strategies himself, the Senate can exercise its constitutional authority to determine its procedural rules either way.

He may certainly believe that the changes he sought were warranted while the change we may seek today is not. That is his right, and he can express that right in debate by voting against such a change. But that difference of opinion does not make his attempts to limit debate, even on legislation, right and just while any attempt to do so today on judicial nominations cruel and unjust.

We departed from our tradition of giving judicial nominations reaching the Senate floor an up-or-down vote only 2 years ago. The result has been the Senate's inability to do its constitutional duty of providing advice and consent regarding judicial nominations. We were able to give advice, I presume, but with regard to these 10 nominees we were never able to give consent or not consent, whichever the case may be. And that is done by a vote up and down. It demonstrates that the confirmation process is, in the words of the Washington Post, ''steadily degrading.''

Returning to that tradition of giving up-or-down votes for judicial nominations will not in the long run mean either party will always get its way. Both the executive branch and the Senate do change partisan hands from time to time. This standard, this tradition, knows no party and guarantees no partisan advantage. It applies no matter which party occupies the White House or which party controls the Senate. It would bind Republicans as well as Democrats and preserve our institutional traditions. I hope and believe, however, that restoring this tradition will, despite some Senators' threats to blow up the Senate, help restore some comity and good will to this body.

Returning to that tradition, which recognizes the difference between our authority over legislation and the President's authority over appointments, is not an attack on the Senate; rather, it affirms our traditions and the Senate's unique place in our system of separated powers. Returning to it both respects the President's authority over appointments and asserts the Senate's role of advice and consent, not just advice but consent as well.

A majority of Senators have been deprived of the right to give or not give consent by these irresponsible filibusters of judicial nominations on the Executive calendar. The deviation we have seen from that tradition, wherein a filibuster prevents confirmation of nominees with majority support, undermines the President's authority and distorts the Senate's role. Preserving both of our traditions—extended debate regarding legislation and up-or-down votes on judicial nominations reaching the Senate floor—will restore the proper balance.

There is nobody in this body who respects the distinguished Senator from West Virginia more than I do. I hope we can resolve these matters so both parties are bound by the correct tradition that we are not going to filibuster executive branch nominees and we will both preserve the right to filibuster over the matters we totally control on the legislative calendar. I would fight to my death to preserve rule XXII on legislation because I have also been in the minority from time to time, and it was the only way we could stop some things which would have been just terrible for this country. But there is a difference between the legislative calendar and the Executive calendar.

I respect my colleague from West Virginia. I can truthfully say I love him because he has been a strong force around here for years, but I hope he will look at some of these examples I have given and some of these thoughts I have and help us stop this impasse that is occurring in the Senate, not by preferring one party over the other but by binding both parties to treat Presidential nominations with the respect they deserve.

I have to say I never quite concentrated on this enough until these judicial nominations were filibustered in 2003 and 2004. I myself am to blame for not having thoroughly studied this until these problems arose, but I have now studied it. I believe it would be far better for our Senate to get rid of these animosities and threats to have nuclear warfare and bind both the Republicans and the Democrats in the Senate to do what is right, to give a vote up or down, so that we can not only give advise but consent as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, what is the time that I have under the order?

The PRESIDING OFFICER. The minority controls 14 minutes.

Mr. BYRD. Madam President, I ask unanimous consent that my time may be extended to a total of 35 minutes and that the final 5 minutes be under the control of the distinguished Senator from Delaware, Mr. CARPER.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BYRD. I thank the Chair.

FREEDOM

Mr. BYRD. Madam President, freedom is a fragile thing and never more than one generation away from extinction. It is not ours by inheritance; it must be fought for and defended constantly by each generation, for it comes only once to a people. Those who have known freedom and then lost it have never known it again. These words come from the lips of former President Ronald Reagan.

I rise today to discuss freedom, not the grandiose worldwide ''freedom talk'' one hears so much about. No. Not far-flung foreign policy goals, but, rather, my concern today is preserving our freedoms right in our own backyard at home.

Freedom, like a good garden, needs constant tending. One must watch for the worms in the wood. As Wendell Phillips, the abolitionist, orator, and the columnist, once said, ''eternal vigilance is the price of liberty.'' One must pay the price if one wants the blessing.

In a culture where sports metaphors are more common public parlance than historical analogies, our unique form of government, carefully restraining powers while protecting rights, presents a special challenge to maintain. The ''winning is everything'' philosophy so beloved by Americans may, without careful balance, obscure the goal of justice for all that must be the aim of a representative democracy. Demeaning minority views, characterizing opposition as obstructionist—these are first steps down the dark alley of subjugating rights.

Majorities can prevail by numerical force. They do not need protection from minorities. Yet some would have us believe that minority voices threaten the larger public good in the case of Presidential judicial appointments. The opposite is true. It is minorities who are most in jeopardy without fairness from the Federal bench. I am talking about those who are in the minority. The persecuted, the disadvantaged, the poor, the downtrodden—these are the very citizens who need the strong protection of an unbiased legal system.

Appointees to the Federal bench should be scrutinized for traces of ideological rigidity or allegiance to political movements which could cloud impartial judgment. I for one do not favor activist judges of any stripe. I do not think the proper role for a judge is to make new law from the bench. My own preference is usually for strict constitutionalists. Conservative judges can hold activist views, just as can liberal judges. Such labels tell us very little. What we should strive for on the Federal bench is blind justice; that is, justice absent a political agenda.

Judicial appointments must never be a sure thing for the bench simply because they please the majority party, whether that majority is Democratic or Republican. Federal judges enjoy life tenure. Remember that. Federal judges enjoy life tenure, making decisions of huge importance to the lives and the livelihoods of our citizens. Are they accountable to anyone? No. They are accountable to no one, and no President can fire them. No President can say: Go home, you are sick today.

It is ridiculous to suggest that mere superiority of numbers in the Senate should alone guarantee confirmation to a Federal judgeship. Such a claim reduces the constitutional advice and consent function of the Senate to a pro forma rubberstamping of Presidential judicial appointments whenever the President's party controls the Senate. We are talking about a separate branch of the Federal Government. We are talking about a separate branch of the

Federal Government here, which wields tremendous power.

There is no God-given right to a seat on the Federal bench—no God-given right. There is no God-given right to a seat on the Federal bench. Should a minority have only the recourse of delay to defeat a judicial candidate of concern, that minority is well within its rights to filibuster. In fact, the minority would be derelict in their duty if they did not filibuster. There is no shortage of candidates for the Federal bench, no shortage. Another name can always be offered. Our aim should be to select excellent judges acceptable across a wide spectrum of political views.

There was a time in this country when men and women of opposite political parties could reason together to achieve such goals. There was a time when the concerns of honorable men and women serving in this Senate received the respect of fellow Members of the Senate, even though they were in the minority. Now I am very sorry to observe the Senate and the country are so polarized—so polarized, so politicized—that nearly all dissent is discarded as obstructionist and politically motivated. ''Get out of the way'' is the cry. ''Get out of the way, get out of the way'' is the cry. Few take the time to consider other views.

If 41 Members of the Senate have objections to any judicial candidate, perhaps those objections should be heeded. Those are 41 Members. Perhaps that nominee should not serve. Forty-one Members, representing at the very least the people of 21 States, at the very, very least. Perhaps the minority is right. Perhaps the minority is right.

Senate service often reminds me of a game of ''red rover.'' We line up like two opposing camps and run as hard as we can at each other to score points. The talk show mavens keep the fires fanned, and through the din, honest discourse is nearly impossible. I worry. Oh, yes, I worry about a country whose major political pastime is not in finding compromise but, rather, in seeking conflict. The people are not well served. The courage to speak out about one's convictions is in scarcer and scarcer supply. Where, oh, where are the 21st century's profiles in courage?

President John F. Kennedy's Pulitzer Prize-winning book ''Profiles in Courage'' lionized public servants who did not fear to stand alone, like Senator George Norris of Nebraska. From 1806 to 1917, there was no ability to invoke cloture in the Senate. Why 1806? Because that was when the rule was dropped from the Senate rules asking for the previous question, which would shut off debate. Therefore, it was really from 1789 to 1917 that there was no ability to invoke cloture in the Senate. But, in 1917, a cloture rule passed after a filibuster by 12 determined Senators who opposed U.S. intervention in World War I. That debate began when President Wilson asked Congress for the authority to arm U.S. merchant ships against Germany. The House of Representatives passed Wilson's bill, the ''Armed Ship'' bill, by a vote of 403 to 13. But a handful of determined Senators who opposed U.S. intervention in World War I, including Republican George W. Norris of Nebraska, launched a filibuster with far-reaching consequences.

George Norris's filibuster killed President Wilson's bill, though Wilson resurrected its contents by Executive order shortly after the filibuster ended.

I was born during the administration of Woodrow Wilson.

Nebraskans and, in essence, all States, the entire nation, were consumed with rage at George Norris because of public disclosure that Germany had promised Mexico several United States States if Mexico would align itself with Germany in war against the United States.

Well, there was a huge din, a huge outcry. The New York Times called Norris and others ''perverse and disloyal obstructionists.'' Does that recall anything of present-day vintage to Senators? The New York Times called Norris and others ''perverse and disloyal obstructionists'' and editorialized that:

> . . . the odium of treasonable purpose will rest upon their names forevermore. The Hartford Courant called them ''political tramps.'' The New York Sun called them ''a group of moral perverts.'' The Providence Journal called their action ''little short of treason'' and the Portland Free Press said they should be ''driven from public life.''

Senator George W. Norris, the Nebraskan from the heart of America, suffered merciless abuse, vicious invective and public scorn, tarred by public sentiment, savaged by a strident press and the grip of a public filled with hate of Germany and the start of World War I. Yet he was and is an American hero. George Norris was ''fearful of the broad grant of authority'' that President Wilson sought to go to war, and resentful of the manner in which that authority was being ''steamrolled'' through the Congress.

Oh, how history repeats itself. How history repeats itself.

In Senator Norris's words:

> I will not, even at the behest of a unanimous constituency, violate my oath of office by voting in favor of a proposition that means the surrender by Congress of its sole right to declare war. . . . I am, however, so firmly convinced of the righteousness of my course that I believe if the intelligence and patriotic citizenship of the country can only have an opportunity to hear both sides of the question, all the money in Christendom and all the political machinery that wealth can congregate will not be able to defeat the principle of government for which our forefathers fought.

That was George Norris speaking.

When George Norris went home to explain why he had filibustered in the face of universal criticism, he sought an open meeting in Lincoln, NE.

''I had expected an unfriendly audience,'' Norris wrote, ''And,'' he said, ''it was with some fear that I stepped forward. When I stepped out on the stage, there was a deathlike silence.''

Senator Norris began, President Kennedy tells us, by stating simply: ''I have come home to tell you the truth.''

After more than an hour, the crowd in Lincoln, NE, Kennedy wrote, roared its approval.

Many have written extensively and with legitimate fear of what could happen if men without the courage of their convictions simply sat back and let themselves be swept away by a powerful majority, including George Orwell, writing of the horrors of power run rampant, of a world run by ''thought police'' who seek to control not just information but the speech and thoughts of every individual citizen. In ''1984'' Orwell recorded what life would be like under the thumb of Big Brother, with no autonomy of thought or speech.

George Orwell's fictional warning against Big Brother should encourage us all to ponder, to cherish and to protect our precious freedom—our precious freedom to think and speak freely. And the means to that end is protecting the right to dissent. Orwell said of liberty:

> If liberty means anything at all, it means the right to tell people what they do not want to hear.

That right will be in jeopardy if a misguided attempt to eliminate the filibuster succeeds.

Robert Caro, winner of the Pulitzer Prize for his renowned book about Lyndon B. Johnson, made Orwell's point in a letter to the Senate Rules Committee in June 2003.

> Many times in America's history the right of extended debate has been used to defend causes with which I profoundly disagree. Nonetheless, great care should be taken in placing new restrictions on that right. Senators who are considering doing so should understand that they will be taking a step that has significant implications for the balance of powers created under the Constitution, and also for another fundamental concern in a democracy: the balance between majority and minority rights.

Caro stressed that the Framers gave the Senate strong protections from transient public passions or executive pressures and that the Constitutional Convention kept the Senate small so that it would have, in Madison's words:

> [less propensity] to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions.

Madison believed:

> . . . there are more instances of the abridgement of freedoms of the people by gradual and silent encroachment of those in power than by violent and sudden usurpations.

Madison was right. The loss of freedom will not come as a thunderclap. I say again, the loss of freedom will not come as a thunderclap from Heaven. Rather, if it goes away, it will slip silently away from us, little by little, like so many grains of sand sliding softly through an hourglass.

The curbing of speech in the Senate on judicial nominations will most certainly evolve to an eventual elimination of the right of extended debate.

And that will spur intimidation and the steady withering of dissent. An eagerness to win—win elections, win every judicial nomination, overpower enemies, real or imagined, with brute force—holds the poison seeds of destruction of free speech and the decimation of minority rights.

The ultimate perpetrator of tyranny in this world is the urge by the powerful to prevail at any cost. A free forum where the minority can rise to loudly call a halt to the ambitions of an overzealous majority must be maintained. We must never surrender that forum—this forum—the Senate, to the tyranny of any majority.

When Aaron Burr said farewell to the Senate, he urged the Senate to do away with the Senate rule that would close debate on the previous question. That previous question has seldom been used in the short time. And in 1806, the Senate carried out the will of Aaron Burr.

This house is a sanctuary; a citadel of law, of order and of liberty; and it is here—it is here, in this exalted refuge; here, if anywhere, will resistance be made to the storms of political phrensy and the silent arts of corruption; and if the Constitution—

This Constitution.

—and if the Constitution be destined ever to perish by the sacrilegious hands of demagogue or the usurper, which God avert, its expiring agonies will be witnessed on this floor.

On March 2, 1805, Aaron Burr stated that prophetic warning.

The so-called nuclear option, if successful, will begin the slow and agonizing death spiral of freedom, speech, and dissent, and it will be witnessed on this floor.

I yield the floor.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. ENSIGN). There is 9 minutes 40 seconds remaining in total to the minority.

Mr. BYRD. I thank the Chair. I believe Senator CARPER is on his way. He wishes to have 5 minutes under the order following my remarks.

The PRESIDING OFFICER. The Senator from Delaware.

JUDICIAL NOMINATIONS

Mr. CARPER. Mr. President, I came to the floor today to talk about bankruptcy reform and the need to enact legislation dealing with bankruptcy reform. Before I do that, given the comments of our esteemed leaders, Senator BYRD and Senator HATCH, I feel compelled to say something first with respect to judicial nominations.

This 109th Congress, in my view, has begun with much promise. We have taken steps to begin to restore a sense of balance in our legal systems—the system of civil justice to make sure that little people harmed by big companies have a chance to band together and be made whole, and at the same time make sure that companies defended in class action lawsuits have a fair trial in a court where the deck is not stacked against them.

We are on the verge of passing significant and needed bankruptcy reform legislation. A conference on energy policy is taking place that will reduce our dependence on foreign oil, which has the promise also of increasing our reliance on renewable forms of energy and cleaning up our air, reducing sulfur dioxide emissions, nitrogen dioxide, mercury, and even carbon dioxide.

We have just reported out of the Finance Committee legislation that will better ensure that work pays more than welfare to help people make that transition from welfare to work. We are close to consensus on overhauling our postal system and taking the 1970s model created under the leadership of Senator STEVENS—who has joined us on the floor—to bring that into the 21st century.

There is much promise. There is much that can be done and ought to be done.

I fear that we are approaching a precipice that we may fall off—both parties, Democrats and Republicans—which is going to render us unable to achieve what I think would be a very fruitful session in this Congress. Reason must prevail here. Democrats will not always be in the minority; the Republicans will not always be in the majority; Republicans will not always hold the White House. We have to figure out some way to work through our divisions on the nomination of judges.

It is sort of ironic in the first term of President Bush's administration that 95 percent of his nominees were approved, compared to President Clinton's success rate of about 80 percent over the 8 years he served.

We need to be able to establish a system of checks and balances. We don't want to be obstructionists; we don't want one party to basically call the shots in the executive and legislative branches, and stack the decks in our courts.

I encourage our leaders, as I have done privately, Senator REID and Senator FRIST, to sit down—if they have done it, to do so again—and have a heart to heart.

I urge colleagues on both sides of the aisle who want this place to work, who want us to do the people's business, to work and find a way out of this bind.

BANKRUPTCY REFORM

Mr. CARPER. Mr. President, I want to take a few minutes to talk about bankruptcy reform legislation.

Much has been said about the bill that is before us. Let me say a few things as well.

Two years ago, roughly 83 Senators voted in favor of an overhaul of our Nation's bankruptcy laws. As you may know, under current law, people who do not have the ability to pay their debts can go into chapter 7 and their debts are largely forgiven. They may have to turn over some of their assets. That is chapter 7. If the court of bankruptcy believes a family has the ability to repay some of their debts, they go into chapter 13, if a payment schedule is worked out.

Concerns have been raised, justifiably, over the last decade or more that some people who have the ability to repay don't; they simply run up their debts and walk away from those obligations, and, frankly, leave the rest of us having to pay more interest on the consumer debt we acquire and to pay more for the goods and services we buy.

Bankruptcy laws exist for a good purpose. People do have disasters that come into their lives; marriages end, serious health problems occur, and people lose jobs. For those reasons, we have bankruptcy laws. Most people who file for bankruptcy are not trying to defraud anybody. They have a genuine emergency, or a huge problem in their life, and they need the protection of the bankruptcy court. That is why we have those laws.

There is a principle, whether you are for this bill or not, that I think we can all agree on. That principle is simply this: If a person or a family has the ability to repay a portion or all of their debts, if they have that financial wherewithal, they should repay a portion or all of their debts. If a family doesn't have that wherewithal to pay or begin repaying their debt, they should be accorded protection of the bankruptcy court. That is it; it is that simple.

The legislation we have before us is an effort to try to codify that principle, and to improve on the system today where too many people, frankly, have abused that system.

Much has been said about credit card banks and putting credit cards in the hands of people, encouraging them to use them. I have heard from my credit card banks. They would like to see this legislation adopted. I have heard more from my credit unions in Delaware than I have from the credit card banks, saying there is a problem and it is one that we need to address.

I want to consider for a moment what will happen, or continue to happen, if we don't enact this legislation.

No. 1, some people who ought to be repaying a portion of their debts do not.

No. 2, the folks who ought to be receiving childcare from parents who are not anxious to meet that obligation will not receive that childcare payment. Their biological parent will file for bankruptcy in an effort to avoid making that childcare payment, or to make an alimony payment. In fact, the way the current law is structured, when somebody is in a position to start paying their responsibilities or obligations, legal fees come ahead of childcare and come ahead of alimony. That is wrong.

Today, under current law, a wealthy individual in a State such as Florida or Texas can go out, if they are a millionaire, and take those millions of dollars and invest that money in real estate, a huge house, property, and land in the