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With research advances, we have the know-how to better balance conservation with the need for increased production. We should use our know-how to come up with a good energy bill.

I hope we can move it quickly and pass a bill to make our environment, economy, and National security stronger.

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

The PRESIDING OFFICER (Mr. CRAPO). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

NOMINATIONS OF JUSTICE PRISCILLA OWEN AND MIGUEL ESTRADA

Mrs. HUTCHISON. Mr. President, I want to talk today about Justice Priscilla Owen. On Friday, it will be the 2-year anniversary of the nomination of Justice Priscilla Owen for the Fifth Circuit Court of Appeals and also for Miguel Estrada to the District of Columbia Court of Appeals.

These are two qualified nominees in every respect who are being filibustered to keep them from taking their seats. They have both received a majority vote of the Senate, but neither of them is confirmed because we are now being asked to have a 60-vote threshold for these qualified nominees. It is not right, and I think it goes against the Constitution and affects the balance of powers.

The balance of powers was very clearly and purposefully set out by our Founders so that each branch would be separate and equal. In the Constitution, it says the President will nominate Federal judges and the Senate will give its advice and consent. Historically, advice and consent under the Constitution has meant a majority vote for judicial nominees. It does not mean a 60-vote threshold. And it does not mean that the Senate can dictate to the President whom the President can nominate.

We should give the President's nominees an up-or-down vote when they get out of the committee. The committee is there to have hearings, to question these nominees. If a person gets out of

committee, that person deserves a vote on the floor.

When the Founding Fathers did think that a supermajority should be required, they clearly provided for it. For example, article II, section 2, gives the President the power to nominate "by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur." Immediately following this provision, the Constitution gives the President the power to make judicial nominations "by and with the Advice and Consent of the Senate," period.

By clear omission, the Constitution does not require a supermajority for judicial nominees as it does for treaties. Congress has no right—it has no power, as outlined by the Constitution—to assume a different role in the nomination and confirmation of judges. A filibuster requiring 60 votes on a judicial nominee is beyond the intent of the Constitution.

Furthermore, the 25th amendment to the U.S. Constitution, approved by the Senate in 1965, demonstrates, I think, the intent of the Founding Fathers in confirming a nominee. In this case, the Vice President "shall take office upon confirmation by a majority vote of both Houses of Congress." If we are required to approve the Vice President of the United States by a majority vote, how could we possibly require a 60-vote threshold for a Federal judge?

I understand that cloture votes are needed sometimes for procedural reasons, such as a time-management device, but with the nomination of Miguel Estrada this has not been the case; with the nomination of Priscilla Owen this has not been the case.

This kind of filibuster is unprecedented in Senate history. So I hope we can do one of three things: We can start talking about changing the Senate rules so that, in the case particularly of judicial nominations, we will not ever have a 60-vote threshold, which is not contemplated by the Constitution; or we can require a vote, ask for a vote, get a vote for these qualified nominees; or we can file a lawsuit, asking the courts to decide if the balance of powers in the Constitution is being violated by this 60-vote threshold.

I do hope we will get an up-or-down vote on these nominations. The fact that they have received over 51 votes—both of them—shows that they would be confirmed if they had their right to an up-or-down vote in the Senate.

Priscilla Owen, of course, is from Texas, so I know her and I know her reputation. She has the strongest bipartisan support you could possibly ask for. She is a person who graduated cum laude from Baylor Law School, made the highest grade on the State bar exam when she graduated. She has been elected to the supreme court by over 80 percent of the people in Texas. She is universally well regarded.

She is not a judicial activist. In fact, it is her strict adherence to the letter

of the law and Supreme Court rulings that has been one of the problems with this nomination because she didn't make law. She didn't try to put words in the mouth of a legislator. She just followed what the legislature said in the parental consent laws in the State of Texas, the law of the State. She followed the letter of the law and the Supreme Court rulings and tried not to be a judicial activist. For that she is being accused of being a judicial activist.

She was grilled twice by members of the Judiciary Committee. She had very tough hearings. I don't think I have ever seen a nominee do better. She knew every answer to every question asked, even the minutia of cases that had been heard by her court years ago. She knew what she had done and the reasoning for it. Her hearings alone would be enough to show her academic prowess and her qualifications for this bench.

Further than that, the hearings also showed her judicial temperament. She handled herself so well, and she has gone through 2 years of a grueling experience—not something she is used to. Judges are not usually in the political arena. Even when they are elected, they don't usually have strong opposition. They don't have these spirited races such as we see in legislatures and the Congress. It wasn't that she was attuned to the slings and arrows of politics. She has handled herself so beautifully, I don't think you could ever argue that she does not have the judicial temperament. When you put that together with her clear academic excellence, she is the kind of person we want on the bench.

I wonder if we turn down nominees like Miguel Estrada, who came to this country from South America when he was about 18 years old, didn't speak English, worked his way through Columbia, was Phi Beta Kappa, went to Harvard Law School and graduated magna cum laude, then had an outstanding record in the Solicitor General's Office, winning very complicated Supreme Court cases, and is known as one of the outstanding appellate lawyers in America—if people like Priscilla Owen and Miguel Estrada are not the kind of people we are going to put on the court, we are going to start having mediocre people on the court.

We will have people who never have said anything, people who don't have the stellar reputations. These scholars, Miguel Estrada and Priscilla Owen, are people who are willing to take pay cuts in order to serve, because they like the intellectual challenge. They like what they are doing. They like public service. They are willing to take huge pay cuts for serving, and they are willing to do it. And they are quality people. What are we doing? What are we doing holding up quality qualified people like this?

These nominations should not be controversial. They obviously are because they are not being passed, but

these are not controversial people. They are mild-mannered, brilliant, fair, evenhanded, temperamentally sound people. We are putting them through the political meat grinder.

I have to ask: Who are we going to get, as we go down the road and good people watch what has happened to Priscilla Owen and Miguel Estrada? Who is going to submit themselves to be a Federal judge, if they have to go through this kind of political process?

I hope the Senate can amicably resolve the issue of nominations, especially judicial nominations where the Constitution and the balance of power are at stake. I hope we will allow these votes for these two people who deserve an up-or-down vote and deserve to be on the bench. They will both make excellent judges.

May 9 is Friday. We are going to have cloture votes tomorrow, May 8, the day before the 2-year anniversary of these qualified nominations. I hope those who are filibustering them will see their way clear to let the majority rule. Both of these nominees have now gotten 52 and 54 votes respectively. They have the majority. In any other case they would be on their way to sitting on the circuit courts of appeals. That is where they ought to be. That is where they deserve to be.

I hope my colleagues will allow Miguel Estrada and Priscilla Owen to take their rightful place on the bench. They have earned the majority vote. They have received a majority vote, which is what is required by the Constitution. They should be allowed to be confirmed.

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. CORNYN. 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. CORNYN. Mr. President, I ask unanimous consent that in the period for morning business, I be allotted 20 minutes to speak.

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

JUDICIAL CONFIRMATION PROCESS

Mr. CORNYN. Mr. President, I rise today to say a few more words about our broken judicial confirmation process. This week the Senate marks a dismal political anniversary: 2 years of partisan obstruction of President Bush's judicial nominees, culminating in two unprecedented filibusters, and more are threatened.

The current list includes Justice Priscilla Owen, with whom I served on the Texas Supreme Court, whose nomination is now subject to a filibuster before the Senate. This 2-year anniversary indicates the true breadth of the

failure of the judicial confirmation process, an increasingly bitter and destructive process, a process that does a disservice to the President, to the Senate, to the nominees, and ultimately to the American people.

Today a partisan minority of Senators are forcing a supermajority requirement of 60 votes on the judicial confirmation process. They are using the filibuster not simply to provide for adequate debate—a reasonable and laudable goal—but to prevent many of our Nation's most talented legal minds, in this case at least two of them, from filling our Nation's judicial vacancies. These obstructionist activities continue to undermine the constitutional principles of judicial independence and majority rule.

My colleagues should not think the American people do not know what is going on here. They see when a nominee's well-recognized abilities are ignored in favor of scare tactics and revisionist history, and they see when some Senators eschew the interests of the States from which they were elected, and, indeed, our Nation, and instead kowtow to special interest groups.

I am confident that Members of the Senate are wise enough to reject, I guess, what can only be called an inhuman caricature that has been drawn of Justice Priscilla Owen by special interest groups intent on vilifying, demonizing, and marginalizing an admirable nominee.

If we were allowed to hold a vote today, a bipartisan majority of this body stands ready to confirm Justice Priscilla Owen to the Fifth Circuit Court of Appeals.

I would like to take a few moments to talk about my own observations while serving with Justice Owen on the Texas Supreme Court for a period of 3 years during which our terms overlapped, from the time she joined the court in January 1995 until the time I left the court after serving 7 years in October of 1997.

During those 3 years, I had the privilege of working closely with Justice Owen. I had the opportunity to observe on a daily basis exactly how she approached the task of judging, how she thinks about the law and, indeed, her responsibilities, and how she thinks judges should perform once given the awesome responsibility that confers.

I spoke with and debated with Justice Owen in conference on countless occasions about how to faithfully read and follow statutes passed by the legislature and how to interpret precedents; that is, cases that had been previously decided that are binding on courts in terms of their guidance on deciding the same issues in the future.

I saw how hard she worked to faithfully interpret and apply what the legislature had written. I saw her take notes. I saw her tireless attention to detail, her zeal for studying the law, her dedication and her diligence. Not once did I see her attempting to pursue a political or personal agenda at the

expense of what the law said or what the law required.

Indeed, some of my colleagues have taken her to task for disagreeing, and the fact that appellate judges, particularly at the highest court in my State, would actually disagree with one another, and suggesting that somehow there is something wrong with that.

Well, to the contrary. That is exactly what the job of a judge is. If we did not have judges occasionally disagree with each other, that would mean somebody was not doing their job, because by the time cases get to the top echelons of our judicial system, they are the hardest cases. They are the cases that cannot be solved by lower levels of the judiciary or indeed by settlement between the parties. These are important issues and must be decided. Indeed, a judge, unlike a member of this body, cannot choose to simply walk away. They must decide the case in the posture as presented by the litigants.

From experience and from observation, Justice Owen believes strongly that judges are called upon not to act as another legislative branch, not to act as a politician trying to read the polls or trying to assess what public opinion may say about this question or another. A judge's job is to faithfully read the statutes on the books and then apply them to the case before him or her or to interpret the precedents by earlier courts and to faithfully apply those, not in a lawmaking fashion but in a law interpretation and law enforcement fashion.

Indeed, that is the difference between what judges do and what members of the executive or legislative branches do. Judges are not supposed to make law. They are supposed to interpret and enforce the law written by the legislature.

I can testify from my personal experience as her former colleague that Priscilla Owen is an exceptional judge and one who understands and internalizes her duty to follow the law and enforce the will of the legislature. That is why the American Bar Association gave her a unanimous rating of well qualified. That is why she has strong bipartisan backing, including Democrats in the State of Texas and Democrat practitioners who have seen her in action. That is why she had enthusiastic support from her fellow Texans in her last election to the court. Some 84 percent of the voters voted to return her to office when she ran for that election.

Simply put, she is a brilliant legal scholar and a warm and engaging person. Knowing the individual, the human being, as I do, it causes me great pain to see her treated the way I believe she has been treated, unfairly, during the judicial confirmation process, and to hear Senators describe her in a way that nobody who knows her would recognize.

Not many in this body have had the privilege of knowing her personally and so that is why I think it is important