was higher? Is the Senator from Washington aware of that fact?

Ms. CANTWELL. I am not aware to what the Senator from Nevada is referring. I know during the Bush and Clinton administrations, with a richer package of 20 weeks after a Federal program on extension, richer than the 13 weeks that we have now, we extended that over a 30-month period of time.

So far this administration has only done that over a 22-month period of time. While we all want the economy to recover, and we all want to put Americans back to work—I guarantee these individuals would rather have a paycheck than an unemployment check—we need to do a better job making sure that we are making a commitment to unemployment benefits before we adjourn for the session.

We just spent all this time debating judicial nominees. I think it was a hardy debate on both sides. But let's give the American people and those who are suffering from unemployment the benefit of knowing that they will get this benefit extension before we adjourn.

Mr. ENSIGN. Mr. President, the fact is, when the Democrats were in control of all three bodies, the Democrats terminated the program of extending unemployment benefits at the Federal level. They terminated the program.

More people were unemployed at that time when they terminated the program. It is good enough today. The economy is recovering. It is producing jobs. Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Pennsylvania.

JUDICIAL NOMINATIONS

Mr. SANTORUM. Mr. President, I just want to thank all of the Members, particularly on this side of the aisle, for the terrific level of debate we have seen over the past 40 hours. I was amazed, yesterday, sitting both here and in my office, and seeing Member after Member come to the Senate floor. I have never seen a debate where more of our Members came to the floor to let their views be known to the American public, of how important this issue is to the future of our country, the issue we just voted on, the issue of judicial nominations.

I was stunned. I thought we would have to scurry around and have sort of a core of people who were willing to come to the floor and fill up the time. But for 40 hours, 39-plus hours, we had no problem. In fact, at 5 o'clock in the morning, Senator CHAMBLISS and I were arguing over 5 minutes, who was going to get the extra 5 minutes because there was such enthusiasm for a cause that we felt was just. It was not a small group.

Some in the media suggested that there was some division over here as to whether to take on this strategy. I would say, just look at the response of our membership. They came to the floor. They came with passion. They came with a conviction that what we were arguing for was the right thing for the country. Maybe it was not the right thing for us politically. We had that debate about having a higher standard for judges, higher than a simple majority, a three-fifths majority, which is now the rule. I think this debate and the votes today have cemented that.

Now the standard will be that you have to have 60 percent of the Senate in order to be a Federal judge. We have made that the rule. So the 214-year history is now gone.

We had a great debate about it. The rule has changed. I thank all who participated on both sides. I thank the staff, the pages, the staff here on the floor—the floor staff, which has been rotating, but even rotating these jobs were not made for three shifts. We don't have three-shift jobs. This is a one-shift operation and they had to work three shifts. They did a great job—the folks in the cloakroom, the Judiciary Committee, all the leadership staff. I particularly thank the staff of the Republican conference—Mark Rogers and Barbara Leeden and Elizabeth Keys, Robert Traynham, Melissa Seckora—all the staff who have worked so hard, holding press conferences in the middle of the night.

Gosh, we had press conferences, 1:30, 2:30, 3:30, 4:30, 5:30, 6:30 in the morning, every hour.

All the outside groups who were concerned about the future of our country and concerned about the future of the judiciary came to Washington. I remember walking in late in the evening on Wednesday evening, and in the rain, in the wind, people lined up outside the Capitol to get into the Capitol to be here on Wednesday night because they knew this was a debate that had real significance because they knew this was a debate that is going to have a place in history.

By affirming what has happened four times before today, now five, now six—that 168-to-4 chart, that 98 percent chart—that is now history; 168 to 6. That is not even accurate because there are 6 more they have said they will filibuster.

Obviously, when the minority leader says there is going to be a filibuster, you get the ducks in a row. They have been able to do that and do it successfully.

So it is now 168 to 12. Of course, we just started that this year. There have only been four, they say. This is the first time it has been done.

It is like a little ball, like dropping a pebble at the top of a large mountain. It shakes lose a couple of other pebbles. Pretty soon, over time this gets to be a boulder, an avalanche that is coming down and is going to hit the judicial branch of our Government.

I predict, if nothing is done to change the rule, the number will be in the hundreds within a couple of years, in the thousands and the tens of thousands as this country goes forward. Why? Because we have changed the way we consider nominations.

I am going to repeat what I said at the close of the debate because I still hope there is a chance that some Members will reconsider. There are Members on our side who have smiles on their faces, Members who care deeply about issues that are before the court today who have smiles on their faces because they say: Now we have the tool to stop activist judges. Now we have the tools we didn't have before. Now they have to get 60 percent of the vote for the judges, the Richard Paezes of this world and the Marsha Berzons of this world, and those who could come on and replace the document I hold in my hand, the Constitution, with their own view of the world.

What an activist judge is, is a little James Madison, just someone who thinks they can write their own Constitution. Madison didn't have the privilege of having all the knowledge that we have today about what is right and wrong. He didn't have the understanding that so many of our learned jurists have in doing what is right for the American people. So this guy, Madison—it was a pretty good first draft. There are many activist judges who think they can write a better Constitution, and they do so on a regular basis. What Madison thought would change the Constitution is something that is actually in the Constitution, and that is a procedure for amending the Constitution. But a lot of Members on the other side of the aisle don't believe we should have to bother with that rather cumbersome process in this fast-changing world in which we live. It just takes too much time. It is far too much effort. It involves having to convince the American public. Why should we bother with such folly?

We, the enlightened, the intellectuals, those who have reached the pinnacles of our professional occupations, we in the judiciary, we are the ones who should be able to lay out for future generations what should have been done for them.

So this elitist, activist corps—elitist in the most pejorative sense of the word ''elitist''—are activist judges who take this document, light a match to it, and throw it away and say: We are a country of people, we are a country of people, not of laws.

That is what we are going to get more of. So what my colleagues believe we can do now is apply the same standard they have applied to Janice Rogers Brown, elected by 76 percent of the vote in the State of California; Priscilla Owen, elected by 84 percent of the people of the State of Texas; Carolyn Kuhl, William Pryor, Charles Pickering, Miguel Estrada—the list goes on and will go on. It will go on.

This is a huge tragedy, what happened here today. The point is, as the Senator from Iowa, Mr. HARKIN, when we came in the Chamber just 40-some

hours ago had a sign held up: ''I am going to watch 'The Bachelor'.'' That was funny. I chuckled. But true humor, good humor, really good and biting humor, always has an element of truth to it, doesn't it? It always has an element of truth. The element of truth here is that the other side does not want you to hear what is going on. They want you to go and watch ''The Bachelor,'' tending to your business. We will take care of the business here. You need not mind what we do here. No, don't bother with us; we'll handle it. You could watch ''The Bachelor.'' We will take care of the people's business here and don't bother with us.

Hopefully, some Americans paid attention. Hopefully, some Americans heard the debate that went on here in the Senate Chamber for the past 40 hours and heard very clearly that we have changed, potentially forever, the standard by which we will confirm judicial nominees. In so doing we eliminate those, not just from the right.

Let me assure you, my colleagues on the other side of the aisle, let me assure you we are not just eliminating those on the right, because what is good for the goose is good for the gander. When you twist and contort the law, it becomes the law for everybody. It is twisted and contorted in its ugliest sense, but it is there for all to see and there for all to use. Rest assured, it will be used. Whether it is by the Senator from Pennsylvania—I hope not because I hope never to be in the minority, and I hope never to have to serve under a Democrat President. That is obviously my objective. I hope I don't have the opportunity or the desire to ever use it. But I suspect someday, someone—either myself or someone who shares my philosophy and ideas of how this Government should be run and how the judiciary should behave—will take this tortured process that has been cemented today and use it against the very people you believe are mainstream, who the Democrats of the left believe represent the deep and wide channel that is the mainstream of American thought; people who believe that ''under God'' should not be in the Pledge of Allegiance, that deep, wide mainstream; people who believe this is a living document.

Let me interpret what that means. That is what you will hear a lot from those on the other side, that this is a living, breathing document. A living, breathing document? Yes. It is living and breathing, but it is not a document. It is a judge. When you hear ''living and breathing,'' documents don't live and breathe. They say exactly what they mean. Documents written 214 years ago don't change by themselves. They don't breathe. They do not live. They were put there and put on paper for a reason—to provide stability to this country and certainty for those here in America who know their rights and who understand those rights throughout time. If we are to change these words, we do so through the process where the people of America—not some unelected few—have input into that process. It is called the amendment process to the Constitution which requires the Congress to act and three-quarters of States to affirm and ratify. That is how we change this document—not by appointing and confirming living, breathing judges to make it their own. That is what they have done.

They think now that they have a sufficient number of these folks on the court that they don't want any conservative judges. What is a conservative judge? A conservative judge is not someone who changes this document to reflect their ideology. I would not call that a conservative judge. I would not call that a judge for whom I would vote. That is not a conservative judge. I don't want a judge who is going to come in and contort the Constitution to my thinking. I want a judge who is going to live by what this Constitution says. It reflects the will of the people. That is what a conservative judge is. A conservative judge is someone who abides by the Constitution—not someone who sees it as a living, breathing document. Judges who are conservative are called ''strict constructionists''—to strictly and narrowly construe controversies that are before them and decide cases in the narrowest sense—not to use a dispute between parties as an opportunity to legislate.

The Senator from Kansas, Mr. BROWNBACK, said at about 4:15 in the morning that what is really happening here is this new test is being introduced by Senators on the other side of the aisle—this ideological test.

Your job as a judge is to look at the disputes between parties, see the applicable law that has been passed by Congress, the State legislatures, or provisions in the Constitution and apply those to the factual circumstances before you. That is your job. If that is your job, then why should we be concerned about your ideology? That is a pretty fair question. If all you are supposed to do is look at the statutes and use the rules and the statutory constructions which are laid out, or look at the Constitution and refer to the interpretations of the Supreme Court with respect to that area of the law, then why at the district court or on the appellate court level should we be concerned about your ideology? It should not be a factor because you are simply applying the law. A liberal can apply the law just as easily as a conservative can apply the law and look at ideology.

Why should your political ideology have anything to do with it if that is all your job is? I don't mean to demean by saying ''if that is all your job is.'' It is a very important job. It is an adjudicatory process. It is a very important process in our country. It is one of the three branches of Government. It is their responsibility to do that. It is not the responsibility of the Senator from Arkansas or Nevada to settle disputes and make decisions. We give that to people who study the law, understand it, and then make the decisions based upon it. We are the ones who create the law. We are the ones who have the great debates on what the law should be that they apply.

The President is the one who executes the law, and in the case of the judiciary appoints those who prosecute it.

I will say in conclusion that what is happening now with this political test is a recognition by the other side—an admission by the other side—that no longer are judges just there to try facts and apply the law, but they are there—in fact, the other side wants them to be there to change the law—not to apply the law but to change the law to reflect the ideology that is dominant on their side of the aisle. They do not want judges who will apply the law. They want judges who will make the law. You would think they would not want to give up their legislative prerogative. That is our prerogative. It is our job to make the law.

What they have found over the years is that the public will not buy a lot of stuff they want to sell. They can't get it done. What they have figured out is a way to avoid having to go through this cumbersome process of writing the laws, getting the public to go along with it, and having to stand for things that are unpopular, which is to just find people who will do it for them and they don't have to stand for election. We can get them in there and they are there for life. They can do our bidding because we can't get it done.

A very dangerous thing happened here today. It will not serve this country well. It will politicize the branch of the Government that heretofore has stayed fairly apolitical. It is a mistake.

I hope and pray that Americans will write and talk to their Members of the Senate, ask them, plead with them to stop this. Put this genie back in the bottle and put it away—throw it away. It is not good for America. It is not right for America. It has never been America. For 214 years we have kept politics out of the judiciary. Let us not politicize it. People are so tired of politics. They complain and rail about it all the time. What have we done here today? We have now injected a healthy dose of it into the judicial system.

May God help this country for what we have done today.

I yield the floor.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from Arkansas is recognized.

NOMINATION OF J. LEON HOLMES

Mr. PRYOR. Mr. President, I want to again remind this Senate and my colleagues on both sides of the aisle about one of the judicial nominees who happens to be from my State of Arkansas, Mr. Leon Holmes.

Leon and I practiced law together in Little Rock for a few years in the late