(Ms. LORETTA SANCHEZ of California addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Tennessee (Mr. TANNER) is recognized for 5 minutes.

(Mr. TANNER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST THE CONFERENCE REPORT TO ACCOMPANY H.R. 1268, EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT FOR DEFENSE, THE GLOBAL WAR ON TERROR, AND TSUNAMI RELIEF ACT, 2005

Mr. DREIER, from the Committee on Rules, submitted a privileged report (Rept. No. 109–73) on the resolution (H. Res. 258) waiving points of order against the conference report to accompany the bill (H.R. 1268) making Emergency Supplemental Appropriations For Defense, the Global War on Terror, and Tsunami Relief, for the fiscal year ending September 30, 2005, and for other purposes, which was referred to the House Calendar and ordered to be printed.

DRUG SAFETY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan (Mr. STUPAK) is recognized for 5 minutes.

Mr. STUPAK. Mr. Speaker, I come here tonight concerned about drug safety and to speak out to protect our children from the acne drug Accutane, manufactured by Hoffman-LaRoche. As a legislator, I have called for more restrictions on the distribution and use of this drug, which is known to cause severe births defects and a form of impulsive behavior and depression in young people taking this drug.

This drug has devastated my family, with the loss of our son BJ, and more than 268 other families who have lost a son or daughter while he or she was taking the drug Accutane.

Recent news stories have quoted an FDA safety reviewer, Dr. David Graham, when he spoke before the Senate Committee on Finance. Dr. Graham said: ''I would argue that the FDA as currently configured is incapable of protecting America against another Vioxx.'' He told the Senate Committee on Finance that ''there are at least five other drugs on the market today that should be looked at seriously to see whether they should remain on the market.'' He cited the acne drug Accutane.

Why Accutane? Accutane is the poster child for why we need an independent body to approve and review drug safety. Accutane causes horrendous birth defects and causes psychiatric disorders such as depression and suicide. It is linked to 268 suicides, according to the FDA.

A recent study by Dr. J. Douglas Bremner, and published this month in the American Journal of Psychiatry, demonstrates how Accutane affects the brain, possibly causing impulsive behavior due to changes in the orbital frontal cortex. This is the front part of the brain. This is the area known to mediate depression.

As Dr. Bremner demonstrates in this study, as we see in this PET scan here, there is a decrease in the metabolism or function of the brain. This PET scan establishes a baseline of a person before they start Accutane. Notice the red activity in the brain. The second PET scan is of the same person 4 months later on Accutane. Notice the first PET scan from the second PET scan. The red color, after 4 months on Accutane, is missing, representing a decrease in brain activity in the frontal part of the brain.

In the second PET scan, here, notice again very little or no red, representing decreased brain activity, in the same person after 4 months of Accutane treatment. Accutane decreases the metabolism or brain function in the front part of our brain.

In this one slide that Dr. Bremner has shared with us, there is a 20 percent decrease in brain metabolism or function. This decrease in brain function only occurred in some Accutane patients. Dr. Bremner did PET scans with other patients taking oral antibiotics for acne and none showed any brain changes.

It is not all Accutane patients who demonstrate a brain change, just those who complain of headaches. Is the excessive dosage found in the current formula of Accutane that is prescribed to our young people the cause for the change in the brain that we see? The medical evidence is clear that Accutane causes changes in the brain, and this may be what leads some young people to take their own life through impulsive behavior.

Let us join with Dr. Graham, the CDC, and other health care groups who have expressed strong concerns about the safety of this drug, and who have called for Accutane to be withdrawn from the market as far back as 1990. Let us pull this drug Accutane from the market until we have all the answers surrounding this powerful drug.

At the very least, the FDA should immediately require a large-scale review and a study on the drug's effects on the human brain. Is this decreased metabolism we see here reversible? Will the brain repair itself? What amount or what dose of Accutane is safe? What amount of Accutane can be safely taken by young people so that the brain is not affected? Has the FDA done enough to protect our children from the side effects of this drug? Has the FDA seriously looked at Dr. Bremner's study and similar studies in animal testing, which also demonstrated that Accutane harms the brain?

It has been 7 or 8 months now since I have shared this information with the head of the FDA, Dr. Crawford. We still have had no response to our concerns. It is time for all of us to join together to protect our children. It is time to withdraw Accutane from the market until all of our important safety questions are answered.

IMPENDING CONSTITUTIONAL CRISIS IN U.S. SENATE

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 2005, the gentleman from Iowa (Mr. KING) is recognized for 60 minutes as the designee of the majority leader.

Mr. KING of Iowa. Mr. Speaker, I appreciate this opportunity to address the House. This issue before us in this discussion this evening, Mr. Speaker, is the issue of an impending constitutional crisis that I believe is taking place over in the other body, and it is something that has been dealt with and worked with and rolled around by the Senate with regard to the confirmation of the President's appointments to the judicial branch of government. It is an unprecedented use of the Senate rules with regard to filibusters.

About 2½ years ago, something like that, this process began, and it began with a gentleman that was appointed to the D.C. Court of Appeals. His name was Miguel Estrada, a very, very highly qualified individual, an immigrant from Honduras, someone who English was his second language. He learned that, studied hard, and worked his way up through the process. He was very, very highly qualified.

But as highly qualified as he was, he was also apparently a political threat to the minority on the other side, Mr. Speaker. So Miguel Estrada hung on the vine because of this unprecedented utilization of the Senate rules called filibuster, requiring 60 votes to gain cloture so that they could go to a vote on the floor of the Senate.

In the history of this country, Mr. Speaker, there has never been, until these last 2 to 3 years, that rule, the rule of the filibuster used against judicial nominees when that nominee had a majority of the votes on the floor of the Senate. The unprecedented use of that hung Miguel Estrada on the vine for 28 months and 5 days, where he finally could not stand it any longer. He had to get on with his life. He had to make a living, had to take care of his family, and so he withdrew his name.

I think that should have been lesson enough, but what happened was that the minority in the other body continued with the filibuster process. They held up a good number of the President's nominees, and I believe that number was 10. Today, the President has pledged to reappoint those nominees that were held up in the 108th Congress, and so now those names are before the Senate again.

In speaking of this impending constitutional crisis, I would also, Mr. Speaker, address the situation and ask that we remember the nomination process for Justice Thomas, and the long, drawn-out grilling affair that was used on him when he was finally confirmed by the Senate by a majority vote. That process and what this country went through was an agonizing thing. It was an embarrassment to the dignity of the United States that we would bring out all those details. Yet now we have a jurist who sits there and whose opinions I read, respect, admire and appreciate. He is a Justice who reads the Constitution, understands the letter of the Constitution, the intents of the framers, the effect of the Constitution and its controlling factors within our laws and the interpretation of congressional intent.

□ 1800

I appreciate that in a justice, and apparently some of the other side of the aisle do not, so they have been filibustering this second round of appointments by our President in this unprecedented effort.

Now it does a number of things. It puts us into this pending constitutional crisis because we are always one heartbeat away from a vacancy on the Supreme Court. We are always one heartbeat away from another national circus and confirmation like we saw with Justice Thomas. This case, though, it would be even more intense, it would be more difficult. It would be fought out more intensely, and that one heartbeat away or one retirement announcement away, one that some of us do anticipate could happen fairly soon, within the next few weeks or the next couple of months, if that takes place, these appointees that are hanging on the vine now that are held up by a Senate rule, a Senate rule that I believe contravenes the Constitution, will become secondary issues and the vacancy on the Supreme Court will become the primary issue.

And if this precedent that they are seeking to establish is allowed to stand, then a minority in the United States Senate will control who is nominated and who is confirmed. I will say they will have influence on who is nominated and they will control who is confirmed for all of our courts in this land.

We know that it is difficult to get judges confirmed that rule on the letter of the Constitution, the letter of the law, the intent of the Framers, and the intent of Congress.

As we sit here with this impending constitutional crisis, this filibuster over on the Senate side, I would ask the body to take a look at the Constitution itself. And if we look to the directions that we have that are framed within the Constitution and ratified by the people, that would be Article I, section 5, it says, ''Each House may determine the rules of its proceedings.'' One might read that and conclude that the Senate can have their filibuster rules and they can hold up the judicial appointments if they so choose, but the Senate rules cannot contravene the Constitution. They cannot be outside the Constitution. We are all bound by the Constitution. We take an oath to uphold the Constitution of the United States.

I would say that the controlling factor is not that each body, each House will establish its own rules, but Article II, section 2, where it says, and I think I should read this for the body, ''He shall have power,'' meaning the President, ''by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur,'' and that is one specific time where we have more than a simple majority.

There are two others in the Constitution. Continuing to quote, ''and he shall nominate, and by and with the advice and consent of the Senate, shall appointment ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law.''

So, Mr. Speaker, advise and consent of the Senate is the controlling constitutional question here. Certainly there is no shortage of advice from the Senate. We will concede they can have all of the advice they would like to deliver to our Commander in Chief and chief executive officer of the United States. We will concede that. They deliver that consistently. It is the consent portion that I object to because under consent, all analysis of the definition of consent is to a simple majority of the United States Senate, not a super majority. When this Constitution requires a super majority, it defines that in this Constitution without exception. It is a simple reading of the Constitution. The United States Senate needs to provide an up or down vote for these nominees that the President has put before them. They are qualified. They have a majority vote on the floor of the Senate. They are being held up by a Senate rule that contravenes the Constitution and it denies the representation of the people who elected the majority members of the United States Senate their voice.

That is the essence of this, Mr. Speaker. To get into it further, I would like to yield to the gentlewoman from North Carolina (Ms. FOXX).

Ms. FOXX. Mr. Speaker, I rise again today to add my voice to the chorus that is convened in this House Chamber to denounce the grave disservice that the Senate Democrats are doing to our fellow Americans. I am pleasantly surprised at how many people at home keep encouraging me to do all I can to see that the judges that the President has nominated become confirmed.

When the Framers of our Constitution brilliantly crafted the greatest form of government on earth, they deliberately installed a detailed system of checks and balances, and I think the point that the gentleman from Iowa (Mr. KING) has made is very, very important. Where we needed super majorities, they outlined that in the Constitution. Otherwise, simple majorities are sufficient.

And under that system, judges and courts are not supposed to legislate, and legislators are not supposed to make court decisions. However, by refusing to do their jobs and not even considering judicial appointments, Democrats in the Senate are making a mockery of the government our forefathers put their lives on the line to obtain.

Mr. Speaker, just as many of my colleagues and I frequently contest the dangerous trends and practices of activist judges, we have gathered this evening to oppose the equally dangerous activities of partisan activist Democrat senators, or should I say, inactive senators.

As any student of American government knows, it is the job of the President to nominate fellow Americans to serve as Federal judges, and it is the job of the Senate to approve or reject those nominations. It is a simple system that guarantees proper checks and balances in the manner our forefathers envisioned. Over the past 2 years, though, Senate Democrats have exploited parliamentary loopholes to prevent the Senate from voting up or down on many of President Bush's highly qualified nominees. They are hiding behind the Senate filibuster to judicial nominees who have the support of the majority of the Senate, something which has never been done before in American history. They are not asking for time to debate these nominees, they are not going to the American people and explaining why they oppose them, they are not even attempting to persuade their Republican colleagues to vote no. No, they are just refusing to vote, and that is wrong.

I stand for this simple proposition that every judicial nominee of the President deserves a fair yes or no vote. If Democrats do not like the President's nominees, they can vote no; but to avoid voting all together is a dangerous disservice to our Nation.

I urge Democrats in the Senate to stop playing politics with our justice system and to start doing their job. I hope the Democrats in the Senate are using their time off this week to contemplate their recklessly irresponsible actions. It is time to put partisanship aside, like many of my sensible colleagues have done in the House.

With no real agenda coming from their leadership, constructive Democrats have found a legislative home with House Republicans this year. As the Republican Party has made great strides for our Nation during the first few months of this Congress, many House Democrats have joined the majority in working for a better America.

Mr. Speaker, 73 Democrats voted to pass bankruptcy reform; 50 Democrats

voted for class action reform; 42 Democrats voted for the Real ID Act; and 122 Democrats voted for Continuity in Government; and 42 Democrats voted to repeal the death tax.

Mr. Speaker, the Republican Party is accomplishing great things for America every day. Many House Democrats have joined in that progress. I hope the Democrats in the Senate will put their partisan, irresponsible instincts aside and do their job when they return to Washington. Stop the filibuster on judicial nominees and put them to a vote.

Mr. KING of Iowa. Mr. Speaker, I thank the gentlewoman from North Carolina (Ms. FOXX) for her contribution to this cause.

Mr. Speaker, I yield to the gentleman from Utah (Mr. BISHOP).

Mr. BISHOP of Utah. Mr. Speaker, I thank the gentleman from Iowa (Mr. KING) for yielding me this time.

Mr. Speaker, in the late 1880s, House Speaker Thomas Brackett Reed was easily one of the most powerful speakers that has ever served in this body, and probably one of the most sarcastic speakers that ever served. Anyone who can be asked if he is going to attend the funeral of one of his political enemies and have the presence of mind to say, ''No, but I approve of it,'' one has to like that kind of a speaker.

One day Speaker Thomas Brackett Reed returned from watching proceedings in the Senate, and looked at his colleagues sitting in this Chamber and told them to thank God the House is not a deliberative body. I would never deign to give advice, or for the sake of the parliamentarian, to make a value judgment as to the actions of our brethren, and sisters, over in the Senate, but as they contemplate what is popularly called the ''Constitution option,'' or the Byrd option, or the nuclear option, it would be useful to briefly review the history of the House.

No Child Left Behind may not think history significant enough to be tested, but an understanding of congressional history may indeed smooth the troubled times ahead.

Historian David McCullough noted that ''Congress rolls on like a river, always there and always changing.'' So for all the fealty we give to traditions of each body, each tradition of both the House and the Senate had a beginning point when the body made a conscious decision to implement a tactical course of action. As McCullough intimated, though we do not like to admit it, each body is constantly making those course changes. The same principle applies to filibusters.

A filibuster is not a Constitution doctrine but a tactical course of action, and the concept of the filibuster has often been used for noble causes. During the 1990s, the Senate engaged in a filibuster of what I saw as a devastating attack upon the economy of the west based upon another administration's Federal land policies. I applauded them for that effort, but what can be used for good can also be used to abuse. And when that abuse becomes egregious, commonplace, and detrimental for the overall well-being of this Nation, changes should then be considered.

The Senate has changed its practices on filibusters several times with this tactic. They did so in 1917 and again in the 1950s, and again in the mid-1970s. And as the Senate considers whether to make an adjustment again, they should review the House's tradition with a tactic that was both similar and yet the exact opposite of the Senate filibuster.

The Senate developed the filibuster, a tactic designed for the minority to obstruct and frustrate the will of the majority by talking. But in the 1800s, the House had an Act called the disappearing majority. It was designed by the minority to obstruct and frustrate the will of the majority by silence.

In the early 1800s, former President John Quincy Adams, the only person to leave the White House and return here to this House body, refused to vote on a pro-slavery amendment. When his name was called, he just sat. Others joined him until there were not enough votes cast to make a quorum and the motion failed. There would be few who would criticize him for the nobility of that particular action; but unfortunately, that tactic caught on and by the speakership of Thomas Reed was being abused in an effort to frustrate any positive action in this body. On a quorum call, those people would simply refuse to answer, and with a lack of a quorum, all business would be brought to a screeching halt; the same goal as a filibuster, just a different approach.

This was common in the House practices in the 1800s, and the refusal to allow a vote resulted in minority government. As Speaker Reed said at the time, ''If the majority does not govern, the minority will; and if you think the tyranny of the majority is hard, the tyranny of the minority is unendurable.'' The rules then, he said, ought to be arranged to facilitate action of the majority. The Speaker made up his mind if, in his words, ''political life consisted of sitting helplessly in the Chair and seeing the majority powerless to pass legislation,'' he had had enough of it and was ready to step down.

He did not step down. Instead, he decided to step up to the challenge. Thus, he instituted a policy of counting as present Members in this Chamber, whether they were speaking or voiceless, and it led to a wonderful exchange between the Speaker and a Democrat Member from Kentucky, James McCreary. The outraged McCreary demanded to know what parliamentary right the Speaker had to declare him present. And Reed simply responded, ''The Chair is making a statement of fact that the gentleman from Kentucky is present. Does he deny it?''

Well, the precedent for the tactic was broken and even though the minority took this issue, ironically enough, to the Supreme Court in 1892, the Supreme Court upheld the position of the Speaker.

The House then evolved into a body with centralized or majoritarian authority, while the Senate remained decentralized with minority authority. These tactics, all of them, are not ordained by the Constitution, they are traditions of the Members of each body. House historians Oleszek and Sachs once wrote, ''The forces of centralization and decentralization are constantly in play, and they regularly adjust and are reconfigured in response to new conditions and events.''

In less scholarly terms, whatever has been born in a noble cause can degenerate into abuse; and if the abuse of that tactic harms the Nation in such situations, Congress should make changes. They should adjust.

□ 1815

The House did in the 1800s. The Senate would do well to learn from our experience. As McCullough might be saying right now, the river is ready to change.

Mr. KING of Iowa. I thank the gentleman from Utah. It would be interesting to have heard the gentleman say, no, I am not here and see that in the RECORD. That is a perspective that I appreciate being able to hear here tonight. At this moment I would also like to yield to a gentleman who has enormous experience in working with the judicial branch of government, former attorney general of the State of California and now a Congressman again, the gentleman from California (Mr. DANIEL E. LUNGREN).

Mr. LUNGREN of California. I thank the gentleman for recognizing me, I thank the gentleman from Iowa for having this time, and I thank the other Members of this body for entering into this discussion here this evening.

In my former life as the attorney general of the State of California, I was privileged to be on the confirmation panels for those members of the bench who were nominated to appellate positions or the Supreme Court of the State of California. In that regard, it was a three-person panel of confirmation requiring a majority vote, a two-thirds vote because there were three of us on that panel. During that time, I had the opportunity to investigate, review, speak with and have public hearings and then vote on more than a score, I believe, of nominees of the Governor of the State of California during the 8 years I served as the attorney general.

During that time, we were required to look at their record to see whether or not they were qualified to serve in their positions, but never did we misunderstand the responsibility we had, which was not to nominate them in the first place but, rather, review their nomination after it was made by the Governor of the State of California. While that is not an absolute analogy,

it certainly is an apt analogy to the responsibility that the United States Senate has under the Constitution of the United States to give advice and consent to the President of the United States upon his nomination of individuals to serve in the various courts in the Federal system.

Tonight I would like to at least address briefly the process that has developed in the Senate and the impact it has had on the nomination of a particular individual from my home State of California. Her name is Janice Rogers Brown. She is and has served for a significant period of time as a member of the California Supreme Court. Prior to that, she was on the Third District Court of Appeals for the State of California. She has been nominated by the President of the United States to serve on the District of Columbia Circuit Court of Appeals.

The gravamen of my observation is that the failure of the Senate to allow her nomination to come to the floor thus far denies her, but more importantly the American people, an opportunity to review her qualifications, to review her personal history and to make a determination as to whether she is a worthy individual to serve on the District of Columbia Circuit Court of Appeals.

As a matter of fact, it is my observation that in the absence of the opportunity to be voted up or voted down, to be subjected to a debate on the floor of the United States Senate in the context of such a consideration, that in fact the Janice Rogers Brown that I know in the State of California, not only because of my personal experience with her but because of my prior service in making a determination as to whether or not she was worthy to serve on the California appeals court and the California Supreme Court, that that person that I know is not the person that I hear discussed, the person that I hear characterized, or the person that I see presented in the press and in other places.

Her personal story is nothing short of inspirational. Janice Rogers Brown comes from a family of Alabama sharecroppers. She was born and grew up at a time in which there was still official discrimination in that State. She was one of those people who suffered as the result of official and unofficial discrimination in that State. Yet she rose from those humble beginnings to receive her law degree from UCLA in 1977. She served as a deputy attorney general in the California Department of Justice from 1979 to 1987.

When I was elected the attorney general of the State of California and took office in January of 1991, I asked a number of people who had previously served in the attorney general's office for recommendations of people who should serve at the top level of the Department of Justice in my administration. Her name was always offered by those who had had experience in that office.

I did talk with her. I did offer her the opportunity to serve as the head of the civil division in the California Department of Justice. That is an office that has over 1,000 attorneys in it, 5,000 employees, I believe one of the finest law offices in the country. It probably presents itself in argument before the U.S. Supreme Court more than any other office outside of the U.S. Department of Justice, and I very much believed that she would be someone who would bring tremendous esteem to our office.

Unfortunately, Pete Wilson, the former United States Senator, then Governor of the State of California, was successful in talking her into accepting his offer to be the legal affairs secretary to him in his administration. During that period of time that she served as legal affairs secretary, I was the attorney general of California and worked with her on many knotty legal issues. I found her to always be professional, to always be measured in her tones, to always look to the law first, and to give the best advice that she possibly could.

Later, the Governor nominated her to serve as justice on the Third District Court of Appeals, and we listened to the testimony of those who had worked with her, those who had seen her close at hand in the office of the Governor, in the attorney general's office and in private practice; and there was such a strong recommendation of those who had worked with her that it was easy to vote for her confirmation to the Third District Court of Appeals for the State of California.

Several years later, she was the first African American woman to be nominated to serve on the California Supreme Court.

During the confirmation hearings that we had, I had the opportunity to review the opinions that she had written while on the appellate court. Interestingly enough, every single member of the appellate court on which she served recommended her confirmation to the California Supreme Court. I recall at the time that the chief justice of the California Supreme Court, Justice Ron George, surprised the public hearing that we had by actually putting on the table every single written opinion that she had done and advising everybody there that he had read every opinion she had written at that point in time, not once but twice, and rendering his opinion that she was well qualified to serve on the California Supreme Court.

I can recall of those who opposed her, some said she was not serious enough and one of the things they cited was a particular case. So I went to that case to see their suggestion that she was not serious enough, and I found out that not only is she a legal scholar but she is a well-read individual and someone who understands the culture of America very well, because she had footnoted a routine done by George Burns and Gracie Allen, and that routine that she footnoted was right on point but made the point with humor.

I must say that having been involved in the law for 30-some-plus years, having served in this body on the Judiciary Committee for now 11 years, having served as attorney general for 8 years, and been involved in private practice in the other years, it is refreshing to find members of the court who actually believe it is appropriate occasionally to use humor to make a point.

It should be noted that Justice Brown was required to go before the people of the State of California for confirmation in a direct vote of the people and that in that she received over 75 percent of the vote of the people of California who had the opportunity to review her performance while serving on the California Supreme Court.

I have seen some criticism of some of her opinions. One cited in the other body has to do with a case coming out of the city of San Jose, and it had to do with whether or not the city of San Jose's ordinance with respect to hiring or contracting policies had run afoul of a new section of the California Constitution which was as the result of a direct vote of the people in Proposition 209. Proposition 209 entered the vast area of affirmative action and said in that vast area, we believe it is inappropriate to use racial quotas and set-asides. It did not condemn all affirmative action, but specifically said that the use of race for purposes of contracting or hiring by State government or its political subdivisions was inappropriate when it came by way of quotas or set-asides. That was a vote of the people.

In the case brought by some who challenged the ordinance in the city of San Jose, she wrote the majority opinion. Some have now criticized her for that opinion, suggesting, as I have heard, that she is, quote-unquote, out of the mainstream.

Well, that decision was a unanimous decision of the Supreme Court of the State of California: 7 to 0. If she is out of the mainstream, the entire Supreme Court of the State of California is, and the people of California are, out of the mainstream as defined by those who would criticize her.

The interesting thing is that she is a prolific writer in her capacity as a jurist. In fact, in the year 2001 and the year 2002, she authored more majority opinions than anyone else on the California Supreme Court. As I mentioned before, her opinions reflect well-reasoned analysis, a prosaic quality, as well as humor. In upholding a drug-testing program, she observed, ''That is life. Sometimes beauty is fierce, love is tough, and freedom is painful.'' Some have suggested that such comments are inappropriate. I would suggest that such comments are extremely appropriate because they are couched in the reality of life as well as the reality of the law.

I have talked with those people who served with her directly while she

served the Governor of the State of California, those who saw her on an everyday basis, those who asked her legal advice, those who asked her positions. Every single one of them will tell you that she is a measured individual, she is a well-thought-out individual, she is one who will give you what the law is; and if you ask her opinion, she will give you that as well.

If you look at her opinions, they are the opinions of someone who understands what I believe jurists ought to understand, that their obligation is to interpret the law, not make the law. Their obligation is to attempt to divine what the intent of the legislators was at the time they passed the law, and similarly what the intent of the framers of the Constitution meant at the time they wrote the Constitution. Because, simply put, this is not a game. We have an obligation in a democracy to be fair with the people who are members of that democracy, the citizenry. And if in fact those who are on the bench speak in some sort of Sanskrit, speak in some sort of code such that when they say one thing that is understood in the common utterances one way but they mean in their legalese something else altogether, that somehow that is the way to legislate, I would suggest that is the wrong way to legislate because it does not give the members of our society a fair chance at ordering their lives in accordance with the laws.

That is something we have not talked about enough here. When we give full flight of fancy to members of the court under the Federal system, what we are doing is saying that the people should not have the opportunity to fully understand the democracy in which they participate, that the people somehow are incapable of governing themselves and that somehow all the important decisions of life have to be decided on a, quote-unquote, constitutional basis as opposed to constitutional questions being the exception.

I would suggest that it is also not possible to pigeonhole Justice Brown into a stereotype or ideological mold. She has surprised some in the law enforcement community with her steadfast defense of individual rights. For example, in a California case called People v. Woods, she authored a lone dissent in a case which upheld a prosecution of two defendants for drug offenses based on evidence seized without a warrant from a residence defendants shared with a woman subject to a probation search condition.

□ 1830

In this dissent she observed, ''In appending the Bill of Rights to the Constitution, the Framers sought to protect individuals against government excess. High on that pantheon was the fourth amendment guarantee against unreasonable searches and seizures, which generally forbids such actions except pursuant to warrant issued upon probable cause by a neutral magistrate.'' This hardly sounds like a caricature of the right wing gargoyle which Justice Brown's critics have tried to create.

Recently her critics have heaped criticism upon her for reference to the cultural wars in a speech in which she acknowledged the secular assault on religious freedom. First of all, everyone from Pat W. Buchanan to Tammy Bruce has acknowledged that we are in the midst of a titanic cultural struggle. As a matter of fact, if we looked at the recent writings and utterances of James Carville, he has suggested that maybe his party ought to pay more attention to the cultural argument that is taking place, the cultural battle that is taking place. In light of the fact that cases relating to the removal of reference to God and the Pledge of Allegiance, which happened to come out of my district, by the way, and the two Ten Commandment cases currently before the United States Supreme Court, cases in courts around the land involving the question of the continued definition of marriage, Justice Brown would seem to be merely stating the obvious.

In fact, cities and counties across Southern California are being coerced by lawsuits and threats of lawsuits to remove minuscule depictions of the cross from city and county seals. Perhaps we ought to pretend that the California missions never existed, and perhaps we will be required soon to change the names of San Francisco, San Jose, and Sacramento to more secular terms.

My point this evening is a simple one. That which we are observing in the Senate is denying the American people an opportunity to review the nominees of the President of the United States. It is my belief that Janice Brown should be so presented to the United States Senate for consideration. She is the American story. From the humblest background, she has risen to the highest court in the most populous State in the Nation. She subscribes to a judicial philosophy considered radical in some circles, that the text of the Constitution actually means something. She holds to a consistent enforcement of individual rights that is not result oriented.

In my judgment, these are the qualities of a true jurist and is why she should be confirmed to sit on the DC Circuit Court of Appeals, and at very least, that her story be told in open debate on the floor of the United States Senate in the context of the consideration of her nomination by the whole body.

Mr. KING of Iowa. Mr. Speaker, reclaiming my time, I thank the gentleman from California for his comments, and I appreciate more insight into Justice Brown.

I also want to say that I looked to the gentleman from California for his viewpoint on the law and on the Constitution because of the experience he has and the fact that he had the opportunity to view her from up close and share that with us tonight.

We are asking for an up or down vote for Janice Brown and the others in the Senate.

And I yield to the gentleman from Indiana (Mr. PENCE), the chairman of the Republican Study Committee.

Mr. PENCE. Mr. Speaker, I thank the gentleman for yielding to me.

I thank the gentleman from Iowa for his stalwart and courageous and unbending commitment to an independent judiciary and for calling this forum tonight, which is really about this body speaking of the obligations of the Congress as a whole to do what the American people sent us here to do, and that is, in very simple terms, Mr. Speaker, we vote for a living. And I am going to be in Muncie, Indiana on Friday. We make a lot of car parts there. We have got a lot of corn and soybean fields in Eastern Indiana, where they grow things for a living, they make things for a living. We actually just vote for a living here. Any other way one dresses it up, there are a lot of other aspects of our job, but when the bells go off, legislators in the House and the Senate vote. That is what taxpayers call us to do. This is not a debating society, and the effort by our colleagues with the constitutional option as it is rightly observed in the Congress is an effort to reestablish a 214-year tradition in the Senate of either approving or disapproving the President's nominations by a simple majority vote. As many of my constituents love to say, this is not really rocket science.

I think for many Americans, the central question of the moment is can Mr. Smith still go to Washington? I mean, we could get lost in Article I, section 5 of the Constitution, and determining the rules and proceedings and all of the gobbledegook, but in my heart, I think many Americans just ask the question, can Jimmy Stewart still go to the floor of the United States Senate and expose the corrupt dam project?

I really believe it comes down to that. With a lot of the hyperbole and the hyper-rhetoric about the ending of filibusters and the ending of democracy and great traditions in the Senate, I have got to think, Mr. Speaker, that many Americans looking in are still asking that question, can Mr. Smith still go to Washington? And I think it is absolutely imperative that we say tonight an emphatic yes, Mr. Smith can still go to Washington, that specifically all the duly-elected majority of the United States Senate seeks to do is to eliminate filibusters on judicial nominations, which, I will argue is unprecedented in the Senate to begin with. It has never been accepted.

And recently, in the last 5 years, by prominent members of the Democratic then majority of the Senate, people like Senator TEDDY KENNEDY, people like Senator PATRICK LEAHY, people like Senator Tom Daschle, decried the use of the filibuster on judicial nominations. The filibuster that Jimmy Stewart used in the famous movie ''Mr.

Smith Goes to Washington'' was the legislative filibuster, the ability to go to the floor and to use the rules of the Senate to tie the institution up, to use a minority power in the institution to expose truth. And the reality is that that remains untouched and ever should it remain untouched, in this legislator's judgment. It is an essential element of the power of the most deliberative body in the world.

But that being said, Mr. Speaker, the introduction in recent years of filibusters on judicial nominations of the President of the United States is unprecedented, and it is precisely that which the majority of the United States Senate seeks to bring to an end.

And let me just give a couple of quotes. There are those who say that filibusters on judicial nominations are a great part of the Senate tradition and that, indeed, by their own rhetoric, Democrats acknowledge this not to be the case. Senator PATRICK LEAHY, and I will quote from the CONGRESSIONAL RECORD 18 June 1998, who said, ''I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported; that I felt the Senate should do its duty.'' Senator PATRICK LEAHY.

Senator TEDDY KENNEDY in 1998, also in the CONGRESSIONAL RECORD in March, said, ''We owe it to Americans across the country to give these nominees a vote. If our Republican colleagues do not like them, vote against them. But give them a vote.''

And Senator Tom Daschle, then I believe the majority leader of the U.S. Senate, of Clinton nominees to the United States Senate, said, ''The Constitution is straightforward about the few instances in which more than a majority of Congress must vote,'' and he names them: ''A veto override, a treaty, a finding of guilt in an impeachment proceeding.'' But he said, ''Every other action of Congress is taken by majority vote.'' And he went on to say, this is Tom Daschle now: ''The Founders debated the idea of requiring more than a majority . . . They concluded that putting such immense powers in the hands of the minority ran against the democratic principle. Democracy means majority rule, not majority gridlock.''

Tom Daschle, Senator PATRICK LEAHY, Senator TED KENNEDY all acknowledging the fact during the Clinton administration, that filibusters have never been a part nor should they ever be a part of the deliberation of the Senate over presidential judicial nominees.

I say as I close, and as I began, Congress is not a debating society. We vote for a living. And what we call on our colleagues to do, as much as our rules permit us, and I believe the American people that returned a widening Republican majority in the United States Senate in the last election and returned this President to office by the largest margin in American history insist that the Senate do its duty, that the Senate vote up or down, to quote Senator TED KENNEDY, up or down on the President's nominees to the bench.

Mr. KING of Iowa. Mr. Speaker, reclaiming my time, I thank the gentleman from Indiana for his comments.

Mr. Speaker, I now yield to the gentleman from Arizona (Mr. FRANKS).

Mr. FRANKS of Arizona. Mr. Speaker, I thank the gentleman from Iowa (Mr. KING) for yielding to me.

Mr. Speaker, our colleagues in the Senate in the coming days will approach a crossroads that will forever impact the future of this Republic. They will choose the road that will restore the constitutional balance of power that our Founders so carefully constructed, or they will travel the path that rewards a shameless behavior that has deliberately injured this delicate balance by transferring the executive power of judicial appointment to the legislative minority.

The Constitution's advice and consent has been twisted into mockery. Men and women of outstanding character have come forth as judicial nominees to be undeservedly maligned, smeared, and ridiculed, and then left in nominations limbo by this unprecedented, unconstitutional, and outrageous judicial filibuster.

Mr. Speaker, this is a show of disregard and contempt towards the world's flagship of freedom and toward her people and toward the time-honored principles of the United States Senate.

We will recapture the civility that once presided over judicial appointments, or we will forever surrender what Abraham Lincoln called ''the angels of our better nature'' to a bitterly partisan tactic that threatens the constitutional prerogative of the President to appoint good, decent, and honorable men and women to the Federal judiciary.

Advice and consent is clearly written in the United States Constitution. This judicial filibuster to prevent fair up or down votes is neither advice nor consent, and it is not in the United States Constitution. Never before 2003, in 214 years of U.S. Senate deliberations, has any judicial nomination with clear majority support been denied a fair up or down vote. And yet the minority would have the public believe that the majority is the one trying to change the rules here. They call it the ''nuclear option.'' It is the Senate minority that has launched the unprecedented ''nuclear option'' by devastating the constitutionally required just consideration of judicial nominees by the President of the United States.

What the majority seeks is the ''constitutional option'' that is in total keeping with 214 years of the rules, traditions, and dignity of the United States Senate. Senate Democrats have arrogantly and openly threatened to shut down the operations of this government if Republicans insist on the constitutional option.

Mr. Speaker, far better it is to let the Democrats shut down this government temporarily than it is to allow them to shut down this Republic permanently, because in this critical struggle for the future of this Republic, one of two things will happen: Either the time-honored tested provision of advice and consent written in the Constitution will prevail or unprecedented judicial filibuster and obstructionism will take its place and become the tragic legacy of these days.

The people who have placed us here with their votes have entrusted us to act in principle and for the common good. They are exhausted by the mercenary partisanship of these attempts to destroy the reputations of decent men and women. This destructive behavior has so insidiously invaded every aspect of our political process that it will destroy this Republic if we foolishly continue to reward it.

Mr. Speaker, I should not have to remind my Republican colleagues that the people who have entrusted us with this majority have spoken with resounding voice on the issue of judicial appointments. They hear it and I hear it everywhere I go.

□ 1845

The people of America have a profound sense of justice and fair play; and they want a fair up-or-down vote on judges. Somehow, the people understand how important this really is, and they understand it is really about the Constitution itself. They seem to innately embrace the message of Daniel Webster when he said those magnificent words: ''Hold on, my friends, to the Constitution and to the Republic for which it stands, for miracles do not cluster. And what has happened once in 6,000 years may never happen again. So hold on to the Constitution, for if the American Constitution should fall, there will be anarchy throughout the world.''

Mr. Speaker, the stakes could not be higher, and this Republic hangs in the balance. We have a once-in-a-lifetime opportunity to pass along the miracle of the American constitutional republic to any future generations that are yet to be.

We owe it to the American people, we owe it to ourselves, we owe it to those future generations, and we owe it to that vision of human freedom our Founding Fathers risked their fortunes, their lives, and their sacred honor to entrust to us.

We must not fail.

Mr. KING of Iowa. Mr. Speaker, I thank the gentleman from Arizona for his eloquence, for his understanding of the Constitution, and for his willingness to share that with us here tonight. I yield to the gentleman from Missouri (Mr. AKIN).

Mr. AKIN. Mr. Speaker, the Constitution calls upon the other body to advise and give consent to judicial nominations. For 214 years, they have done this effectively. Yet, today, we see what is becoming a constitutional crisis which is completely unprecedented,

and that is the use of the filibuster to basically stop the confirmation process both for circuit court and Supreme Court nominations.

In light of this mounting problem, it may become necessary to restore the confirmation process by adjusting the rules in the Senate. Of course, the Constitution gives the Senate the right and the authority to govern itself and has set up its own rulemaking. In fact, the Democrats in the Senate, when they were in the majority, advocated the total removal of the filibuster in 1995, and that was voted for by Senators BOXER, HARKIN, and KENNEDY, and some others. So there has been discussion on this subject in the past.

But we are not suggesting the removal of the filibuster, not at all. But we do not stand for the complete filibuster of judicial appointments. Rather, the so-called Constitutional Option actually is a very narrow rule change, and it affects only the Supreme Court and circuit court nominees.

So, once again, we come back to where we have been for 214 years, and that is the fact that never, never in the history of this Republic has it ever happened that a judge that was supported by a majority was denied the right to have a simple vote on whether or not they could serve. Never in our history has a nominee with clear majority support failed to receive a vote in the U.S. Senate. This is our longstanding tradition.

We believe that at least a majority should have the right to cast a vote on whether or not we will seat a judge, and that is all that we are talking about. It is an essential tenet of our whole representative form of government, the idea that there should not be some tyranny which makes it so nobody can even have a chance to vote. And that is certainly a new use of the filibuster and something which threatens to shut down our entire confirmation process for the courts.

We have never embraced a system in which it requires 60 votes to confirm a judge, and we should not be doing that now. With this change, Mr. Smith can still come to Washington, he can still filibuster legislation, but our constitutional call to confirm judges will continue so that the work of the judiciary may go on without the obstruction that we have been seeing in the last several years.

Mr. KING of Iowa. Mr. Speaker, I thank the gentleman for his contribution to this important subject matter that is before us here. It is actually pending before the United States Senate.

A couple of pieces that I think came out in this discussion we have had tonight has been that even though we are asking Mr. FRIST to utilize the Constitutional Option and to call for a rule decision that would be that in the case of a constitutional issue in the United States Senate, when the confirmation of judges are before the United States Senate, a simple majority vote will have to prevail. It is not unprecedented in the Senate rules. What it would do is it would set aside the filibuster option with regard to judicial appointments.

There is no filibuster right now for appropriations bills for obvious reasons, because if you allowed a single Senator or a minority of the Senators to hold up the spending, then anyone could hold the appropriations process hostage to their particular agenda and their particular wishes. Those rules reflect the reason for suspending filibuster for the purposes of appropriations.

Certainly, getting judges on the bench is as high a standard and something that should allow for a simple majority vote over in the Senate. If he exercises that option and the majority leader makes a decision that they will have a vote on the rule, the rule can be amended on the floor of the Senate with a simple majority vote. So if 51 Senators say, let us change the rule to a simple majority for confirmation of judges, it is entirely within the Constitution. In fact, it brings them back to the Constitution which says advice and consent. Consent is defined as a simple majority, not a supermajority, which is what prevails today.

I happen to have heard in the news media last week, or else early this week, the former Governor of New York was on the media saying, and that would be Governor Cuomo, saying that James Madison said the Constitution is here to protect the rights of the minority, meaning the minority in the United States Senate, from the tyranny of the majority. Well, this is not the case. I will say, yes, the Constitution protects those rights; it defines those rights. But what we have right now is the tyranny of the minority in the United States Senate setting policy and determining who will get through the confirmation process for everyone in the United States of America.

So Mr. Smith, after this rule is changed, will still go to Washington, we will still protect the rights of the minority by our Constitution, but we will then prevent the minority, who have been elected to serve in a capacity in the United States Senate, will allow them their rights, will let the people who elected the majority in the Senate make the decisions on who gets confirmed to the courts in this land.

There is far more at stake here than these judges that are before the court today. It is the impending nomination to the Supreme Court that is at stake here. The hostages that are sitting over there right now in the Senate include the energy bill, the transportation, the road bill, other pieces of legislation that we passed over there from the House, all sit there today waiting to be bottled up in a potential filibuster that has to do with the threat that the process will be shut down in the Senate.

Well, we know when somebody shuts down this legislative body by using the rules, however they might use the rules, they have paid a price at the ballot box. There are more Senators over there today on the majority side than there were before the last election because the public does not want obstruction. They want progress, they want an up-or-down vote for these justices consistent with the Constitution, and that is a simple majority.

My junior Senator from the State of Iowa is one of those people who has taken a position and actually led an initiative back in 1995 to change the rules in the Senate so there would not be a filibuster of the justices. That was his opinion then; I am asking that it be his opinion today. In fact, his wife was before the Iowa Senate to be confirmed to a position there before the Board of Regents. If those senators had determined, my former colleagues, my alma mater had determined they wanted to use their rights to filibuster to hold that up, the junior Senator from Iowa's wife would not be sitting on the Board of Regents today like she is.

We want to have the voice of the people in this country heard. We want to stay consistent with the Constitution. We want an up-or-down vote. It is a simple process, a simple concept, and something that, in 214 years of the United States, has not been utilized, the filibuster, to hold up these judicial appointments.

So, Mr. Speaker, I would ask this: let the people know that what we are asking, the Constitutional Option, the up-or-down vote in the United States Senate, let the people know that it is their voice that will be heard when that option is exercised. We ask for that action early in the United States Senate so that it does not bottleneck legislation that is there; and we ask for this decision before such time as we get into a real bare-knuckles brawl over a Supreme Court Justice that might well be nominated within the next few months.

So with that, Mr. Speaker, I appreciate the opportunity to speak before this House.

CAFTA, LIKE NAFTA, IS BAD TRADE POLICY

The SPEAKER pro tempore (Mr. INGLIS of South Carolina). Under the Speaker's announced policy of January 4, 2005, the gentleman from Maine (Mr. MICHAUD) is recognized for 60 minutes as the designee of the minority leader.

Mr. MICHAUD. Mr. Speaker, first I want to thank my good friends, the gentleman from Ohio (Mr. BROWN) and the gentleman from New Jersey (Mr. PALLONE), for allowing me to conduct this Special Order regarding CAFTA this evening. They have been remarkable advocates of issues affecting working families, and they have my gratitude and admiration.

Mr. Speaker, there are several Members who want to come down to speak on this important issue, so I will at this time yield to my good friend, good colleague and cofounder of the House