founding Fathers didn't want the President to have sole power to choose judges, nor did they want the Senate to be a rubber stamp. In fact, one of the first nominees, John Rutledge from South Carolina, was rejected by the Senate, which contained a goodly number of the Founding Fathers themselves because they were appointed to the Senate in those days right from the Constitutional Convention. Rutledge was rejected because of his views on the Jay Treaty.

So this idea that unless we find the candidate to have some kind of criminal record or has done something unethical, we should not be examining that record or speaking to that record makes a good deal of sense. President Bush is a classic case of what the Founding Fathers were worried about in the way he has chosen his nominees because the Founding Fathers, I believe, wanted nominees to be from the American mainstream. They wanted them to interpret the law, not to make law.

There have been times when judges have leaned to the far left—the 1960s and 1970s—and they now lean to the far right. The bench becomes infused with ideologues and ideologies, and those judges want to make law, not interpret law—very much against what our Founding Fathers wanted. That has been the case of President Bush. I don't think it is disputed that he has nominated judges through an ideological prism more than any President in our history. You don't have a sprinkling of Democrats or liberals or even moderates—you have a few moderates, but the overwhelming majority of the President's judges have been hard core, hard right. A few of them have been so far over that they don't deserve nomination. They include Miguel Estrada and Priscilla Owen, and they include, in my opinion, two nominees we may vote on later this week: Carolyn Kuhl, and the attorney general of Alabama, Pryor.

If you look at the records of these judges and you put scales, left to right, 10 being the most liberal and 1 being the most conservative, these judges are ones, to be charitable. When Bill Clinton nominated judges, he nominated mainly sixes and sevens, people who tended to be a little more liberal, but were moderate and mainstream—very few legal aid lawyers or ACLU charter members, much more prosecutors and partners in law firms.

This President, for whatever reason, has chosen to nominate judges way over to the far right side.

I am proud of what we have done in this Chamber. I am proud that we are bringing some moderation to the bench. I am proud that we are following the wishes of the Founding Fathers and not just being a rubber stamp. For those who try to beat us with a two-by-four, by calling names, by saying we are anti-Black, anti-Hispanic, anti-Catholic, anti-women, when we oppose a judge who happens to be of that description, we are not going to win. We believe in what we are doing. We believe it is mandated by the Constitution. We believe we are following the will of the American people who don't want judges either too far left or too far right.

I assure you, Mr. President, and I assure President Bush, and I assure my colleagues in the Senate that we will continue to do this. You can prolong this and put up all the visuals and nasty ads you want, like the one just run by one of the President's associates in Maine, accusing those who will vote against Mr. Pryor of being anti-Catholic, including good Catholics in this Chamber. That is wrong. In fact, I think it is reprehensible. But I tell the other side, not only will it not work, if anything it strengthens our desire to do the right thing.

Let's talk about Miguel Estrada. This nominee was unusual in this sense: He had no real record because he had not been a judge previously, nor written law articles. By many reports, his views were very extreme. But when I approached the hearings for his nomination, and when many colleagues did, we were willing to see what he thought. The bottom line is that he didn't tell us what he thought. The bottom line is that when he was asked very simple questions on issues that he had an obligation to expound upon, such as: What is your view of the first amendment; how broad or narrow should it be; what is your view of the commerce clause; what is your view of the relationship between the States and the Federal Government; he kept hiding behind this idea that canon 5 of lawyers ethics says you should not comment on a pending case if you are nominated to be a judge, so that he could not comment on anything. If Mr. Estrada were asked how should Enron be treated, he would rightfully say: I cannot answer that because I might judge Enron on the bench. But if he is asked what his views on corporate ethics are, of course, he has an obligation to answer that question. He did not. And doing so was an affront, not to any one individual, but to our Constitution.

If Mr. Estrada were correct, then probably most of the judges we have nominated in the last two decades should be cited for violation of canon 5. They all answered these questions. Judges nominated by President Bush before and after Estrada have answered these questions. So why would Mr. Estrada not come clean and tell people what he thought? Why would he not do what every American has to do?

When every American applies for a job, the employer says: Please fill out this questionnaire. Can you imagine someone saying I refuse to fill out the questionnaire in getting the job? It would be rare to do that. That is what he did. He is applying for a job—not just any job, but one of the most important jobs this Government has—a Federal judge, with awesome power. He kept refusing to fill in the job application form by answering the questions we had asked.

We then came to the question: How could we tell what his views were? We

did not stop. We asked him, and we asked the Justice Department to give us some documents about issues on which he had worked when he was in the Solicitor General's Office. There were some in that office who reported, again, that his views were way over, that they were extreme, and we were refused our request.

I will tell you this, Mr. President, and I will tell every Member of this Chamber, as long as Mr. Estrada refuses to answer questions about issues over which he is going to have virtual life and death power in terms of governing the American people and we do not know how he feels, we are going to continue to block him. We are proud of that fact.

At first when it started, most people said: Don't do it; politically they will attack you—and this and that. I told my colleagues I thought we ought to do it because it is the right action to take, regardless of politics.

A funny thing has happened. Politics seems to be rolling in our direction. People are beginning to understand that this President is not nominating mainstream, moderate judges. People are beginning to understand that there is a desire to pack the courts and turn the clock back.

Congress will not turn the clock back. The President himself will not turn the clock back. We are elected. But if you put judges in, they can turn the clock back for a whole generation. There is a view out there that this is happening.

What started out as something done out of a deep conviction remains a deep conviction, and our view about the direction of this country, our view about the appropriate role of the Senate in the nomination process of judges is not ending up to be the political loser that some prognosticated.

We will continue to block this nomination. If nominees stubbornly and arrogantly refuse to answer legitimate questions of members of the committee, we will not allow them to become judges. That is not our doing in an ultimate sense; it is their own doing. If nominees are so far out of the mainstream that it is quite clear they will make law, not interpret the laws that others have made, we will oppose them as well.

We will vote on the nomination of Mr. Estrada for the seventh time. I make the point that my good friend from New Mexico was saying we have to move the Energy bill forward. Our majority leader is saying we have to move the Energy bill forward, but we are taking out time to vote on this nomination again. The purpose I do not know, a purpose grander than I can think of. But we are here and we are doing it.

No one has changed his or her minds. Mr. Estrada has not answered the questions, and as long as he continues not to answer these important vital questions, he will not be approved.

Mr. President, I reserve the remainder of my time and 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. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DASCHLE. Mr. President, I will use some of the allocated time on the nomination to make a comment. We have been debating the Energy bill for the last couple of days and, of course, for good reason; the distinguished majority leader has said he wants to move this legislation forward and that we ought to do all we can to find a way to resolve the many issues that are still pending on energy prior to the end of the week.

I cannot think of a more counterproductive effort, a more counterproductive device, than to bring back a nomination that has already been before the Chamber six times. I certainly am not questioning the majority's motives. I do not question their desire to finish the Energy bill, but I do question the management of our time when I think with every bit of sincerity our Republican friends tell us they want to finish this bill.

We are now in a quorum call in the middle of the day on a nomination that has already been before the Senate six separate times this year. Six times we have debated whether Miguel Estrada ought to be required to do what every nominee is required to do, which is answer the questions and fill out the job application. Six times, without equivocation, Senators said you do that and we will take another look at your nomination.

Here we are now for the seventh time, in the middle of an energy debate that we are told by the majority must be done, debating once more this very issue.

That is not all. Yesterday we debated Priscilla Owen, and I think that was for the third time. Tomorrow we may debate another nominee, William Pryor, for the first time. Who knows what could come on Friday.

The majority needs to show us they are truly intent on working with us through these many important issues before they can convince us that they want to finish the job on energy.

It is 1:25 and for the life of me I cannot understand why we are in the middle of a quorum call on a judicial nomination that has come before us on six other occasions. That is not good time management. It is not a good practice. It obviously has not generated much interest, and I think it is a huge waste of time.

I only come again to express my disappointment and my puzzlement, my lack of ability to answer the question why is this happening now, when we have so much work to be done.

I will make another prediction. This vote will not change. If we do it 18 more times, it will not change. So we can continue to waste our time or we can continue to find ways to work together to use our time a lot more effectively than we are using it now.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank the minority leader for his comments on this Miguel Estrada nomination.

As a member of the Senate Judiciary Committee, I can say we have been very cooperative with the Bush administration. Of the 146 judges, if I am not mistaken—the minority leader can correct me but I think it is in the range of 140, and then there are five or six judges in another lifetime category that some add in, but whatever the number, 140, 146, it is significant—only two nominees to date have been held.

We have a responsibility under the Constitution, as Members of the Senate, to advise and consent to the President's nominees, and that means more than a rubberstamp. In the Miguel Estrada case, he is a person with extraordinary academic credentials and an extraordinary legal background who has refused to provide the Senate and members of the Judiciary Committee important writings he generated which would reflect on his view of the law. He has said we cannot see them.

A few months ago, when we first considered this nomination, the Republican Senator from Utah came to the floor—not Senator HATCH but his colleague Senator BENNETT—and suggested maybe the answer to this impasse is for the White House to release these documents for us to review, and once having reviewed them we can decide whether to move forward with this nomination.

I was here and I said I applaud that; I think that is a reasonable standard of conduct. Within hours, the White House came out and said publicly, we will not release them. We do not believe we have to, and we are not going to generate this kind of paperwork that may make Estrada's nomination more controversial. That was the end of the story. That has been the end of his nomination. So it was a conscious decision by the White House not to release documents which may give us an insight into Miguel Estrada and his lifetime appointment to one of the highest Federal courts in the land.

In the Priscilla Owen situation, she is a classic judicial activist. We have nominated and approved scores of conservative judges for the Bush administration. She reached a new level, a level of judicial activism which has put her in a special category with Miguel Estrada.

Now because of those two nominees being held up, we see practices in the Senate Judiciary Committee that are unprecedented. Rule 4, which is this obscure rule of the committee, was put in place by Senator Strom Thurmond

years ago to protect the minority. It is now being ignored on a regular basis, twice in the last few months by Senator HATCH. This rule basically says if the majority wants to, they are going to move a nominee regardless of whether there is minority opposition. That was never the practice of the committee. It is now. It is an effort by the Bush administration and their supporters and the Senate Judiciary Committee to basically ignore the precedent.

In the next couple of days, we are going to consider two other nominees, and they are fraught with controversy. William Pryor of Alabama has become a lightning rod on Capitol Hill. If one looks at his background, what he has done as attorney general in the State of Alabama, they can understand why. This is a man who goes far beyond conservatism. His positions on issues far and wide are so controversial. I said during the course of the committee, when one looks at the controversial positions that have been taken by William Pryor, the Attorney General of Alabama, it is like an all-you-can-eat buffet. You do not want to fill up your plate early on with his controversial statements, discriminating against women, because you have to save room for his controversial statements when it comes to the environment and to civil rights.

When it is all over, you are going to need more than one plate to get through the William Pryor all-you-can-eat buffet of controversial positions.

This man is headed for the floor. How did he get here? He got here by circumventing an ethics investigation which was not completed. A decision was made by the Republicans in the Senate Judiciary Committee that we do not need to finish that investigation; we are just going to send him to the floor. Then they went through that shameful display on the issue of his religion, which I hope never again is brought up in the Senate Judiciary Committee but was brought up for William Pryor. Finally, they jammed it through, strong-armed his nomination to the floor, under rule 4.

So here we sit in the minority and what are we supposed to do? Are we supposed to ignore these tactics, this departure from the precedent of the Senate Judiciary Committee? Are we supposed to ignore the fact that at least two, maybe four or five, of these nominees clearly would never have passed through the Senate Judiciary Committee under any other circumstances but for these tactics? I think if we did that, we would be ignoring our constitutional responsibility.

Whether the nominee is William Pryor, Miguel Estrada, or Priscilla Owen, time and again we have to stand and accept our constitutional responsibility to really stand in judgment as to whether these individuals deserve a lifetime appointment to the Federal court. Miguel Estrada, until he is ready to come clean with his writings so we understand who he is and what he believes, I am afraid is going to face the same fate over and over again.

The Republicans can call this to a vote as often as they want.

Our Senate Democratic leader, Senator DASCHLE, is right: The Democrats will hold fast to the position. Until he is forthcoming and honest and open as to who he is and what he believes, he does not deserve this high appointment to a Federal circuit court. That spells out why we are here.

I also add, I listened for days last week and this week as the Republicans complained we were not spending enough time on the Energy bill; we were finding all sorts of excuses not to get down to the work of the Energy bill. We are certainly not on the Energy bill right now. We were not yesterday when we voted on Priscilla Owen, nor will we be later in the week when other judicial nominations come to the Senate. Any excuse will do to get off that bill, it seems. I had hoped we would stay on it and do our work. I offered my amendment early. Others have done the same. We will continue to make the symbolic votes.

If we are going to have true comity in this institution, if we are going to have a cooperative relationship, it will require us to deal with this on a bipartisan basis. I urge my colleagues to continue to oppose the nomination of Miguel Estrada.

Mr. LEAHY. Mr. President, yesterday the assistant minority leader made some cogent observations about how the Senate is being required to expend hours on matters that are leading nowhere and take away from debate on the Energy bill. If the Republicans were truly serious about finishing the Energy bill this week, they would not be scheduling hours of debate on contentious judicial nominations. Nor for that matter would they break for several hours yesterday to have a pep rally at the White House. From the Senate schedule, an objective observer would have to think it is more driven by partisanship and trying to score political points than a desire to make progress on the business of the Senate and on the issues that are the most important to the American people.

This week we have not proceeded to the foreign operations appropriations bill, which contains a number of matters of overriding importance to the country and the world, although Chairman MCCONNELL and I have been ready to proceed. We have not proceeded to the energy and water appropriations bill or the other appropriations matters that need to be concluded soon for the Government and Government programs to continue to operate in the fiscal year that will soon be upon us. Usually we devote July to appropriations matters but the Republican leadership has chosen to take this week off in that regard.

Today we must again return to the controversial nomination of Miguel Estrada to the U.S. Court of Appeals for the D.C. Circuit. The last cloture vote on this nomination was scheduled on May 8. The only thing that has changed since that unsuccessful vote is that the administration and some Republicans in the Senate have ratcheted up their unprecedented partisanship and the use of judicial nominees for partisan political purposes.

I spoke yesterday about the new low to which some Republican partisans have stooped in political ads and charges that should offend all Americans. I again challenged Republicans and the administration to disavow those despicable efforts but, instead, they are choosing to continue to support the smear campaign of insult and division. Yesterday I inserted into the CONGRESSIONAL RECORD some of the articles and editorials that comment upon this most troubling development.

Yesterday I also had the opportunity to meet with representatives of the Interfaith Alliance. I thank them for condemning these unwarranted attacks and for standing up for the Constitution and the first amendment rights of all Americans. Reverend Gaddy, Father Drinan, Reverend Veazy, Right Reverend Dixon, and Rabbi Moline understand what is afoot and have spoken out in the best tradition of this country, and I thank each of them.

I do not expect the vote on this nomination to change today. Nothing has been done to accommodate Senators' concerns. No arrangements have been made to provide access to the documents requested in connection with this nomination that are available to the administration and that Mr. Estrada said he had no objection be provided. Thus circumstances have not changed since the first vote on this nomination or the most recent vote back in May.

There continues to be, in the phrase favored by the White House, ''revisionist history'' regarding the precedent of providing the Senate with legal memos to the Solicitor General and by the Solicitor General and similar documents in connection with nominations for both lifetime and short-term posts. Senator SCHUMER, Senator KENNEDY, and I have detailed those earlier precedent in earlier debate. It has not been refuted. It cannot be refuted. Facts are stubborn things. Nonetheless the administration and Republicans continue to ignore the facts seeking political gain and have chosen to use Mr. Estrada as a pawn in their efforts. That is unfortunate and regrettable.

We have worked hard to try to balance the need for judges with the imperative that they be fair judges for all people, poor or rich, Republican or Democrat, of any race or religion. This has been especially difficult because a number of this President's judicial nominees have records that do not demonstrate that they will be fair and impartial. In response, the White House and its allies have bombarded the airwaves with all manner of misleading information to try to bully the

Senate into rolling over and rubberstamping every one of its these nominees.

The claims that we are anti-Hispanic or anti-Catholic or anti-woman or anti-Christian are part of Republican politics of attack and division as taught by Presidential advisor Karl Rove and as implemented by the administration's allies in the Senate and C. Boyden Gray and his so-called Committee for Justice, who paid for the most recent volley of ads. These dirty tricks are nothing new to this gang. Earlier this year, Mr. Gray and his group ran ads insinuating that Democrats oppose the nomination of Mr. Estrada because he is Hispanic, ads which were refuted by the courage of many Latino leaders and Latino civil rights groups which spoke out against confirming Mr. Estrada. Mr. Gray's group recently ran print and radio ads calling Democratic Senators anti-Catholic because they oppose President George W. Bush's most controversial and divisive appellate nominee, Alabama Attorney General Bill Pryor. These are despicable and false charges intended to distract the public from the serious evidence that Mr. Pryor was chosen because he would be an unfair, results-oriented judge. This type of demagoguery, in its shameful effort to mislead and inflame, should be disavowed.

The cynical political games are all the more disappointing from a President who campaigned claiming that he was going to be a uniter not a divider and set a new tone in Washington. The reality is that on nominations this administration goes out of its way to choose divisive nominees. The tone set by the White House has been unilateral and been marked by a refusal to consult with Senators in advance of nominations and to accommodate concerns raised.

Senate Democrats have more than demonstrated our good faith. We inherited 110 vacant seats in the Federal judiciary in July 2001, vacancies that were increased and perpetuated under Republican control of the Senate. In 17 months, Democrats worked hard to have the Senate confirm 100 of President Bush's judicial nominees.

Second, as of July 28, 2003, the Senate has confirmed 140 of President Bush's judicial nominees, including 27 circuit, or appellate, nominees. This is more circuit court judges confirmed at this point in his Presidency than for his father, President Clinton, or President Reagan at the same point in their Presidencies. It is more judges than a Republican-controlled Senate allowed be confirmed in any 3-year period serving with President Clinton.

We are finally below the number of vacancies Republicans inherited in 1995, and earlier this year we reached the lowest number of vacancies in the Federal courts in 13 years. This from the 110 vacancies that Democrats inherited from Republican obstruction. Indeed, today there are more full-time Federal judges serving on the Federal courts than at any time in U.S. history.

These confrontations and problems with nominations are of the White House's own making. It is true that some of this President's judicial nominees with troubling records have not been confirmed. It is also true that Democrats have supported as many nominees as we could responsibly. Democrats have not been spoiling for a fight.

We did not seek out the nomination of Judge Pickering or Judge Owen. But we treated them fairly and much more fairly than Republicans had treated President Clinton's nominees to the Fifth Circuit by according them hearings, debate, and a committee vote. They were rejected. For the first time in history a President nonetheless renominated those rejected by the Senate Judiciary Committee. That it was unprecedented is part of the difficulty with these controversial and divisive nominees. Justice Owen is someone whom Republican judges on the Texas Supreme Court criticized as a judicial activist.

We did not seek out the nomination of Miguel Estrada, but we accorded him a hearing and sought to consider the nomination responsibly. We are being required to vote without all the information we need. The committee did vote, which was more than was accorded President Clinton's nominees to the DC Circuit. The Senate is resisting a vote without knowing more about Mr. Estrada's work and judgment. Democrats did proceed to vote on and confirm the nomination of another to the DC Circuit in spite of Republican obstruction of President Clinton's nominations to that important court.

We did not seek the controversial nominations of Jeffrey Sutton, Timothy Tymkovich, or Dennis Shedd, but we proceeded with them. They each received more negative votes than required to prevent cloture, but we proceeded. We proceeded on Deborah Owen, Michael McConnell, and a number of strongly conservative and controversial nominees.

We have not chosen these fights this week. They have been staged by the Republican leadership. We have fought them for the sake of the American people, the independence of the Federal courts, and to preserve the Senate as a check on this expansive court packing by the Executive.

Republican partisans have responded to the sincere concerns of numerous Senators about the records of controversial nominees by demanding that Senate rules be changed to force votes on the most extreme nominees. This effort is in the wake of repeated violations by Republicans of longstanding committee rules and agreements to allow sufficient time to review the FBI investigations and legal careers of the President's nominees for these powerful positions with lifetime tenure. With the Constitution's guarantee of lifetime jobs for judges, we cannot correct mistakes made in a slipshod confirmation process.

In their quest to limit public scrutiny, Republicans have invented interpretations of the Constitution without any basis in tradition or history. Although they now contend that the Constitution requires an up-or-down vote on every judicial nominee, the plain facts are that they blocked up-or-down votes on more than 60 of President Clinton's judicial nominees and more than 250 of his nominees to short-term positions in his administration.

Did they engage in wholesale constitutional violations during President Clinton's Presidency? I did think their one-person filibusters by anonymous, secret holds were unfair, and that is why I made blue slips public as chairman and have supported ending anonymous holds.

Our Democratic Senate leadership worked hard earlier this year to correct some of the problems that arose from some of the earlier hearings and actions of the Judiciary Committee in violation of rules that have served the committee and the Senate well for a quarter of a century. However, once again just last week, the Republican members of the Judiciary Committee decided to override the rights of the minority and violate longstanding committee precedent under rule IV in order to rush to judgment even more quickly for this President's most controversial nominees. That was another sad day in committee. And yet Republicans persist in their obstinate and single-minded crusade to pack the Federal bench with right-wing ideologues, regardless of what rules, longstanding practices, personal assurances, or relationships are broken or ruined in the process.

These rules and precedents are not just ''inside baseball.'' They are the core of the rule of law in our system of government. If those elected will not follow rules to confirm judges or create statutes, then we have little hope that the rule of law will prevail in our courts and in our country. Republicans in the Senate seem intent on sacrificing the role of the Senate as a check on the Executive for the short-term political gain of this White House.

The Framers expressly protected Members' freedom of debate in the Constitution. The Constitution also gives the Senate the power to devise its procedural rules. There is no requirement in the Constitution that matters be decided by simple majorities or that all bills or nominations be brought to a vote.

As the Supreme Court has recognized that ''Certainly any departure from strict majority rule gives disproportionate power to the minority. But there is nothing in the language of the Constitution, our history or our cases that requires a majority to always prevail on every issue.'' Gordon v. Lance, 403 U.S. 1 at 6, 1971, finding constitutional local voting rules requiring a majority of 60 percent to pass a measure. The notion that every nominee is

entitled to a vote on the Senate floor is defied by decades of practice over the past two centuries.

Filibusters and other parliamentary tactics to delay matters were known to the Framers. There was even a filibuster in the first Congress over locating the Capitol.

More importantly, the Framers created the Senate to be unique from the House in the protections for the rights of each Senator and the stability and continuity in this body. Unlike the House, the Senate is not reborn every 2 years but two-thirds of its Members remain through every election. The Framers gave the Senate special powers, as a check on the executive branch, to confirm nominees or to decline to do so, affirmatively or by inaction.

History shows that since the early 19th century, nominees for the highest court and to the lowest short-term post have been defeated by delay, while others were voted down. Not even President Washington's nominees were all confirmed. One of President Washington's short-term nominees, Mr. Benjamin Fishbourn's nomination to the port of Savannah, was defeated on the floor of the Senate because of the opposition of both Georgia Senators. Many Supreme Court nominations were defeated through inaction or delay, rather than by failed confirmation vote.

For 160 years, until 1949, there was no way, other than through unanimous consent, to bring a judicial or executive nomination to a vote. For the past 86 years, the Senate has required a vote of two-thirds to end debate on changing any rule of procedure, made explicit in 1959. For the past 54 years, the Senate has required more than a simple majority, ranging from two-thirds to three-fifths, to bring a judicial nomination or legislation to a vote. For the past 25 years, the Senate has required three-fifths of the Members sworn to vote to end debate on any matter, other than amending the rules, two-thirds.

The Senate and the Nation not only have survived all of these years while respecting freedom of debate but have thrived, strengthening our democracy by ensuring a forum that honors the passionate views and interests of a minority of its members while checking the caprice of temporary majorities, particularly regarding the lifetime appointments to our Federal courts.

As the late, eminent Professor Lindsay Rogers observed, ''the fact of the matter is . . . that, as the much vaunted separation of powers now exists, unrestricted debate in the Senate is the only check upon president and party autocracy.'' The American Senate 164, 1926. We would all do well to remember that, as the scholar Charles Black observed, ''If a President should desire, and if chance should give him the opportunity, to change entirely the character of the Supreme Court, shaping it after his own political image, nothing would stand in his way except the United States Senate.''

If we give up the genius of the checks and balances of the Constitution as embodied in the role of the Senate exercising its independent judgement to confirm or reject lifetime appointees, by vote or inaction, the American people will be the losers. Yet some Republicans seem intent on inflicting more damage, to the process, to the Senate, and to the independence of the Federal courts.

Republicans claim there has never been a filibuster of a circuit court judge. This is false. As recently as 2000, Senator FRIST and his Republican colleagues filibustered two of President Clinton's circuit court nominees. One of those nominees, Judge Richard Paez, a Mexican American nominated to the Ninth Circuit was subject to filibuster procedures and other blocking tactics that prevented him from being confirmed for more than 1,500 days. That was a circuit court filibuster, even though it was ultimately unsuccessful. At the same time, Republicans were simultaneously filibustering the nomination of Ninth Circuit nominee Marsha Berzon. This was in addition to nearly 2 dozen other circuit court nominees who were languishing or defeated in committee without a vote in committee or on the floor as well as dozens of other district court nominees.

Republicans who now claim that the Constitution requires a majority vote on every judicial nominee should explain how Republicans through secret objections, blocked votes on more than 60 of President Clinton's judicial nominees, including nearly 2 dozen circuit court nominees. For Republicans to claim that the process is now broken because a few of President Bush's circuit court nominees are being debated in the light of day, rather than defeated in the dark of night, is breathtaking in its hypocrisy.

Republicans also blocked more than 250 of President Clinton's nominees to short-term positions in his administration. For example, they successfully debated to death his nominations of an ambassador, Sam Brown, and of Dr. Henry Foster to be Surgeon General, in addition to the other more than 300 judicial or executive branch nominees blocked in the dark of night by one of more Republicans. I mention this because I just cannot imagine how they can get away with these false claims, which the most recent history of nominations clearly refutes. This data is publicly available.

The Senate, unlike the House, has never had a rule allowing a simple majority to force a vote on any matter. Only for the past 54 years have Senate rules allowed fewer than the agreement of all Senators to force a vote on a nomination, reducing the number needed to end debate from unanimous agreement to the current number, 60 votes. These rules help ensure that lifetime appointees have wide, rather than narrow, support because consensus nominees are more likely to be fair than extremely divisive ones.

The nomination we vote on today, that of Mr. Estrada, is another divisive nomination of this President. Despite the overtures that have been made to the White House to ask them to honor past precedent and provide Mr. Estrada's memos to the Senate, the White House has refused to budge. Instead of honoring that precedent, the White has sought to break other precedents and understandings in the quest to win confirmation at any cost.

Just last week, the White House signaled again its refusal to seek compromise or accommodation for the sake of the fairness of the courts. The President nominated two more controversial individuals to the DC Circuit. This is just one more sign in a long line that this White House is determined to continue to divide the American people with its nominations and to pack the courts in order to win judicial victories for its ideological agenda and its allies at the expense of fairness for all.

Since the administration has not provided the information requested more than a year ago with respect to Mr. Estrada, nothing has been done to alleviate concerns about this nomination.

Mr. HATCH. Mr. President, I rise today to speak on the nomination of Miguel Estrada for the United States Court of Appeals for the District of Columbia Circuit. It is truly a sad record that the Senate is now being obstructed by multiple filibusters on judicial nominees and that we are required to conduct an unprecedented seventh cloture vote on this particular extremely qualified nominee.

Let me state that a clear majority of this body supports this nomination, as has been demonstrated in the past six cloture votes. So it is regrettable that a minority number of Senators have followed their script of extraordinary obstructionism to prevent the Senate from concluding the debate on this nomination and proceeding to a final vote.

It has now been 6 months since Mr. Estrada's nomination was reported by the Judiciary Committee and placed on the Senate Executive Calendar. It has been nearly 8 months since he was renominated by President Bush. It has been more than 10 months since his hearing before the committee, and I has been more than 2 years since he was first nominated by President Bush on May 9, 2001.

In all of that time my Democratic colleagues have had unlimited opportunities to make their case. Some of them oppose him; others support him. But one thing has remained clear through this debate: There is no good reason to continue this route of obstruction by denying Mr. Estrada an up-or-down vote.

We are at a troubling point in Senate history. Over the past few months I have spoken frequently on the calculated effort to stall action on President Bush's judicial nominees. There

have been efforts to bottle up nominees in committee, to inject ideology into the confirmation process, to delay by demanding production of all unpublished opinions of nominees who are sitting Federal judges and making demands for answers to questions that are unanswerable. And, in the case of Mr. Estrada, opponents have demanded he produce confidential internal memoranda that are not within his control. When these tactics have failed, opponents have turned to their ultimate weapon—the filibuster.

Filibusters of judicial nominees allow a vocal minority to prevent the majority of Senators from voting on the confirmation of a Federal judge, a prospective member of our third, coequal branch of Government. It is tyranny of the minority, and it is unfair to the nominee, to the judiciary, and to the majority of the Members of this body who stand prepared to fulfill their constitutional responsibility by voting on Mr. Estrada's nomination.

I am not alone in my disdain for delaying or defeating judicial nominees through a cloture vote. I think that it is appropriate at this point to note that many of my Democratic colleagues argued strenuously on the floor of the Senate for an up-or-down vote for President Clinton's judicial nominees.

The distinguished minority leader himself once said, ''As Chief Justice Rehnquist has recognized: 'The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down.' An up-or-down vote, that is all we ask. . . .''

The ranking member of the Judiciary Committee echoed these sentiments when he said, ''. . . I, too, do not want to see the Senate go down a path where a minority of the Senate is determining a judge's fate on votes of 41.''

Another one of my Democratic colleagues, Senator KENNEDY, himself a former chairman of the Judiciary Committee, had this to say: ''Nominees deserve a vote. If our Republican colleagues don't like them, vote against them. But don't just sit on them—that's obstruction of justice.''

The distinguished Senator from California, Senator FEINSTEIN, who also serves on the Judiciary Committee, likewise said in 1999, ''A nominee is entitled to a vote. Vote them up; vote them down.'' She continued, ''It is our job to confirm these judges. If we don't like them, we can vote against them. That is the honest thing to do. If there are things in their background, in their abilities that don't pass muster, vote no.''

My other colleague from California, Senator BOXER, said in 1997, ''It is not the role of the Senate to obstruct the process and prevent numbers of highly qualified nominees from even being given the opportunity for a vote on the Senate floor.''

My colleague from Delaware, Senator BIDEN, also said in 1997, ''I . . . respectfully suggest that everyone who is nominated is entitled to have a shot, to have a hearing and to have a shot to be heard on the floor and have a vote on the floor.''

The qualifications of Miguel Estrada are well known to the Senate. However I would like to briefly remind my colleagues of his outstanding record of accomplishment. Miguel Estrada represents an American success story. Born in Honduras, he immigrated to the United States as a teenager to join his mother. Overcoming a language barrier and speech impediment, he graduated magna cum laude and Phi Beta Kappa in 1983 from Columbia College. At Harvard Law School he was an editor of the Harvard Law Review and graduated magna cum laude in 1986.

Mr. Estrada's professional career has been marked by one success after another. After graduation he clerked for Second Circuit Judge Amalya Kearse—a Carter appointee—then Supreme Court Justice Anthony Kennedy. He worked as an associate at the distinguished firm of Wachtell Lipton in New York. He then worked as a Federal prosecutor in Manhattan, rising to become deputy chief of the appellate division. In recognition of his appellate skills, he was hired by the Solicitor General's Office during the first Bush administration. He stayed with the SG's Office for most of the Clinton administration. When he left the SG's Office, he joined the D.C. office of Gibson, Dunn & Crutcher, where he has continued to excel as a partner and has risen to the top of the ranks of oral advocates nationwide, having argued fifteen cases before the Supreme Court.

The legal bar's wide regard for Mr. Estrada is reflected in his evaluation by the American Bar Association. The ABA evaluates judicial nominees based on their professional qualifications, their integrity, their professional competence, and their judicial temperament. Based on its assessment of these factors, the ABA has bestowed upon Mr. Estrada its highest rating of unanimously well qualified.

His supporters include a host of well-respected Clinton administration lawyers, including Ron Klain, former Vice President Gore's chief of staff; Robert Litt, head of the Criminal Division in the Reno Justice Department; Randolph Moss, former Assistant Attorney General; and Seth Waxman, former Solicitor General. I have, on previous occasions, placed letters of support in the record. I would refer my colleagues to previous statements regarding Mr. Estrada's qualifications and endorsements.

Yet, despite the superb record, qualifications, temperament and experience of Mr. Estrada, he continues to be blocked in his nomination. In support of their obstruction, our Democratic colleagues have repeatedly raised red-herring issues with two demands that Mr. Estrada answer their questions, and that the administration release confidential memoranda he authored at the Solicitor General's Office.

With regard to the first demand, the record is clear that Mr. Estrada spent hours during a day-long hearing answering my Democratic colleagues' questions. He answered written questions submitted after the hearing. He gave answers to questions that were substantially similar to answers given by Clinton nominees who were confirmed. Yet my Democratic colleagues still complain that he has not answered their questions. Really, their complaint is that, in answering their questions, Mr. Estrada did not say anything that gives them a reason to vote against him. Simply put, they are not interested in his answers to their questions—they are interested in defeating his nomination.

This is why every effort to make Mr. Estrada available to answer additional questions has gone virtually unacknowledged. He has been made available to answer written questions and to meet with individual senators. There has even been an offer to make Mr. Estrada available to answer questions in a second hearing. But only one Democratic Senator has met with Mr. Estrada since these offers were extended, and only one has submitted written questions since the floor debate began, to which Mr. Estrada has responded. We have met our Democratic colleagues more than halfway on this, but they insist on continuing down this path of obstructionism.

Their second demand, for the Solicitor General memoranda, has been fully debated. The short response is that never before has a Presidential administration released confidential appeal, certiorari, and amicus recommendations on the scale that my Democratic colleagues seek for Mr. Estrada. This is a full-scale fishing expedition, pure and simple, and the Justice Department is right to oppose it.

Despite these supposed reasons for denying an up-or-down vote on Mr. Estrada's nomination, I think there are other factors. Last fall a Democratic staffer on the Judiciary Committee was quoted in The Nation magazine as saying, ''Estrada is 40, and if he makes it to the circuit, then he will be Bush's first Supreme Court nominee. He could be on the Supreme Court for 30 years and do a lot of damage. We have to stop him now.''

So it appears that the real reason for this filibuster is the threat of a Justice Estrada on the Supreme Court. An editorial appearing in the Atlanta Journal-Constitution said it best: ''The fear with Owen and Estrada is that one or both will be nominated to the U.S. Supreme Court should a vacancy occur. Senate Democrats are determined to keep off the Circuit Court bench any perceived conservative who has the credentials to serve on the U.S. Supreme Court.''

There is an additional factor that is not based on any substantive objection to his nomination. I believe that some Senate Democrats do not want the current President, a Republican President,

to appoint the first Hispanic as United States Circuit Judge for the District of Columbia Circuit.

Let me read from an editorial published by the Dallas Morning News addressing this point. On February 17, 2003, the News wrote, ''Democrats haven't liked Mr. Estrada from the beginning. Part of that is due to his ideology which is decidedly not Democratic. But part of it also has to do with the fellow who nominated him. Democrats don't relish giving President Bush one more thing to brag about when he goes into Hispanic neighborhoods during his reelection campaign next year. They are even less interested in putting a conservative Republican in line to become the first Hispanic justice on the Supreme Court.''

Miguel Estrada will be an excellent Federal judge. Today, once again, we have a choice either to continue to block another highly qualified nominee for partisan reasons or to allow each Senator to decide the merits of the nomination for himself or herself. I choose to vote against obstructionist tactics and permit an up-or-down vote on the nominee. I urge my colleagues to do likewise.

I ask unanimous consent the Atlanta Journal-Constitution editorial to be printed in the RECORD.

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

[From the Atlanta Journal-Constitution, May 4, 2003]

DEMOCRATS USE WRONG ROUTE TO WIN SOUTH

(By Jim Wooten)

U.S. Senator John Kerry (D-Mass.) brought his presidential aspirations to the South last week, promising in Alabama that he will make the national party competitive here once again.

Make competitive, he neglected to mention, a party that has positioned itself in opposition to the war in Iraq and anything other than token tax cuts, and as Democrats reminded the nation once again about the elevation of conservatives to the federal bench. While the White House may appeal to some as inside work with no heavy lifting, getting there through the South toting this party's agenda will be a task requiring Herculean labor.

Just this week, for example, Kerry's Democratic colleeagues—Georgia's Zell Miller excepted—began to filibuster the nomination of Texas Supreme Court Justice Priscilla Owen to the New Orleans-based 5th U.S. Circuit Court of Appeals.

Kerry and other Democrats are already filibustering the nomination of Miguel Estrada to the District of Columbia Circuit Court of Appeals—the first time simultaneous filibusters against judicial nominees have occurred in the U.S. Senate.

Both Owen and Estrada are superbly qualified in every respect. Yet on Owen, those who complain that a ''glass ceiling'' exists for women of achievement are busily constructing one to keep her in her place. And those who complain that the federal bench lacks ''diversity'' find Estrada to be too much diversity for their taste. He is considered to be a conservative, and the interest groups that drive the Democratic Party nationally fear Owen is, too, at least on their abortion litmus test.

The fear with Owen and Estrada is that one or both will be nominated to the U.S. Supreme Court should a vacancy occur. Senate Democrats are determined to keep off the Circuit Court bench any perceived conservative who has the credential to serve on the U.S. Supreme Court.

Kerry, then, and the legions of presidential soundalikes who campaign with him, have to come to a region where conservatism is the mainstream to explain how reducing federal taxes is bad and cheating exemplary women and minorities of the fair hearing they have earned before the U.S. Senate because they might be conservative is good.

''I can help you wage a fight down here and rebuild this party for the long,'' Kerry said in Birmingham. Republicans have carried Alabama in all but three presidential elections in the past 50 years. Jimmy Carter in 1976 was the last Democrat to carry the state. George W. Bush carried every Southern state in 2000, including Tennessee, his Democratic opponent's home state. Al Gore Jr. thought so little of his Southern prospects that he actively campaigned in just three states—Tennessee, Florida and West Virginia.

Some Democrats, said Kerry, were ''surprised'' that he visited Alabama.

No surprise that he visited. The real surprise is the party baggage he hauled.

Opposition to tax cuts is comprehensible. Politicians loathe interruption in the flow of spendable revenues. Opposition to the war is, too. Too confrontational. Angers adversaries. Provokes understandable aggression, for which we bear unexpurgated sin.

While some positions are understandable, not so their party-line opposition to Owen and Estrada. Owen, the new filibusteree, drew the American Bar Association's highest rating. She is a cum laude graduate of the Baylor University Law School who scored the top grade in Texas on the bar exam. She practiced 17 years before becoming a judge and has been widely praised for her integrity and ability. Liberal groups say, unconvincingly except when they are talking to each other and Senate Democrats, that she is anti-abortion and pro-business.

Being a neighborly people, Southerners of course welcome Kerry to visit the region and to indulge himself in its hospitality. But the senator should not indulge himself into believing that a party that opposes tax cuts and filibusters nominees such as Owen and Estrada has the slightest chance of carrying this region.

[From the Dallas Morning News, Feb. 17, 2003]

RUSH TO JUDGMENT: ESTRADA NOMINATION HAS BEEN BLOCKED TOO LONG

There is a time for talking and a time for voting. The time is past for the U.S. Senate to talk about Miguel Estrada's nomination to the federal Court of Appeals for the District of Columbia circuit. It's time to vote.

Having emigrated from Honduras as a teenager unable to speak much English, Mr. Estrada went on to graduate magna cum laude from Columbia University and Harvard Law School, to clerk for a Supreme Court justice, to serve two administrations in the U.S. solicitor general's office, to win more than a dozen cases in the Supreme Court. In short, the 42-year-old lawyer is talented. Who knew that talent would extend to tying the Senate in knots for days on end.

Democrats by now are in full filibuster. Senate proceedings, as carried on C-Span, resemble the firm Groundhog Day, where the main character has to relive the same day over and over again. Every day, it's the same thing. Democrats get up, march over to the podium, shuffle papers and recite their main complaint with Mr. Estrada—that he's conservative, unconventional and unapologetic. That when he had the chance to hand them the rope with which to hang him during his hearing before the Senate Judiciary Committee, he refused to hold up his end.

Democrats haven't liked Mr. Estrada from the beginning. Part of that is due to his ideology—which is decidedly not Democratic. But part of it also has to do with the fellow who nominated him. Democrats don't relish giving President Bush one more thing to brag about when he goes into Hispanic neighborhoods during his re-election campaign next year. They are even less interested in putting a conservative Republican in line to become the first Hispanic justice on the Supreme Court.

And so they have talked and talked, in hopes that Republicans will back down. They won't. Nor should they.

Republicans certainly stalled their share of appointments during the Clinton administration. But Democrats are being shortsighted in seeking retaliation. It is precisely these sorts of narrowly motivated temper tantrums—from both sides of the political aisle—that turn off voters and make cynics of the American people. When that happens, it doesn't matter which nominees get confirmed or rejected. Everybody loses.

The PRESIDING OFFICER. The distinguished majority leader.

Mr. FRIST. All time has expired?

The PRESIDING OFFICER. That is correct.

Mr. FRIST. I will use a couple minutes prior to the vote in response to some of the comments that have been made, specifically in response to the Democratic leader's comments which I understand really are two.

Are we committed to addressing energy issues and completing this bill? We are. We will continue to work aggressively on this bill starting earlier than we normally would and continuing later tonight. Again, I ask for amendments to come forward. We are going to address them one by one in a systematic way with adequate time for debate and amendment.

Second, the question has been raised as to why we are considering these votes today, such as cloture on Miguel Estrada. The answer is, the American people deserve it. They understand we are not fulfilling our responsibility in this body without an up-or-down vote. That is our job. That is our responsibility. It is advice and consent of the judicial nominees sent by the President of the United States. That is being denied by the other side of the aisle. That is unacceptable to us. That is why that is being voted on today.

I made it very clear in my request both publicly and otherwise that we would like to stack these votes as we are voting on other energy amendments; it is not us who requested the time.

The complaint was made we were in a quorum call; why were we sitting in a quorum call in the middle of this bill? It should be made very clear that they requested that time and it was on their time that we were in a quorum call. I, once again, make this plea for a vote like today. When the initial request was made, it was that we have

the vote and not spend a lot of time discussing the issue.

Second, let me reinforce a point I made this morning; that is, we are being required by the other side of the aisle to use a lot of our valuable time, time that is increasingly valuable as we get closer and closer to the recess, to rollcall votes on district judges. That has not been done in the past. Once again, I ask and, in fact, plead with the other side to change this request they have made that we spend so much time on rollcall votes which historically have been unnecessary.

On the issues of Chile and Singapore, I have made it very clear that we will move those to a time after energy unless we are not dealing with an issue on energy. I will talk to the other side of the aisle. If there is debate on Chile and Singapore, we will probably do it after we have the final energy votes this week. Then we will take up Chile and Singapore trade issues at that point.

The same issue will come up tomorrow because we will be voting on Judge Pryor. I am sure the same issues will come up about spending time and people will come to the floor and spend time.

I make it clear, our request last night was to set aside time, some time in the future—not necessarily this week—to debate and discuss Pryor and have an up-or-down vote on Pryor. That was refused. Again, it would not have been this week—it could be sometime during September—but there was an objection to that unanimous consent request. Thus, we will proceed with a vote tomorrow.

Again, I make it clear my initial request is not to use a lot of time simply to be able to go to Pryor but that we proceed aggressively on energy. The American people deserve it. We will do it in an orderly way as we go forward today. I am confident we can complete this Energy bill if we stay focused, work together. The American people deserve it. I am confident we can do that.

I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The bill clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 21, the nomination of Miguel A. Estrada to be United States Circuit Judge for the District of Columbia Circuit.

Bill Frist, Orrin G. Hatch, Judd Gregg, Norm Coleman, John E. Sununu, John Cornyn, Larry E. Craig, Saxby Chambliss, Lisa Murkowski, Jim Talent, Olympia Snowe, Mike DeWine, Michael B. Enzi, Lindsey Graham of South Carolina, Jeff Sessions, Lincoln Chafee, Wayne Allard.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Miguel A. Estrada to be United States Circuit Judge for the District of Columbia Circuit shall be brought to a close?

The yeas and nays are mandatory under the rule. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay.''

The PRESIDING OFFICER (Mrs. DOLE). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 55, nays 43, as follows:

[Rollcall Vote No. 312 Ex.]

YEAS—55

Alexander	Dole	Murkowski
Allard	Domenici	Nelson (FL)
Allen	Ensign	Nelson (NE)
Bennett	Enzi	Nickles
Bond	Fitzgerald	Roberts
Breaux	Frist	Santorum
Brownback	Graham (SC)	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Campbell	Hagel	Snowe
Chafee	Hatch	Specter
Chambliss	Hutchison	Stevens
Cochran	Inhofe	Sununu
Coleman	Kyl	Talent
Collins	Lott	Thomas
Cornyn	Lugar	Voinovich
Craig	McCain	Warner
Crapo	McConnell	
DeWine	Miller	

NAYS—43

Akaka	Dorgan	Levin
Baucus	Durbin	Lieberman
Bayh	Edwards	Lincoln
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murray
Boxer	Graham (FL)	Pryor
Byrd	Harkin	Reed
Cantwell	Hollings	Reid
Carper	Inouye	Rockefeller
Clinton	Jeffords	Sarbanes
Conrad	Johnson	Schumer
Corzine	Kohl	Stabenow
Daschle	Landrieu	Wyden
Dayton	Lautenberg	
Dodd	Leahy	

NOT VOTING—2

Kennedy	Kerry

The PRESIDING OFFICER. On this vote, the yeas are 55, the nays are 43. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

ENERGY POLICY ACT OF 2003—Continued

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I ask unanimous consent that the pending amendment be set aside.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DOMENICI. Does the Senator want to offer a second-degree amendment to the electricity amendment?

Mr. FEINGOLD. Yes.

Mr. DOMENICI. I did not know that. I did not understand that.

Mr. FEINGOLD. My attempt was to set aside what I thought was a pending amendment to your amendment and then to offer a different amendment to your amendment. And I make that request again.

Madam President, I ask that in the form of a unanimous consent request, that the pending amendment to the Domenici amendment be set aside.

Mr. DOMENICI. Well, they have all been currently set aside for amendments to the electricity amendment, Madam President. That is why I wondered, what is the need for the unanimous consent request?

The PRESIDING OFFICER. There are currently pending second-degree amendments which would have to be set aside.

Mr. DOMENICI. I have no objection to the request.

Mr. REID. Will the Senator from Wisconsin yield?

Mr. FEINGOLD. I yield to the Senator from Nevada.

Mr. REID. Madam President, I direct this question through you to the distinguished manager of the bill for the majority. I have had a number of inquiries during the vote as to whether or not, when the Secretary of Defense comes here at 4 o'clock this afternoon, we are going to take a recess. We have a number of Democrats who are going to attend. I assume there will be members of the majority attending that briefing also.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, if somebody is discussing an amendment, and there is business on the floor of the Senate, we will not recess; we will work.

The PRESIDING OFFICER. Without objection, the request of the Senator from Wisconsin is granted.

Mr. FEINGOLD. Thank you, Madam President.

AMENDMENT NO. 1416 TO AMENDMENT NO. 1412

Madam President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD], for himself and Mr. BROWNBACK, proposes an amendment numbered 1416.

Mr. FEINGOLD. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To protect the public and investors from abusive affiliate, associate company, and subsidiary company transactions)

Beginning on page 35, strike line 10 and all that follows through page 35, line 15, and insert the following: