phone call from Mr. Tenet, the head of the CIA, telling him these claims were highly suspect. But these words made it into the President's State of the Union Message. Thus, the White House, in its determination to wage war, included information they knew to be questionable to justify the war in Iraq.

Six months later, when Joseph Wilson questioned that information, two senior White House officials undertook a campaign to destroy the career of his wife. Who would have known that Valerie Plame was married to Joseph Wilson? Maybe some in the CIA knew it. I don't know who else knew it. They had different names. She was deep undercover. She was not given diplomatic immunity. She was very deep undercover in the CIA.

In the process of blowing Ms. Plame's cover, these White House officials cost the people of this country a 20-year investment in Valerie Plame. They placed into jeopardy her entire network of contacts and CIA operatives. They caused the entire intelligence community to question whether they might be next and be exposed. Thus, they weakened the reputation of this country at home and abroad.

Don't take my word for it; take the words of three former CIA high-ranking officials. Vincent Cannistrano, former chief of operations and analysis at the CIA counterterrorism center, said of the Plame disclosure:

The consequences are much greater than Valerie Plame's job as a clandestine CIA employee. They include damage to the lives and livelihoods of many foreign nationals with whom she was connected, and it has destroyed a clandestine cover mechanism that may have been used to protect other CIA non-official covered officers.

Or the words of James Marcinkowski, a former CIA operations officer, he said:

The deliberate exposure and identification of Ambassador Wilson's wife by our own Government was unprecedented, unnecessary, harmful, and dangerous.

Larry Johnson, a former CIA analyst, said:

For this administration to run on a security platform and to allow people in this administration to compromise the security of intelligence assets I think is unconscionable.

No one listening to these three men could have any doubts about the damage this act has done to our intelligence community and the extent to which this has weakened America.

We have seen that this administration has put relentless pressure on the intelligence community to justify the war. I have been informed that Vice President CHENEY personally went to the CIA headquarters—personally went across the river in Virginia to the CIA headquarters—at least eight times in the months when this intelligence data was under review. The Los Angeles Times reported last week that the Vice President's office even prepared its own dossier of all the information they thought should be used by the Secretary of State to justify the war, much of which the State Department rejected.

My question is, what was Vice President CHENEY doing visiting the CIA over eight times? This is unprecedented—unprecedented.

And my final question is this: Where is the same drive and determination by the President or the Vice President when it comes to finding those responsible for the breach of national security this leak caused?

The people who exposed Valerie Plame broke the law. Title 50 U.S.C., section 421. It is very clear on this: Any person who has access to classified information that identifies a covert agent shall be fined or imprisoned not more than 10 years or both.

I ask unanimous consent that the exact words of 50 U.S.C., section 421, be printed in the RECORD.

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

TITLE 50.—WAR AND NATIONAL DEFENSE

CHAPTER 15.—NATIONAL SECURITY, PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION, 50 USC § 421 (2004)

§ 421. Protection of identities of certain United States undercover intelligence officers, agents, informants, and sources.

(a) Disclosure of information by persons having or having had access to classified information that identifies covert agent. Whoever, having or having had authorized access to classified information that identifies a covert agent, intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States, shall be fined under title 18, United States Code, or imprisoned not more than ten years, or both.

(b) Disclosure of information by persons who learn identity of covert agent as result of having access to classified information. Whoever, as a result of having authorized access to classified information, learns the identity of a covert agent and intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States, shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(c) Disclosure of information by persons in course of pattern of activities intended to identify and expose covert agents. Whoever, in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, discloses any information that identifies an individual as a covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined under title 18, United States Code, or imprisoned not more than three years, or both.

(d) Imposition of consecutive sentences. A term of imprisonment imposed under this section shall be consecutive to any other sentence of imprisonment.

Mr. HARKIN. Mr. President, this law does not make any exceptions. It does not say, you can be fined or put in prison unless your spouse has gone against the administration's policy. It does not have that in here. No one is excused, not even, in my opinion, Mr. Novak.

One year and 6 days later we are still waiting for some action to be taken against those who broke the law. I have said repeatedly, if the President wanted to know the identity of these high-ranking officials, he could have done so within 24 hours. Clearly, Mr. Bush does not want to know the identity of the leakers, and when he was asked about it, he just dismissed it out of hand, smiled about it, said: There are a lot of leakers, who knows, a lot of people in the administration, and he just brushed it off. Where is Mr. Bush's sense of outrage that two people would do this and so weaken America's national security?

I think getting these answers means only one thing: The President of the United States, Mr. Bush, the Vice President of the United States, Mr. CHENEY, should be put under oath and filmed at the same time and deposed and asked these questions. One might say: Senator, that is an awful drastic step to be taken to put the President and Vice President under oath. I remind my colleagues that just a very few years ago a former President was put under oath and questioned under oath and filmed, and we sat in this Chamber and watched on television sets the deposition of former President Clinton when he was put under oath.

Regardless of how one may have felt about the impeachment one way or the other, I think the fact that the President was put under oath and questioned sent a signal very loudly and clearly to the people of this country: No one is above the law, not even the President of the United States. If it was good enough for a former President, it is good enough for this President.

The ACTING PRESIDENT pro tempore. The Senator has consumed the 5 minutes allocated to Senator REID as well.

All time has expired on the Democratic side.

Mr. LEAHY. Mr. President, am I correct that we will now go to the Myers nomination?

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF WILLIAM GERRY MYERS III TO BE A UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

The ACTING PRESIDENT pro tempore. Under the previous order, the

Senate will proceed to executive session and resume consideration of Calendar No. 603, which the clerk will report.

The legislative clerk read the nomination of William Gerry Myers III of Idaho to be United States circuit judge for the Ninth Circuit.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 12:30 p.m. shall be equally divided for debate only between the chairman and the ranking member or their designees.

The Senator from Vermont.

Mr. LEAHY. Mr. President, on this side I have how much time?

The ACTING PRESIDENT pro tempore. There is 34½ minutes.

Mr. LEAHY. Mr. President, not long ago the Democratic leadership reached an agreement with the White House that both sides believed was reasonable and fair. Actually, it was the Democratic leadership, the Republican leadership, and the White House. We agreed to hold votes for 25 of the President's judicial nominees, including one that was so controversial that he received what might have been the highest number of ''no'' votes ever from both Republicans and Democrats for a confirmed judge.

Now in return for those good-faith votes, the White House agreed not to make any more recess appointments of judges for the remainder of the President's term. So we fulfilled our end of the deal. When we were in the majority during 17 months, we moved 100 of President Bush's nominees. In about 27 or 28 months, the Republican majority has moved another 98 or 99. Of course, we brought up for consideration and agreed to consideration of all 25 of the judicial nominees we had agreed on with the President.

Probably on the basis that no good deed goes unpunished, especially with the most political, poll-driven administration I have seen in the time I have been here, the day after the debate and this extremely closely divided vote on the last of the group of those 25 judicial nominees, one many Republicans voted against, President Bush flew to North Carolina and then on to Michigan in an effort to politicize this issue anew. It appears that nominating and appointing his most ideological, partisan slate of judicial nominees is not enough for this President.

Besting the confirmation record of Ronald Reagan, former President Bush, and President Clinton does not satisfy him. The President continues to insist that every nominee, every nomination he makes to a lifetime, well-paying position, must be confirmed by the Senate because he is President, making the nominations. This ignores the fact that that has never been the case. Even President George Washington, the most popular President in this Nation's history, saw the Senate reject his nominees. President Franklin Roosevelt, who carried all but two States in the country in his reelection bid, with a heavily Democratic Senate, saw them reject his court-packing plan.

Like the recent abuse of the Constitution for partisan political purposes, I believe the President is trying to turn the independent Federal judiciary into an arm of the Republican Party. He has politicized the filling of judicial vacancies beyond anyone who preceded him and now we see he is exploiting this important Presidential authority as a campaign issue.

The independent Federal judiciary should not be an arm of the Democrat party or the Republican Party, and the American people should not fall for it. Facts are stubborn things. No amount of demagoguery overcomes the facts. The Senate has now confirmed 198 judges.

We have objected to a small handful of the most extreme or unqualified nominees. The President uses sharp rhetoric about ''activist judges,'' yet he nominates activist candidates from the far right wing of his party. When we have felt it necessary to draw the line at some of these candidates, we have done so to protect the rights of the American people from being undercut by partisan and ideological activists. We have tried to ensure the independence of the federal courts so that this Administration and its enablers in the Senate would not successfully turn our courts into an arm of the Republican Party.

We have cut vacancies on the federal judiciary to one quarter of what Republicans maintained during the Clinton Administration. Let me repeat that: Today, vacancies are one fourth what they were when Republicans were blocking dozens of President Clinton's judicial nominees. We have even reduced circuit court vacancies by more than 60 percent. By contrast, under Republican Senate leadership during the Clinton Administration, circuit court vacancies more than doubled from 16 to 33. From the high of 110 vacancies in the federal system that Republicans maintained during the Clinton Presidency, the federal courts are now down to 27 vacancies. There are more active judges serving on the federal courts today than at any time in our nation's history.

Not that the facts will deter the President and Republican partisans during this election year. This is another area on which this President has been a divider and not a uniter, in spite of the promises he made during his last campaign. Instead of working with us and uniting all Americans and strengthening their confidence in our courts, he and his supporters criticize the courts and attack the Senate for fulfilling its constitutional responsibilities and standing up to the most extreme of his nominees. The Senate has withheld consent only from the worst of his nominees, but he insists on sending more nominees who divide the Senate and the American people.

The nomination before us on which the Republican leadership insists the Senate devote three days is perhaps the most anti-environmental judicial nominee sent to the Senate. The nomination of William Myers to the United States Court of Appeals for the Ninth Circuit is an example of how this President has misused his power of appointment to the federal bench. Mr. Myers is neither qualified nor independent enough to receive confirmation for a lifetime appointment to this federal circuit court. His nomination is the epitome of the anti-environmental tilt of so many of President Bush's nominees.

Mr. Myers' hometown newspaper warned that as Solicitor at the Department of the Interior: ''Myers sounds less like an attorney, and more like an apologist for his old friends in the cattle industry.'' He has a record of extremism when it comes to his opposition to environmental protections, having gone as far as comparing the federal government's management of public lands to ''the tyrannical actions of King George'' over the American colonies and arguing that the government is fueling ''a modern-day revolution'' in the American West.

Well, I come from a part of the country that fought a revolution to overturn the tyrannical power of King George, and even though I may disagree with this administration, I do not liken this or any other administration to the tyrannical rule of King George.

I have carefully reviewed the record Mr. Myers has logged in private practice and in the Bush administration. I asked him a series of questions at his hearing in February and later in writing after that hearing. We gave Mr. Myers every opportunity to be heard and to make his case that he would be a fair and impartial adjudicator if he is confirmed to the Federal bench. Unfortunately, the only conclusion I have been able to arrive at is that if he is confirmed he would be an anti-environmental activist on the bench. He has a consistent record of using whatever position and authority he has had to fight for corporate interests at the expense of the environment and at the expense of the interests of the American people in environmental protections.

For 22 years, Mr. Myers has been an outspoken antagonist of long-established environmental protections, usually wearing the hat of a paid lobbyist for industry. At his hearing, he attempted to defend his anti-environmental statements and actions by saying he was just acting as an attorney, ''on behalf of his clients.'' This is not a case of a representation of a defendant in a single case. He has chosen this career for which he has been amply rewarded both monetarily and by positions in the Bush administration.

An attorney also has a duty to follow the law and, on more than one occasion, Mr. Myers' advocacy has pushed the limits of the law. As The New York Times editorialized, Mr. Myers ''regularly took positions that, though legally insupportable, would have had a

devastating impact on the environment.''

As the chief lawyer at the Department of the Interior, Mr. Myers disregarded the law in order to make it easier for companies to mine on public lands—a position consistent with his prior role lobbying for mining interests while he was in private practice. He interpreted the mining law in a way that would have allowed the reversal of Secretary Babbitt's rejection of a permit for Glamis Mining Co. on land in the Southeastern California desert. Fortunately, an independent review by a federal court concluded that Mr. Myers' interpretation was wrong. The court called into question his ability to interpret a statute as he violated ''three well-established canons of statutory construction.'' In addition, he acted without government-to-government consultation with the Quechan Indian Nation, a federally-recognized tribe, or other Colorado River Tribes, before taking action to imperil their sacred places.

As Solicitor General at the Interior Department, Mr. Myers encouraged two Northern California congressmen to sponsor legislation that would have given a private firm eight acres of valuable federal land in Yuba County, CA. Recognizing that the government did not have the right to turn over the land without compensation, he told the landowners that the ''department would support private relief legislation'' to accomplish that goal. The Department has since withdrawn its support for the private relief bill after its own agents produced readily available documents that conclusively proved that the government owned the land.

Mr. Myers' record on the environment would raise serious concerns no matter where he would be sitting as a judge. However, it is especially disturbing given the court to which he has been nominated. William Myers has been nominated to a circuit court with jurisdiction over an area of the country which contains hundreds of millions of acres of national parks, national forests and other public lands, tribal lands, and sacred sites. Judges on the Ninth Circuit decide legal disputes concerning the use and conservation of many of the most spectacular and sacred lands in America and often make the final decision on critical mining, grazing, logging, recreation, endangered species, coastal, wilderness, and other issues affecting the nation's natural heritage. These judges are also the arbiters on treaty, statutory, trust relationship, and other issues affecting American Indian tribal governments, Native Americans, and Alaska Native groups. The Ninth Circuit plays an enormous and pivotal role in interpreting and applying a broad range of environmental rules and protections that are important to millions of Americans, and to future generations of Americans.

At Mr. Myers's hearing, I raised concerns over what might be at stake if he were to be confirmed. At stake is the longstanding acceptance of the Constitution's commerce clause as the source of congressional authority to enact safeguards to protect our air, water, and land. In Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, Mr. Myers submitted an amicus brief arguing that the Commerce Clause does not support the United States Army Corps of Engineers' jurisdiction over isolated, intrastate waters on the basis that they are or have the potential to be migratory bird habitat. Mr. Myers' position raises concerns whether his extremely narrow view of the scope of the Constitution's commerce clause would undermine our nation's environmental, health, safety, labor, disability and civil rights laws.

At stake are environmental protections which can be struck down if taxpayers do not pay polluters, according to the extreme expansion of the takings clause that some judges have begun to adopt. Mr. Myers has taken this extreme view by arguing that property rights should receive the same level of constitutional scrutiny as free speech. His position raises concerns that he will interpret as ''takings'' the very laws implemented by Congress to protect our lands and our environment.

At stake is the true meaning of the Constitution's Eleventh Amendment and the right of citizens to sue to enforce environmental protections. In an era of ballooning government deficits and cuts in environmental enforcement budgets, there is much at stake if courts eliminate or minimize the critical role of ''private attorneys general'' who are needed to ensure that polluters are complying with federal mandates. Mr. Myers has even argued that judges should take a more active role in reducing lawsuits brought by environmentalists by requiring non-profit environmental organizations to post a bond for payment of costs and damages that could be suffered by any opposing party. He wrote: ''Environmentalists are mountain biking to the courthouse as never before, bent on stopping human activity wherever it may promote health, safety and welfare.'' These positions raise concerns that plaintiffs in his courtroom who are members of environmental organizations will not be treated fairly.

For the last four years, the Bush administration has systematically, and often stealthily, set out to undermine the basic safeguards that have been used by administrations of both parties to protect the environment. One way the Bush administration has demonstrated its contempt for our nation's environmental laws is in the court system. A Defenders of Wildlife study covering the Administration's first 2 years noted how its agencies argued in court. Amazingly, in cases where the Administration had a chance to defend the National Environmental Protection Act (NEPA), more than 50 percent of the time it presented arguments in court which would weaken NEPA. Similarly, the Administration argued to weaken the Endangered Species Act (ESA) more than 60 percent of the time.

Despite the Administration's arguments against the environmental laws it is entrusted with protecting, and despite the deference customarily paid to Executive agencies in federal court, the independent federal judiciary, thus far, has generally upheld our longstanding environmental laws. The courts ruled against the Administration's arguments to weaken NEPA 78 percent of the time, and ruled against the Administration's arguments to weaken the ESA an astounding 89 percent of the time. Further illustrating how important the judiciary has become for environmental protection, especially in the absence of a commitment to environmental protection by Executive agencies, the League of Conservation Voters for the first time included a vote on a judicial nominee on its 2003 scorecard of Senate votes. In the past year, our federal courts resisted efforts to weaken the Clean Water Act, the Clean Air Act, and the Endangered Species Act. The courts protected our National Monuments from challenges by extremist groups trying to strip them of their status, upheld air conditioning standards which save energy and money for consumers, and stopped Administration rollbacks that benefited industry at the expense of our forests. The result of these court decisions is that our vital wetlands and rivers are not decimated, diverse species are protected from extinction, and the standards for air quality are brought into compliance with the law.

There are, however, dark clouds on the horizon. There are cases pending where the outcomes could affect whether our air is threatened by toxic chemicals and whether our water and health are threatened by pollution and pesticides. There are cases pending whether to allow snowmobiles in our National Parks, whether to allow the Administration to open up 8.8 million acres of important wildlife habitat and hunting and fishing grounds in Alaska for oil and gas leasing, whether pumping dirty water into the Everglades violates the Clean Water Act, and whether the Administration can open our nation's largest National Forest to logging.

How will these cases be decided? Will the federal courts continue to stand as a bulwark against the administration's assault on environmental protection? Consider that in two recent cases, judges appointed by President Bush dissented, arguing against environmental protections. In one case, a Bush-appointed judge indicated that he might find the Endangered Species Act unconstitutional, and, in the other case, a Bush judge would have ruled to make it harder for public interest groups to prevent irreparable environmental harm through injunctive relief

while claims are pending. What if President Bush succeeds in appointing more like-minded judges and these Bush judges become the majority next time, positioned to strike down vital environmental protections? This is the type of judicial activism against established precedent that President Bush says he deplores, but he nominates and appoints judges who engage in wholesale judicial activism.

The Bush administration has already proposed more rollbacks to our environmental safeguards, aiming to benefit industry at the expense of the public's interest in clean air and water, our public lands, and some of our most fragile wildlife populations. While today we have a Federal judiciary which has in many instances prevented this administration's attempts to roll back important environmental laws and protections, in the future we may not be so fortunate. Today, the appellate courts in this country have tilted out of balance with Republican appointees already in control of 10 of the 13 circuit courts. The American people expect good stewardship of the nation's air, water and public lands, and the American people deserve that. Judges have a duty to enforce the protections imposed by environmental laws. The Senate has a duty to make sure that we do not put judges on the bench whose activism and personal ideology would prevent fair and impartial adjudication and would circumvent environmental protections that Congress intended to benefit the American people and generations to come.

An editorial in The Boston Globe recognized: ''When the White House is in the clutches of the oil, coal, mining, and timber companies, as it is now, the best defenders of laws to protect the environment are often federal judges.'' The editorial concludes that if the Senate confirms William Myers, ''the judicial check in this administration's unbalanced policies will be weakened.''

For almost his entire 22-year legal career, Mr. Myers has worked in Washington—in political positions for Republican Administrations and as a lobbyist. He received a partial ''Not Qualified'' rating from the American Bar Association—the ABA's lowest passing grade. He has minimal courtroom experience—having never tried a jury case and having never served as counsel in any criminal litigation. It seems clear that William Myers was nominated not for his fitness to serve as a lifetime member of the federal judiciary but rather as a reward for serving the political aims of the administration.

When Mr. Myers was appointed to his legal post at the Department of the Interior, some described it as putting a fox in charge of the henhouse. Another metaphor that comes to mind is the revolving door that is emblematic of so many of this administration's appointments, especially to sensitive environmental posts. Mr. Myers' Interior appointment was the first ''swoosh'' of the revolving door. His nomination by President Bush to one of the highest courts in the land completes the cycle. Mr. Myers is one of several nominees who have come before us because they are being awarded lifetime appointments to the federal courts based not primarily on their qualifications for the office, but as part of a spoils system for those who are well connected and have served the political aims of the Bush administration.

So many of President Clinton's judicial nominees upon whom the Senate took no action seemed to have been penalized for their government service or for having supported the President. Elena Kagan, James Lyons, Kent Markus and so many others never received hearings, and their nominations were defeated through Republican inaction and obstruction, without explanation. With a Republican President, Senate Republicans have reversed their field and position. We have already confirmed to lifetime appointments a number of Administration and Republican-connected candidates, including Judge Prost, Judge McConnell, Judge Cassell, Judge Shedd, Judge Wooten, Judge Chertoff, Judge Hudson, Judge Clark, and Judge Bybee. At this point in a presidential election year, in accordance with the Thurmond Rule, only consensus nominees being taken up with the approval of the majority and minority leaders and the chairman and ranking members of the Judiciary Committee should be considered. Mr. Myers is no such nominee. In 1996, the last time a President was seeking reelection, the Senate Republican majority refused to confirm any judges to the circuit courts. Not one was considered and confirmed that entire session. In contrast, this year we have already proceeded to confirm five additional circuit judges.

The list of those who are deeply concerned about, and who have felt compelled to oppose this nomination has been long and it continues to lengthen. More than 175 environmental, Native American, labor, civil rights, disability rights, women's rights and other organizations have signed a letter opposing Mr. Myers' confirmation to the Ninth Circuit Court of Appeals. The National Congress of American Indians, a coalition of more than 250 tribal governments, unanimously approved a resolution opposing Mr. Myers' nomination. The National Wildlife Federation, which has never opposed a judicial nomination by any President in its 68-year history, wrote:

> Mr. Myers has so firmly established a public record of open hostility to environmental protections as to undermine any contention that he could bring an impartial perspective to the issues of wildlife and natural resource conservation that come before the court. Indeed, Mr. Myers is distinguished precisely by the ideological rigidity that marks his positions on these issues.

A letter from the California Legislature, signed by the Senate President Pro Tem, the Chair of the Senate Natural Resources Committee, and the Chair of the Senate Environmental Quality Committee, strongly opposing Mr. Myers' nomination, told the Judiciary Committee:

> Mr. Myers' record as Interior Solicitor of favoring the interests of the grazing and mining industries over the rights of Native Americans and the environment, coupled with his long history as an extreme advocate for those industries, cause serious doubts on his willingness or ability to put aside his personal views in performing his official duties.

I have great regard for the Senators from Idaho. I have affection for the former Senator from Wyoming who was my colleague on the Judiciary Committee for many years and who I consider a friend. In deference to them, I have examined Mr. Myers' record and asked myself whether I could support this nomination. Regrettably, I cannot.

If you watch what the Bush administration does, instead of just listening to what it says, there is much evidence of this administration's outright contempt for high environmental standards. This nomination, in itself, says something about that.

I hope that the Senate's vote today will say something about the higher priority that the Senate makes of environmental quality.

I must oppose Mr. Myers' confirmation.

Also, we know under the Thurmond rule he can't even be confirmed without the agreement of the Republican leader, the Democratic leader, the chairman, and myself.

We have come to a time when we can't get our budget done. We can't pass veterans appropriations or homeland security. We can't do these things because we don't have time, and yet we are wasting time on something everyone knows will go nowhere.

I must oppose Mr. Myers' nomination.

I yield 5 minutes to the distinguished Senator from Illinois.

Mr. DURBIN. Before yielding to me, would the Senator yield for a question?

Mr. LEAHY. Of course.

Mr. DURBIN. Would the Senator from Vermont inform me and the Senate the number of nominees of the Bush administration to date who have been approved by the Senate and the number of those who have been disapproved?

Mr. LEAHY. Mr. President, I would note that we have approved, first, 100 in the 17 months that we, the Democrats, were in charge of the Senate.

In the next 21, 22, 23 months, however long it was that the Republicans were in charge, another 98 were confirmed.

I don't think a single one was defeated on the Senate floor. A small number had been held back—I think about one-tenth of what the Republican majority held back during the Clinton Presidency.

Actually, I might say to my friend from Illinois, we have confirmed more than we did during President Reagan's first term when, of course, you had a Republican Senate throughout his term. For that matter, we confirmed

more than President George H.W. Bush.

Mr. DURBIN. If the Senator will further yield, if I am not mistaken, we have approved 198 nominees from the Bush administration, and only 6 have not been approved to date?

Mr. LEAHY. That is right.

Mr. DURBIN. Does that number meet the Senator's recollection?

Mr. LEAHY. Yes, and one highly contentious one went through. He had the most negative votes, of both Democrats and Republicans, of any nominee in history because of the extreme positions he had taken.

I yield 5 minutes.

Mr. DURBIN. Mr. President, I rise in opposition to the nomination of William Myers to the U.S. Court of Appeals for the Ninth Circuit.

William Myers is a successful lawyer and a passionate advocate. If I owned a mining company or a ranch and I needed a lobbyist, Mr. Myers would be the first person I would call. But I have concerns about whether Mr. Myers can walk away from a lifetime of lobbying for these special interests and be fair as a judge on the Nation's second highest court.

His loyalty to the grazing and mining industries and to ranchers has been undivided and passionate. He has advanced their agenda, whether on a private payroll or working for the Government.

For example, in a case from my home state of Illinois, Solid Waste Agency of Northern Cook County v. United States Corps of Engineers, Mr. Myers argued on behalf of the National Cattlemen's Beef Association that Federal regulation of certain land use was beyond the commerce clause power of Congress because that area is traditionally regulated by State and local governments. Mr. Myers' narrow reading of the commerce clause, if followed through, could jeopardize essential health, safety, environmental, and antidiscrimination laws.

In another Supreme Court case, Babbitt v. Sweet Home Chapter of Communities for a Great Oregon, Mr. Myers argued, on behalf of the National Cattlemen again, that:

> . . . the constitutional right of a rancher to put his property to beneficial use is as fundamental as his right to freedom of speech or freedom from unreasonable search and seizure.

He argued that the freedom claimed by a rancher to use his property was equivalent to our freedom of speech under the Constitution. This is an argument that would make any cowboy blush. Mr. Myers should have known better. He should have known that the Supreme Court has held that only a very limited number of rights are so fundamental, such as freedom of speech and the right to privacy. Mr. Myers' celebration of property rights is reminiscent of the Lochner decision, an era of court law when property and economic rights trumped almost all others. All but the most radical thinkers have rejected this ancient, discredited view. Mr. Myers lovingly embraces it.

The Ninth Circuit is a crucial battleground circuit. It hears a great many cases pitting property rights against environmental regulation. I have searched in vain for any evidence—any evidence—that Mr. Myers could rule on such cases with an open mind. I can't find it.

In a 1998 article entitled ''Litigation Happy,'' Mr. Myers expressed concerns about environmental litigation. These are his words:

> Environmentalists are mountain biking to the courthouse as never before, bent on stopping human activity wherever it may promote health, safety and welfare.

End of quote from nominee Myers.

He wrote another article in which he compared the Federal Government's management of public lands to King George's tyrannical rule of the American colonies, and he claimed that public land safeguards are fueling ''a modern-day revolution'' in the West.

Mr. Myers has stated that many environmental laws have ''the unintended consequence of actually harming the environment.''

He has denounced the California Desert Protection Act, a significant environmental law that was passed in 1994, thanks to the leadership of our colleague, Senator DIANNE FEINSTEIN. Mr. Myers calls that particular law ''an example of legislative hubris.'' In his hearing he acknowledged his remark was a ''poor choice of words,'' and we all appreciated his honesty. But as the San Francisco Chronical put it:

> Poor choices of words seem to be the rule, not the exception, in Myers' career.

President Bush rewarded Mr. Myers for his track record of advocacy by appointing him to be the top lawyer at the Department of Interior in 2001. While there, he formulated several important policy changes that favored the industries that he traditionally represented in public life. He issued a controversial legal opinion that prevented the voluntary retirement of Federal grazing permits. These voluntary retirements had enjoyed bipartisan political support, but they were opposed by the grazing industry. He also wrote a legal opinion overturning the policy of the Clinton administration and allowed for mining of the 1,600-acre Glamis open-pit gold mine.

This decision was strongly opposed by the Quechan Indian Nation because the mining violates their sacred lands.

Because of his role in the Glamis project, Mr. Myers' nomination has been opposed by the National Congress of American Indians, the first time this organization of 500 tribes has ever opposed a judicial nominee.

In addition, he has been opposed by virtually every major environmental group, including the National Wildlife Federation, which has never opposed a judicial nominee in its history.

The final concern I have about Mr. Myers is his minimal courtroom experience. He is seeking a spot on the second highest court of the land and comes to this nomination with extremely limited experience in a courtroom. Mr. Myers' exposure to the courtroom has apparently been limited to watching the second half of ''Law and Order.''

He has never handled a case that went before a jury in 23 years of legal practice. He has participated in only three trials and he has no criminal litigation experience whatsoever. His lack of legal experience may explain why Mr. Myers received the ABA's lowest passing grade: ''majority qualified'' and ''minority not qualified.''

I believe President Bush can do better by this circuit. I don't think Mr. Myers should receive a lifetime appointment to the second highest court in the Nation.

The ACTING PRESIDENT pro tempore. The Senator from New York.

Mr. SCHUMER. Mr. President, I ask unanimous consent that I be yielded 5 minutes from the time of the minority.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SCHUMER. Thank you, Mr. President. I thank my colleagues here today.

I rise in strong opposition to the confirmation of William Myers. When the nine Democratic members of the Judiciary Committee unanimously vote against a nominee, you can be sure that there are real questions about the nominee that must be answered. We rarely do it.

Once again to reiterate, 198 judges approved, 6 opposed. Why are we trying to make Mr. Myers the seventh? Is it some lobbying group? Not at all. Is it the fact we just do not agree with his views? Clearly not.

The bottom line is that Mr. Myers is extreme on environmental issues and on land issues. And these issues are important where the Ninth Circuit probably has much more to say than any other circuit in the land, given the vast territory out west that it covers.

Mr. Myers is one sided and extreme. There has been no balance. There has been no attempt to see the other side. There has been no attempt to be judicious in the true sense of the word. That is why so many of us feel constrained to rise against him.

Nominating William Myers is like sticking a thumb in the eye of all Senators who believe extremists, right or left, should not be on the Federal bench.

The bottom line is very simple; that is, Mr. Myers has not shown a single iota of moderation as he has moved through his career. He has not been a judge or somebody who has had judicial experience. But that doesn't bother me. It bothers some. It doesn't bother me.

The problem is Mr. Myers' record screams ''passionate activist.'' It doesn't so much as whisper ''impartial judge.''

Let us go over some of the things my colleague, Mr. DURBIN, mentioned. I

will elaborate on some of those. It is not just that Mr. Myers has spent almost every day of his career as a professional lobbyist advocating for mining and ranching interests to the detriment of environmental concerns. It is how he has done it. There is never an understanding that the other side has any merit.

The bottom line here is what he said: ''Environmentalists are mountain biking''—that was snide—''to the courthouses, never before done, stopping human activity wherever it may promote health, safety, and welfare.''

Human activity that pollutes the air or water? This man comes from such a narrow mindset that it is clear he doesn't belong on the bench.

The cases he was discussing when he said that included suits to halt the discriminatory placement of waste treatment facilities, protection of irrigation canals from toxic chemicals, and to stop logging in protected national forests.

Again, he shows such little tolerance for the other viewpoint that one doesn't have much faith that he can be an impartial judge.

When it comes to the environment, it seems like confirming William Myers would be like putting the fox in charge of the environmental hen house.

If one remark were an isolated incident, you could say, well, one remark shouldn't stop someone from being a judge. But he said the Clean Water Act has the unintended consequence of actually harming the environment. Who in America believes that? Some people—very few—may say it goes too far. But that it harms the environment?

He argues that it is fallacious to believe the central government can promote environmentalists.

Let me tell Mr. Myers something. In New York City where I live my lungs are cleaner because the Federal Government has a Clean Air Act. Maybe he doesn't need one in Idaho, but they sure need one in Los Angeles which is in the Ninth Circuit.

And the intolerance to say that the central government can never promote environmentalism—he has compared the Government's management of public lands to King George's tyrannical rule over the American Colonies.

I guess that kind of selfish freedom—you own the land and you can do whatever you want with it—is Mr. Myers' view. It is not America's view. This man has continued to have that view.

He said that professional environmentalists are primarily interested in fundraising and the selling of magazine subscriptions. Do we want to say the Cattlemen's Association is only interested in making money no matter what happens? What would the Cattlemen's Association or a rancher who is trying to do a good job think of that?

Mr. Myers' comments are hardly reflective of the moderation and temperament we look for from judicial nominees. His lack of understanding and intolerance come across over and over and over again.

When it comes to comments about the environment, Mr. Myers is like the Energizer bunny: He just keeps on going and going.

Earlier this year, the Buffalo News ran an editorial against his nomination, saying in part:

> The Bush administration is showing an Oz-like talent for turning over protect-the-environment posts to former lobbyists who once sought to overturn the rules they are now being charged with keeping.

I couldn't agree more.

This is just another example of the Bush Administration saying one thing and doing another. They say they care more about the environment and then they nominate anti-environmentalists to defend it.

With Mr. Myers' nomination, we are not just through the looking glass; we are all the way down the rabbit hole.

I wish we didn't have rise today and vote no but I think we are compelled to. I urge my colleagues to reject this nomination.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. HATCH. Mr. President, I yield such time as he needs to the distinguished Senator from Idaho.

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

Mr. CRAPO. Thank you very much, Mr. President, I thank the chairman of the Judiciary Committee, Senator HATCH, for yielding me this time.

It is my honor to stand here in strong support of the nomination of William G. Myers to the U.S. Court of Appeals for the Ninth Circuit.

Contrary to the remarks we have just heard, former Solicitor of the Interior, William G. Myers is a highly respected attorney who has had extensive experience in the field of natural resources, public lands, and environmental law. His nomination enjoys widespread support from across the ideological and political spectrum.

Mr. Myers has been nominated to the Ninth Circuit Court of Appeals which covers the States of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington, as well as Guam and the Northern Mariana Islands. He has a distinguished career serving on the issues that are critical to these States.

From July 2001 to October of 2003, Mr. Myers served as Solicitor of the Interior, the chief legal officer and third ranking official of the Department of the Interior. In that capacity, he was supervisor over 300 attorneys in 19 offices across the country and managed a $47 million annual budget, and provided advice and counsel to the Secretary of the Interior, as well as to the Department's offices and bureaus.

He was confirmed by the Senate as Solicitor of the Interior by unanimous consent. At that time, these arguments that are now being brought forward simply were absent from the floor.

The reason is because Mr. Myers' strong service is respected across the political spectrum.

Before coming to the Department of Interior, Mr. Myers practiced at one of the most respectable law firms in the Rocky Mountain region, where he participated in an extensive array of Federal litigation involving public lands and natural resource issues. Some of the attacks on him are attacks made against him because of positions he took on behalf of clients, something which Members across the board in this Senate have said is not the appropriate way to judge whether a person will, as a judge, take a balanced view.

An advocate in the courtroom is different than a judge. One should not be judged in their professional qualifications when they are serving as an advocate, as is being done to Mr. Myers today.

From 1992 to 1993, Mr. Myers served in the Energy Department as the Deputy General Counsel for Programs, where he was the Department's principal legal adviser on matters pertaining to international energy, Government contracting, civilian nuclear programs, power marketing, and intervention and State regulatory proceedings.

He served as Assistant to the Attorney General of the United States from 1989 to 1992. In this capacity, he prepared the Attorney General for his responsibilities as Chairman of the President's Domestic Policy Council.

Before entering the Justice Department, Mr. Myers served over 4 years as legislative counsel for one of our former colleagues, Senator Alan Simpson of Wyoming, where he was Senator's Simpson principal adviser on public lands issues. Mr. Myers is a nationally recognized expert in natural resource law and public lands law. He served as vice chairman of the Public Lands and Land Use Committee of the American Bar Association, the section on environmental and energy and resources. In his home State of Idaho, Mr. Myers chaired Idaho State Board of Land Commissioners, Federal Lands Task Force Working Group, and the Boise Metro Chamber of Commerce State Affairs and Natural Resources Subcommittee.

He is an avid outdoorsman and committed conservationist. For the past 15 years, he served as a volunteer for the National Park Service and over that span has logged at least 180 days of volunteer service in numerous parks, performing trail work, campsite cleaning, visitor assistance, and park patrols.

He has widespread support, as I indicated, from across the political spectrum. Again, contrary to the comments made in the Senate today, Mr. Myers has the balanced demeanor to be an excellent Federal judge.

Former Democratic Idaho Governor Cecil Andrus, who also served as Secretary of the Interior in the Carter administration, supports Mr. Myers. He stated that Mr. Myers possesses ''the necessary personal integrity, judicial temperament and legal experience, as

well as the ability to act fairly on matters of law that will come before him on the court.''

In addition, former Democratic Governor of Wyoming, Mike Sullivan, who also served as a U.S. Ambassador to Ireland under the Clinton administration, endorses Mr. Myers. He calls Mr. Myers a thoughtful, well-grounded attorney who has reflected, by his career achievements, a commitment to excellence, and states that Mr. Myers would provide serious responsible and intellectual consideration to each matter before him as an appellate judge and would not be prone to extreme or ideological positions unattached to legal precedence or the merits of a given matter.

Mr. Myers is backed by every member of the Idaho congressional delegation and 15 State attorneys general, including three Democratic attorneys general—Ken Salazar from Colorado, Drew Edmondson from Oklahoma, and Patrick Crank from Wyoming—who strongly support Mr. Myers. These chief law enforcement officers from their States say Mr. Myers would bring to the Ninth Circuit strong intellectual skills combined with a strong sense of civility, decency, and respect for all.

Two former Attorneys General of the United States support Mr. Myers, one Republican and one Democrat. Former Attorney General William P. Barr states that Mr. Myers represents the epitome of judicial temperament and would do a great job, while former Attorney General Dick Thornburgh calls Mr. Myers exceptionally well-qualified to serve as a member of the Federal judiciary.

There have been some attacks made against Mr. Myers today to which I will briefly respond. As I said earlier, many of the attacks made against him are for positions he took advocating on behalf of clients or on behalf of an employer when he was working in the Department of the Interior or in other capacities.

Some groups claim that Mr. Myers did not adequately protect the environment as the Solicitor of the Interior. The record simply belies this argument. As Solicitor of the Interior, Mr. Myers vigorously fought to safeguard the environment and conserve natural resources. Mr. Myers sought to protect this country's lands and national parks and monuments. The list I have in front of me is extensive, listing actions he has taken as the Solicitor of the Department of the Interior to preserve and protect the incredible environmental resources which we have in this Nation.

He is also recognized for protecting indigenous animals as well as the environment and supported an agreement removing dams from the Penobscot River, in what conservationists called the biggest restoration project north of the Everglades. His involvement in working on wolf issues and on issues regarding nesting sites of endangered birds to protect them from harassment of bird watchers has been significantly noted. He has a very proconservationist leaning.

Mr. Myers fought to protect our Nation's waters and to ensure the Nation was adequately compensated for the private use of natural resources. Again, he has been attacked in the Senate today for his defense of private property rights by those who do not want to see a balance brought back to the Ninth Circuit Court of Appeals. Mr. Myers has defended reasonable interpretations of the Outercontinental Water Royalty Relief Act to ensure that oil and gas companies did not enjoy unjustified windfalls through royalty-free activity and supported record royalty recoupment against Shell Oil Company regarding natural gas in the Gulf of Mexico.

This shows when there are actions taken by those who would harm the environment, he is prepared and ready to step forward. Yes, he does protect private property rights. He has a belief that private property protection means something in this country. He recognizes the value of private property in our Constitution and in our system of government in America. For that, he is being criticized in the Senate today.

We should be glad to have a nominee to the Ninth Circuit Court of Appeals who will help us bring some sense of balance back to that court. Our colleague from New York, Senator SCHUMER, who just debated, stated last year on the nomination of Jay Bybee that the Ninth Circuit is by far the most liberal of any court in our country. Most of the nominees are Democrats and from Democratic Presidents. It is the Ninth Circuit that gave us the Pledge of Allegiance case, which is way out of the mainstream on the left side. Mr. Myers would bring some conservative balance back to that Ninth Circuit court, it is true. Frankly, I personally believe one of the reasons he is being so strongly objected to in the Senate today is because there are many who do not want to see that balance brought back to the Ninth Circuit Court of Appeals.

Finally, I conclude by discussing a little bit more the qualifications of Bill Myers. I know him personally. As has been stated, he is from Idaho. He has shown throughout his legal career that he can be a fierce, strong, eloquent advocate for those who were his clients and for those who were his employers. His effectiveness in advocating on behalf of his clients and his employers is now being utilized against him. If that were done to other nominees, as it has been done to some nominees, very few who were eloquent, strong advocates as attorneys or who were strong public servants serving as attorneys in the public service of our country would be able to pass through this Senate. We could find quotations in their briefs, quotations in their statements and in their advocacy which we could use in an isolated way to say they were taking too strong a stand.

The reality is, those who know him—Idaho Democratic Governor Cecil Andrus, Wyoming Democratic Governor, the Democratic Attorneys General who have worked with him—have given the true picture of Bill Myers. He is a man who with passion fights for that in which he believes but who has the ability, the skill, and the demeanor as a judge to stand in judgment with balanced reference to the precedent that comes before him. He would be an outstanding addition to the Ninth Circuit Court of Appeals. I encourage all Members in the Senate to vote to give him a chance to have his nomination considered.

In conclusion, let's remember what the vote is that we are having today. The vote we are having today is not on the nomination of Mr. Myers; it is on the effort to get cloture on the filibuster of his nomination.

We are voting today to answer the question of whether he is entitled to a vote on his nomination—something that, until this Congress, has always been allowed on someone who was put out of the Judiciary Committee and brought to the floor of the Senate. Never, before this Congress, has a nominee sent from the Judiciary Committee to the floor of the Senate been denied a vote on their nomination. Yet today we see, for the seventh time in this Congress, an honorable person who is nominated, and has made it all the way to the floor of this Senate, being threatened with the denial of even a vote on their nomination.

I encourage all of my colleagues to afford Mr. Myers the kind of opportunity that all persons before him—until this Congress—have been allowed to have; and that is, a vote on his nomination to the Ninth Circuit Court of Appeals.

Mr. President, I yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent that the distinguished Senator from Wyoming be granted up to 5 minutes, and immediately following him, the distinguished Senator from Idaho be granted up to 5 minutes of our time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Wyoming is recognized for up to 5 minutes.

Mr. THOMAS. Mr. President, I thank the chairman.

I come to the floor to speak on behalf of Bill Myers because of his activity in Wyoming and his work in Washington, working with a former Senator from Wyoming. But after hearing what was said on the other side of the aisle, I am particularly inclined to share a little bit about Bill Myers and the fact that he would bring some balance to the Ninth Circuit.

Fortunately, Wyoming is not in the Ninth Circuit, but I am concerned there would be someone there who has

dealt with public lands issues, who has dealt with the kinds of issues we deal with in the West, and who has done so very successfully.

So I support Bill Myers' nomination to the Ninth Circuit Court of Appeals. He has had a distinguished career in public service and as a practicing attorney, as well as being Solicitor of the Interior Department. He was confirmed by the Senate unanimously to that job as Solicitor, which is a very difficult task, of course.

He is nationally recognized as an expert on natural resources and the use of natural resources and issues that are of particular importance to the West and the Ninth Circuit area. So I am not going to continue with his credentials. Our friends from Idaho know more about that than I, and they have talked about his qualifications.

But, unfortunately, western issues disqualify him for Idaho's only seat on the Ninth Circuit Court. That is a shame because there is nothing more important overall than natural resource kinds of issues. So I guess the court will not have a person with that kind of experience, but, rather, this floor will keep the citizens of Idaho from having someone there to represent them in those areas that are so important. I certainly feel badly about that kind of position.

There has been discussion that he is not supported by any Democrats. That is not the case. I have a statement from the Honorable Michael Sullivan, former Democratic Governor of Wyoming:

> Mr. Myers has a wealth of legal experience in the private practice, in Washington, and in the areas of public lands and the environment. Those are areas of extreme importance to the country and those of us in the West, and it is my view that Bill's experience would serve the Court and the Circuit well. . . . He is, in my view, an individual who would provide serious, responsible, and intellectual consideration to each matter before him as an appellate judge and would not be prone to extreme or ideological positions unattached to legal precedent or the merits of a given matter.

So I rise to say we have observed the activities of Bill Myers in the West. Certainly, from all the activities he has been involved in, he has done so well. It is my belief he should go on to this court. But, more importantly, in terms of process, he certainly ought to have an opportunity to have a vote on the floor of the Senate. So I urge that be the case this afternoon.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

Mr. CRAIG. Mr. President, I thank my colleague from Wyoming for visiting with us about Bill Myers and his qualifications.

I was on the Senate floor yesterday and made my full statement on behalf of Bill Myers. I spoke this morning in opening remarks, but I did want to make a few additional comments before the chairman of the committee, once again, revisits the nomination of Bill Myers.

On the Senate floor this morning, I said I believed there was a selective, concerted effort on the part of our colleagues on the other side of the aisle to pick nominees and block a vote against them for the purpose of the filibuster and ultimately knowing they can kill these nominees because we cannot get to the 60-vote requirement or threshold they have provided us.

I made that statement this morning. I was told, very frankly, by a member of the Judiciary Committee on the other side, that when Mr. Myers was voted out, he would not be confirmed. Why? Because they were going to use him to demonstrate before their environmental constituencies that he was their token, and they would bring him down.

Bill Myers does not deserve that kind of treatment for a variety of reasons. My colleague from Idaho has expressed them very clearly, as have I, that in his private life he was a good attorney and an advocate for his clients.

But here is what Bill Myers said in the committee hearing that I chaired in his behalf when we were considering his nomination. He said:

> [W]hen a person takes on those robes—

Meaning the robes of a judge of the Ninth Circuit—

> takes the oath of office, swears to uphold the Constitution, that means they will follow the law and the facts, wherever the law and the facts take them, without regard to personal opinion, public opinion, friends or foes.

To me, that sounds like a gentleman of judicial temperament who understands the appropriate role of a judge, as some who have come to the floor who are Senators, and were attorneys in other lives, also understand the appropriate role of an advocate, an attorney for a client. Yet Mr. Myers is criticized today because he was a good attorney for a client. It was because he was a good attorney that the President of the United States said: This man will make a good judge in the Ninth Circuit. And now he is criticized for it.

The minority leader, after I had spoken this morning, said: Well, Senator CRAIG voted to not allow cloture on a judge of the Ninth Circuit before. I did. I did exactly what the minority leader said I had done. And the man's name was Richard Paez. That was in 2000. He was a nominee for the Ninth Circuit by President Clinton. I voted against cloture, and I lost. And why I lost is that it was not an organized ''party'' effort of the kind we now see demonstrated on the floor of the Senate today, that has openly and directly refused the right of seven people to have a vote on the floor.

I voted against Mr. Paez because I am a constituent of the Ninth Circuit, and I thought he would be a liberal, activist judge. I did something else. I voted to delay indefinitely a vote on Richard Paez. I lost. Why did I lose? Because it was not an organized ''party'' effort on this side of the aisle, as is the vote we will see at 2:15 this afternoon. I voted against confirming Richard Paez and I lost.

But the point here is clear: Richard Paez got his vote on the floor of the Senate. He was not denied a vote, as now the Democrat leader and his colleagues have decided to deny Bill Myers a vote. That is a fact. And the minority leader needs to know it. He needs to know that Richard Paez was not organized against. Up-or-down votes: I lost; Richard Paez won.

Now, I was not wrong in my vote. Richard Paez has now been on the Ninth Circuit bench for at least 3 years. He is an activist, liberal judge. And I was right about reviewing him.

He still got his vote. He still got his judgeship because a majority of the Senate said Richard Paez should serve in our advise and consent role under the Constitution. We advised the President of the United States on behalf of his nominee and he was confirmed.

I will talk about one other item I think is important. We are all entitled to our own opinions, but not to our own facts. We can all look at facts differently. I want to talk for a few moments about ABA ratings. I remember the American Bar Association ratings of nominees used to be called the ''gold standard.'' If you didn't get a top rating, my goodness, you were not, nor should be, considered. Let me talk about those briefly.

The other side was saying Mr. Myers doesn't have the right rating. Well, they also riled and railed against Miguel Estrada and Priscilla Owen and, by the way, they had top ABA ratings. Have they already forgotten the very principles they applied to somebody else? You cannot reverse them in a 48-hour period and apply them in a different way to somebody else. I am sorry, you can be entitled to your own opinions, but you ought not to be entitled to your own facts.

As we each consider the weight of ABA ratings and what they should carry, let me remind this body that Mr. Myers' rating places him among an impressive group of individuals. Among the names of those who received similar ABA ratings, we find judicial nominees like Judge Richard Posner, arguably one of this generation's most prolific and impressive court of appeals judges, who was described by Supreme Court Justice William Brennan as one of the two geniuses he had ever met. Well, Bill Myers is in that category. Not bad. Other nominees included Judge Frank Easterbrook, Stephen Williams, James Buckley, Jerry Smith, and Laurence Silberman. No one familiar with their impressive experience, credentials, and legal acumen can honestly question these judges' fitness for the Federal bench. Yet Mr. Myers' ratings and theirs are the same.

Isn't it interesting how it can be so arbitrary and one can choose and pick based on one's opinions? I cannot criticize my colleagues on the other side. They are entitled to their own opinions. But they are not entitled to their own facts.

Finally, let me remind you that during the Clinton administration this

committee voted out and the Senate confirmed 3 circuit court and 15 district court nominees who had ABA ratings identical to Mr. Myers' ''majority qualified; minority not qualified'' ratings. In August, September, and October of 1994, this committee even voted out three district court nominees who had ''majority not qualified'' ABA ratings, and all three judges were confirmed. These nominees include Roger Gregory, confirmed on a 93–1 vote, who now serves in the Fourth Circuit; Julio Fuentes, confirmed by a 93–0 vote. The reason that happened is because, at that time in the history of the Senate, we recognized the importance of the debate and we also recognized an up-or-down vote. What we did not see was a concerted party effort on selectively picked nominees for political purposes and denying them their right to a vote on the floor of the Senate.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, how much time remains?

The ACTING PRESIDENT pro tempore. There is 8 minutes 15 seconds.

Mr. HATCH. Mr. President, I want to briefly make a point in rebuttal to the statement by the Senator from South Dakota, Mr. DASCHLE, this morning.

The minority leader seems to be trying to justify his obstruction of an up or down vote on Bill Myers by pointing to some in our caucus who voted against cloture on two very liberal Ninth Circuit judges whom the Senate confirmed without a filibuster in election year 2000. Just stating the facts makes it clear that there is no justification for the Democrats' obstruction. But let me also point out. Unlike their leadership, Republican leadership made sure that those two liberal nominees, now committed leftist activists on the Ninth Circuit, were not filibustered. They got up or down votes because the vast majority of us thought that filibusters of judicial nominees were completely out of order in the U.S. Senate.

These liberal activist judges, now issuing their often-reversed edicts from San Francisco, received up or down votes in this Senate in an election year. Bill Myers deserves no less.

I think it's important to get on record exactly what's happened here with Bill Myers' nomination. We originally asked for 5 or 6 hours of debate; Democrats objected. We settled on 4 hours of debate, equally divided, during yesterday's session, and not a single Democrat came to the Senate Floor to debate. It is puzzling to me why those who oppose him so vehemently did not come to the floor, stand up and defend their objections. It seems to me that if Senators can't defend their objections to a nominee, they certainly shouldn't object to an up or down vote. I appreciate that today we have at least heard some of their arguments, though I think they are not reflective of this qualified nominee nor his outstanding record.

So I want to return to what this debate is about, or at least what it should be about. While this nomination has been hijacked by another unparalleled filibuster—the seventh nominee to be subjected to this unprecedented form of obstruction—it should have been about the qualifications of Bill Myers to be a Ninth Circuit judge. And in that respect, let me remind my colleagues, that Bill Myers' nomination to the Ninth Circuit Court of Appeals is supported by a wide, bipartisan range of individuals and organizations, particularly those who value expertise in Western land use issues.

Let me provide just a few examples from several support letters received by the Judiciary Committee:

The Farm Bureau Federations of California, Oregon, Idaho and Montana, the Oregon Cattlemen's Association, the Oregon Forest Industries Council, the Oregon Wheat Growers League, the Oregon Women for Agriculture, and eight additional county farm and stock grower bureaus in Oregon, among others, wrote on February 18, 2004:

> Mr. Myers' background and legal career provide enormous experience that could only serve to benefit the citizens of the [Western United States]. His professional history shows clear leadership skills in resolving many complex issues. It is clear that Mr. Myers has an ability to analyze problems and make rational decisions that conserve our national heritage while at the same time move us forward in a responsible manner. Time and again he has shown a capacity to set aside the rhetoric and to objectively evaluate the respective interests of the parties involved. . . . Our organization and membership has found, whether through first hand experience or simply as interested observers, that Mr. Myers conducts himself with integrity, competence, professionalism and an unprecedented respect for the law.

The Tulalip Tribes of Washington State wrote on March 9, 2004:

> The Tulalip Tribes [write] to support the nomination of [Bill Myers]. . . . We find that he has a balanced record [of defending] the interest of Native Americans. The [Ninth Circuit] is in need of an appointment by an individual experienced and knowledgeable in Federal Indian Law.

And the Attorney Generals of South Dakota, North Dakota, Delaware, Hawaii, Nevada, Alaska, Colorado, Idaho, Ohio, Oklahoma, Wyoming, Pennsylvania, Virginia, Utah, and Guam wrote on January 30, 2004:

> As Attorneys General, we observed that Mr. Myers, while dutifully representing his client, the federal government, always maintained an objectivity and practical understanding of the conflicting demands relating to those interests. In our view, his thorough understanding of relevant legal precedents, decisions and key policy interests and his outstanding legal reasoning as Solicitor demonstrate his keen intellect, sound judgment and the skills suitable to the bench. . . . [W]e appear before the Circuit Courts of Appeal with considerable frequency. Clearly, we value judges who display a temperament that is even-handed, respectful and thoughtful—the temperament displayed by Mr. Myers. Mr. Myers would bring to the Ninth Circuit strong intellectual skills, combined with a strong sense of civility, decency and respect for all.

Now, while such endorsements from these types of people—farming and ranching organizations, Indian tribes who do not have ideological axes to grind with the Department of the Interior, and 15 state Attorneys General—may not matter much to Senate Democrats, they do to me, and to most Westerners.

They matter to Senators CRAIG and CRAPO, whose state will effectively lose its representation on the Ninth Circuit by means of a stealth filibuster. This is grossly irresponsible and unworthy of the U.S. Senate. They matter to a majority of Senators who stand ready to vote and confirm Bill Myers to a Ninth Circuit that so badly needs qualified, non-activist judges who respect the law and the Constitution.

Let me just talk about the process here of confirming judges. We have confirmed 198 judges so far, which I might add, is fewer than President Clinton's first term. Yet some of my colleagues think that the constitutional duty to advise and consent has a time clock attached to it and that the time has run out for the Senate to do its duty. I reject this analysis, either that the previous agreement to allow the vote on the 25 judges was the sum total of our work in the Senate; or the notion that judicial nominations cannot be confirmed after some mythical deadline is announced.

There are plenty of examples of confirmations of judges in Presidential election years during the fall, some which occurred after the election was held. Stephen Breyer, confirmed to the First Circuit Court of Appeals, is just one example. I know, I was one who helped bring that about. Under the Senate Democrats theory, the remaining 25 judges pending before the Senate should be dismissed out of hand. This is not logical, nor is it the proper approach to take under the Constitution.

So it appears that the Democrats' newest tool of obstruction takes the form of a stealth filibuster. Sure, we object, my colleagues say, but we are not going to bother to explain to the American people why. To the Senator whose States are in the Ninth Circuit—Senators CRAIG and CRAPO, Senator SMITH, Senator ENSIGN, Senators STEVENS and MURKOWSKI, Senators KYL and MCCAIN, Senator BURNS—guess what? You are told by Senate Democrats that they are not going to allow you to vote on this nominee, that you need for the Ninth Circuit, and that the position papers of the extreme environmental groups that have distorted the record of and attacked Bill Myers for over a year should adequately explain their opposition and basis for refusing a vote.

Yesterday, I said that Senators should ask themselves, Is this vote on Bill Myers really about Bill Myers? It is clear that this cloture vote, this denial of an up-or-down vote, is not about Bill Myers. It is, in fact, nothing more

than a reflection of special interest group disdain for policies favored by farmers, ranchers, miners, the Bush Interior Department, or anyone else who advocates balanced uses of Federal lands. It is, as Senator SESSIONS put it so well yesterday afternoon, a demonstration of the conceit of the elite, that Senate Democrats refuse to allow an up-or-down vote.

Bill Myers has been nominated to the Ninth Circuit, but I want to emphasize that the impact of this vote—or the Democrat minority's obstruction of an up-or-down vote—will be felt not only in the States within the Ninth Circuit, but throughout the West, as Senator ENZI so eloquently emphasized yesterday afternoon.

And it is, quite simply, a slap in the face to those farmers, ranchers, miners, and others who make their livings off of the public and private lands of our Western States to say that because a nominee has represented their interests, he does not even deserve a fair vote in the Senate. And, almost silently now, he is filibustered because he is too extreme to sit on a Ninth Circuit with a demonstrated record of leftist judicial activism.

Such a position is untenable, objectively, and I predict it will play even more poorly in the West. Let me read a recent letter to the editor, which was sent by a representative of South Dakota farmers and ranchers to that State's largest newspapers:

RAPID CITY JOURNAL AND
ARGUS LEADER,
Belle Fourche, SD, July 9, 2004.

SUPPORT NOMINATION

Agriculture producers in South Dakota and throughout our great country need elected representatives who understand our needs and respond to them. An important issue is currently before the U.S. Senate and Sen[ator] Daschle, the nomination of Bill Myers to serve on the Ninth Circuit Court of Appeals. We urge Sen[ator] Daschle to support the interests of South Dakota agriculture producers by allowing an up or down vote on the merits of the nomination on the floor of the Senate.

The Ninth Circuit issues many important decisions on resource use and environmental matters. Much of the opposition to Mr. Myers has been by environmentalists who have not liked his representation of people who make their living from the land in the West, including ranching interests in particular.

South Dakota producers would be well-served by having someone with direct knowledge of their concerns sitting on the Ninth Circuit, helping to set environmental legal policy for the entire country.

We hope Sen[ator] Daschle will hear our call and allow the Myers nomination to come to a full vote in the Senate. We are constantly reminded how powerful the minority leader position is. Bill Myers deserves a vote by the full Senate.

CHANCE DAVIS,
President, South Dakota
Public Lands Council.

Indeed, I do hope that Senate Democrats hear this call. I hope they listened to Senators CRAIG, SESSIONS and ENZI yesterday, when they were too busy to even engage in a reasoned debate about why they insist on obstructing a qualified nominee.

In closing, the Senate should show the Constitution some respect by voting up or down on Bill Myers' nomination. I urge my colleagues to reject the filibuster of judicial nominations now and in the future, reject the smears of the extremist special interest groups who have poisoned this process. I urge my colleagues to support the cloture motion and allow the Senate to do its duty and vote up or down on the nomination.

Mr. President, I see Senator BIDEN is in the Chamber. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Delaware.

Mr. BIDEN. Mr. President, I understand I have roughly 8 minutes; is that correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. BIDEN. Mr. President, I ask unanimous consent that I be granted 2 additional minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BIDEN. I thank the Chair.

RESPONDING TO THE CRISIS IN DARFUR

Mr. BIDEN. Mr. President, Senator DEWINE and I have introduced a bill to address the atrocities and human rights abuses inflicted by the Government of Sudan upon its citizens living in the western region of Darfur.

By now you are aware of the terrible violence being perpetrated against civilians by the Government of Sudan and its allied militias in Darfur, Sudan. As many as 30,000 black Africans have been killed. Rape has routinely been used as a weapon of war by the Sudanese Government's janjaweed militia proxies. The Government of Sudan has obstructed the delivery of humanitarian assistance—as a result, over 300,000 people are expected to die of disease and malnutrution. Entire villages have been razed to the ground. Crimes against humanity have and are taking place with frightening regularity. Any reasonable person would agree that at the very least, we are witnessing ethnic cleansing. However, I believe that what we are actually seeing is genocide, and that the burden of proof should be on those who deny that such is the case.

Secretary of State Powell visited Darfur at the end of June. I applaud him for going. His visit as well as that of United Nations Secretary General Kofi Annan served to shine a much needed international spotlight on Khartoum's brutal actions.

However, I am disappointed in the actions taken by the administration in the wake of the Secretary's visit.

The administration is circulating a draft United Nations Security Council resolution which puts sanctions on the janjaweed. I do not think pursuing a resolution which would impose an arms and travel embargo on the janjaweed will improve the security situation in Darfur. I am sure there must be a strategy behind this resolution, but on its face, it is hard to see. The janjaweed is not a state actor. It is not even an independent actor. It certainly is not accepting arms shipments from foreign governments. The janjaweed is armed and supplied by the Government of Sudan. And last I heard the only place the janjaweed has traveled is across the border into Chad to further harass its victims. I was not aware that militia members applied for visas to do so. So I would like to know what exactly the thought process behind pursuing such sanctions is.

I would also like to know just why the administration does not believe the Genocide Convention has been triggered. Article II of the Convention defines genocide as any of the following acts committed with the intent to destroy, in whole or substantial part, a national ethnic, racial or religious group: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; or forcibly transferring children of the group to another group.

Let's consider what we know to be the case in Darfur and compare it to the criteria set out in the Convention.

Is there an intent to destroy a national ethnic racial or religious group? A U.N. interagency fact finding team found in April that while villages populated by black Africans were destroyed, villages in the same area populated by Arabs were undisturbed. In some cases the villages that were left undisturbed were less than 500 meters away from those that were bombed and burned to the ground, its residents murdered, raped or tortured, its wells poisoned, its food stores and crops destroyed. This seems to me to be a pretty profound indicator that black Africans are being deliberately targeted. The scorched earth policy of the janjaweed makes it virtually impossible for those who live through the attacks to survive. One can reasonably assume that they were not meant to.

We know that the Government of Sudan, through it janjaweed proxies, has murdered an unknown number of people—perhaps 30,000—because of their ethnicity.

We also know that the militia has caused serious bodily and mental harm to black Africans in Darfur. According to the Convention only one or the other is necessary to qualify as genocide, but the janjaweed and the Sudanese military have done both. As a recent Washington Post article points out, the text of which I ask unanimous consent be printed in the RECORD, the janjaweed have engaged in widespread systematic rape in an effort to populate Darfur with Arab babies.

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

[From the Washington Post, June 30, 2004]

'WE WANT TO MAKE A LIGHT BABY'; ARAB MILITIAMEN IN SUDAN SAID TO USE RAPE AS WEAPON OF ETHNIC CLEANSING

(By Emily Wax)

GENEINA, SUDAN, June 29.—At first light on Sunday, three young women walked into a scrubby field just outside their refugee camp in West Darfur. They had gone out to collect straw for their family's donkeys. They recalled thinking that the Arab militiamen who were attacking African tribes at night would still be asleep. But six men grabbed them, yelling Arabic slurs such as ''zurga'' and ''abid,'' meaning ''black'' and ''slave.'' Then the men raped them, beat them and left them on the ground, they said.

''They grabbed my donkey and my straw and said, 'Black girl, you are too dark. You are like a dog. We want to make a light baby,' '' said Sawela Suliman, 22, showing slashes from where a whip had struck, her thighs as her father held up a police and health report with details of the attack. ''They said, 'You get out of this area and leave the child when it's made.' ''

Suliman's father, a tall, proud man dressed in a flowing white robe, cried as she described the rape. It was not an isolated incident, according to human rights officials and aid workers in this region of western Sudan, where 1.2 million Africans have been driven from their lands by government-backed Arab militias, tribal fighters known as Janjaweed.

Interviews with two dozen women at camps, schools and health centers in two provincial capitals in Darfur yielded consistent reports that the Janjaweed were carrying out waves of attacks targeting African women. The victims and others said the rapes seemed to be a systematic campaign to humiliate the women, their husbands and fathers, and to weaken tribal ethnic lines. In Sudan, as in many Arab cultures, a child's ethnicity is attached to the ethnicity of the father.

''The pattern is so clear because they are doing it in such a massive way and always saying the same thing,'' said an international aid worker who is involved in health care. She and other international aid officials spoke on condition of anonymity, saying they feared reprisals or delays of permits that might hamper their operations.

She showed a list of victims from Rokero, a town outside of Jebel Marra in central Darfur where 400 women said they were raped by the Janjaweed. ''It's systematic,'' the aid worker said. ''Everyone knows how the father carries the lineage in the culture. They want more Arab babies to take the land. The scary thing is that I don't think we realize the extent of how widespread this is yet.''

Another international aid worker, a high-ranking official, said: ''These rapes are built on tribal tensions and orchestrated to create a dynamic where the African tribal groups are destroyed. It's hard to believe that they tell them they want to make Arab babies, but it's true. It's systematic, and these cases are what made me believe that it is part of ethnic cleansing and that they are doing it in a massive way.''

Secretary of State Colin L. Powell flew to the capital, Khartoum, on Tuesday to pressure the government to take steps to ease the humanitarian crisis in Darfur. U.S. officials said Powell may threaten to seek action by the United Nations if the Sudanese government blocks aid and continues supporting the Janjaweed. U.N. Secretary General Kofi Annan is due to arrive on Khartoum this week.

The crisis in Darfur is a result of long-simmering ethnic tensions between nomadic cattle and camel herders, who view themselves as Arabs, and the more sedentary farmers, who see their ancestry as African. In February 2003, activists from three of Darfur's African tribes started a rebellion against the government, which is dominated by an Arab elite.

Riding on horseback and camel, the Janjaweed, many of them teenagers or young adults, burned villages, stole and destroyed grain supplies and animals and raped women, according to refugees and U.N. and human rights investigators. The government used helicopter gunships and aging Russian planes to bomb the area, the U.N. and human rights representatives said. The U.S. government has said it is investigating the killings of an estimated 30,000 people in Darfur and the displacement of the more than 1 million people from their tribal lands to determine whether the violence should be classified as genocide.

The New York-based organization Human Rights Watch said in a June 22 report that it investigated ''the use of rape by both Janjaweed and Sudanese soldiers against women from the three African ethnic groups targeted in the 'ethnic cleansing' campaign in Darfur.'' It added, ''The rapes are often accompanied by dehumanizing epithets, stressing the ethnic nature of the joint government-Janjaweed campaign. The rapists use the terms 'slaves' and 'black slaves' to refer to the women, who are mostly from the Fur, Masalit and Zaghawa ethnic groups.''

Despite a stigma among tribal groups in Sudan against talking about rape, Darfur elders have been allowing and even encouraging their daughters to speak out because of the frequency of the attacks. The women consented to be named in this article.

In El Fasher, the capital of North Darfur, about 200 miles east of Geneina, Aisha Arzak Mohammad Adam, 22, described a rape by militiamen. ''They said, 'Dog, you have sex with me,' '' she said. Adam, who was receiving medical treatment at the Abu Shouk camp, said through a female interpreter that she was raped 10 days ago and has been suffering from stomach cramps and bleeding. ''They said, 'The government gave me permission to rape you. This is not your land anymore, abid, go.' ''

Nearby, Ramadan Adam Ali, 18, a frail woman, was being examined at the health clinic. She was pregnant from a rape she said took place four months ago. She is a member of the Fur tribe and has African features.

''The man said, 'Give me your money, slave,''' she said, starting to cry. ''Then I must tell you very frankly, he raped me. He had a gun to my head. He called me dirty abid. He said I was very ugly because my skin is so dark. What will I do now?''

In Tawilah, a village southeast of El Fasher, women and children are living in a musty school building. They said it was too dangerous to leave and plant food.

Fatima Aisha Mohammad, once a schoolteacher, stood in a dank classroom describing what happened to her three weeks ago, when she left the school to collect firewood.

''Very frankly, they selected us ladies and had what they wanted with us, like you would a wife,'' said Mohammad, 46, who has five children. ''I am humiliated. Always they said, 'You are nothing. You are abid. You are too black.' It was disgusting.''

During a recent visit, government minders warned people at the school to stop talking about the rapes or face beatings or death. Minders also were seen handing out bribes to keep women from speaking to foreign visitors. But those at the school spoke anyway. A group of people handed a journalist two letters in Arabic that listed 40 names of rape victims, and wanted the list to be sent to Sen. Sam Brownback of Kansas and Rep. Frank R. Wolf of Virginia, Republicans who were touring the region and pressing the government to disarm the Janjaweed.

''I was sad. I am now very angry. Now they are trying to silence us. And they can't,'' Mohammad said. ''What will people think of all of us out here? That we did this to ourselves? People will know the truth about what is happening in Darfur.''

Later that day in Tawilah's town center, Kalutum Kharm, a midwife, gathered a crowd under a tree to talk about the rapes. Everyone was concerned about the children who would be born as a result.

''What will happen? We don't know how to deal with this,'' Kharm lamented. ''We are Muslims. Islam says to love children no matter what. The real problem is we need security. We don't trust the government. We need this raping to stop.''

Aid workers and refugees in Geneina said that despite an announcement last week by Sudan's president, Lt. Gen. Omar Hassan Bashir, that the Janjaweed would be disarmed, security had not improved. Janjaweed dressed in military uniforms and clutching satellite phones roamed the markets and the fields, guns slung over their shoulders. Last week, the Janjaweed staged a jailbreak and freed 13 people, aid workers said. They also killed a watermelon salesman and his brother because they did not like their prices, family members of the men said.

A government official, speaking with a reporter, described the rapes as an inevitable part of war and dismissed accusations by human rights organizations that the attacks were ethnically based.

In Geneina, two women told their stories while sitting in front of their makeshift straw shelter. One of the women, a thin 19–year-old with dead eyes, moved forward.

''I am feeling so shy but I wanted to tell you, I was raped too that day,'' whispered Aisha Adam, the tears rushing out of her eyes as she covered her face with her head scarf. ''They left me without my clothing by the dry riverbed. I had to walk back naked. They said, 'You slave. This is not your area. I will make an Arab baby who can have this land.' I am hurting now so much, because no one will marry me if they find out.''

Sitting on mats outside the shelter, Sawela Suliman's father talked with village elders about what to do if his daughter became pregnant.

''If the color is like the mother, fine,'' he said as a crowd gathered to listen. ''If it is like the father, then we will have problems. People will think the child is an Arab.''

Then his daughter looked up.

''I will love the child,'' she said, as other women in the crowd agreed. ''But I will always hate the father.''

Then the rains came. They pounded onto the family's frail shelter, turning their roof into a soggy and dripping clump of straw. Suliman started to shiver as the weather shifted from steaming hot to a breezy rain. She will no longer leave the area of her hut to collect straw. She will stay here, hiding as if in prison, she said, and praying that she is not pregnant.

Mr. BIDEN. Mr. President, in the article, which appeared on the front page of the Post on Wednesday, June 30, a woman tells of how she and other women were gang raped by six janjaweed militia men as they went out to gather fuel for fire. ''They grabbed my donkey and my straw and said 'Black girl, you are too dark. You are like a dog. We want to make a light baby. . . .' '' They said ''You get out of this area and leave the child when it's made.'' If that isn't inflicting mental and bodily harm on a group, what is?

We know for a fact that the Government of Sudan has prevented the delivery of humanitarian aid such that, as I

mentioned before, over 300,000 people—black Africans—will probably die. I would say that qualifies as deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

I can not speak to the final two elements. I have not yet heard that the Government or janjaweed have imposed measures intended to prevent births within the group or forcibly transferred children of the group to another group. However, the Convention does not require that all five acts be committed. Any one of the acts qualify as genocide.

Let me make one thing perfectly clear. I completely agree with the Secretary Powell that we must urgently meet the needs of the people of Darfur regardless of whether what is happening is genocide. And the Genocide Convention makes clear that we are to prevent, suppress and punish the crime. So whether one believes what is happening is actual or potential genocide, we are obligated to act.

However, I also believe it is imperative that we acknowledge what is going on. Failure to call the crime what it is and respond fosters a sense of impunity, and emboldens the bad actors in other parts of the world to carry out these sorts of atrocities. I do not believe that the argument I and others are making about whether or not what is going on is genocide is academic, or misses the point about the necessity of helping those suffering in Sudan.

U.N. Secretary General Kofi Annan visited Darfur at the end of June as well. The United Nations and the Government of Sudan issued a joint communique in which the Government agreed to allow unfettered access of assistance and to disarm the janjaweed. The bill Senator DEWINE and I have introduced puts pressure on Khartoum to make good on the promises it has made.

The bill requires the President to certify 30 days from its enactment and every 90 days thereafter whether or not the Government of Sudan has made credible, sincere and genuine efforts to demobilize and disarm the janjaweed, and allowed truly free access to Darfur, without using red tape as a way to prevent aid delivery.

The Government is subject to three different types of sanctions 120 days after the bill becomes law unless that certification is made. First, senior members of the military and Government in Khartoum as well as their families will have any U.S. held assets frozen, and be denied entry into the United States. Second, prohibitions on assistance in this year's appropriations bill will remain in place beyond the end of the fiscal year.

Finally, unless the President issues this certification, the sanctions that are part of the original Sudan Peace Act are triggered: Our representatives to the multilateral development banks are directed to use their voice and vote to oppose any loans to Sudan. The President is asked to consider downgrading our diplomatic representation to Sudan, and directed to seek a UN Security Council Resolution to impose an arms embargo on Sudan and to deny Khartoum oil revenue.

As a further means of pressuring the Government of Sudan, the bill takes the extra steps of prohibiting the normalization of relations between the Government of Sudan and the United States and the disbursement of any U.S. funds to support a comprehensive north-south agreement unless the President certifies in six months the Government of Sudan has stopped attacking civilians, demobilized and disarmed the janjaweed, ceased harassing aid workers, and cooperated with the deployment of the African Union ceasefire monitoring team. And for every 6 months the government of Sudan continues its reign of terror in Darfur, the amount that otherwise would have been available to support the north-south peace agreement—$800 million—is reduced by $50 million.

Perhaps the most important piece of this bill is an authorization for $200 million to provide much needed relief for the people of Darfur. The money is offered with no strings attached. The needs on the ground in Darfur and Chad are urgent and we must respond quickly and robustly without conditions or caveats.

I hope my colleagues will support this bill, as it provides both help for Sudanese civilians affected by war in western Sudan and an incentive for Khartoum to stop the violence and allow the international community to assist the victims of what our own Government has called the world's worst humanitarian crisis.

I yield the floor.

Mr. WYDEN. Mr. President, the United States Senate has now confirmed more than 170 of President Bush's judicial nominees. The nomination the Senate is considering today—that of William G. Myers III for a lifetime seat on the United States Court of Appeals for the Ninth Circuit—is different from many because of both the background and experience of the nominee and the direct and lasting influence the nominee's decisions will have on Oregon and her citizens. This nominee's rulings will affect the fate of environmental and other safeguards in nine western States, including Oregon.

After a career as a grazing and mining industry lobbyist, Mr. Myers worked as Solicitor General for the Department of Interior, responsible for Indian Affairs and most Federal lands. In his position at the Department of Interior, Mr. Myers continued to advocate for his former clients, overturning precedent to allow mining on sacred Indian grounds and rendering a decision in direct response to a case he participated in as a lobbyist. Not only has Mr. Myers refused to recuse himself from cases where there may be a conflict of interest, he has limited judicial experience. He received a partial Not Qualified rating from the American Bar Association and has minimal courtroom experience. He has never tried a jury case and never been involved as counsel in any criminal ligation. Unfortunately, Mr. Myers has demonstrated neither the experience nor judicial temperament to qualify him for this position.

As a result of his performance as Solicitor General, at least 180 groups have come out in opposition to his nomination. Among those opposing his nomination are every major tribe in this Nation—including the Confederated Tribes of Siletz Indians, the Cow Creek, Warm Springs, and Umatilla tribes all from Oregon, and the National Congress of American Indians, which represents over 250 tribes nationwide, as well as Oregon groups such as the Oregon Natural Resources Council. The Oregonian just published an editorial today, which may have said it best: ''Myers' anti-environmental activism by itself shouldn't disqualify him. The problem—and this gets back to his lack of judicial experience—is that he has no track record whatsoever to show how he would separate his ideology from his interpretation of the law on the Nation's second-highest court.''

Mr. President, I take very seriously the Senate's role to advise and consent to the President's nominations, and in this instance, the facts require that I withhold my consent on this nominee.

Mrs. FEINSTEIN. Mr. President, I rise to urge my colleagues to oppose the nomination of William Myers to serve on the U.S. Court of Appeals for the Ninth Circuit, and to vote no on the motion to close debate. I came to my decision after a careful review of Mr. Myers' professional record. That review has convinced me that he is not the proper person to serve on this highly influential Federal court of appeals, which oversees all Federal litigation in my home State of California.

I met with William Myers and I found him to be an extremely polite and personable man. But I have serious reservations about whether he has the professional qualifications to serve on the Ninth Circuit. I also have serious doubts about his ability to rule on cases, particularly environmental and land-use cases, in an impartial, even-handed way.

A position on the appellate court should be reserved for our Nation's best legal minds and most accomplished attorneys. But, the American Bar Association gave Mr. Myers a partial ''not qualified'' rating. A key factor was his lack of legal experience.

This nominee has little litigation experience in either State or Federal court. By his own account, he has taken only a dozen cases to verdict—and six of those occurred before 1985 when he was a newly minted lawyer. He has never served as a counsel in criminal litigation. Even as Solicitor of the Department of Interior, Myers had no role in writing legal briefs.

Mr. Myers has spent a large part of his legal career as a lobbyist for cattle

and grazing interests. Attorneys are obligated to zealously represent their clients and there is nothing wrong with this representation. But, I am troubled by a number of extreme comments that he made as an advocate.

For example, in a 1996 article, Myers equated Federal management of rangelands with the ''tyrannical actions of King George'' against the American colonists. According to Myers, these tyrannical practices included:

> over-regulation and efforts to limit [ranchers'] access to federal rangelands, revoke their property rights, and generally eliminate their ability to make a living from the land.

Source: ''Western Ranchers Fed Up with the Feds,'' Forum for Applied Research and Public Policy, winter 1996.

Equating Federal rangeland policy with the tyrannical policies that sparked the American revolution is strong language. But when asked by Senator LEAHY to back up his claim, Myers could not come up with any examples.

Similarly, after the California Desert Protection Act was passed, he described the law as ''an example of legislative hubris.'' The source is a book chapter: ''Farmers, Ranchers, and Environmental Law,'' 1995, at page 209. As the author of the California Desert Protection Act, I was quite struck by this statement. Myers himself has acknowledged his ''poor choice'' of words, but this is one more piece of evidence that Mr. Myers can be intemperate and extreme.

The California Desert Protection Act created the Joshua Tree National Park, the Death Valley National Park, and the Mojave National Preserve. These are among our Nation's environmental jewels.

In total, the act set aside 7.7 million acres of pristine California wilderness, 5.5 million acres as a national park preserve, and provided habitat for over 760 different wildlife species. It has provided recreation and tourism for over 2.5 million people, provided more than $237 million in sales, more than $21 million in tax revenue, and more than 6,000 new jobs. This is what Myers called ''legislative hubris.''

Similarly, in a 1994 article, entitled ''Having Your Day in Court,'' Myers railed against ''activist'' judges. He wrote of environmental groups:

> They have aggressively pursued their goals before friendly judges who have been willing to take activist positions and essentially legislate from the bench.

Source: National Cattlemen Magazine, November/December 1994, at page 34.

To illustrate his argument, he wrote:

> No better example can be found than that of wetlands regulation. The word ''wetlands'' cannot be found in the Clean Water Act. Only through expansive interpretation from activist courts has it come to be such a drain on the productivity of American agriculture.

When I and other Senators pointed out that, 10 years prior to his article, the Supreme Court had unanimously upheld the application of the Clean Water Act to protect wetlands, Myers backtracked and acknowledged Supreme Court precedent. He further acknowledged that he could not recall any specific cases that would justify the argument he made in his article.

Similarly, Myers, in another article, wrote that environmental groups are ''mountain biking to the courthouse as never before, bent on stopping human activity wherever it may promote health, safety, and welfare.'' Source: ICA Line Rider, February, 1998. When queried about these statements, Myers again backtracked. And he has argued that he was merely the zealous lobbyist taking tough positions on behalf of his client.

There is one area of Myers' career where he can't attribute his words and actions solely to his role as a legal advocate. It is Myers' troubling body of work as Solicitor of the Department of Interior in the Bush administration. His record in this position provided for me the ''tipping point'' against his nomination.

As Solicitor of Interior, Myers' client was the American public. He had a duty to carry out his work in an impartial fashion just as he would if confirmed to be a Ninth Circuit judge. Nevertheless, on multiple occasions as Solicitor, Myers engaged in actions that raised questions about his impartiality and professional qualifications.

One of Myers two formal opinions as Solicitor involved the proposed Glamis Gold Mine in California.

During the Clinton administration, then-Solicitor Leshy wrote an opinion that led to the denial of an industry proposal which would have carved an 880-foot deep, mile-wide, open-pit gold mine out of 1,600 acres of ancestral tribal land in Imperial County, CA.

The Leshy opinion came out of an exhaustive review process spanning 5 years, three environmental documents, as well as several formal Government-to-Government consultations with the affected tribe, the Quechan Tribe. Within months of becoming Solicitor, Myers reversed the Leshy opinion.

In coming to his decision, Myers met personally with industry representatives, but not with the affected tribe. This one-sided dealing cannot be justified or explained away—particularly because Myers was mandated by law to engage in Government-to-Government consultation with the tribes and to protect sacred Native American religious sites.

Given that Myers would not even meet with the tribes to hear their point of view, it was not surprising that when Myers subsequently issued an opinion in favor of the industry, the District judge determined that Myers ''misconstrued the clear mandate'' of the applicable environmental law.

In his only other major opinion as Solicitor, Myers reversed a Clinton administration regulation on grazing permits challenged by his former clients, the Public Lands Counsel.

The issue involved whether environmental groups such as the Grand Canyon Trust could buy grazing permits from willing sellers in order to retire them. Myers, contrary to his strong support for property rights and free-market principles in other areas of Government regulation, found such a practice illegal.

Further, as the Los Angeles Times has reported, Solicitor Myers recommended that California State Representatives HERGER and DOOLITTLE introduce a private relief bill giving $1 million worth of public land in Marysville, CA, to a private firm. Source: ''Interior Attorney Pushed Land Deal,'' Los Angeles Times, March 8, 2004, at B1.

The land, called locally the Yuba Goldfields, consists of 9,670 acres of gravel mounds and ponds created by hydraulic mining during the 19th century. According to the Bureau of Land Management, the land contains sand and rock that could be worth hundreds of millions of dollars for construction projects.

It turns out the companies seeking legislative relief did not have a valid claim to the land and had never even paid taxes on the property. And since 1993, the property had been carried on the county's tax records as public lands.

I am concerned that Myers committed the Department to support a bill without first doing the basic research needed to evaluate the issue, like consulting with local Bureau of Land Management officials.

I would like to comment briefly on one other area. Mr. Myers' nomination is to the Ninth Circuit. Some might argue that circuit could use some shaking up. But criticisms along those lines of the Ninth Circuit are not justified and do not do justice to the Ninth Circuit's judges.

This is not the time or the place for a long discussion of the Ninth Circuit generally. But I do want to cite just a few statistics to show that the Ninth Circuit's decisions are well within the mainstream of other circuit courts.

From 1994 to 2002, nationwide, the Supreme Court granted certiorari in only .23 percent of all Federal appellate cases. The Ninth Circuit had numbers that were a bit higher for that time period; the Supreme Court granted certiorari in .37 percent of all Ninth Circuit cases for those years. But while higher than average, this was entirely within the mainstream of other circuit courts. The range among circuits for that time period ranged from .13 percent of all Eleventh Circuit cases, to .5 percent for all DC Circuit cases. The Ninth Circuit is clearly in the mainstream of how its cases are treated by the Supreme Court.

Based on Myers' record, over 170 national groups have decided to oppose his nomination, including organizations that usually don't get involved in nominations. The National Congress of American Indians, NCAI, a coalition of

more than 250 tribal governments, is opposing the nomination and they previously have not weighed in on any Bush-nominated judges. The National Wildlife Federation, which has never in its 68-year history opposed a judicial nominee, opposes Myers.

In closing, I would offer the observations of Joseph Sax, a nationally renowned professor of environmental and natural resources law at the Boalt Hall, U.C. Berkeley, who is familiar with Myers' work.

Sax writes:

I do strongly believe that we are entitled to have persons of professional distinction appointed to important posts such as that of the U.S. Court of Appeals. Neither based on his experience as a practicing lawyer, nor while serving as Solicitor at Department of Interior has Myers distinguished himself, nor has he made any significant contributions to the law in his writings. . . . We can do much better.

Given Myers unremarkable record and the serious questions about his capability to judge cases impartially, I do not believe we should confirm him to the Ninth Circuit. So I will vote nay.

Mr. FEINGOLD. Mr. President, I oppose the nomination of William G. Myers to the Ninth Circuit Court of Appeals. After attending the hearing on his nomination, listening to his testimony, and reviewing his responses to my written questions, I am not persuaded that Mr. Myers can set aside his personal views and objectively evaluate cases that come before him. Many times during the nomination hearing, Mr. Myers simply evaded or refused to answer questions that were posed to him, claiming that he could not comment on an issue that could come before him if he is confirmed.

This was not the approach taken by at least some of President Bush's nominees. Then-Professor, now-Judge Michael McConnell, for example, was forthcoming in his testimony and answers to written questions. He convinced me in his hearing that he would put aside his personal views if he were confirmed to the bench. Mr. Myers did not.

Since Mr. Myers has never served as a judge, his published articles, his past legal work, his legal opinions at the Department of the Interior, and his testimony before the Judiciary Committee are all we have to assess his legal philosophy and views. This nominee did not simply make a stray comment that can be interpreted as indicating strong personal disagreement with our nation's environmental laws; he has a long record of extreme views on the topic.

Mr. Myers has called the Clean Water Act an example of ''regulatory excess.'' He has stated that critics of the administration's policies are the ''environmental conflict industry.'' He has stated that conservationists are ''mountain biking to the courthouse as never before, bent on stopping human activity wherever it may promote health, safety, and welfare.'' He even compared the management of public lands to King George's ''tyrannical'' rule over American colonies.

Over 175 environmental, Native American, labor, civil rights, women's rights, disability rights, and other organizations oppose the nomination of Mr. Myers. This opposition speaks volumes about the concern that many potential litigants have about his views on a diverse range of issues that would come before his court. Rather than explaining what his views were during the nomination hearing or in responses to follow-up questions, Mr. Myers repeatedly ducked questions posed by me and my colleagues.

For example, during the hearing Mr. Myers was asked to identify which regulations he considered to be ''tyrannical.'' After pointing out that he wasn't criticizing Government employees, which obviously wasn't the question, Mr. Myers finally identified a previous Federal rangeland policy. Yet, when pressed, Mr. Myers would not say that he personally believed these regulations were unneeded, but that he was merely ''advocating on behalf of my clients.'' This is what all nominees say, of course, when challenged about past statements made on behalf of clients, but since Mr. Myers has never been a judge or a law professor, we have no other record to evaluate. And since he was repeatedly unwilling to tell us about his personal views in his hearing, we certainly cannot ignore his previous published statements on important legal issues that he will be called upon to decide.

Mr. Myers's views on the jurisdiction of Federal environmental laws, which he has called ''top down coercion,'' also concern me. Mr. Myers authored a Supreme Court amicus brief on behalf of the National Cattlemen's Beef Association and others in an important case dealing with the jurisdiction of the Clean Water Act, Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers. The SWANCC case involved a challenge to the Federal Government's authority to prevent waste disposal facilities from harming waters and wetlands that serve as vital habitats for migratory birds. Mr. Myers argued in this brief that the commerce clause does not grant the Federal Government authority to prevent the destruction and pollution of isolated interstate waters and wetlands. The Department of Justice, on behalf of the Army Corps and EPA, has filed approximately 2 dozen briefs in Federal court since the SWANCC decision. DOJ has consistently argued that the Clean Water Act (CWA) does not limit coverage of the Clean Water Act to navigable-in-fact waters.

When I asked Mr. Myers about his view of the Clean Water Act, Mr. Myers would not say whether he agrees with this administration's consistent interpretation of the SWANCC case. He would not provide any information on how he reads the Supreme Court's SWANCC decision other than saying that it is ''binding precedent'', nor would he state what waters, if any, should not receive Federal Clean Water Act protection post-SWANCC. His refusal to respond to these questions gives me pause because of a recent Ninth Circuit decision that ruled that the SWANCC decision should be read narrowly and that wetlands, streams and other small waters remain protected by the statute and implicitly that the rules protecting those waters are constitutional. While Mr. Myers indicated that he would follow this Ninth Circuit precedent, he refused to elaborate on his views on this crucial issue.

In follow-up questions, I also asked Mr. Myers about a 1994 article he wrote for the National Cattlemen Beef's Association, which he also represented in the SWANCC case. Myers wrote that environmental organizations have:

aggressively pursued their goals before friendly judges who have been willing to take activist positions and essentially legislate from the bench. No better example can be found than that of wetlands regulation.

Mr. Myers argued:

The word ''wetlands'' cannot be found in the Clean Water Act. Only through expansive interpretation from activist courts has it come to be such a drain on the productivity of American agriculture.

Mr. Myers' answers to my questions about this article were not forthcoming. Mr. Myers would not list any of the cases he was referring to in that article or any cases of which he had subsequently become aware in which there has been an ''expansive interpretation from activist courts'' of ''wetlands regulation.'' Nor could he provide me with his analysis of United States v. Riverside Bayview Homes, Inc., the 1985 case in which the United States Supreme Court unanimously upheld the Reagan administration's application of the Clean Water Act to protect wetlands. Mr. Myers stated that he considered the case to be binding precedent, which of course it is, but that doesn't shed much light on his views on the Clean Water Act.

I am also deeply troubled by Mr. Myers's record as Solicitor General at the Department of the Interior. During his tenure as the chief lawyer for the Department, Mr. Myers authored a very controversial Solicitor's opinion, and approved an equally controversial settlement. That Solicitor's opinion overturned a previous ruling regarding the approval of mining projects and greatly limited the authority of the Interior Department to deny mining permits under the Federal Land Policy Management Act—FLPMA.

FLPMA amends the Mining Law of 1872 in part by requiring that:

in managing public land the Secretary shall, by regulation or otherwise take any action necessary to prevent the unnecessary or undue degradation of public lands.

In the Solicitor's opinion, Mr. Myers interpreted this law to mean that the Government could only deny a project to prevent unnecessary and undue degradation of public lands. Thus, if the

proposed mining activity is ''necessary,'' then Mr. Myers declared that the Government would have no authority to prevent a mine from going forward, even if it would harm sacred Native American grounds, historic sites, or environmentally sensitive areas. This legal opinion interpreting DOI regulations is one of the only guides we have to evaluate how a Judge Myers would interpret statutes

Last year, a Federal court found that Mr. Myers's opinion

misconstrued the clear mandate of FLPMA, which by its plain terms vests the Secretary of the Interior with the authority—indeed the obligation—to disapprove mines that ''would unduly harm or degrade the public land.''

In response to questions posed about this opinion at the hearing, Mr. Myers could not adequately explain his statutory interpretation of ''unnecessary or undue,'' nor could he articulate his rationale for finding that the word ''or'' in the statute actually meant ''and.''

After Myers's opinion, Secretary Norton approved the mining permit for the 1600-acre cyanide heap-leaching Glamis gold mine located on sacred tribal lands. Tribal leaders have called the Myers' legal opinion and the resulting decision to approve the Glamis mine ''an affront to all American Indians.'' The National Congress of American Indians, which includes more than 250 American Indian and Alaska Native tribal governments, formally opposes the Myers nomination.

I have discussed my concerns about this nominee at some length because I wanted to show that my opposition to Mr. Myers is not based on a single intemperate remark he has made as an advocate. I simply am not convinced that Mr. Myers will put aside his personal policy views and fairly interpret and apply the law as passed by Congress. He has shown a willingness to disregard clear statutory language as Solicitor General of the Department of the Interior.

It is not enough for Mr. Myers to pledge that he will follow Supreme Court precedent. As we all know, the Supreme Court has not answered every legal question. Circuit court judges are routinely in the position of having to address novel legal issues. Mr. Myers's writings and speeches raise the question of whether he has prejudged many important legal questions. His answers to committee questions did not satisfy me that he has not. I will vote ''No'' on the nomination.

I yield the floor.

Mr. JEFFORDS. Mr. President, I rise today to express my opposition to the nomination of William G. Myers III to the Ninth Circuit Court of Appeals.

Looking over Mr. Myers record, it is clear that we do not see eye-to-eye on environmental policy. He once complained that the ''federal government's endless promulgation of statutes and regulations harm the very environment it purports to protect.'' Mr. Myers believes that the Endangered Species Act and the Clean Water Act's wetlands protections are examples of ''regulatory excesses.'' He has also compared the Government's management of public lands to King George's rule over the American colonies.

But policy disagreements alone are not enough to disqualify an individual from serving on our Nation's lower courts. I dare say that there has not been a judge confirmed during my almost 16 years in the Senate where the nominee and I have agreed on all issues. I believe the same could be said by any Senator who has ever served in the Senate.

For me to oppose a judicial nomination there needs to be more than just a disagreement on policy; there needs to be an issue concerning judicial temperament or competence. When reviewing the record compiled on Mr. Myers by the Judiciary Committee, I do believe there are serious deficiencies with this nomination, beyond a disagreement on policy, and I must oppose it.

First, Mr. Myers has very little litigation experience, a critical factor for serving on the circuit court level. In fact, he has never been a judge, nor has he participated in a jury trial, and only rarely has he participated in a nonjury trial. He has never been a law professor, and he has written only a few law review articles. Some candidates who I have supported in the past have lacked one kind of experience—being a judge, professor, or prolific writer—but have compensated for that gap with strength in other areas. Mr. Myers' resume, however, does not show any other such compensatory experience.

I am also greatly concerned that Mr. Myers' past actions bring into question his ability to separate his strong beliefs from his judicial duty to rule dispassionately on the law. This is a critical trait for any judge, at any level of the judiciary, and one that appears to be lacking in this nominee. For example, when he was the Interior Department Solicitor, which is the chief lawyer for the Department, he was sworn to defend the public interest and enforce Federal land regulations. However, in many actions taken by Mr. Myers, he used his position to weaken environmental regulations to the benefit of his former mining and grazing industry clients. This is a strong indication of his inability to separate his beliefs from his duty as a judge, and he must not be allowed to carry that to the Ninth Circuit Court of Appeals.

For those reasons I will oppose his nomination. In addition, as the ranking member of the Senate Environment and Public Works Committee, I am distressed that the majority leadership has decided to use valuable floor time to debate a nominee with horrible environmental perspectives and no chance at confirmation, while failing to take action on many important environmental issues.

We should be enacting comprehensive power plant antipollution legislation. We should be looking for new opportunities to improve the efficiency of our cars, homes, and buildings to help curb air pollution and reduce global warming. We should pass standards to improve reliable delivery of electricity. We should agree to produce more renewable motor fuels that meet Federal Clean Air requirements. We should build a pipeline to bring needed natural gas from Alaska to the lower 48 States. We should end manipulative electricity marketing practices that gouge our consumers. Finally, we should expand our use of renewable energy. We could do all these things, which would provide more energy for our country, and do them with substantial Senate support rather than debate a nomination that does not have the support necessary to be confirmed.

We also have failed to ensure that the United States continues to exercise leadership in multilateral efforts to protect the global environment. Even though the United States led the way in negotiating and signing several important international environmental treaties, we are not yet a party to these treaties because of a failure to pass necessary implementing legislation. The Law of the Sea Treaty is a perfect example. The Stockholm Convention on Persistent Organic Pollutants is, unfortunately, another.

These are some of the important environmental issues the Senate should be spending its precious remaining time on, and not on divisive nominees who have no chance for confirmation.

Mr. LEAHY. Mr. President, earlier today I discussed my concerns about the nomination of William Myers to a lifetime job as a judge on the U.S. Court of Appeals for the Ninth Circuit. Before we vote on the motion of Republican Senators to invoke cloture on this nomination, I would like to highlight a few things.

This nomination was reported out of the Judiciary Committee on April Fool's Day over the objections of every single Democratic member of the committee.

The Republican majority has failed to bring this nomination up for a vote during the past 4 months, knowing that Mr. Myers is strongly opposed by the widest coalition of citizen groups that have ever opposed a circuit court nominee in U.S. history. Suddenly last Friday, Republicans filed their cloture motion to end a debate that had not even begun about why President Bush nominated such an anti-environment activist for a judgeship. They set debate for a time they knew few were scheduled to be here on such short notice. It seems that they are afraid of a robust and thorough debate on the merits, or lack of merit, of this nomination but they are eager to try to create a political issue out of it.

I do not think it is too skeptical to suggest that Republicans are bringing this nomination up now only to try to politicize the judicial nominations issue further in advance of the Presidential nominating conventions. This

is the partisan game plan proposed by the rightwing editorial page of the Washington Times and White House and rightwing advocacy groups such as the Committee for Justice. The White House and its Republican friends in this body should stop playing politics with these lifetime jobs as judges. Stop playing politics with our courts. Stop proposing extremists for our Federal bench. Stop trying to remake the Federal judiciary from an independent branch of Government into just another wing of the Republican Party.

We have stopped only a handful of this President's most extreme judicial nominees, even though Republicans blocked more than 60 of President Clinton's judicial nominees from getting an up-or-down vote. Republicans blocked nearly 10 times as many of President Clinton's moderate and well-qualified judicial nominees. Democrats have been judicious and sought to check only the worst nominations President Bush has proposed. This nomination is one of the most controversial and divisive, and the worst choice in terms of environmental protections and policy. It is so obvious he was chosen with the hope that he will continue to help roll back protections for clean water, clean air, and endangered ecosystems from the judicial bench.

Mr. Myers was picked to be a lifetime-appointed judge because for most of his working life he has been a strident opponent of environmental laws. The nomination of this industry lobbyist who has barely been inside a courtroom exemplifies the revolving door between corporate interests and the Bush administration. It is no wonder that his confirmation is opposed by more than 180 environmental, tribal, labor, civil rights, disability rights, women's rights and other citizen groups. I ask unanimous consent to have a list of those opposing this nomination printed in the RECORD.

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

LETTERS OF OPPOSITION TO THE NOMINATION OF WILLIAM G. MYERS III—NOMINEE TO THE NINTH CIRCUIT COURT OF APPEALS

PUBLIC OFFICIALS

Senator James M. Jeffords, D–VT.

Members of Congress: George Miller, CA–7 (D); Peter A. DeFazio, OR– (D); Xavier Becerra, CA–31 (D); Luis V. Gutierrez, IL–4 (D); Jane Harman, CA–36 (D); Tom Lantos, CA–12 (D); Ed Pastor, AZ–4 (D); Nancy Pelosi, CA–8 (D); Raul Grijalva, AZ–7 (D); Earl Blumenauer, OR–3 (D); Grace F. Napolitano, CA–38 (D); Adam Smith, WA–9 (D); Anna G. Eshoo, CA–14 (D); Susan A. Davis, CA–53 (D); Dennis A. Cardoza, CA–18 (D); Jay Inslee, WA–1 (D); Zoe Lofgren, CA–16 (D); Bob Filner, CA–51 (D); Henry A. Waxman, CA–30 (D); Joe Baca, CA–43 (D); Linda T. Sánchez, CA–39 (D); Lucille Roybal-Allard, CA–34 (D); Maxine Waters, CA–35 (D); Jim McDermott, WA–7 (D); Barbara Lee, CA–9 (D); Brad Sherman, CA–27 (D); Ellen O. Tauscher, CA–10 (D); Hilda L. Solis, CA–32 (D); Jose E. Serrano, NY–16 (D); Lois Capps, CA–23 (D); Lynn C. Woolsey, CA–6 (D); Michael M. Honda, CA–15 (D); Mike Thompson, CA–1 (D); Robert T. Matsui, CA–5 (D); Pete Stark, CA–13 (D); Neil Abercrombie, HI–1 (D); Rick Larsen, WA–2 (D); Diane E. Watson, CA–33 (D); Sam Farr, CA–17 (D); Juanita Millender-McDonald, CA–37 (D); Adam B. Schiff, CA–29 (D); and Loretta Sanchez, CA–47 (D).

Members of the California State Senate: John Burton, President Pro Tempore (D-San Francisco); Shiela Kuehl, Chair, Senate Natural Resources Committee (D-Los Angeles); and Byron Sher, Chair, Senate Environmental Quality Committee (D-Stanford).

GROUPS

Affiliated Tribes of Northwest Indians; AFL-CIO; Ak-Chin Indian Community, Maricopa, AZ; Bear River Band of Rohnerville Rancheria Tribe, Loleta, CA; Big Sandy Rancheria, Auberry, CA; Cabazon Band of Mission Indians, Indio, CA; Cachil Dehe Band of Wintun Indians, Colusa, CA; California Nations Indian Gaming Association; California Rural Indian Health Board, Sacramento, CA; Circle Tribal Council, Circle, AK; Confederated Tribes of Siletz Indians, Siletz, OR; Delaware Tribe of Indians, Bartlesville, OK; Elko Band Council, Elko, NV (Te-Moak Tribe of Western Shoshone Indians of Nevada); Fallon Paiute-Shoshone Tribe, Fallon, NV; Friends of the Earth; Habematolel Pomo of Upper Lake, Upper Lake, CA; Ho-Chunk Nation, Black River Falls, WI; Hopland Band of Pomo Indians, Hopland, CA; Inaja Cosmit Band of Mission Indians; Inter Tribal Council of Arizona; Jamestown S'Klallam Tribe, Sequim, WA; Justice for All Project; Kalispel Tribe of Indians, Usk, WA; Kaw Nation, Kaw City, OK; Leadership Conference on Civil Rights; Mesa Grande Band of Mission Indians; Mooretown Ranchiera (Concow-Maida Indians); NAACP; National Congress of American Indians; National Senior Citizens' Law Center; National Wildlife Federation; Nightmute Traditional Council, Nightmute, AK; Oglala Sioux Tribe, Pine Ridge, SD; Paskenta Band of Nomlaki Indians, Orlando, CA; Passamaquoddy Tribe, Perry, ME; Public Employees for Environmental Responsibility; Pueblo of Laguna, Laguna, NM; Quechan Indian Tribe, Ft. Yuma Reservation; Ramona Band of Cahuilla Mission Indians, Anza, CA; Redding Rancheria Tribe, Redding, CA; San Pasqual Band of Mission Indians, San Diego County, CA; Santa Ysabel Band of Diegueno Indians, Tracts 1, 2, and 3; Seminole Nation of Oklahoma; Timbisha Shoshone Tribe of the Western Shoshone Nation, Bishop, CA; U ta Uta Gwaita Paiute Tribe, Benton, CA; Viejas Band of Kumeyaay Indians, Alpine, CA; and Winnebago Tribe of Nebraska

Coalition Letter from Civil, Women's and Human Rights Organizations: Advocates for the West; Alliance for Justice; American Rivers; Americans for Democratic Action; Clean Water Action; Committee for Judicial Independence; Defenders of Wildlife; EarthJustice; Endangered Species Coalition; Friends of the Earth; Leadership Conference on Civil Rights; Mineral Policy Center; NARAL Pro-Choice America; National Abortion Federation; National Environmental Trust; National Organization for Women; National Resources Defense Council; The Ocean Conservancy; Public Employees for Environmental Responsibility; Sierra Club; and The Wilderness Society.

Coalition Letter from Civil, Disability, Senior Citizens', Women's, Human rights, Native American, and Environmental Rights Organizations:

NATIONAL GROUPS

ADA Watch/National Coalition for Disability Rights; Alliance for Justice; American Lands Alliance; American Planning Association; American Rivers; Americans for Democratic Action; Association on American Indian Affairs; Campaign to Protect America's Lands; Citizens Coal Council; Clean Water Action; Coast Alliance; Community Rights Counsel; Defenders of Wildlife; Disability Rights Education and Defense Fund; Earth Island Institute; Earthjustice; Endangered Species Coalition; Environmental Law Association; Environmental Working Group; First American Education Project; Forest Service Employees for Environmental Ethics; Friends of the Earth; Indigenous Environmental Network; Leadership Conference on Civil Rights; League of Conservation Voters; Mineral Policy Center/Earthworks; The Morning Star Institute; National Association of the Deaf; National Congress of American Indians; National Employment Lawyers Association; National Environmental Trust; National Forest Protection Alliance; National Organization for Women; National Partnership for Women and Families; National Senior Citizens Law Center; National Tribal Environmental Council; Natural Heritage Institute; Natural Resources Defense Council; New Leadership for Democratic Action; Legal Momentum, formerly NOW Legal Defense and Education Fund; The Ocean Conservancy; People For the American Way; Progressive Jewish Alliance; PEER (Public Employees for Environmental Responsibility); REP America (Republicans for Environmental Protection); Sierra Club; Society of American Law Teachers; U.S. Public Interest Research Group; The Wilderness Society.

REGIONAL, STATE AND LOCAL GROUPS

Action for Long Island; Advocates for the West; Alaska Center for the Environment; Alaska Coalition; Alaska Rainforest Campaign; Arizona Wilderness Coalition; As You Sow Foundation; Audubon Society of Portland; Buckeye Forest Council; Cabinet Resource Group; California Employment Lawyers Association; California Nations Indian Gaming Association; California Native Plant Society; Californians for Alternatives to Toxics; California Wilderness Coalition; Cascadia Wildlands Project; Center for Biological Diversity; Citizens for the Chuckwalla Valley; Citizens for Victor!; Clean Water Action Council; Coast Range Association; Committee for Judicial Independence; Cook Inlet Keeper; Desert Survivors; Endangered Habitats League; Environmental Defense Center; Environmental Law Caucus, Lewis and Clark Law School; Environmental Law Foundation; Environmental Law Society, Vermont Law School; Environmental Protection Information Center; Environment in the Public Interest; Escalante Wilderness Project; Eugene Free Community Network; Florida Environmental Health Association; Forest Guardians; The Freedom Center; Friends of Arizona Rivers; Friends of the Columbia Gorge; Friends of the Inyo; Friends of the Panamints; Georgia Center for Law in the Public Interest; Gifford Pinchot Task Force; Grand Canyon Trust; Great Basin Mine Watch; Greater Yellowstone Coalition; Great Old Broads for Wilderness; Great Rivers Environmental Law Center; Headwaters; Heal the Bay; Hells Canyon Preservation Council; High Country Citizens' Alliance; Idaho Conservation League; Inter Tribal Council of Arizona; Jamestown S'Klallam Tribe; Kamakakuokalani Center for Hawaiian Studies; Kentucky Resources Council, Inc.; Kettle Range Conservation Group; Klamath Forest Alliance; Klamath Siskiyou Wildlands Center; Knob and Valley Audubon Society of Southern Indiana; Kootenai Environmental Alliance; Lake County Center for Independent Living; The Lands Council; Lawyers Committee for Civil Rights of the San Francisco Bay Area; Magic; Maine Women's Lobby; McKenzie Guardians; Mining Impact Coalition of Wisconsin; Mining Impacts Communication Alliance; Montana Environmental Information Center; Native Hawaiian

Leadership Project; Northern Regional Center for Independent Living; Northwest Ecosystem Alliance; Northwest Environmental Advocates; Northwest Environmental Defense Center; Northwest Indian Bar Association; Northwest Old-Growth Campaign; Oilfield Waste Policy Institute; Okanogan Highlands Alliance; Ola'a Community Center; Olympic Forest Coalition; Oregon Natural Desert Association; Oregon Natural Resources Council; Pacific Environmental Advocacy Center; Pacific Islands Community EcoSystems; Placer Independent Resource Services, Inc.; Quechan Indian Nation; Reno-Sparks Indian Colony; Resource Renewal Institute; Rock Creek Alliance; San Diego Baykeeper; San Juan Citizens Alliance; Santa Monica Baykeeper; Save the Valley, Inc.; Selkirk Conservation Alliance; Siskiyou Project; Sitka Conservation Society; Southern Utah Wilderness Alliance; Southwest Environmental Center; St. Lucie Audubon Society; Tennessee Clean Water Network; Umpqua Watersheds; Valley Watch, Inc.; Waipa Foundation; Washington Environmental Council; WashPIRG; Waterkeepers Northern California; West Virginia Rivers Coalition; Western Environmental Law Center; Western Land Exchange; Western San Bernardino County Landowner's Association; Western Watersheds Project; Wildlands CPR; Wild South; Wyoming Outdoor Council; and Yuba Goldfields Access Coalition.

ATTORNEYS AND LAW PROFESSORS

Michael Dennis, Round Hill, VA; and Joseph L. Sax, Boalt Hall, Berkeley, CA.

Joint letter from Attorneys and Law Professors in the 9th Circuit: Robert T. Anderson, Director of the Native American Law Center; Keith Aoki, Professor of Law, University of Oregon Law School; Annette R. Appell, Professor of Law, William S. Boyd School of Law, UNLV; Barbara Bader Aldave, Stewart Professor of Law, University of Oregon; Michael C. Blumm, Professor of Law, Lewis and Clark School of Law; Melinda Branscomb, Associate Professor of Law, Seattle University; Allan Brotsky, Professor of Law Emeritus, Golden Gate University School of Law; Robert K. Calhoun, Professor of Law, Golden Gate Law School; Erwin Chemerinsky, Professor of Law, University of Southern California; Marjorie Cohn, Professor of Law, Thomas Jefferson School of Law; Connie de la Vega, Professor of Law, University of San Francisco; Sharon Dolovich, Acting Professor of Law, University of California Los Angeles; Scott B. Ehrlich, Professor of Law, California Western School of Law; Roger W. Findley, Professor of Law, Loyola Law School; Catherine Fisk, Professor of Law, University of Southern California; Caroline Forell, Professor of Law, University of Oregon School of Law; Susan N. Gary, Associate Professor of Law, University of Oregon School of Law; Dale Goble, Professor of Law, University of Idaho; Carole Goldberg, Professor of Law, University of California Los Angeles; A. Thomas Golden, Professor of Law, Thomas Jefferson Law School; Betsy Hollingsworth, Clinical Professor of Law, Seattle University Law School; M. Casey Jarman, Professor of Law, University of Hawaii; Kevin Johnson, Professor of Law, University of California, Davis; Craig Johnston, Professor of Law, Lewis and Clark Law School; Arthur B. LaFrance, Professor of Law, Lewis and Clark Law School; Ronald B. Lansing, Professor of Law, Lewis and Clark Law School; David Levine, Professor of Law, University of California Hastings College of the Law; Susan F. Mandiberg, Professor of Law, Lewis and Clark Law School; Karl Manheim, Professor of Law, Loyola Law School; Robert J. Miller, Associate Professor of Law, Lewis and Clark Law School; John T. Nockleby, Professor of Law, Loyola Law School; David B. Oppenheimer, Professor of Law, Golden Gate University School of Law; Laura Padilla, Professor of Law, California Western School of Law; Clifford Rechtschaffen, Professor of Law, Golden Gate University School of Law; Naomi Roht-Arriaza, Professor of Law, University of California Hastings College of Law; Michael M. Rooke-Kay, Professor of Law Emeritus, Seattle University School of Law; Susan Rutberg, Professor of Law, Golden Gate University School of Law; Robert M. Saltzman, Associate Dean, University of Southern California Law School; Sean Scott, Professor of Law, Loyola Law School; Julie Shapiro, Associate Professor of Law, Seattle University Law School; Katherine Sheehan, Professor of Law, Southwestern Law School; Paul J. Spiegelman, Adjunct Professor of Law, Thomas Jefferson School of Law; Ralph Spritzer, Professor of Law, Arizona State University; John A. Strait, Associate Professor of Law, Seattle University; Jon M. Van Dyke, Professor of Law, University of Hawaii at Manoa; Martin Wagner, Adjunct Professor of Law, Golden Gate University School of Law; James R. Wheaton, President, Environmental Law Foundation; Bryan H. Wildenthal, Professor of Law, Thomas Jefferson School of Law; Gary Williams, Professor of Law, Loyola Law School; Robert A. Williams, Jr., Professor of Law and American Indian Studies, and Faculty Chair of the Indigenous Peoples Law and Policy Program, University of Arizona; and Jonathan Zasloff, Professor of Law, University of California Los Angeles.

CITIZENS

Nora McDowell, President, Inter Tribal Council of Arizona (19 member tribes); and Dyrck Van Hying, Great Falls, MT.

GROUPS EXPRESSING CONCERN OVER THE MYERS NOMINATION

Coalition Letter from Women's, Reproductive, and Human Rights Organizations: Alliance for Justice; American Association of University Women; Catholics for a Free Choice; Feminist Majority; Human Rights Campaign; NARAL Pro-Choice America; National Abortion Federation; National Council of Jewish Women; National Family Planning and Reproductive Health Association; NOW Legal Defense and Education Fund; National Partnership for Women and Families; National Women's Law Center; Planned Parenthood Federation of America; Religious Coalition for Reproductive Choice; and Sexuality Information and Education Council of the United States.

Mr. LEAHY. He is opposed because he should not be trusted with a lifetime job as an appellate judge. His record is too extreme.

If you watch what the Bush administration does, instead of just listening to what it says, there is much evidence of this administration's outright contempt for high environmental standards. This nomination, in itself, says something about that. This nomination is emblematic of so many of this administration's appointments, especially to sensitive environmental posts. Mr. Myers' Interior appointment was the first ''swoosh'' of the revolving door. His nomination by President Bush to one of the highest courts in the land completes the cycle.

I must oppose cloture on this nomination, and I hope that the Senate's vote today will say something about the higher priority that the Senate makes of environmental quality.

Mr. CHAFEE. Mr. President, today I will vote in favor of invoking cloture on the nomination of William G. Myers III to serve on the U.S. Court of Appeals for the Ninth Circuit. During the 108th Congress, the Senate has failed to invoke cloture on the nominations of Mr. Myers and several other circuit court nominees. I have supported invoking cloture on these nominations because I am concerned about how such filibusters will affect the judicial confirmation process, including the nominees of future Presidents. The overwhelming majority of editorial pages across the Nation agree that district and circuit court nominees are entitled to an up-or-down vote.

However, a vote to invoke cloture is not an automatic vote for confirmation. in fact, I joined several other Republicans in voting against a district court nominee earlier this month. I have heard from a number of Rhode Islanders who have serious concerns about Mr. Myers, particularly his views on property rights and environmental protection, and I will carefully weigh their objections should the Senate invoke cloture on his nomination in the future.

Ms. CANTWELL. Mr. President, over the last 3½ years, the Senate has approved 198 of President Bush's judicial nominees: more than were confirmed during President Reagan's first term, more than confirmed during the first President Bush's term, and more than were confirmed during President Clinton's second term, when the other party controlled this body.

The reality is that the Senate has made remarkable progress approving this President's nominees. Today, there are fewer Federal judicial vacancies than at any time in the last 14 years.

This is true because both sides of the aisle have been able to work together to identify talented, qualified, experienced nominees—nominees who can put their own ideologies aside and uphold the law.

We have a bipartisan selection process that has worked very well for Washington state. Members of Washington State's legal community, the White House, and my colleague Senator PATTY MURRAY and I worked together to review a group of applicants. I am proud of our work. This cooperative approach has produced a number of highly qualified judicial nominees—including two who were confirmed just last month—and I believe it is a sound model for other States.

Unfortunately, the nomination before us today—that of William Myers to the Ninth Circuit Court of Appeals—represents a break with this spirit of cooperation and fairness. As a Senator who represents a State in the Ninth District, I feel that I must explain why I have concluded that I have no choice but to oppose this nomination.

Other Senators have spoken about Mr. Myers' inexperience. I agree that the nominee before us has limited experience. He has never been a judge, he

has never tried a jury case, he has never served as counsel in any criminal litigation, and he has tried just twelve cases to verdict or judgment.

I am troubled that this administration believes such a candidate is an appropriate choice to serve on the U.S. Court of Appeals, just one level below the U.S. Supreme Court. But I would like to spend my time discussing some other problematic aspects of this nomination.

The decision this body makes on the nomination before us will have a long-lasting impact on the States of the Ninth Circuit. For one thing, the person appointed to fill this seat on bench will receive a lifetime appointment. For another, the Ninth Circuit decides on many cases that can have dramatic impacts on land management policy and environmental protections. Decisions about how to use our natural resources and public lands can have irrevocable consequences.

With this in mind, I am concerned that this nominee has compared the federal government's management of public lands to ''the tyrannical actions of King George'' over the American colonies.

More troubling in his view of the Commerce Clause. In the face of decades of established law, Mr. Myers has argued for a more limited interpretation of this key portion of the Constitution, which underpins much of Federal environmental law. Rhetoric is one thing; radically re-interpreting the Constitution is another.

I am disappointed that the Senate has spent so much time debating a judicial nominee with such a poor record on protecting the environment, instead of taking up legislation that could actually improve the environment.

And in addition to public lands issues, the Ninth Circuit often considers cases regarding Native American issues. Yet here, too, Mr. Myers's record is troubling.

In one case, Myers reversed existing policy of the Department of the Interior, without seeking public opinion or input from affected Tribes. His decision, which relied on his interpretation of the Federal Land Policy and Management Act, FLPMA, allowed a mining company to contaminate a large area of land in California that was sacred to the Quechan tribe.

But when a Federal judge reviewed the case—the only time a Federal judge reviewed Myers' work—he concluded, ''The Solicitor misconstrued the clear mandate of FLPMA.''

It is for reasons like this that the National Congress of American Indians—which has never in its history opposed a Federal judicial nominee—opposes this nominee. Together, 560 tribes have spoken up and voiced their strong concerns with his nomination.

The Affiliated Tribes of Northwest Indians, which represents tribes in Washington, Oregon, Montana, and the nominee's home State of Idaho, has also never previously opposed a judicial nominee. But they believed it was necessary to step forward and oppose Mr. Myers. As they noted in a letter to me and other Northwest Senators, ''We do not take this step lightly—but when a nominee has acted with such blatant disregard for federal law and our sacred places, we must speak out.''

I ask unanimous consent that the Affiliated Tribes' letter be printed in the RECORD.

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

AFFILIATED TRIBES
OF NORTHWEST INDIANS,
Portland, OR, March 19, 2004.

Re: Opposition to the Nomination of William G. Myers III to the 9th Circuit Court of Appeals.

Senators: STEVENS, MURKOWSKI, MCCAIN, KYL, FEINSTEIN, BOXER, INOUYE, AKAKA, CRAIG, CRAPO, BAUCUS, BURNS, REID, ENSIGN, WYDEN, SMITH, MURRAY, CANTWELL,

U.S. Senate,
Washington, DC.

Dear SENATORS: We write to you today as leaders of tribes within the jurisdiction of the 9th Circuit Court of Appeals to express our strong opposition to the confirmation of William G. Myers III to the 9th Circuit Court of Appeals. As President of the Affiliated Tribes of Northwest Indians/Chairman of the Coeur d'Alene Tribe in Idaho, and as Treasurer of the National Congress of American Indians/Chairman of the Jamestown S'Klallam Tribe, respectively, we represent a broad base of tribes in the Northwest who would be directly impacted by this nomination.

We have never before stepped forward to oppose a judicial nominee. We believe that the President is entitled to receive the consent of the Senate for his judicial appointments unless there are serious concerns regarding judicial fitness. However, former Solicitor of Interior Myers' disregard for federal law affecting Native sacred places compels our view that he is unable to fairly and impartially apply the law and thus should not be confirmed.

The U.S. government, as steward for millions of acres of Western lands, has accepted responsibility for maintaining and protecting religious sites of significance to Native Americans. This responsibility is clearly recognized not only by treaty and custom but also in laws such as the Federal Land Policy and Management Act (FLPMA).

Unfortunately, the nominee, while serving two years in the Bush administration as solicitor of the Department of the Interior, trampled on law, religion, and dignity. In his official capacity he orchestrated a rollback of protections for sacred native sites on public lands, although such places have been central to the free exercise of religion for many American Indians for centuries.

Most notably, despite his stewardship responsibility, with the stroke of his pen Myers reversed a crucial departmental decision that had been arrived at over a period of years with substantial public input. His action cleared the way for a massive hardrock mining operation employing cyanide to extract gold from enormous heaps of rock. This mine, run by Canada's Glamis Imperial Gold Company, stands to contaminate thousands of acres and destroy a vast swath of land in the California desert that is sacred to the Quechan tribe.

In one of only three formal opinions in his two-year tenure at Interior, Myers argued that the agency's Bureau of Land Management did not have authority under the FLMPA law to prevent the undue degradation of public lands that sometimes accompanies such mining operations. But this is contrary to the specific wording of the legislation, which requires the Department of the Interior to protect against public land degradation that is ''unnecessary or undue.''

Myers simply concluded that any practice necessary for a mining operation was, by definition, not undue. Such reasoning stands contrary to common sense and turns legislative statute on its head. While specifically addressing only the Glamis project, Myers's opinion, if followed, would block the Bureau from preventing undue degradation across millions of acres of public land.

It's hard to imagine a more fundamental misreading of the language and intent of the law. As Federal district Judge Henry Kennedy Jr.—the only judge to have reviewed Myers's handiwork—declared, ''The Solicitor misconstrued the clear mandate of FLPMA.''

Furthermore, the court held: ''FLPMA by its plain terms, vests the Secretary of Interior with the authority—and indeed the obligation—to disapprove of an otherwise permissible mining operation because the operation, though necessary for mining, would unduly harm or degrade the public land.'' No wonder the American Bar Association questions Myers's legal qualifications for a position on the Federal appellate bench.

Equally troubling to tribes in the 9th Circuit is the shameful exclusion of the Quechan Indian Nation from the decision to reconsider the Glamis project. Neither Myers nor Interior Secretary Gale Norton engaged in government-to-government consultation with the Quechan Indian Nation or other Colorado River tribes before reopening and reversing the Glamis debate.

The Ninth Circuit Court encompasses a huge area. It contains scores of reservations, more than one hundred Indian tribes, millions of Indian people, and millions of acres of public lands. Because so few legal cases ever reach the U.S. Supreme Court, the Ninth Circuit is often the court of last resort for deciding critically important federal and tribal land management issues.

Judges on this court must understand and respect tribal values and the unique political relationship between the federal government and tribal governments. Myers' actions and legal advice in the Glamis matter trample on tribal values, raise serious questions about his judgment, and demonstrate a clear lack of the impartiality necessary to decide cases affecting public lands.

We ask that you stand with us in opposing this nominee. We do not take this step lightly—but when a nominee has acted with such blatant disregard for Federal law and our sacred places, we must speak out.

ERNEST L. STENSGAR,
President, Affiliated Tribes of Northwest Indians, Chairman, Coeur d'Alene Tribe.
W. RON ALLEN,
Chairman, Jamestown S'Klallam Tribe, Former President, National Congress of American Indians.

Ms. CANTWELL. Mr. President, for the 29 tribes in my home State of Washington, and the many tribes throughout the West, this is a troubling report.

To be clear, I am not opposing Mr. Myers's nomination simply because we disagree on issues. I have voted for many of this President's nominees whose views on a range of issues differ from my own.

I have had ideological differences with many of the nominees put forth

by this administration, yet I have voted to approve the overwhelming majority of those candidates. I do not believe that a difference in a nominee's views alone justifies voting against him or her.

But I cannot assent to a nominee who I do not believe will uphold the law when it conflicts with his ingrained political philosophy. Unfortunately, I believe Mr. Myers is such a nominee.

Mr. Myers has written, ''Judge Bork's judicial philosophy was well within the parameters of acceptable constitutional theory, worthy of representation on the Supreme Court.'' More importantly, Mr. Myers indicated his support of ''judicial activism'' in his discussion of Bork's views: ''Interpretivism does not require a timid approach to judging or protecting constitutionally guaranteed rights . . . interpretivism is not synonymous with judicial restraint and may require judicial activism if mandated by the constitution.''

A Pacific Northwest newspaper, the Oregonian, summed up Mr. Myers's nomination this way: ''Myers has overwhelmingly looked out for industry interests while antagonizing a vast array of conservation groups, tribes, labor unions and civil-rights organization.'' I ask unanimous consent that this editorial be printed in the RECORD.

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

[From the Oregonian, July 20 2004]

WRONG PICK FOR 9TH CIRCUIT; SURELY THE WHITE HOUSE CAN FIND A MORE QUALIFIED NOMINEE FOR THE APPELLATE COURT THAN WILLIAM MYERS

In conservative doctrine, no court in the land is more out of step than the 9th U.S. Circuit Court of Appeals. It's considered a nest of ''activist'' judges whose liberal leanings produce some truly wacky rulings.

That reputation reared its head again Monday in a hearing on the nomination of William G. Myers III to a 9th Circuit vacancy. One Republican senator after another testified that the Idaho lawyer is just what's needed to bring some ''balance'' to the court.

Wrong. The 28-seat appellate court may indeed harbor some ideology-driven activists. But the solution isn't to add another ideology-driven activist.

Myers didn't get this nomination because of superior judicial fitness. He got it because of his political views and friendly relationships with industries besieged by environmental lawsuits.

He lacks any judicial experience, but that isn't the real problem. Many outstanding judges, such as Portland's Diarmuid O'Scannlain, were appointed to the 9th Circuit without coming up through the judicial ranks.

But unlike Scannlain, Myers wasn't hailed by his peers as a brilliant legal mind. He received only a tepid ''qualified'' rating by the American Bar Association's judicial review panel. Not one member rated him ''well-qualified,'' and several voted ''unqualified.''

No distinguished career in law won Myers the attention of the Bush administration. He toiled for years as a lobbyist for the mining industry and cattle interests before the White House appointed him to be the Interior Department's top lawyer in 2001.

In that role, Myers has overwhelmingly looked out for industry interests while antagonizing a vast array of conservation groups, tribes, labor unions and civil-rights organizations.

Myers' anti-environmental activism by itself shouldn't disqualify him. The problem—and this gets back to his lack of judicial experience—is that he has no track record whatsoever to show how he would separate his ideology from his interpretation of the law on the nation's second-highest court.

The Senate is scheduled to vote today on Myers' confirmation. According to their aides, Sen. Gordon Smith, R-Ore., probably will support the appointment, which is unfortunate, and Sen. Ron Wyden, D-Ore., will vote against it.

The Senate has confirmed more than 170 of Bush's judicial nominees, while blocking only seven. William Myers should be the eighth.

Ms. CANTWELL. Mr. President, Mr. Myers's embrace of judicial activism, combined with his anti-environmental record and a poor history of recognizing tribal rights, prevent me from offering my consent on this nomination.

I yield the floor.

Mr. HATCH. Mr. President, I rise today to rebut my colleagues' statements regarding our nominee William Myers. Some of these statements we have heard today are inaccurate and I would like to set the record straight.

Despite some accusations to the contrary, Myers has a proven record of defending Native American tribal interests in this country. For example, he defended the constitutionality of a provision of the California Constitution giving Indian tribes the exclusive right to conduct casino gaming in that State.

He also fought to uphold the Secretary of the Interior's decision to put a parcel of land located in Placer County, CA into trust for the United Auburn Indian Community. In addition, Myers supported legislation that vindicated the property rights of the Pueblo of Sandia, a federally recognized Indian tribe in central New Mexico, by creating the T'uf Shur Bien Preservation Trust Area within New Mexico's Cibola National Forest.

He also helped negotiate an agreement removing two dams from the Penobscot River in an effort to clear the way for the Penobscot Indian Nation to exercise its tribal fishing rights. Conservation groups and the Penobscot Indian Nation supported these efforts, and the agreement is now being implemented by the DOI's Boston field office.

And finally, with respect to tribal interests, Myers worked to implement an Indian Education Initiative that provided increased budget support to the Bureau of Indian Affairs schools, including over $200 million annually for school construction. This initiative emphasizes the teaching of tribal languages and cultures in addition to improving reading, math, and science education.

Some have also alleged that Myers demonstrated his hostility to environmental safeguards when he submitted a brief, on behalf of the North Dakota Farm Bureau, the American Farm Bureau and a similar group of clients, which challenged the Army Corps of Engineers' authority to regulate solid waste disposal into isolated wetlands. However, the U.S. Supreme Court agreed with his argument—pretty good evidence that the argument was both mainstream and stood on solid legal ground.

In fact, the U.S. Supreme Court agreed with Myers' clients that as a matter of statutory interpretation, the Clean Water Act did not authorize the Army Corps of Engineers to regulate the habitat of migratory birds in isolated, intrastate waters.

Myers' brief never contended that Congress lacks the ability to regulate wetlands under other statutes or provisions of the Constitution, e.g., under its spending clause powers. It simply argued that the Clean Water Act, as it existed in 1999, did not properly delegate such regulatory authority to the Army Corps of Engineers.

In his responses to Senator FEINSTEIN's written questions, Mr. Myers affirmed that Congressional intent in passing the Clean Water Act was to ''restore and maintain the chemical, physical and biological integrity of the Nation's waters,'' and that ''the health of our Nation's waters is often inextricably connected to the health of adjacent wetlands.''

As Myers stated at his hearing, the Clean Water Act is clearly constitutional, and there's no question that he understands its importance. And there's also no question that advocacy of a position accepted by a Supreme Court majority should be viewed as a positive point for a nominee, not a negative due to someone's personal disagreement with the decision in question.

I would also like to set the record straight regarding our nominee and an amicus brief he submitted on behalf of the National Cattlemen's Association to the U.S. Supreme Court in the 1995 Sweet Home v Babbitt case. Despite what my colleagues allege, this brief did not argue that the Endangered Species Act itself was unconstitutional.

The brief simply relied on the then-recent precedent of Dolan v City of Tigard, in which the Supreme Court stated:

> We see no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or the Fourth Amendment, should be relegated to the status of a poor relation in these comparable circumstances.

The problem that Mr. Myers' clients had with the Endangered Species Act was that Babbitt Interior Department regulations defined the term ''harm'' in the statute in a way that essentially precluded any private landowner's use of property on which an endangered species might find habitat, and, importantly, that the Government had no intention of compensating affected landowners.

In fact, the Endangered Species Act contains provisions that enable the

Secretary of the Interior to pay landowners to protect endangered species on their properties, while also preserving viable economic uses of the land. It's no surprise that the Babbitt Interior Department had no intention of enforcing those provisions of the law, but you can hardly blame ranchers and farmers adversely affected by Endangered Species Act regulations for hiring lawyers to ask the Supreme Court to remind the Interior Department of its obligations.

These provisions of the statute are, of course, in addition to the takings clause of the Fifth Amendment. Now, I understand that the Supreme Court ruled against Mr. Myers' clients' position in this case, but it seems to me that arguments well grounded in the plain language of the Constitution and the statute at issue, that acknowledged the basic validity of the statute, cannot credibly be tarred as ''extreme.''

By contrast, here is a situation that I think most people would agree is extreme. Last month, the Associated Press published an article entitled ''So Endangered It Didn't Exist,'' in, among other newspapers, the Daily Southtown of Illinois. The article reports that the LeSatz family of Chugwater, WY:

wants to be able to teach their clients the finer points of riding and roping without having to trailer their animals 25 miles to the nearest public indoor arena whenever the weather turns miserable. But the LeSatzes aren't able to build their own riding arena. The only decent site on their property in southeastern Wyoming lies within 300 feet of Chugwater Creek, and building there is far too expensive because of Endangered Species Act restrictions intended to protect the Preble's meadow jumping mouse.

The article then breaks it to the reader that the mouse doesn't exist:

After six years of regulations and restrictions that have cost builders, local governments and landowners on the western fringe of the Great Plains as much as $100 million . . . new research suggests the Preble's mouse in fact never existed. It instead seems to be genetically identical to one of its cousins, the Bear Lodge meadow jumping mouse, which is considered common enough not to need protection.

Now, the U.S. Fish and Wildlife Service is in the process of deciding whether or not these two species of mice are identical; if they are, then neither needs protection from the Endangered Species Act. And the consequences would positively affect many Western communities, in Montana, Wyoming, Colorado, and perhaps several other Western States. As a spokesman for the Colorado Contractors Association put it:

If we've shown that the mouse doesn't exist, what happens to all that has been set aside? Because that's been a huge economic burden.

Indeed it has. As the article reports, ''nearly 31,000 acres along streams in Colorado and Wyoming have been designated critical mouse habitat.'' The mouse ''also has blocked the construction of reservoirs amid a five year drought in the Rocky Mountains.''

Naturally, environmental groups have begun their usual attacks in hopes of preserving the potentially bogus classification of this mouse as endangered. But the quote from one of those groups' spokesmen in the AP article is instructive. Does it attack the science? Does it say, well, let's get to the bottom of this? No. It personally attacks the biologist who raised this issue with the U.S. Fish and Wildlife Service, as having ''a clear anti-Endangered Species Act agenda,'' and mocks him for ''testifying in Washington, D.C. in front of committees headed by members of Congress who would like nothing better than having the Endangered Species Act thrown away.'' I guess that, by this individual's logic, any time someone who doesn't share his policy agenda is chairing a Congressional committee, testimony before that committee is illegitimate. An interesting standard—I wonder if Bill Myers' liberal environmentalist opponents would like it applied to their detriment.

Now, the biologist referenced in this AP article may or may not prove to be right about this mouse; it's the Fish and Wildlife Service's job to figure that out. But here's the point: anyone who suggests that sound science ought to inform Endangered Species Act classifications—as Bill Myers did when he was representing folks like the LeSatzes, trying to make a living off the land, in this case, their own land—is attacked by the liberal activists as trying to throw the entire law into the garbage can. Sound familiar? It should. It sounds exactly like the kinds of personal attacks we're hearing on Bill Myers today, and it sounds like the attacks on any member of Congress who has the gall to suggest that the Endangered Species Act must be reformed. While now is not the time to debate the ESA, now should also not be the time to personally attack a qualified judicial nominee for having represented Westerners who have suffered because of its draconian applications.

Let me also remind my colleagues of Mr. Myers' acknowledgement at his hearing, that:

the Supreme Court, in interpreting the Takings Clause and the Fifth Amendment, has never interpreted it as an absolute. . . . [P]roperty rights are subject to reasonable regulation by government entities.

We all know this is the case—not only with the Takings Clause, by the way—and Mr. Myers has never suggested otherwise, despite the misrepresentations of his opponents.

I might note that I find it very unfortunate that the various Indian tribes that oppose Bill Myers have bought into the same false accusations about the Glamis Gold Mine issue.

The truth is Bill Myers was not involved in the permitting process for the proposed Glamis gold mine in southern California. He simply issued a Solicitor Opinion regarding the proper scope of the Interior Department's authority under the Federal Land Policy and Management Act, which allowed Glamis Gold, the owner of several mining claims in the area, to proceed with a pre-existing mining proposal. My colleagues should understand that the Babbitt Interior Department approved the same Glamis proposal—supported by two draft environmental impact statements in 1996 and 1997, and two separate Native American tribal cultural resource studies in 1991 and 1995—up until the last week of the Clinton Administration in January 2001.

At his hearing, Mr. Myers stated that:

my role in that matter was looking at a fairly narrow [legal] point and determining whether the Department had the congressional authority that it needed to make certain interpretations [of the FLPMA].

And his legal conclusion was that the Interior Department did not have the authority to do what former Secretary Babbitt's Solicitor said it did, regardless of the policy merits.

In response to Senator LEAHY's written questions, Mr. Myers explained that prior to his tenure as Solicitor.

Interior had suspended the 2000 regulations affecting hard rock mining. Those regulations were based in part on one of my predecessor's opinions. Multiple lawsuits regarding the suspended regulations were also pending when I arrived. I therefore felt an obligation to review the opinion that was common to these controversies to determine if the Department's defense to the lawsuits was viable.

In fact, Myers reached the legal conclusion that the regulations based on that opinion could not be credibly defended in Federal court.

Additionally, as his written responses to several other Senators' questions make clear, he reached that conclusion before he met with any mining industry representatives, and with the full awareness of the legal positions taken by the affected Indian tribes. Mr. Myers emphasized that:

representatives of the mining company were disappointed by their meeting with me because I would not engage them in a discussion of their ideas or views on the [hardrock mining] matter.

Finally, last spring, a Department of the Interior Inspector General report, concluded:

the conduct of the DOI officials involved in this [Glamis] matter was appropriate, that their decisions are supported by objective documentation and that no undue influence or conflict of interest affected the decision-making process related to the Imperial Project.

While a Federal district court judge here in D.C. disagreed with Myers' Opinion regarding mining operations on Federal lands, the judge upheld the Interior Department's regulations that were based on Myers' Opinion. As Bill noted in his responses to Senator FEINSTEIN's written questions, his opinion was consistent with the Carter administration's interpretation of the relevant portions of the FLPMA, and the D.C. judge agreed with Bill's Opinion's ultimate conclusion that the Bush administration's mining regulations would protect public lands from unnecessary and undue degradation.

Just once I would like to come here to vote on a nominee that some Democrats have maligned and misrepresented in order to make him or her ''controversial,'' and hear more than one Democrat say, well, we've actually reviewed the hearing transcript and the nominee's answers to written questions, and he or she really is a balanced, reasonable person who doesn't deserve the slander we've hurled at him or her. Maybe just once those Democrats prosecuting these filibusters will stray from the talking points and press releases of the inside-the-Beltway smear groups.

But I fear that day will be a long time in coming. Until then, and today in Bill Myers' case, all I can do is calmly point out facts and in particular, statements that the nominee has made to us that conclusively rebut the fevered allegations against him.

Mr. Myers' opponents have continually argued that since Bill Myers had publicly advocated his former clients' causes, which clash with their own policy preferences, he is presumptively disqualified from service on the Federal bench. But here is what he said in response to Senator SCHUMER's question regarding the Federal Government's role in environmental policy:

A centralized government, i.e., Congress, has an important role to play in environmental protection. And the Clean Water Act, the Clean Air Act—there are probably 70 environmental statutes that give evidence to that truth.

He further explained that much of his advocacy for ranchers against the Government was in response to the impact of environmental regulations on the generally good environmental stewardship of public lands by ranchers.

But, Mr. Myers explained in his responses to Senators' written questions that he has in fact represented ''clients who actively opposed use of federal land for oil and gas exploration and ranching,'' in one case because ''proposed oil and gas exploration conflicted with my client's use and enjoyment of . . . the land's aesthetic and ecosystem values.'' He also clarified that his lobbying on behalf of coal companies was limited to a piece of legislation supported by Bruce Babbitt's Interior Department.

In written questions, Mr. Myers was asked:

In private practice, have you ever represented an environmental organization or Indian tribe in litigation against the grazing or mining industry, or lobbied for environmental or Native American organizations on an issue or piece of legislation that was opposed by the mining or grazing industries?

And here's how he responded:

I have not represented environmental organizations in private practice. However, I have represented Native American tribal interests in pursuit of environmental matters unrelated to grazing or mining. In particular, I have represented tribal interests in securing water rights and damages for lost fishing rights. I have not lobbied for environmental or Native American organizations. While in private practice, I volunteered to chair a review commissioned by the State of Idaho regarding management of federal lands in Idaho. Environmental interests participated in that effort. Specific environmental groups were invited to join the group as full members but they declined to do so.

Mr. Myers also clarified that as Solicitor, he:

supported litigation and non-litigation activities restricting commercial use of public land for gold mining, ranching, off-shore oil and gas development, trespass in National Parks, expansion of national monuments, and protection of Indian sacred sites.

The question is, Do Mr. Myers' opponents care about his statements and the facts of the particular matters they hold against him, or had they made up their minds, well before he ever had an opportunity to respond to their concerns, and regardless of what he's actually said in sworn testimony? I think I know the answer, and it is a profoundly unsettling one.

I would also like to respond briefly to a falsehood recently circulated by a reliably liberal environmental group about Mr. Myers' October 2002 Solicitor Opinion, which addressed the Bureau of Land Management's authority to permanently retire grazing permits on Federal lands. The Opinion concluded that BLM does have the authority to retire permits at the request of a permittee, but only after compliance with statutory requirements and a BLM determination that the public lands associated with the permit should be used for purposes other than grazing. And BLM's decision to retire grazing permits is subject to reconsideration, modification or reversal.

Some found this Opinion controversial; some saw it as a shot across the bow against environmental activist groups that try to buy up grazing permits and then seek to retire them permanently, in order to shut ranchers off from those permitted areas. But at least in the case of a dispute over a portion of Utah's Grand Staircase-Escalante National Monument, a spokesman for the environmental group that sought to buy and retire grazing permits had this reaction to your Opinion:

What [Myers'] memo sets up is an acknowledgement of what we've already known . . . Once an area is closed to grazing, someone could still come along later and say ''we want to graze here'' and the BLM could reopen the area to grazing. . . . What people consider new about the memo is that plan amendments are not permanent. But that was not new to us.

I guess the extreme environmentalists opposition campaign didn't bother to read that quote, or Myers' Opinion.

In fact, the portion of the 1999 Tenth Circuit opinion in Public Lands Council v Babbitt that the U.S. Supreme Court did not review found that there is a presumption of grazing use within grazing districts, and that BLM could not unilaterally reverse this presumption. That finding supports the Opinion.

Let me also note that Myers' Opinion superseded a prior memorandum issued by former Secretary Babbitt's Solicitor on January 19, 2001, during the final hours of the Clinton Administration. That memorandum failed to consider a critical factor in any analysis of grazing permits under the Federal Taylor Grazing Act, namely, that the Secretary of the Interior has deemed lands within existing grazing districts ''chiefly valuable for grazing and the raising of forage crops.''

Now, the environmental group that's propagating the misrepresentations about this Solicitor Opinion also speculates that, if Myers' ''authority also extended to the national forests,'' then groups that try to buy up land to preclude all subsequent economic uses of it wouldn't be able to duplicate the ''success story'' of wolf and grizzly bear reintroduction in Wyoming and Montana. It is hard to know where to start dismantling this absurd statement. First, as the record will now show, the relevant Solicitor Opinion does not, in any way, stop willing buyers of land from buying land from a willing seller—but the Federal Taylor Act must be respected in the process. Second, as a Federal appellate judge, Bill Myers, at his most powerful, would be on a panel of three judges. Given the overwhelming number of liberals on the Ninth Circuit, the odds are that he would be routinely outvoted.

The third and perhaps most telling, only a liberal environmental group believes that grizzly bear and wolf reintroduction in the West has been a ''success.'' The verdict of the many farmers and ranchers, inside and outside of the Ninth Circuit, who have lost their livestock and livelihoods to these federally subsidized and protected predators is quite different. And it is Bill Myers' understanding of both sides of these types of issues that makes it absolutely essential that he be confirmed as a Ninth Circuit judge.

I would like to point out that at the Judiciary Committee markup on April 1, 2004, Bill Myers was unfairly characterized by one of my colleagues as ''a man who has contempt for the views, the well-believed and cherished views of others,'' based on a couple of quotes, lifted out of context, from several advocacy articles he wrote on behalf of his clients: ranchers and farmers.

I thought I might read you a few quotes, not lifted out of context, from some of the many activist groups who have fomented much of the baseless opposition to Myers' nomination. Judge for yourselves whether this rhetoric fits the Senator's definition of contempt for the views of others, but I think it's crystal clear that what Myers' opponents would like to do is demonize him as a way to silence the opposition to their own favorite purveyors of contempt.

Here are a few choice quotes from a document posted by a coalition of several liberal environmental groups, all of which have vilified Bill Myers as an ''extremist,'' in April 2002:

One of the most nefarious strategies used by the Bush Administration and its industry

allies to undermine environmental protections is to set policy by failing to defend against industry lawsuits or by reaching ''sweetheart'' settlements with industry.

Among the top contributors to the 2000 Bush Presidential Campaign were the very industries oil—and gas, logging, ranching and large-scale real estate development—that stand to benefit most from the weakening of federal wildlife policy. The court cases discussed above [regarding the Endangered Species Act] were virtually all filed by developers, ranchers and loggers, so it is clear that these industries have already benefited from their generosity to the campaign and their otherwise close ties with the Bush Administration. The oil and gas industry similarly has enjoyed favored treatment, even when its activities would despoil some of the most important remaining habitats of imperiled species.

Unfortunately, in the current Administration, science is often shortchanged when it gets in the way of favored corporate interests. Secretary Norton's Interior Department has repeatedly suppressed, distorted or scuttled the science, even when it comes from biologists within the Department.

Let's see if I've got this straight. The entire Bush administration is nefarious, corrupt, and bribed by corporate interests. Secretary Norton distorts science to benefit the administration's corporate contributors. But it's Bill Myers who is contemptible and ''extreme'' because he dared suggest that frivolous environmental lawsuits are increasing?

I think everyone ought to be honest about what's going on here. Groups like this, which I'm sure many Democrats would defend as ''mainstream,'' and whose bidding Senators will be doing by refusing to vote on Bill Myers, are the ones spewing contempt.

I would like to respond to some of the rhetoric about Bill Myers' record as Solicitor at the Department of the Interior, a position to which this Senate confirmed him without opposition in 2001.

I understand that Mr. Myers's opponents believe that association with the Bush/Norton Interior Department is a disqualifier for service on the Federal bench I wonder if they will mind when such a standard is applied to the detriment of officials from the Clinton/Babbitt Interior Department, or any future Democratic administration, who might be nominated to the Federal bench. Regardless, let me point out just one example of where the Bush Interior Department clearly got a policy issue right, an issue on which Bill Myers himself has been extensively criticized.

The issue was decided just last month in the case of *Southern Utah Wilderness Alliance* [124 S. Ct. 2373 (2004)]: The Bush Interior Department's position in this case, for which Bill Myers laid the legal foundation, was upheld by a unanimous Supreme Court. The Court rejected environmental activists' challenges to a land use plan that was duly issued under authority of the Federal Land Policy and Management Act. The Court endorsed the Interior Department's ''multiple use management'' concept, describing it as ''a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put. . . .'' The Court also held that while a ruling in favor of the environmental activists:

might please them in the present case, it would ultimately operate to the detriment of sound environmental management. Its predictable consequence would be much vaguer plans from BLM in the future—making coordination with other agencies more difficult, and depriving the public of important information concerning the agency's long range intentions.

The fact that Bill Myers defended such policies cannot, in a rational confirmation process, disqualify him from service on the Federal bench. In fact, the endorsement of multiple use management policies by a unanimous Supreme Court in this case is compelling evidence against the absurd allegations that Bill Myers is somehow ''out of the mainstream'' with respect to public lands and environmental law.

I would also like to address a point raised earlier about some statements that Bill Myers made in articles that he wrote on behalf of his clients—cattlemen, ranchers and farmers who opposed Federal Government mismanagement of public lands.

In a July 1, 2004 article entitled ''Ronald Reagan, Sagebrush Rebel, Rest in Peace,'' William Pendley of the Mountain States Legal Foundation wrote: ''I am, former Governor Ronald Reagan proclaimed in 1980, 'a Sagebrush Rebel.' ''

Now, at his hearing, Bill Myers was attacked merely for having used this same term, in an advocacy piece he wrote for his farming and ranching clients. In fact, he was mocked at this hearing, and after it, for merely channeling the concerns of his clients, who, like Ronald Reagan, considered themselves ''Sagebrush Rebels.''

Mr. Pendley's article goes on:

When Ronald Reagan was sworn in, he became the first president since the birth of the modern environmental movement a decade before to have seen, first hand, the impact of excessive federal environmental regulation on the ability of state governments to perform their constitutional functions; of local governments to sustain healthy economies; and of private citizens to use their own property. . . . Reagan thought federal agencies in the West should be ''good neighbors.'' Therefore, Reagan returned control of western water rights to the states, where they had been from the time gold was panned in California until Jimmy Carter took office. Reagan sought to ensure that Western states received the lands that they had been guaranteed when they entered the Union. Reagan responded to the desire of western governors that the people of their states be made a part of the environmental equation by being included in federal land use planning.

I would also like to note that Reagan criticized ''excessive'' regulation, not any regulation at all—neither Bill Myers nor anyone else thinks there is no role for the Federal Government in environmental regulation. And Bill Myers emphasized this at his hearing, in response to very hostile questioning by Democratic Senators:

A centralized government—i.e. Congress—has an important role to play in environmental protection. And the Clean Water Act, the Clean Air Act—there are probably 70 environmental statutes that give evidence to that truth.

But the Reagan approach, which is also the Bush Interior Department's approach, which Bill Myers did his best to defend, is inimical to the environmental activist groups that oppose Mr. Myers' nomination. Any attempt to give the people who actually make their living on and around Western lands a stake in how those lands are regulated is violently opposed by these groups. And then these groups label their enemies ''enemies of the environment,'' or ''friends of polluters.'' It is unfortunate that such labels are uncritically accepted by some Senators, and because these liberal groups have similarly labeled Bill Myers, he won't get the up or down vote he deserves.

RECESS

The ACTING PRESIDENT pro tempore. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:32 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. ALEXANDER).

EXECUTIVE SESSION

NOMINATION OF WILLIAM GERRY MYERS III TO BE A UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT—Continued

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant 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. 603, William Gerry Myers III of Idaho, to be U.S. circuit judge for the Ninth Circuit.

Bill Frist, Orrin Hatch, Christopher Bond, Chuck Hagel, Ted Stevens, John Cornyn, Wayne Allard, Lindsey Graham, Sam Brownback, Gordon Smith, Lisa Murkowski, Lamar Alexander, Robert Bennett, Elizabeth Dole, Don Nickles, James Inhofe, and Conrad Burns.

The PRESIDING OFFICER. By unanimous consent the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of William Gerry Myers III to be U.S. circuit judge for the Ninth Circuit shall be brought to a close?

The yeas are mandatory under the rule.

The clerk will call the roll.