will provide a system of care. We essentially are going to do what insurance should do—take the broadest possible risk pool of all seniors—healthy seniors, unhealthy seniors, the frail and elderly seniors, and the young and vigorous seniors. They are all going to participate. That is the efficient, fair, and sensible way to do it.

We are on the verge, I fear, of ruining that system—not just for the moment but for all time.

I hope in the next several days we can resolve these issues favorably. But I am concerned if we proceed on this course we will not really be doing anything for seniors, the prescription drug benefit might be illusory, and the long-term effect will be severe and perhaps cause fatal damage to Medicare.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Massachusetts.

NOMINATION OF WILLIAM H. PRYOR

Mr. KENNEDY. I urge my colleagues to vote against cloture on the nomination of William Pryor. Since President Bush came into office, the Senate has confirmed 168 of his nominees and has decided so far not to proceed with only 4. That is a 97.7 percent success rate for the President. It is preposterous to say that Senate Democrats are obstructing the nomination process.

The few nominees who have not received our support are too extreme for lifetime judicial appointments, and Mr. Pryor's nomination illustrates the problem. His views are at the extreme of legal thinking, and he does not deserve appointment to an appellate Federal court that decides so many cases involving basic legal rights and constitutional protections. The people of the Eleventh Circuit deserve a nominee who will follow the rule of law and not use the Federal bench to advance his own extreme ideology.

The issue is not that Mr. Pryor is conservative. We expect a conservative President from a conservative party to select conservative nominees. But Mr. Pryor has spent his career using the law to further an ideological agenda that is clearly at odds with much of the Supreme Court's most important rulings over the last four decades, especially in cases that have made our country a fairer and more inclusive nation for all Americans.

Mr. Pryor's agenda is clear. He is an aggressive supporter of rolling back the power of Congress to remedy violations of civil rights and individual rights. He has urged the repeal of Section 5 of the Voting Rights Act which helps to ensure that no one is denied the right to vote because of their race. He vigorously opposes the constitutional right to privacy and a woman's right to choose. He is an aggressive advocate for the death penalty, even for persons with mental retardation. He dismisses—with contempt—claims of racial bias in the application of the death penalty. He is a strong opponent of gay rights.

Somehow, despite the intensity with which Mr. Pryor holds thee views and the many years he has devoted to dismantling these legal rights, we are expected to believe that he will suddenly change course and ''follow the law'' of he is confirmed to the Eleventh Circuit. Repeating that mantra again and again in the face of his extreme record does not make it credible. Actions speak louder than words, and I will cast my vote based on what Mr. Pryor does, not just on what he says.

Mr. Pryor's supporters say that his views have gained acceptance by the courts, and that his views are well within the legal mainstream. But actions paint a different picture. He has consistently tried to narrow individual rights, far beyond what any court in this land has been willing to hold.

Just this past term, the Supreme Court rejected Mr. Pryor's argument that it was constitutional for Alabama prison guards to handcuff prisoners to ''hitching posts'' for hours in the summer heat. The court also rejected his argument that States could not be sued for money damages when they violate the Family and Medical Leave Act.

Mr. Pryor's position would have left workers who are fired in violation of the Family and Medical Leave Act without a remedy.

The court rejected his argument that states should be able to criminalize private sexual conduct between consenting adults.

The court rejected his far-reaching argument that counties should have the same immunity from lawsuits that States have.

The court rejected his argument that the right to counsel does not apply to defendants with suspended sentences of imprisonment.

The court rejected Mr. Pryor's view on what constitutes cruel and unusual punishment in the context of the death penalty. The court held, contrary to Mr. Pryor's argument, that subjecting mentally retarded persons to the death penalty violated the Constitution.

Just this spring, even the Eleventh Circuit, a court already dominated by conservative Republican appointees, rejected Mr. Pryor's attempt to evade the Supreme Court's decision. Mr. Pryor tried to prevent a prisoner with an IQ of 65 from raising a claim that he should not be executed, when even the prosecution agreed he was mentally retarded.

This is not a nominee even close to the legal mainstream. His actions in seeking to evade the Supreme Court's decision speak volumes about whether he will obey its decisions if confirmed to the Eleventh Circuit.

Mr. Pryor and his supporters keep saying that he is ''following the law,'' but repeatedly he attempts to make the law, using the Attorney General's office in his state to advance his own personal ideological platform.

If, as his supporters urge, we look to Mr. Pryor's words in considering his nomination, we must review more than just his words before the committee at his confirmation hearing. We have a duty to consider what Mr. Pryor has said about the Supreme Court and the rule of law in other context as well.

Mr. Pryor ridiculed the Supreme Court of the United States for granting a temporary stay of execution in a capital punishment case. Alabama is one of only two States in the Nation that uses the electric chair as its only method of execution. The Supreme Court had agreed to hear the case to decide whether use of the electric chair was cruel and unusual punishment. Mr. Pryor, however, said the court should have refused to consider this constitutional issue. He said the issue ''should not be decided by nine octogenarian lawyers who happen to sit on the Supreme Court.'' Those are his words, and they don't reflect the thoughtfulness that we want and expect in our judges. If Mr. Pryor does not have respect for the Supreme Court, how can we possibly have any confidence that he will respect that court's precedents if he is confirmed to the Court of Appeals?

Finally, Mr. Pryor's nomination does not even belong on the Senate floor at this time. His nomination was rushed through the Judiciary Committee in clear violation of our committee rules on ending debate.

An investigation into Mr. Pryor's controversial role in connection with the Republican Attorney Generals Association was interfered with and cut short by the committee majority and has never been completed. Most of our committee members agreed that the investigation raised serious questions which deserved answers in the committee, and they deserve answers now, before the Senate votes. The Senate is entitled to wonder what the nominee's supporters have to fear from the answers to these questions.

The fundamental question is why—when there are so many qualified attorneys in Alabama—the President chose such a divisive nominee? Why choose a person whose record casts so much doubt as to whether he will follow the rule of law? Why choose a person who can muster only a rating of partially unqualified from the American Bar Association? Why support a nominee who is unwilling to subject key facts in his record to the light of day?

We count on Federal judges to be open-minded and fair and to have the highest integrity. We count on them to follow the law.

Mr. Pryor has a first amendment right to pursue his agenda as a lawyer or an advocate, but he does not have the open-mindedness and fairness essential to be a Federal judge. I urge my colleagues to vote against ending debate on this nomination.

I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. MURKOWSKI). Without objection, it is so ordered.

JUDICIAL NOMINATIONS

Mr. ENSIGN. Madam President, this morning I rise to talk about what has been happening in this Chamber with regard to judicial nominations, and especially those nominations that have been put forward by the President with respect to the circuit courts.

The court of appeals is that branch in our Federal court system which is directly under the Supreme Court, an incredibly important place where a lot of judicial precedent is set.

We have had several judges being filibustered this year by the other side; just recently, Charles Pickering, a wonderful man with incredible qualifications, incredible political courage. With all the debate that happened about him and his qualifications—people can check the CONGRESSIONAL RECORD for it—but the bottom line is this man deserves an up-or-down vote. If he is granted an up-or-down vote, he would be approved because he was able to get 54 votes against 43 negative votes. Unfortunately, there is a minority in the Senate choosing to filibuster. That 54 votes should be enough to put him on the circuit court where he deserves to be.

I have no objection to people voting against judges. That is their right to do under the Constitution. But the Constitution specifically spells out only five instances where a supermajority is required in the Senate for approval, and moving to the consideration or the approval of the President's judicial nominees is not on that list.

Why is this debate so important to have on whether we should allow the Senate to filibuster judges or whether we should just have straight up-or-down votes on judges after a good amount of debate? If one side, meaning one political party, chooses to filibuster judges, the other side is going to be forced to filibuster. In other words, a precedent is set.

Someday the Democrats will get back in power in the White House and will be sending judges up to this body, and if they continue to filibuster the President's nominees, a precedent will be set, and our side will have no choice but to filibuster their judges. The reason is very simple: If they filibuster more conservative type judges, and we do not filibuster theirs, our court system will just go further and further to the left.

Politics and the judiciary—we are supposed to try to separate those as much as possible, even though it is impossible to completely separate them.

So, Madam President, I appeal to our colleagues on the other side that this obstructionism purely for political gain is a dangerous precedent to set in the Senate. We need to become statesmen in this body and do what is right for our Republic. This is really about the future of our Republic. Judges and the third branch of our Government have to have somewhat independence from the legislative branch and from the executive branch. It is critical, I believe, that we have a fair process going forward.

The system really is broken at this point. Another problem we are going to face in the future by staging this political battle on judges is that good people are not going to want to go through the nomination. Miguel Estrada is the perfect example. He was an extraordinary nominee who would have made an extraordinary judge and the ugliness this process has become resulted in him asking the President to withdraw his nomination. The toll of was too great on him and on his family. He could not take it anymore.

If we continue to drag more nominees through this political mess, it is going to be harder to get good people, the kind of people we want serving on the bench.

I make this appeal to my colleagues: This nonsense going on with filibustering circuit court judges needs to stop. I respect the fact that Senators want complete debate. We should have full debate on judges. But once they have their full debate, their complete investigation, questions are asked and answered, then we need an up-or-down vote, straight up-or-down vote. There is no place in the judicial nomination process for filibustering. If we do not correct this problem, and fix this broken process the future our judicial system will be hurt and it will be a great disservice to all Americans.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

HEALTHY FORESTS LEGISLATION

Mr. CRAPO. Madam President, I rise to speak about the Healthy Forests legislation which we recently passed on the Senate floor. Since we passed it—I remind everyone it was a strong bipartisan effort which resulted in 80 votes out of 100 votes in the Senate supporting this effort—we have now run into further procedural snags. As I was sitting here listening to the Senator from Nevada talk about the snag we have run into with regard to trying to get votes on judges, I was reminded of the similarity.

It took us a long time to get this bill to the Senate floor, the Healthy Forests legislation. The process we went through was one in which I believe we showed America how we should be working together in a bipartisan fashion to cross party lines, cross regional lines, and build broad support for meaningful legislation to solve a serious problem.

We did that. We had a bipartisan coalition that came forward with a strong bill. I will talk a little bit about what the bill would mean to America. We passed it in the Senate with 80 votes. Yet today we are stalled in being able to move forward and appoint conferees to get together with the House and work out the differences between the two bills and come forward with strong legislation.

Unfortunately, this procedural maneuver of stopping us from being able to move forward into a conference with the House is simply another mechanism similar to a filibuster. In fact, it might ultimately be backed up by a filibuster to stop us from procedurally being able to move forward on important legislation. In effect, it allows anybody who wants to to vote for the bill, knowing it is going to be stalled and that we will not allow it to then go to conference and keep moving forward.

The Healthy Forests legislation is critically needed. I just received the most recent analysis of the statistics. When we debated the bill, we talked a lot about the damage going on in California with the wildfires then burning there. Just to remind everybody about what those fires meant, a study I have in front of me evaluates just 4 of the 13 fires that were burning in California last week as we considered the legislation.

The estimated cost to date—which is not finished—of fighting just those 4 fires is $65.8 million. That is 4 of the 13 fires in California. When you look at the rest of the country, as I discussed in the debate last week, we have burned 3.8 million acres in America this year. Last year it was nearly 7 million acres. The year before, it was over 3 million, and the year before that, it was over 7 million acres. The running 9-year average for the number of acres we have burned in our forests is 4.9 million acres per year.

The Forest Service estimates over 100 million acres of forest lands are at unnaturally high risk of catastrophic wildfires and large insect-disease outbreaks because of unhealthy forest conditions. Again, just looking at those 4 fires in California, $65.8 million worth of cost to fight them so far, 1,622 structures lost. We all know there were many lives lost in those fires. There were lives lost in Idaho this year fighting fires, my State. I am sure if other Senators from the States in which these fires are burning could be here right now, they would point out the damage in their States, not only from the cost of fighting the fires but in terms of the loss of life and the loss of property.

It is important we move ahead with this legislation. I am here to call on my colleagues from the Democratic side of the aisle to work with us again, as we worked in bringing forward the bill, to go into conference and work to achieve the objectives of this legislation.

Some have said: Let's just send our bill to the House and tell the House it must accept our bill. It is our bill or no bill.