

I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Texas.

Mr. CORNYN. I will ask unanimous consent I be permitted to speak as in morning business.

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

(The remarks of Mr. CORNYN are printed in today's RECORD under "Morning Business.")

Mr. DEWINE. 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. ENZI. 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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. ENZI. Mr. President, I rise in support of the nomination of my good friend, William G. Myers III. I recommend him highly, and I believe the United States Senate should approve his nomination to serve as a judge on the Ninth Circuit Court of Appeals. He has earned that position by his dedication and a remarkable record of service to the country and to our legal system.

I am concerned we won't hear about his impressive record, however, I am afraid we are going to hear a lot of needlessly harsh rhetoric about Bill being a radical who has only represented extreme conservative interests during the course of his outstanding legal career. That isn't the truth, of course, but it does make for good soundbites and unfortunately, that is often what is promoted as the truth.

The truth is that Bill is not a radical extremist, nor does he have a political agenda that he is trying to pursue in agreeing to be nominated for the Ninth Circuit. A radical judge would be one who is intent on making extreme, sweeping changes in the political and social make up of the west. A radical judge is someone who stands out as being significantly different from the community he represents, who pursues his ideology regardless of its impact on those affected by his actions, and who doesn't care if his actions do not represent the interests of the people he serves.

No, Bill is not a radical for he is none of those things. In fact, he is quite the opposite. He is someone who has lived and worked with the people of the West. He knows them, respects them, and he understands the demands they face every day as they try to make a living. He knows their dreams and he shares their values. He is looking to serve on the bench to make life better for them and for all those in the West who will be affected by his decisions.

It is unfortunate that this is an election year. Any other year and we would see Bill for who and what he is. We would see him, not as a radical, but a typical Westerner who has a well established and outstanding reputation for his work representing the West.

Who else shall we appoint to the Ninth Circuit to truly represent the typical West? I believe it would be very safe to say that the Ninth Circuit Court is made up predominantly of judges who are sympathetic to radical agendas with very few if any of them representing the hardworking miners and ranchers who have for generations made up the backbone of the Western economy.

Of the 26 active judges on the Ninth Circuit Court, 17 were appointed by Democrat presidents. Only 9 judges are Republican appointees. A remarkable 14 of the 26 judges—54 percent of the court—were appointed by President Clinton. In 2000 alone—a presidential election year—President Clinton appointed four judges to the court.

The Ninth Circuit has established a pattern of issuing the most activist decisions in the country. In one day earlier this year, the U.S. Supreme Court reversed three decisions from the Ninth Circuit, and the Supreme Court ended its 2003-2004 term having reversed the Ninth Circuit in 81 percent of the cases appealed from it. Needless to say, that's not a good record. That means, in every five cases that were appealed, the Supreme Court ruled that these judges got it wrong 4 out of every 5 cases. Worse still, this was an improvement over their embarrassingly high reversal rate over the past several years—86.5 percent since 1998. This trend is likely to continue unless we help correct the situation by confirming good, honest judges who respect the Constitution and Federal law. Judges who will bring some balance to the Ninth Circuit equation.

Why do they call Bill a radical? If you examine his record, you will see that he represents and understands those under the jurisdiction of the Ninth Circuit Court—the average person in the West who relies more on common sense than complicated legal arguments to determine right from wrong. That ought to erase that label. But, for some reason, it doesn't. Could the placing of this label on this good, fair, honest, and decent individual be another ploy at politicizing this nomination for the sake of obstruction?

Most of the Judges on the Ninth Circuit Court come from the Circuit's most populated States, such as California. The other States that make up the Ninth Circuit, such as the State of Idaho, are allowed only one judge. Right now Idaho's seat is vacant. Will Idaho only be allowed representation on the court when it has a nominee from California?

We begin every session here in the Senate with the Pledge of Allegiance. We join together to say those special words. As we do, I know that my colleagues, on both sides of the aisle, say those words with a firm heartfelt commitment to this country and that they mean every word of pledging their allegiance to the flag and to this Nation. But I have to wonder if they haven't forgotten the meaning of all the words

in the pledge when they take a hardline stance like this against a fully qualified nominee.

The last six words of the Pledge of Allegiance, "with liberty and justice for all," mean that we do not preserve justice or liberty for a few people, or for most of the people, and leave a few, or even an individual, behind. It means we have justice for all, for everyone, and that we don't make exceptions because they come from a State that doesn't have as many people as California, or may not be as liberal as California.

In fact, this is one of the situations that the courts were created to protect—the rights of each individual. I think it is a little ironic that there are those here in the Senate that would be willing to withhold justice and rights from some people, in this case the average, hardworking people who make up the population within the Ninth Circuit just because those individuals don't share their political philosophy.

I hope we will do the right thing by Bill Myers.

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

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

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

#### MORNING BUSINESS

Mr. ENZI. Mr. President, I ask unanimous consent that there now be a period of morning business for debate only, with Senators permitted to speak therein for up to 10 minutes each.

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

#### ENERGY POLICY

Mr. REID. Mr. President, this is a time when American families take their vacations. I can remember as a young man working in a service station in Las Vegas and Henderson. This was a busy time of the year. It was always interesting to see the cars loaded with kids going every place. Even today, these many years later, families still drive. This summer, although the price of gas is not quite as high as it was a few months ago, it is still near record levels in many parts of the country, including the State of Nevada. Every time a family stops for gasoline, it is a reminder that our country needs reliable sources of energy that are not subject to wild price swings.

Every time we see a scene from the Middle East on TV news—and that is

often—it is a reminder that our Nation depends too heavily on oil from that volatile region. Every time a parent tells a child with asthma that he cannot play outside because the air is unsafe, we are reminded that fossil fuels do tremendous harm to our environment and to ourselves.

Our Nation desperately needs a new energy policy, one that protects consumers, safeguards our environment, and makes us stronger by reducing our dependence on Mideastern oil. We cannot create an energy policy for the future by simply repeating the past. We need new ideas. We need some new approaches.

We use about 25 percent of the oil that is produced worldwide, but we only have less than 3 percent of the proven oil reserves in the world, including ANWR. So it is a cinch we cannot drill our way out of the problems we have dealing with the production of fossil fuel. We need to remember the words of Benjamin Franklin who said a penny saved is a penny earned. In the case of oil, a barrel saved is better than a barrel drilled and consumed. Why? Because it does not pollute the air or contribute to global warming.

After the Arab oil embargo of 1973, our Nation got serious about conserving oil. By 1990, less than 20 years later, our vehicles were using about 40 percent as much fuel as they did in 1973. We can do this again.

America's talented engineers and scientists can still design vehicles that save fuel without sacrificing safety if we make conserving oil a national priority. We have to do a better job of conserving oil and we have to develop new sources of energy that are clean and reliable.

Again, we in America are fortunate because this great land of ours is blessed with an abundance of clean, renewable energy sources. We can harness the warmth of the Sun, the power of the wind, and the heat within the Earth. All it takes is good old American ingenuity, and a little bit of incentive but we should be clear. For decades we have provided subsidies and tax breaks for the big oil companies. Today we need some incentives to help spur production of renewable energy.

I have been in Congress a long time, and I know how things work. It takes time to get things done. I try to be very patient, but when we not only fail to make progress on an important issue but actually move backward instead of forward, then I think an alarm must be sounded, and that is what has happened on renewable energy. Instead of making progress, we seem to be taking steps backward.

Over the last 15 years, wind power has been the fastest growing source of renewable energy, thanks to the section 45 production tax credit. This incentive spurred billions of dollars of investment in new technology. As a result, wind energy has become increasingly cost effective and it provides jobs and electricity. In parts of the Mid-

west, some farmers make more money producing electricity from wind turbines than they do selling their crops.

I worked for years to expand this incentive to other forms of renewable energy, especially solar and geothermal power. But instead of expanding the tax credit that has been so successful in promoting wind power, we have allowed it to expire. It is hard to believe but it is true. This seems crazy. It is like allowing insurance on one's home to lapse for failing to properly maintain a vital piece of equipment, equipment that is used every day.

The tax incentive for wind energy expired 31 December 2003. We need to restore it as soon as possible, and we need to extend it to solar, geothermal, and biomass energy.

I was encouraged that the FSC bill passed by the Senate last month contains these section 45 production tax credits. That is great work by Senators GRASSLEY and BAUCUS, and I have told them personally how much I think they have the right idea of what it is going to take to help this country from an energy perspective.

Unfortunately, the companion House bill would only extend the production tax credit for wind. We are beginning to see again, as we always do, the powerful interests of the oil companies who want all the subsidies, but we now have another chance to get it right because this bill is going to conference. That was agreed last week. We must not squander this opportunity. We must get back on the path to renewable energy and energy independence.

America, our Nation, is blessed with abundant renewable energy resources, especially in the western part of the United States. Last month, the Governors of nine Western States, including Nevada, formally signed a plan that commits the region to developing 30,000 megawatts of electricity. That is about 15 percent of current demand from renewable sources by the year 2015, which is going to be soon.

I applaud their determination. I applaud their vision. They know that developing renewable energy is not only good for consumers and the environment but also for creating jobs.

Because renewable energy is "Made in the USA," it can reduce our dependence on oil from the Middle East. Many Western States have already adopted renewable portfolio standards requiring a fixed percentage of energy sold in-State come from renewable energy resources. As we speak, 13 States have set these goals, and the number will increase.

I am happy that Nevada has adopted one of the most aggressive renewable portfolio standards of any place in the country. It commits the State of Nevada to produce 15 percent of our electricity from renewable sources by the year 2013. A goal had been set of 5 percent by the end of 2003. We didn't do that. We could have. We didn't. There were a number of reasons. One was there was uncertainty about whether

the tax incentive for wind power would be extended or expanded to solar and geothermal power. The other reason is utilities in Nevada and other Western States are still reeling, they are in bad shape, from the western energy crisis of 2000-2001, when Enron and other traders manipulated the energy market to jack up prices for no reason other than to generate obscene profits. Because of the exorbitant contracts with Enron, the State of Nevada's utilities are near bankruptcy. As a result, companies that want to develop renewable energy and sell it to these utilities have not been able to attract the investment they need. The investment community evaluates renewable energy projects based on the strength of long-term purchase agreements between the proposed facilities and the local utility, but if the utility is in trouble, investors shy away.

To address this problem, Kenny Guinn, the Governor of Nevada, will ask the legislature which meets next year to create a temporary renewable energy development trust that will provide some protection to renewable energy power plants if our utilities file for bankruptcy.

We need action at the Federal level also. The Federal Energy Regulatory Commission, referred to as FERC, must provide relief to utilities and ratepayers in Nevada and other Western States. FERC needs to act, and now, to vacate the exorbitant contracts of the energy crisis. We know that two of the FERC Commissioners were recommended by Kenny Lay, the Enron CEO, who was a major contributor of the President's campaign, and the President referred to him as "Kenny Boy." These Commissioners should either step down or clean up this mess. I am happy to report that Kenny Boy is now under indictment.

Our Nation must have energy markets that function properly. We must have incentives to develop our clean, renewable energy resources, and we must apply American ingenuity to do a better job conserving energy. These are critical steps toward the kind of far-sighted energy policy this country needs. These steps will protect consumers, they will safeguard the environment, and they will make our Nation stronger by moving us closer to energy independence.

#### SUPPORTING U.S. EFFORTS IN IRAQ

Mr. CORNYN, Mr. President, on July 7, 2004, the Senate Select Committee on Intelligence issued an important report regarding flaws in our prewar intelligence on Iraq. Last week, Lord Butler issued a similar report on British intelligence. In a related vein, the 9/11 Commission will issue its report this Thursday.

Each of these reports either already has, or no doubt will, shed light on how we can improve our ability to protect this country and our allies from future terrorist attacks.