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

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to consider the nomination of Miguel A. Estrada, which the clerk will report.

The assistant legislative clerk read the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia.

The PRESIDING OFFICER. Under the previous order, the time until 6 p.m. shall be equally divided between the chairman and the ranking member or their designees.

The Senator from Utah.

Mr. REID. Mr. President, if the Senator will yield for a brief statement, we have had a number of people on this side of the aisle who have indicated we are to object to any extension of time beyond 6. Even though the vote took a little longer than expected, we cannot extend the time past 6.

Mr. HATCH. That is fine.

NOMINATION OF PRISCILLA OWEN

I yield 1 minute to the Senator from California on their time. She wanted to make a statement and put something in the RECORD, but it should come on their time.

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

Mrs. BOXER. I thank my friend, Chairman HATCH. When Chairman HATCH and I were debating the Owen nomination, which is not before us, he questioned two statements I made. One was that she did not write a dissenting opinion in Doe and the second was that Judge Gonzales never referred to her as a judicial activist. I ask unanimous consent to have these documents printed in the RECORD, the dissenting opinion, the first page, which shows that she, in fact, did file a dissenting opinion. Secondly, an article that appeared about a week ago in the New York Times which says that Judge Gonzales said he was referring to Justice Owen when he said she was an activist. He did say it was merely heated language but, in fact, he said he was referring to her.

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

. . . Texas interpreting the state's law allowing a teenager to obtain an abortion without notifying her parents if she can show a court that she is mature enough to understand the consequences.

In the dissent, Justice Owen said the teenager in the case had not demonstrated that she knew that there were religious objections to abortion and that some women who underwent abortions had experienced severe remorse.

One of the other justices on the court at the time was Alberto R. Gonzales, now the White House counsel. He wrote that the reading of the law by the dissenters was ''an unconscionable act of jusdicial activism.''

Justice Owen has said that Justice Gonzalez was not referring to her. Mr. Gonzales has, in interviews, acknowledged he was referring to her and said that his description of her as a judicial activist was merely heated language among judges who disagreed.

While the first floor fight over the Owen nomination was occurring, another judicial nomination drama was being played out across the street in the Judiciary Committee, which was considering President Bush's nomination of J. Leon Holmes to be a district judge in Arkansas.

Senator Orrin G. Hatch, the Utah Republican who is chairman of the committee, did not ask for a vote on approving the Holmes nomination as is customary. Instead, he took the extraordinary step of asking that the committee vote to send the nomination to the full Senate without a recommendation.

Mr. Hatch was apparently concerned that some Republicans on the committee were not completely comfortable with the nomination after disclosures that Mr. Holmes, an ardent opponent of abortion, had made several notable comments about the role of women in society.

In 1997 Mr. Holmes wrote that ''the woman is to place herself under the authority of the man.'' He had also written that abortion should not be available to rape victims because conceptions from rape occur with the same frequency as snow in Miami.

Most of the combat over judicial confirmations has been over appeals court judges, the level just below the Supreme Court, and the nomination of Mr. Holmes, to the trial court had initially attracted little notice.

But at a committee session last week, Senator Dianne Feinstein, Democrat of California, said that she had never voted against a district court nominee but that she found Mr. Holmes's remarks shocking.

''I do not see how anyone can divine from these comments that he has either the temperament or the wisdom to be a judge,'' Senator Feinstein said.

Senator Hatch said today that he was concerned about some of those remarks and that Mr. Holmes had expressed regret for some. But the most important factor, the senator said, was that many people in Arkansas, including the state's two Democratic senators, Mark Pryor and Blanche Lincoln, still supported the nomination.

IN RE JANE DOE, NO. 00–0224, SUPREME COURT OF TEXAS

19 S.W.3d 346; 2000 Tex. LEXIS 67; 43 Tex. Sup. J. 910

June 22, 2000, Delivered

DISPOSITION: [**1] Reversed the court of appeals' judgment and rendered judgment granting Doe's application for a judicial bypass.

JUDGES: JUSTICE O'NEILL delivered the opinion of the Court, jointed by JUSTICE ENOCH, JUSTICE BAKER, JUSTICE HANKINSON, and JUSTICE GONZALES and by CHIEF JUSTICE PHILLIPS as to Parts II and III. JUSTICE ENOCH filed a concurring opinion, joined by JUSTICE BAKER, JUSTICE GONZALES filed a concurring opinion, joined by JUSTICE ENOCH. JUSTICE HECHT filed a dissenting opinion. JUSTICE OWEN filed a dissenting opinion. JUSTICE ABBOTT filed a dissenting opinion.

OPINION BY: Harriet O'Neill.

OPINION: [*349] APPEAL UNDER SECTION 33.004(F), FAMILY CODE.

This is an appeal from an order denying a minor's application for a court order authorizing her to consent to an abortion without notifying a parent. After remand from this Court, see In re Jane Doe, 19 S.W.3d 249, 2000 Tex. LEXIS 21 (Tex. 2000) (''Doe 1(I)''), the trial court conducted another hearing and found that Jane Doe failed to prove by a preponderance of the evidence that she is sufficiently well informed to have an abortion without parental notification. The court of appeals affirmed. After reviewing the record, we determined that Doe conclusively [**2] established the statutory requirements and that she was entitled to consent to the procedure without notifying a parent. We issued an order on March 10, 2000, reversing the court of appeals' judgment, with opinions to follow on the concern that Doe be able to undergo a less risky abortion procedure, if that option was still available to her and that was her decision. The following is our opinion holding that the evidence Doe presented conclusively established that she was ''mature and sufficiently well informed'' to consent to an abortion without parental notification. See TEX. FAM. CODE §33.003(i).

I

Abortion is a highly-charged issue that often engenders heated public debate. Such debate is to be expected and, indeed, embraced in our free and democratic society. It is through this very type of open exchange that our Legislature crafted and enacted the particular statutory scheme before us. Our system of government requires the judicial branch to independently review and dispassionately interpret legislation in accordance with the Legislature's will as expressed in the statute. We begin our analysis with an overview of the Parental [*350] Notification [**3] Act's judicial bypass procedure and our role in interpreting it.

A. The Proper Role of Judges

''[Courts] are under the constraints imposed by the judicial function in our democratic society. . . . The function in construing a statute is to ascertain the meaning of words used by the legislature. To go beyond it is to usurp a power which our democracy has lodged in its elected legislature. . . . A judge must not rewrite a statute, neither to enlarge nor to contract it.''—Felix Frankfurter (RECORD OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 213 (1947), reprinted in COURTS, JUDGES, AND POLITICS, at 414 (Walter F. Murphy & C. Herman Pritchett, eds., 2d ed. 1974).

Mrs. BOXER. When I come to speak on the Senate floor, I do my homework. I felt very badly about that, and now I have the documentation. I thank my friend for yielding. I know it does not make him happy, but he was very generous to me to allow this minute to send these documents to the desk.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Rather than take time to respond, I will write a letter to the distinguished Senator and point out where she is in error on the Owen matter. As a matter of fact, I think it has been outrageous the way some of the arguments have been made on the other side against this really excellent justice from the State of Texas, who has a unanimous well qualified, the highest rating, from the American Bar Association. I think we have had pure, unadulterated, raw politics involved with regard to Justice Owen.

This debate we are now having is about the raw politics that are being used against Miguel Estrada, the first Hispanic ever nominated to the Circuit Court of Appeals for the District of Columbia.

Today is Cinco de Mayo, the Fifth of May, commemorating the victory of

the Mexican army over the French army at the Battle of Puebla in 1862. This battle came to represent a symbol of Mexican unity and patriotism. The victory demonstrated to the world that Mexico and all of Latin America were willing to defend themselves against any foreign intervention. Cinco de Mayo is now viewed as a festive day to celebrate freedom and liberty.

The fifth of May, 2003, in the Senate, unfortunately is also the 3-month anniversary of the beginning of the debate on Miguel Estrada. I would hope that we would be celebrating the liberation of his nomination and the freedom to vote on final passage on this Cinco de Mayo. But instead, the nomination of Miguel Estrada has been captured by a minority of Senators who refuse to allow a final vote on his nomination. They insist on their unprecedented filibuster, following their game plan of obstruction. In fact, they have compounded their obstructionist tactics by engaging in a second filibuster, this time on Priscilla Owen, nominated to the Fifth Circuit Court of Appeals. She also has a unanimous well-qualified rating from the American Bar Association, the badge of honor, the gold standard, that our colleagues on the other side of the aisle, have said that rating is.

I must admit, the Democrat game plan of delay and obstructionism is not surprising, but it is getting somewhat contradictory. In the case of Mr. Estrada, Democrats say they cannot vote for the nominee because they do not know enough about him. They allege he did not answer their questions and therefore they must have Department of Justice confidential memoranda he wrote while he was a line attorney in the Solicitor General's office; memoranda that have never been given in any way, shape or form to anybody in the Senate in a confirmation battle before, or anybody else for that matter. Even the White House has not seen these matters because they are so highly privileged, not Judge Gonzales, not anybody else in the White House.

There are no such claims about Justice Owen. Democrat opponents admit they know enough about her, that she did answer the questions, and that she has a record they can review. There are no phony excuses. They simply oppose her on philosophical grounds, namely, her interpretation of the Texas parental notification statute that applies to minor girls seeking an abortion.

This double standard demonstrates that some Senate Democrats are willing to use whatever obstructionist tactics it takes, based on any convenient rationale, to defeat the President's nominees.

While the rationales may be different, the motivation in both cases is the same. I think that a recent 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.'' I ask unanimous consent that a copy of this editorial be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. HATCH. As far as Mr. Estrada goes, 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 re-election campaign next year. They are even less interested putting a conservative Republican in line to become the first Hispanic justice on the Supreme Court.

I ask unanimous consent that the entire editorial be printed in the RECORD following my remarks.

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

Mr. HATCH. I don't know if Mr. Estrada is a conservative Republican, but I do know he is qualified for the position to which he is nominated, and it is well past time to vote on his nomination. This Friday will mark the two-years anniversary of his nomination on May 9, 2001. The Majority leader has made every attempt to obtain time agreements or use other procedures to bring this matter to a resolution. Each of these attempts has been rebuffed by a minority of this body. Some Senate Democrats have used every delay and obstructionist tactic available. Yet they still cannot identify one substantive issue that would justify or excuse their refusal to permit a final vote.

Mr. President, on this day, 141 years ago, the Mexican Army defeated forces which represented tyranny and defended the liberty of their nation. I urge my colleagues, on this day of celebration, to defeat the tyranny of the minority by voting to bring the debate on the nomination of Miguel Estrada to a close.

I yield the floor.

EXHIBIT 1

[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 colleagues—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 run,'' 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.

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EXHIBIT 2

[From the Dallas Morning News, Feb. 21, 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 Goundhog 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.

Mr. HATCH. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. 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. LEAHY. Mr. President, for some reason the Republican leadership is forcing what may be the fifth vote on a cloture motion on this divisive and controversial nomination.

I mention that because none of these cloture motions would have been needed if the administration had simply cooperated with the Senate as did prior administrations, Democratic and Republican. I have been here with six different administrations. The previous five always, no matter who was President, no matter who was in the majority in the Senate, always showed cooperation on judicial nominations as, I believe, has every President in the last century. Not this one.

I mention that because we are having this vote yet nothing has changed since the last cloture vote. No effort has been forthcoming by the administration to accommodate Senators' requests for access to the executive branch documents requested last May, almost a year ago. Everybody says Mr. Estrada is perfectly willing to come up and answer Senators' questions but not to answer the only questions the Senators really want to ask him.

Remember, this man was appointed based on what the administration knows of his writings while employed in the government. They have access to these writings. They say, in effect: Trust us. I am a strong supporter of Ronald Reagan's position: Trust but verify. I would like him to verify what was in these writings. We have not had access to them. If we did, we wouldn't be needing all these cloture votes.

Since the beginning of this year, despite the fixation on the President's most controversial nominations, we have worked hard to reduce judicial vacancies even further. As of today, the number of judicial vacancies is 49. That is the lowest it has been in many years. That is lower than at any time during the entire 8 years of the Clinton administration. We have already reduced judicial vacancies from 110, when I became chairman of the Senate Judiciary Committee, to 49. We did this in less than 2 years. We have reduced the vacancy rate from 12.8 percent to 5.7 percent, the lowest it has been in a decade. If we could get even a modicum of cooperation from the administration, think of the additional progress we could be making.

The Nation's unemployment rate rose last month to 6 percent, but the vacancy rate in the Federal judiciary dipped to 5.7 percent. While the number of private sector jobs lost since the beginning of this administration is 2.7 million, and while almost 9 million Americans are now out of work, and unemployment has risen by more than 45 percent during this administration, Democrats in the Senate have cooperated, moving forward to confirm 121 of the President's judicial nominees to reduce judicial vacancies to the lowest level in more than a decade and to reduce Federal judicial vacancies by more than 60 percent.

Apparently, the majority in the Senate remains obsessed in seeking to force through the most divisive of this President's controversial, ideologically chosen nominees. While they have pushed the Nation's unemployment rate up to 6 percent, they have focused their energies on dropping the vacancy rate of the Federal judiciary to below that.

I think it is unfortunate that the White House and some of my friends on the other side of the aisle have insisted on this confrontation rather than working with us to provide the needed information so we could proceed on the Estrada nomination. Some seem to prefer political game playing, seeking to pack the courts with ideologues and leveling baseless charges of bigotry at those who may disagree with them, rather than working with us on this nomination by providing information and proceeding to a fair vote.

We have spent day after day on this nomination that will not go any further until the nominee is given permission to provide answers to us regarding the same questions that were obviously asked by the administration. What was it he wrote that made the administration want to appoint him to the second highest court in the land?

On one level, I admire their efforts to get this high-paying lifetime job for this nominee. Maybe they should talk about the 9 million Americans who do not have any lifetime job, who now don't have any job; or the 2.7 million Americans who have lost their jobs since this administration came into office. Maybe we should be debating that. Maybe we should be working to put them back to work. Apparently, the administration believes it is more important to have this one job.

In that regard, just as any employer would want to know why they should hire a particular person, we in the Senate have a right to ask what is it in this man's record that made the administration want to appoint him to the second highest court in the land. But they don't want us to see what it was on which they based their decision. Maybe they believe the Senate is irrelevant.

That is not the way I read the advise and consent clause. Let us see what brought them to their conclusion, and then let us go forward. Let's actually take those steps that would unite us rather than divide us, and then maybe the administration will be able to turn to the lives of the millions upon millions of Americans who are out of work—the highest unemployment rate in a decade.

To reiterate, today the Republican leadership in the Senate is forcing what may be the fifth vote on a cloture motion on this divisive and controversial nomination. None of these motions would have been needed if the administration had cooperated with the Senate as have prior administrations, Democratic and Republican. Nothing has changed from the last cloture vote. No effort has been forthcoming by the administration to accommodate Senators' requests for access to the executive branch documents requested last May, almost 1 year ago. The White House continues to obstruct any progress toward resolving this matter

by its unprecedented refusal to turn over documents requested to determine whether or not Miguel Estrada should sit on the second highest court in the land, for life. Mr. Estrada's nomination is apparently being sacrificed by the administration for its own partisan, political purposes.

I do want to thank the Democratic leadership in the Senate for working with us and helping press for a vote on the nomination of Judge Edward Prado to the Fifth Circuit last week. We had been seeking that vote for several weeks, since his nomination was favorably reported with the support of every Democratic member of the Judiciary Committee. Last Thursday, the Republican leadership at last agreed to schedule that nomination for Senate consideration. Judge Prado's nomination was confirmed 97 to zero. This nomination is another example of how quickly the Senate is able to proceed on consensus, mainstream nominees. Judge Prado has 19 years of experience as a U.S. District Court judge. Our review of his actions on the bench showed him to have a solid record of fairness and evenhandedness. No supervisor or colleague of Judge Prado has questioned his willingness to interpret the law fairly. Judge Prado enjoyed the full support of the Congressional Hispanic Caucus and the Mexican American Legal Defense and Education Fund. Not a single person or organization submitted a letter of opposition or raised concerns about Judge Prado.

Judge Prado is now the second nominee of this President to be confirmed by the Senate to the Fifth Circuit after years during which President Clinton's nominees were denied hearings and consideration by a Republican Senate majority. Although Republicans had refused to proceed on three of President Clinton's nominees to that court—two from Texas and one from Louisiana—during his entire second term, Democrats proceeded with hearings and committee votes on all three of President Bush's nominees. Judge Prado is the fourth nominee of this administration to receive a hearing and consideration.

Still stalled on the Senate Executive Calendar is the nomination of Judge Cecilia Altonaga to be a Federal judge in Florida. Senator GRAHAM requested that the Judiciary Committee expedite the consideration of her nomination, and we did. All Democratic members of the Judiciary Committee supported this nomination. She will be the first Cuban-American woman to be confirmed to the Federal bench, whenever the Republican majority is willing to proceed on her nomination. In my view, the Senate's time would be better spent this evening voting on this nomination than another unsuccessful cloture vote on the Estrada nomination. Unfortunately, that is not how the Republican leadership has chosen to proceed.

The administration remains intent on packing the Federal circuit courts and on insisting that the Senate rubberstamp its nominees without fulfilling this body's constitutional advise and consent role in this most important process. The White House could have long ago helped solve the impasse on the Estrada nomination by honoring the Senate's role in the appointment process and providing the Senate with access to Mr. Estrada's legal work. Past administrations have provided such legal memoranda in connection with the nominations of Robert Bork, William Rehnquist, Brad Reynolds, Stephen Trott and Ben Civiletti, and even this administration did so with a nominee to the Environmental Protection Agency. In my statement in connection with an earlier cloture petition, I outlined additional precedent for sharing the requested materials with the Senate, as did Senator KENNEDY. I am disappointed that the White House refuses to end this problem and, instead, continues to politicize the process.

We understand that the President's nominees will be Republicans. We understand they will be conservative. We understand that they will have positions with which we disagree. I have voted for hundreds of nominees who were conservative Republicans.

In just the last 2 years, 121 of the President's judicial nominees have been confirmed. One hundred of those confirmations came during the 17 months of Democratic leadership of the Senate. No fair-minded observer could term that obstructionism. By contrast, during the 6½ years during which Republicans controlled the Senate and President Clinton's nominations were being considered, they averaged only 38 confirmations a year. During the last two years of the Clinton administration, the Senate confirmed only 73 Federal judges—the Senate confirmed 72 judges nominated by President Bush last year alone. Combining the 1996 and 1997 sessions, Republicans in the Senate allowed only 53 judges to be confirmed in 2 years, including only seven new judges to the Circuit Courts.

It is a shame that the White House refuses to work together with us to do even more to help the Federal judiciary. This week, we have already had a debate and vote on yet another controversial circuit court nominee, Deborah Cook, for the Sixth Circuit, and now a cloture vote on the nomination of Miguel Estrada.

The fact is that when Democrats became the Senate majority in the summer of 2001, when we inherited 110 judicial vacancies, there was a dire need to fill judicial vacancies. Over the next 17 months, despite constant criticism from the administration, the Senate proceeded to confirm 100 of President Bush's nominees, including several who were divisive and controversial, several who had mixed peer review ratings from the ABA, and at least one who had been rated not qualified. Despite the additional 40 vacancies that arose, we reduced judicial vacancies to 60, a level below that termed ''full employment'' by Senator HATCH. Since the beginning of this year, in spite of the fixation of the Republican majority on the President's most controversial nominations, we have worked hard to reduce judicial vacancies even further. As of today, the number of judicial vacancies is at 49. That is the lowest it has been in 7 years. That is lower than at any time during the entire 8 years of the Clinton administration. We have already reduced judicial vacancies from 110 to 49, in less than 2 years. We have reduced the vacancy rate from 12.8 percent to 5.7 percent, the lowest it has been in a decade. With some cooperation from this administration, think of the additional progress we could be making.

While the Nation's unemployment rate rose last month to 6 percent, the vacancy rate on the Federal judiciary dipped to 5.7 percent. While the number of private sector jobs lost since the beginning of the Bush administration is 2.7 million, almost 9 million Americans are now out of work, and unemployment has risen by more than 45 percent, Democrats in the Senate have cooperated in moving forward to confirm 121 of this President's judicial nominees, to reduce judicial vacancies to the lowest level in more than a decade, and to reduce Federal judicial vacancies by almost 60 percent. Yet the Republican-led Senate remains obsessed with seeking to force through the most divisive of this President's controversial, ideologically-chosen nominees.

It is unfortunate that the White House and some Republicans have insisted on this confrontation rather than working with us to provide the needed information so that we could proceed on the Estrada nomination. Some on the Republican side seem to prefer political game playing, seeking to pack our courts with ideologues and leveling baseless charges of bigotry, rather than to work with us to resolve the impasse over this nomination by providing information and proceeding to a fair vote.

I was disappointed that Senator BENNETT's straightforward colloquy with Senator REID and me on February 14, which pointed to a solution, was never allowed by hard-liners on the other side to yield results. I am disappointed that all my efforts and those of Senator DASCHLE and Senator REID have been rejected by the White House. The letter that Senator DASCHLE sent to the President on February 11 pointed the way to resolving this matter reasonably and fairly. Republicans would apparently rather engage in partisan politics.

Republican talking points will undoubtedly claim that this is ''unprecedented.'' They will ignore their own recent filibusters against President Clinton's executive and judicial nominees in so doing. The only thing unprecedented about this matter is that the administration and Republican leadership have shown no willingness to be

reasonable and accommodate Democratic Senators' request for information traditionally shared with the Senate by past administrations. That this is the fifth cloture vote on this matter is an indictment of Republican intransigence on this matter, nothing more. What is unprecedented is that there has been no effort on the Republican side to work this matter out as these matters have always been worked out in the past. What is unprecedented is the Republican insistence to schedule cloture vote after cloture vote without first resolving the underlying problem caused by the administration's inflexibility.

I urge the White House and Senate Republicans to end the political warfare and join with us in good faith to make sure the information that is needed to review this nomination is provided so that the Senate may conclude its consideration of this nomination. I urge the White House, as I have for more than 2 years, to work with us and, quoting from today's New York Times editorial:

The answer is not to try to twist the rules or demonize Democrats. It is for the White House to consult with the Senate and agree on nominees that senators from both parties can in good conscience confirm.

The President promised to be a uniter not a divider, but he has continued to send us judicial nominees that divide our nation and, in this case, he has even managed to divide Hispanics across the country. The nomination and confirmation process begins with the President, and I urge him to work with us to find a way forward to unite, instead of divide, the Nation as well as the Senate on these issues.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. 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. HATCH. Mr. President, the Senator from Vermont made a point that the White House has seen these privileged documents in the Solicitor General's Office. If they have any evidence of that, I would like to see it because I know they haven't looked at those records. Those are the most highly privileged records in the Justice Department. I am not sure that a Solicitor General wouldn't resign before giving up those records.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. 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. LEAHY. Mr. President, if I have any remaining time, I yield it.

Mr. HATCH. Likewise.

CLOTURE MOTION

The PRESIDING OFFICER. All time has been yielded. Under the previous order, the clerk will report the motion to invoke cloture.

The legislative 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 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, Peter G. Fitzgerald, Lindsey Graham, Jeff Sessions.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call is 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. MCCONNELL. I announce that the Senator from Alaska (Ms. MURKOWSKI) and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

Mr. REID. I announce that the Senator from Washington (Ms. CANTWELL), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Maryland (Ms. MIKULSKI), the Senator from Georgia (Mr. MILLER), and the Senator from Washington (Mrs. MURRAY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''no.''

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 52, nays 39, as follows:

[Rollcall Vote No. 140 Ex.]

YEAS—52

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

NAYS—39

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

NOT VOTING—9

Cantwell	Lieberman	Murkowski
Graham (FL)	Mikulski	Murray
Kerry	Miller	Specter

The PRESIDING OFFICER. On this vote, the yeas are 52, the nays are 39. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

VOTE EXPLANATION

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

● Ms. CANTWELL. Mr. President, I have the great honor of being in Washington State today in order to welcome home the USS *Lincoln* and USS *Camden*. After a 10-month deployment, including valuable service in the recent war against Iraq, the men and women of the USS *Lincoln* and her carrier strike group will finally reach Everett and Bremerton, WA in the next few hours. Unfortunately, in order to be present for this important homecoming in my State—it was necessary to miss two votes today.●

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. MCCONNELL. I ask unanimous consent that the Senate proceed to a period for morning business.

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

TRIBUTE TO DR. PAUL DIXON

Mr. DEWINE. Mr. President, I rise today to pay tribute to a fellow Ohioan, a leader in higher education, a dear friend, and a good neighbor: Dr. Paul Dixon. Dr. Dixon is the current president of Cedarville University, a Baptist liberal arts university located very near my home, my wife Fran's home in Greene County, OH. Dr. Dixon is planning to retire from that position in June of this year after a quarter of a century of great successful leadership. As the longest-serving president of any college or university in Ohio, Paul led the university through an unprecedented period of growth and has