has not always been that way. Indeed, there has never, ever, ever been a refusal to permit an up-or-down vote with a bipartisan majority standing ready to confirm judges in the history of the Senate until these last 2 years. Many nominees have, in fact, been confirmed by a vote of less than 60 Senators. In fact, the Senate has consistently confirmed judges who enjoyed a majority but not 60-vote support, including Clinton appointees Richard Paez, William Fletcher, and Susan Oki Mollway; and Carter appointees Abner Mikva and L.T. Senter.

Specifically, the distinguished Democratic leader, yesterday, when he said this had been used by Republicans against Democratic nominees, mentioned Judge Paez. Well, obviously, that is not correct because Judge Paez, indeed, was confirmed by the Senate and sits on the Federal bench today.

So it reminds me of, perhaps, an old adage I learned when I was younger, when computers were not as common as they are now, and people marveled at this new technology, and those who wanted to chasten us a little bit would say, well, they are not the answer to all of our concerns, and they said: Garbage in, garbage out. In other words, if you do not have your facts right, it is very difficult to reach a proper conclusion.

So I thought it was very interesting—and I thought it was important—that the Democratic leader would make this claim, first of all, as I said, that these judges had been somehow turned down by the Senate when, in fact, they had been denied an opportunity for an up-or-down vote; and, secondly, that somehow there is a 60-vote requirement, and it has always been that way, because the facts demonstrate that both of those conclusions are clearly incorrect.

Finally, he said something I do more or less agree with, although I would differ a little bit on the contentious tone. He said: We're hopeful they'll bring them to the floor so there will be a fair fight. Well, I think I knew what he meant. I hope he meant a fair debate. Frankly, the American people are tired of obstruction and what they see as partisan wrangling and fighting over judicial nominees.

In the end, that is what happened during the Clinton administration when, perhaps, judges who were not necessarily favored by our side of the aisle did receive an up-or-down vote and did get confirmed. And that is, of course, what happened during the Carter administration. In fact, that is what has happened throughout American history—until our worthy adversaries on the other side of the aisle decided to obstruct the President's judicial nominees and they were denied the courtesy of that fair process, that fair debate, and an up-or-down vote.

Let me just conclude by saying this really should not be a partisan fight. Indeed, what we want is a fair process. We want a process that applies the same when a Democrat is in the White House and Democrats are in the majority in the Senate as we do when a Republican is in the White House and Republicans are in the majority in the Senate.

We want good judges. The American people deserve to have judges who will strictly interpret the law and will rule without regard to some of the political passions of the day. A judge understands that they are not supposed to take sides in a controversy. That is what Congress, the so-called political branch, is for. That is why debate is so important in this what has been called the greatest deliberative body on Earth. But we do not want judges who make political decisions. Rather, we want judges who will enforce those decisions because they are sworn to uphold the law and enforce the law as written. Members of Congress write the laws, the President signs or vetoes the laws, and judges are supposed to enforce them but not participate in the rough and tumble of politics.

So it is important that the process I have described produces a truly independent judiciary because we want judges who are going to be umpires, who are going to call balls and strikes regardless of who is up at bat. So I think the process we have seen over the last couple years, which, unfortunately, it sounds like, if what I am hearing out of the Democratic leader is any indication, is a process that has not only been unfair because it has denied bipartisan majorities an opportunity to confirm judges who have been nominated by the President, but it is one which, frankly, creates too much of a political process, one where it appears that judges who are sworn to uphold the law, and who will be that impartial umpire—it has made them part of an inherently political process.

Now, I want to be clear. It is the Senate's obligation to ask questions and to seriously undertake our obligation to perform our duty under the Constitution to provide advice and consent. But, ultimately, it is our obligation to vote, not to obstruct, particularly when we have distinguished nominees being put forward for our consideration, when they are unnecessarily besmirched and, really, tainted by a process that is beneath the dignity of the United States. Certainly none of these individuals who are offering themselves for service to our Nation's courts in the judiciary deserve to be treated this way.

So, basically, Mr. President, what we are talking about is a process that works exactly the same way when Democrats are in power as it does when Republicans are in power. That, indeed, is the only principled way we can approach this deadlock and this obstructionism. I hope the Democratic leader—who I know has a very difficult job because he, no doubt, has to deal with and reflect the views of his caucus on this issue—I hope he will encourage his caucus, the Democrats in the caucus, and we will all, as a body, look at the opportunity to perhaps view this as a chance for a fresh start, a chance for a fair process, one that is more likely to produce an independent judiciary that is going to call balls and strikes regardless of who is at bat.

Mr. President, I thank you for the opportunity. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Journal clerk proceeded to call the roll.

The PRESIDING OFFICER. In my capacity as a Senator from the State of South Dakota, I ask unanimous consent that the order for the quorum call be dispensed with.

Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. In my capacity as a Senator from the State of South Dakota, I ask unanimous consent that the Senate stand in recess until 4 p.m. today.

There being no objection, the Senate, at 3:02 p.m., recessed until 4 p.m. and reassembled when called to order by the Presiding Officer (Mr. COBURN).

The PRESIDING OFFICER. The Senator from Massachusetts.

THE NOMINATION PROCESS

Mr. KENNEDY. Mr. President, before going up to the 3 o'clock briefing, I heard my friend—he is a friend and colleague of mine—Senator CORNYN make comments about our leader, Senator REID, accusing him and Democratic Senators of obstruction in the judicial nomination process earlier today.

That sort of rhetoric may be good for sound bites, but it doesn't match the reality of the Senate's tradition or the Founding Fathers' vision in creating the checks and balances of our constitutional system.

In the Constitutional Convention, they considered four different times who should have the authority about naming justices. On three of those four times, it was unanimous that the Senate of the United States was named. The last important decision the Constitutional Convention made was dividing the authority between the President and the Senate of the United States. Any reading of those debates will reaffirm that.

With all respect to my colleague making comments about our leader, the Senator from Nevada, he clearly has not read carefully that Constitutional Convention. It says that we have a responsibility, a constitutional responsibility to exercise our will on these matters. Historically, the record shows more than 98 percent of the President's nominees have been approved. In fairness to my friend who can speak for himself and does that very well and does not need me here, as to these attacks on Senator REID, it is important to understand the facts and

get them correct if we are going to have those interventions in the Senate.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

GENETIC INFORMATION NONDISCRIMINATION ACT OF 2005

Mr. ENZI. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 3, S. 306, the Genetic Information Nondiscrimination Act of 2005; provided that there be 90 minutes of debate equally divided between the chairman and ranking member of the HELP committee; provided further that the only amendment in order, other than the committee-reported amendment, be a substitute which is at the desk, and following the use or yielding back of time the substitute amendment be agreed to, the committee-reported amendment, as amended, be agreed to, the bill, as amended, be read a third time, and the Senate proceed to a vote on passage without any intervening action or debate at a time determined by the majority leader, after consultation with the Democratic leader.

The PRESIDING OFFICER. Is there any objection? Without objection, it is so ordered.

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 306) to prohibit discrimination on the basis of genetic information with respect to health insurance and employment.

The Senate proceeded to consider the bill which had been reported from the Committee on Health, Education, Labor, and Pensions with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 306

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

[(a) SHORT TITLE.—This Act may be cited as the ''Genetic Information Nondiscrimination Act of 2005''.

[(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

[SEC. 2. FINDINGS.

[Congress makes the following findings:

[(1) Deciphering the sequence of the human genome and other advances in genetics open major new opportunities for medical progress. New knowledge about the genetic basis of illness will allow for earlier detection of illnesses, often before symptoms have begun. Genetic testing can allow individuals to take steps to reduce the likelihood that they will contract a particular disorder. New knowledge about genetics may allow for the development of better therapies that are more effective against disease or have fewer side effects than current treatments. These advances give rise to the potential misuse of genetic information to discriminate in health insurance and employment.

[(2) The early science of genetics became the basis of State laws that provided for the sterilization of persons having presumed genetic ''defects'' such as mental retardation, mental disease, epilepsy, blindness, and hearing loss, among other conditions. The first sterilization law was enacted in the State of Indiana in 1907. By 1981, a majority of States adopted sterilization laws to ''correct'' apparent genetic traits or tendencies. Many of these State laws have since been repealed, and many have been modified to include essential constitutional requirements of due process and equal protection. However, the current explosion in the science of genetics, and the history of sterilization laws by the States based on early genetic science, compels Congressional action in this area.

[(3) Although genes are facially neutral markers, many genetic conditions and disorders are associated with particular racial and ethnic groups and gender. Because some genetic traits are most prevalent in particular groups, members of a particular group may be stigmatized or discriminated against as a result of that genetic information. This form of discrimination was evident in the 1970s, which saw the advent of programs to screen and identify carriers of sickle cell anemia, a disease which afflicts African-Americans. Once again, State legislatures began to enact discriminatory laws in the area, and in the early 1970s began mandating genetic screening of all African Americans for sickle cell anemia, leading to discrimination and unnecessary fear. To alleviate some of this stigma, Congress in 1972 passed the National Sickle Cell Anemia Control Act, which withholds Federal funding from States unless sickle cell testing is voluntary.

[(4) Congress has been informed of examples of genetic discrimination in the workplace. These include the use of pre-employment genetic screening at Lawrence Berkeley Laboratory, which led to a court decision in favor of the employees in that case *Norman-Bloodsaw v. Lawrence Berkeley Laboratory* (135 F.3d 1260, 1269 (9th Cir. 1998)). Congress clearly has a compelling public interest in relieving the fear of discrimination and in prohibiting its actual practice in employment and health insurance.

[(5) Federal law addressing genetic discrimination in health insurance and employment is incomplete in both the scope and depth of its protections. Moreover, while many States have enacted some type of genetic non-discrimination law, these laws vary widely with respect to their approach, application, and level of protection. Congress has collected substantial evidence that the American public and the medical community find the existing patchwork of State and Federal laws to be confusing and inadequate to protect them from discrimination. Therefore Federal legislation establishing a national and uniform basic standard is necessary to fully protect the public from discrimination and allay their concerns about the potential for discrimination, thereby allowing individuals to take advantage of genetic testing, technologies, research, and new therapies.

[TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE

[SEC. 101. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

[(a) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

[(1) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 702(a)(1)(F) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)(F)) is amended by inserting before the period the following: ''(including information about a request for or receipt of genetic services by an individual or family member of such individual)''.

[(2) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 702(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(b)) is amended—

[(A) in paragraph (2)(A), by inserting before the semicolon the following: ''except as provided in paragraph (3)''; and

[(B) by adding at the end the following:

[''(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).''.

[(b) LIMITATIONS ON GENETIC TESTING.—Section 702 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182) is amended by adding at the end the following:

[''(c) GENETIC TESTING.—

[''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require an individual or a family member of such individual to undergo a genetic test.