

about the deficit, they should join some of us on this side of the aisle and start cutting out some of the waste and overspending in certain parts of our Government.

Having said that, let me conclude by saying let's have an up-or-down vote on Miguel Estrada so we can get on to some of the other important issues. Make no mistake about it, though; the judiciary and this part of what we do is a very important part of our role as Senators in fulfilling our obligation, our oath of obligation to defend and support the Constitution. We can get on to other things. The budget was not enacted last year. For the first time since 1974 we did not have a budget. Because of that, we ended up with some serious problems last year. The appropriations bills didn't get finished until just a couple of weeks ago.

We are asking the other side to not continue to obstruct the will and the work of this body, to join us, have an up-or-down vote, let the Senate work its will on this nomination so we can get on to other important business of the country. We have a lot of things to do. Let's join together. Let's work across the aisle. Let's join hands. There are a lot of good things we can do for the American people.

I yield the floor.

**THE PRESIDING OFFICER** (Mr. BUNNING). The Senator from South Dakota.

Mr. JOHNSON. Mr. President, I rise to express my great dismay at the policy of the President of the United States that he seems to be attempting to impose on the Senate, which would require each and every one of us in this body to betray the Constitution, to betray our oath of office, and to ignore the constitutional mandate that we give meaningful advice and consent on judicial nominees coming before this body.

I will never betray the Constitution and my oath. I don't care whether we have to be here night after night. I am not going to go down that road. I speak as a Senator who has voted in favor of somewhere in the range of 100 judicial nominees that President Bush has sent to this body, virtually all conservative Republicans. I wish it were different. I wish there were more progressive judges before us. But I understand the President's prerogative, and I respect his right to nominate whomever he may wish.

But this nomination before us is unprecedented. It is not only a matter of Mr. Estrada, it is a matter of the sanctity of our Constitution. It goes to the very oath of office we have taken. It would make a travesty of this body and of the Constitution for us to do otherwise than to object to the manner in which this particular nominee has been presented to the Senate.

The other nominees who have come before this body—for whom I have voted over and over again, somewhere in the range of 100 already—we at least knew what was their legal philosophy. They tended to be conservative Repub-

licans and that is the President's prerogative and I voted for them, but they had either been Federal judges or State judges, allowing us to look at their rulings in the past, or they had been legal scholars with a significant body of work that allowed us to view what the inner workings of their minds were and allowed us to determine whether they were, in fact, within the mainstream of American jurisprudential thought. This nominee stands unique. The precedent would be catastrophic to our Republic if we start, for the first time ever, to approve secret judges, stealth judges, judges who have no record and who will disclose no record to the Senate.

We have no way of knowing what this individual's legal philosophy might be. We have reason to believe he is undoubtedly a capable lawyer, in terms of his technical skills as a Solicitor, but we have no idea where he stands otherwise. The question is not whether we will have Hispanic Republican judges on the District of Columbia Court of Appeals. That is irrelevant. I voted repeatedly, as have my colleagues on my side of the aisle, for Hispanic judges and other high officials in our Government. I am proud to have played a role in supporting our Hispanic colleagues in issue after issue, and position after position. But this, this is a sham. This is a travesty. I believe any Senator who thinks seriously about his oath and reads the Constitution, the obligation—not the right but the obligation of the Senate to provide advice and consent on these offices is a profoundly important role.

It is one thing to approve or not approve Cabinet appointees and other advisers to the President; they come and they go. It is a serious matter, but at least there is not a lifelong appointment involved. In this case, we have a lifetime appointment to the second highest court in the land. What is worse, if we submit to this failure to abide by our constitutional obligations to make a meaningful decision about advice and consent, we will have opened the floodgate because it will become apparent to this President that the strategy to use from here on out is to continue to find individuals who have no track record, who may have a secret ideological agenda, and to send them one after another through the Senate to be rubberstamped by this institution. That is not acceptable. This is a matter of enormous importance.

These individuals, and this particular individual about whom we are debating today, if confirmed, will likely serve on this bench for the rest of our lifetimes, for many of us in this body. President Bush may come and he may go, but these appointments will last a lifetime.

So it is with enormous concern that I rise to express my opposition to this strategy because that is what this is about. It is about a strategy. It is not about whether a Hispanic Republican should be on the bench. It is not about whether a conservative should be on

the bench, so long as they fall within the mainstream of American jurisprudential thought. The question is, Should this Senate be allowed any idea about this individual's ideology, about his legal philosophy? There we know nothing. We would be surrendering our constitutional prerogatives and our constitutional obligations were we to respond any other way than we have attempted to do on this side. Obviously, we can move on to other agenda items, whether it be stimulating the economy, education, health care, or what have you. All that is required is for leadership of our colleagues on the other side of the aisle in support of the President to either withdraw this nominee or to have him respond to reasonable questions about his philosophy. There is no effort here to require this individual to answer questions that have not been put to other judges. The question is not his response to specific items before the Court. It would be inappropriate to ask those kinds of questions. But this is astonishing. This is stonewalling. That is what this is. It is unacceptable.

Again, over 100 judges that President Bush has nominated have been confirmed by this body, and most have gone through with my support. Most of them were conservative Republican judges. That is fine. But this is different. I hope the American public understands the profound consequences that would flow from our surrendering of our constitutional obligation to at least make meaningful decisions about whether to confirm a particular nominee.

#### THE BUDGET

Mr. President, I also want to express my great frustration and my great sadness in many ways over priorities that President Bush has recently exhibited relative to our young men and women in uniform and the likely war we are about to embark upon.

Americans all across this country, including my wife and myself, are about to send our finest young men and young women into harm's way in the Iraq region. We can debate the wisdom of that. But that is the reality. I think we all see this coming. We can take great pride in these men and women in uniform, the courage they show, and their commitment to America. They are asking for so little and, yet, they are willing to do whatever is required of our American military. They are the greatest military ever fielded in terms of the sophistication of technology they deal with and the requirements they meet.

But while we put this military together and send them on their way with flags flying and salutes and the prayers of all of us, the President simultaneously has recommended now in his 2004 budget recommendation that we cut impact aid education funding for the children of these very troops who we are sending into war. Is it because we can't afford to finance quality

education of the children of our military? No. President Bush also, as we recall, has called for over \$100 billion of tax cuts for primarily the very wealthiest of Americans—primarily on Wall Street. So rather than asking America's wealthiest families to sacrifice at a time of war, the request seems to be of the middle class and the working family, send your sons and daughters into combat, and we will ask America's wealthiest no sacrifice whatever. In fact, we will cut their taxes and we will come back to these families who are sending their sons and daughters into combat and tell them we can't afford to educate your kids while you are gone. And these spouses remain. The Guard and Reserve and active-duty spouses in South Dakota and across every State in our land are worried to death about the prospects of their loved ones, but proud, and upholding America's ideals as they go into heaven knows what kind of combat circumstance they will face with weapons of mass destruction arrayed against them. We hope whatever combat occurs will be swift and decisive and conclude positively for us. But obviously we all know there is great risk for everyone's sons and daughters who go into circumstances such as this.

Is it asking too much of President Bush to at least not cut the education funding for the children who are left behind? Is that asking too much? It says a lot about the priorities of this administration, that we would array the world's finest military on the one hand, provide tax relief for the world's wealthiest people on the other hand, and simultaneously beg poverty when it comes to the schools for the children of our military personnel. Shame on the President. Shame on the President for these kinds of priorities. America deserves better. Our fighting men and women deserve better than this. Fiscal responsibility is not the issue. Priority is the issue.

Then when our military personnel come home again, what do they find but the Veterans Administration underfunded yet again. The administration is asking for higher copayments, higher deductibles, and denies hundreds of thousands of our veterans access to VA health care they were promised. What kind of signal does that send? How are you going to continue to attract the very best of America's young men and women to wear our Nation's uniform when they find that while we do that and pat them on their back and salute them and send them onto combat—4 years, 5 years—at the same time we are not going to take care of their kids. When they come home, we are not going to take care of their health care obligations as we promised we would.

It is long overdue that some of these priorities be met off the top of the barrel, rather than the bottom of the barrel and the crumbs that are left over half doing other things.

I don't know how we can expect in the day and age of a voluntary military

to continue to attract the best and the brightest of our young people who deal with the sophisticated kinds of technology they are requested to do now, if they know simultaneously—and they increasingly do—that once they leave home and once they come back, they will in too many cases be treated shabbily by our government, which is too busy stuffing its pockets with cash rather than meeting its obligations to those who are laying their lives literally on the line for America's freedom and American values.

As a member of the Senate Budget Committee, today I also expressed alarm at recent news reports of still larger than expected Federal budget deficits, after an unprecedented 4 years in a row of budget surpluses during the final 4 years of the past Clinton administration—the years in which we were in the black. We were paying down on the accumulated national debt. We were not borrowing from the Social Security trust fund. We now find the bipartisan Congressional Budget Office telling us this red ink will be an astonishing \$199 billion. As recently as 2001, we had a surplus of \$127 billion.

Mr. President, in 2001—2 years ago—we had a surplus of \$127 billion, which followed 3 preceding surplus years in the black. That was responsible budgeting. Some experts now are saying that the 2004 deficit is going to break all records, at over \$350 billion, if war expenses and the cost of the Bush tax policies are assumed.

The budget surplus, the paying down of the national debt, and the preservation of the Social Security trust funds—which was what we all had when this administration commenced—have all gone away. The days of not borrowing from the Social Security trust fund are over. We are back. And we are told by the White House budget people at OMB that we will continue to borrow under the President's budget and tax plans out of the Social Security trust fund for the remainder of the decade.

The paying down of the national debt has gone away. The ability to avoid continued high debt service so we can redirect those dollars, instead, to education, to health care, to our veterans, to our military, whatever it might be, has all gone away, because we are going to increasingly pay debt service under the President's budget plan.

The CBO indicates that our Nation will not see a budget surplus again until 2007, and then only if there are no war expenses, no additional tax cuts, and no Medicare prescription drug legislation. We all know that is not going to happen. We are going to have war expenses. We do not know what they will be. We will pay whatever it takes to make sure our men and women in uniform are supported. Whatever the cost is, we will pay it. But the war and the follow-on occupation is likely to cost at least \$100 billion.

We know the President has tax cut after tax cut lined up primarily for his

wealthiest contributors. And then we know, as well, that we need to move on to prescription drug legislation that is long overdue. We are the only major democratic society in the world that does not have some kind of prescription drug or national health care strategy.

So what we find here is President Bush's proposal to borrow yet another \$1 trillion. Now we are not even talking "B," we are talking the "T" word. Mr. President, \$1 trillion over the coming decade in order to finance Wall Street tax breaks has to be approached with great caution. This seems, to me, to be part of an agenda designed to make it impossible to have strong Federal funding for education, veterans, agriculture, and seniors for generations to come.

This overall strategy strikes me as one that we saw a glimmer of in the 1980s; and that is, a strategy designed to primarily break the Federal Government, to deny all resources. Because when our friends in the far political right try to advance the cause of eliminating Medicare, downsizing Social Security, downsizing or eliminating veterans health care, withdrawing from supporting our schools, getting out of the afterschool and daycare programs, getting away from rural electricity and rural development programs—when they try to do that, they are always met with resistance from the American people, Democrats and Republicans alike.

They have never been able to win that war because Americans want that kind of partnership—that constructive partnership—between Washington and our communities and our States. So in a very cynical tactic, what has been discovered here is that while they cannot win the war on the merits of eliminating that partnership, they can try to break the Government, to deny it the revenue it needs, so that they can come to the American public and say: Well, we would love to support those afterschool programs, we would love to have more police on the beat, we would love to help our fire departments, and we would love to make sure all our young people could afford to go to college or technical programs, but, oh, we are broke; we don't have the money.

That is apparently how some people hope this debate will conclude. They cannot win on the merits of the policy, but what they can try to do is come up with a tax policy that enriches the wealthiest contributors while simultaneously making it increasingly impossible for this Federal Government to live up to its obligations to its people and to build a stronger society, offering more opportunity for every young American—Black, Hispanic, Native American, Caucasian, whoever they might be.

I feel great frustration. I hope the American public understands what really is going on here relative to the President's budget-and-tax agenda. It is a radical agenda. If you don't believe

it is a radical agenda, look at what this President is willing to do, even to the children of our men and women in uniform. It is appalling.

Look at what the President is willing to do to try to stack the court, possibly with ideologues, far outside the mainstream of American jurisprudential thought, to bend the Constitution, to break the Constitution, by bringing nominees to this body who will not share with us their judicial thoughts, who have no scholarly writings, who have no past judicial decisions to look to. They are stealth judges, secret judges.

We cannot allow that to stand. We cannot allow that to happen in our Nation. Our country has been a beacon of democracy, a beacon of openness, a beacon of opportunity. We cannot walk away from that. The Constitution has been the bulwark of making sure that those remain our ideals. For this body to walk away, and to allow for a rubberstamp process to go on, that any individual can come before the Senate Judiciary Committee and the full Senate without the Senate or the committee having any idea who he is or what his agenda really is would be a travesty. It is completely unacceptable.

So, again, I have been proud to work in a bipartisan manner on the confirmation of roughly 100 judges—virtually all conservative Republican judges. But I draw the line here. This is unprecedented, and the constitutional ramifications of what would occur and what precedent would be set would be devastating to this Nation. It would make a mockery of our oath, a mockery of the Constitution, for this body to do anything other than to insist that this nominee share with the body his philosophy relative to legal issues, his jurisprudence.

So I hope we can soon either get to the bottom of who this individual is or move on to other issues that are pressing before our Republic—ranging from health care, education, support of our men and women in uniform. There is much we need to be doing.

Frankly, there is very little pending on the floor at this time, but there is much that ultimately we need to be doing. I hope, in the context of taking on these additional issues, we will do it with fiscal responsibility, which not only involves not succumbing to the temptation to sink our country deeper and deeper into red ink as far as the eye can see, but also involves correcting President Bush's budget priorities to the degree that we take care of these kids of our military men and women, that we resist the President's temptation to take money away from these schoolhouses in order to give it to Wall Street and to wealthy contributors for political campaigns.

That isn't what we are here for. Those aren't the people we represent. Those aren't the ideals we represent. And this Nation deserves better.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

MEDICAID

Mr. BINGAMAN. Mr. President, I rise to address two or three issues this afternoon. I very much appreciate the chance to do so. First, let me begin with a subject that is extremely important to my State and to many of our States. That is Medicaid. I want to address two different proposals there. First, there is a proposal the administration has made related to Medicaid.

We don't have a written proposal as yet, but we do have various statements from Secretary Thompson. We had a hearing this morning in the Finance Committee that the Presiding Officer attended, as did I. We have had testimony and oral statements and very brief descriptions, but we do not have a written proposal or even a detailed outline of what might be proposed by the administration. But in what they are proposing, I find some real serious concerns.

The other proposal I want to discuss is one I am working on with Congressman DINGELL—we hope to introduce it probably early next week—entitled "Saving Our States." I will try to describe a little bit each of these.

The Nation's Governors have been here this week. I had the good fortune to speak to them last Sunday at one of their subcommittee meetings on human resources about Medicaid. It is clear that they are under severe stress at this point fiscally. It is estimated the States are facing nearly a \$30 billion shortfall this year and an \$80 billion shortfall in fiscal year 2004. In my view, it is important that the Federal Government respond to that. We cannot just ignore the fact that a growing number of our citizens are uninsured and that more and more people are being dropped from the Medicaid Program and the SCHIP program.

The Federal Government needs to fundamentally reassess its own role in providing health care and reassess its relationship to the States in this regard. As I indicated, I am working with Congressman DINGELL to prepare legislation to do just that.

Let me talk first about the administration's proposal in very broad terms, as I understand it. It contains two parts. One is a set of reforms where, as the Secretary very eloquently described, it would allow States to adopt the best practices. It would allow States to put more emphasis on preventive care for seniors. It would allow States to have the flexibility they need to meet their particular needs. All of that is, of course, very good public policy, at least as stated in its most general form.

As a general matter, I certainly believe the President and the Secretary will find strong support in Congress for that effort. But the second part of their proposal is the one that gives me concern. That is the restructuring of the financing. This part is much more difficult. What this does is basically say

that for optional groups and for optional services—and that is an interesting definition as to what is optional; you will find that most of the services and groups currently covered by Medicaid turn out to be optional, and most of the funding that is currently spent on Medicaid turns out to be funding for optional groups and optional services—States would have the ability to get extra money for the first 7 years if they agreed that they would essentially live by a capped amount of Federal funding from now on. It would be about what they were getting in the year 2000 plus a 9-percent increase per year. That is the basic proposal.

In addition to that, they are saying not only are we going to give the States a little extra money, we will reduce the amount of growth in that portion that the State in fact provides. So this is going to save money for the Federal Government. It will save money for the States.

The one thing that is not discussed and that I have great concern about is the effect on the people who are supposed to be getting the health care services under this program; that is, the low-income children and the seniors.

When you look at these definitions, optional groups, which seniors would you think might be in an optional group? Well, under the definition I have been given, if your income is over 74 percent of the Federal poverty rate, you are in an optional group. That means if your income gets anywhere up over about \$7,500 or \$8,000 per year, somewhere in that range—and I can get the exact figure—you are in an optional group. That means the total resources going to assist in your health care are being capped and are not going to grow as the population needing those services grows, are not going to grow as the usage of those services grows, are not going to grow as the health care cost of those services grows. We all know that there is growth in all three of those areas. That concerns me greatly.

The other part of this which I can understand and makes it somewhat attractive to Governors, some of the Governors who were here this week, is that the Federal proposal says, if you agree to this, not only do you get a little extra Federal money but the amount of State money that you are going to have to put in is also going to be capped. The growth in that is also going to be capped. In other words, we will be able to save you money in your State budget.

This is great for the States; it is great for the Federal Government. The problem is that the health care services available to low-income children and to seniors in our society are going to be reduced and reduced very substantially over the next 10 years under this proposal. So that has been my concern.

Allow me to cite a couple of quotations from people who have spent