

I say also that the slope we get on with respect to changing the way we close off debate on judicial nominations is a slippery one. Today, we may want to apply it to judicial nominations; later on we may want to apply it to nominees for Cabinet positions or nominations for other positions. It is a slippery slope.

My Republican friends would be wise to listen to former Republican Senators who served on that side of the aisle, people such as Senators Wallop, McClure, Danforth, and today Senator Dole, Robert Dole. They reminded today's Republican Senators, the majority in the Senate, that the bed we make today is one we may have to sleep in. There won't always be a Republican President. Some day there will be a Democrat President. It could be 4 years from now. There will not always be a Republican majority in the Senate. It goes back and forth.

I say to my friends on the other side of the aisle, before we go down this road, keep in mind a couple of things. No. 1, we have the potential to get so much done this year. I would hate to see us blow that opportunity.

No. 2, this is a slippery slope—a policy change that may be designed initially to make it easier to confirm judicial appointments but could easily be applied to other appointments to other positions.

No. 3, some Democrats would take some consolation in the thought that we are not going to always be in the minority, and as there was a Democrat President for the last 8 years for the last century, there will be another one in the future.

My Republican friends, be careful of the bed you make because someday you will have to chance to sleep in it.

Thank you, Mr. President.

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

#### JUDICIAL NOMINATIONS

Mr. ALLARD. Mr. President, I rise this morning to address one of the most important obligations that we, as Members of the Senate, are bound to fulfill—the approval or disapproval of the President's judicial nominations.

Perhaps no other constitutional duty vests as much responsibility in the executive, or this body, than article II, articulating the President's power of appointment, a power that is only realized when the Constitution works as it was intended to, when we fulfill our obligation as laid out in the clause requiring this body's advice and consent.

This fundamental duty carries with it the weight and responsibility of generations, a lifetime appointment to a position that requires a deep and mature understanding of legal thought, and a solemn oath to uphold the law.

This debate is not about numbers. It is not about percentages, how many judges that Republicans confirmed or how many judges Democrats con-

firmed. To frame the debate as nothing but a statistical argument is to betray the American people.

We were not sent to Congress to focus on a numerical count but instead to make sure that limited government allows for opportunity and promise without stifling individual freedom and liberty.

We were sent here to build a stronger Union and to uphold our obligations under the Constitution.

The Founding Fathers referred to judges as "the guardians" of the Constitution and gave to the President the responsibility to appoint them.

Alexander Hamilton once wrote that, in order to maintain the health of the three branches of government, all possible care is requisite to enable the judiciary to defend itself.

It is frightening to think that a minority in the Senate is eroding the foundation of the third branch by perpetuating obstruction and endangering the citadels of justice.

No where does the Constitution give Congress the ability to ignore the appointment process.

By refusing to give judicial nominations an up or down vote, it is nothing more than a Congressional veto with a fancy name.

James Madison characterized the appointment of judges as the remote choice of the people.

Failure to provide an up or down vote deprives the people of the United States the choice selected by their representatives, denying choice to the very same people who elected us to office and the same people who live under the Constitution that we have sworn to protect.

The legal prowess of a nominee is obviously an important factor to consider when confirming a judge.

The Constitution calls upon the Senate collectively to determine whether or not a particular nominee is qualified to serve. This determination is made in one gesture, the approval or disapproval of the nomination itself.

In 2003 and 2004, a series of votes were held on various nominees. Some were approved, while others were denied a vote altogether, even though they were clearly supported by a majority of Senators.

Procedural processes do not fulfill the advice and consent requirement. Advice and consent does not mean avoiding the question on a judicial nominee entirely by employing a filibuster.

If a Member of the Senate disapproves of a judge, then let them vote against the nominee. But do not deprive the people of the right to support a nominee through their elected representative.

It is our vote, the right of each Member to collectively participate in a show of "advice and consent" to the President, that exercises the remote choice of the people.

The burden of obstruction is borne by the American people. Empty seats on

our highest courts delays the recourse and justice guaranteed by the Constitution.

As so many of my colleagues have stated before me, such justice delayed is justice denied.

In the shadow of September 11, 2001, we now recognize the efforts being made by the enemies of the United States to destroy the liberties and freedom of our great Nation. The most basic of our country's values and traditions are under attack.

Congress responded by enacting new laws and by providing financial assistance to businesses, families and defense; we acted swiftly to suffocate terrorists and destroy the hateful organizations that work to undermine our society.

Through strong and courageous leadership, the President has stood firm against terrorist and terrorist regimes.

But our government cannot function without an equally strong judiciary, the third branch of government. It is through the judiciary that justice is served, rights protected, and that law breakers are sentenced for their crimes.

The Senate cannot willingly refuse to provide an up or down vote on judicial nominees without acknowledging that irreparable harm may be done to an equal branch of government.

Judges must take an oath to uphold the law, regardless of their personal views.

Time after time, a nomination has been blocked by a minority of Senators because they feel that they are better judges of a nominee's ability to fulfill that oath than a majority of the Senate.

The result of this obstruction is a broken nomination process.

I sincerely hope we can work through the impasse on the judicial nomination process.

I hope those opposed to the President's nominees will vote against them and speak their mind about it. But I also hope that we will be allowed to provide the guidance we are required to provide under the Constitution.

As I have said so many times before, "vote them up or vote them down, but just vote."

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

Mr. ALEXANDER. Mr. President, I am the Senator from Tennessee, and we know something about country music in our State. There is an old country music song with the line that goes something like this: There is light at the end of the tunnel and I hope it ain't no train.

I am beginning to think it is a train and that there is not much way to avoid a train wreck. The train wreck I am talking about is a threat by the minority to "shut the Senate down in every way" if the majority adopts rules that will do what the Senate has done for 200 years, which is to vote up or down the President's appellate judicial nominees.

Until recently, not to vote at all on a President's judicial nominee was unimaginable. Take the case of Clarence Thomas in 1991: The first President Bush nominated him to the Supreme Court of the United States. I haven't seen any debate in this body with as much passion in it as the Thomas nomination. But he was nominated in July, the Senate voted in October 52 to 48, and it was done. Yet, in the last session of Congress, for some reason that escapes me, the minority felt it had to use the filibuster to deny an up-and-down vote 10 times on 52 of the President's appellate judicial nominees. That has never happened before. There are a lot of ingenious arguments being made on the other side, but that has never happened.

Some people mention Abe Fortas in 1968—I was here then; I was working for Howard Baker in the Senate. The votes against Fortas were in the majority. But even if you give that to the other side, neither party has ever used the tactic of denying an up-or-down vote on judicial nominees in 200 years.

The argument that the Senate doesn't have the power to change this procedure would get thrown out of court in a summary judgment. From 1789 when the Senate first met and adopted its rules by majority vote, it has adopted its rules by majority vote as the Constitution provides.

The nominees who the President put up who were rejected were badly abused. Charles Pickering, from Mississippi, was accused of not being sensitive to civil rights. In 1967, he put his children into desegregated schools in the middle of Mississippi. He testified in court against the grand wizard of the Ku Klux Klan, who was described by Time Magazine as the most evil terrorist in America.

Bill Pryor, not sensitive on civil rights? Too conservative? Bill Pryor was law clerk to John Minor Wisdom in New Orleans, as the Presiding Officer knows, perhaps the leading civil rights judge in the South during the 1950s, 1960s, and 1970s, and Bill Pryor has repeatedly demonstrated he can separate his views from his judicial judgments. Most recently he was part of the court—by his recess appointment—that rejected an appeal on the Terri Schiavo case. I don't know how he felt personally about it, but he felt under the law there was no recourse in Federal courts. Chairman ARLEN SPECTER has sent a certain memorandum around to Members asking us to look at Priscilla Owen's real views on *Roe v. Wade*. She hasn't said she wants to overturn *Roe v. Wade*.

The question is not whether the Senate has the power to adopt the rules by majority vote—it unquestionably does; that is common sense—but whether we should.

I am one of the Republicans who believe such a rules change is not a good idea—not good for the Senate, not for the country, not for Republicans, and not for Democrats. The Senate needs a

body that by its procedures gives unusual protection to minority rights.

Tocqueville, in the early 19th century, warned of the tyranny of the majority. In South Africa we saw a political miracle when the new Black majority respected the property rights of the White minority. In 1967, when I came here—and I see the Republican whip here; he came about a year or two later—the Republicans were the ones worrying about protecting minority rights. There were 64 Democrats and 36 Republicans then. There were 38 Republicans in 1977 when I came back working with Howard Baker, and in 1979, when Senator BYRD eloquently argued the majority could make Senate rules, there were only 41 Republicans, so the Republicans were worrying about minority rights.

But minority rights can also be abused. Remember what the filibuster was used for in the 1930s, the 1940s, the 1950s, and the 1960s. The filibuster was used to deny Black Americans the right to vote. It was used to keep the poll tax. It was used to stop a Federal anti-lynching law. It was used to keep African Americans from sitting down and having lunch in Nashville. So the filibuster can also be an abuse of minority rights.

It is not my job to advise the Democrats, and I wouldn't presume to do it, but I believe it is a mistake for the Democrats to provoke a rules change, and I believe it is a bigger mistake, as they have threatened, to "shut down the Senate," when it happens. Last month, three dozen Democrats stood on the steps of the Capitol and basically threatened to do that. On December 13, in the Washington Post, the Senator from New York, Mr. SCHUMER, said that the use of the nuclear option would "make the Senate look like a banana republic . . . and cause us to try to shut it down in every way."

Consider what the Senator from New York is saying. Not only will the minority not allow a vote on judges up or down in a country where the rule of law is of paramount concern, but they will shut the Senate down in every way at a time when natural gas prices are at \$7, shut the Senate down in every way at a time when oil prices and prices at the pump are at record levels, shut the Senate down in every way when there is a Federal deficit that needs to be brought under control, shut the Senate down in every way when the immigration laws need fixing, and shut the Senate down in every way while we are at war.

I don't believe the American people like the idea of Washington politicians threatening to shut the Senate down in every way. As I remember, the last prominent political leader who said something like that was my friend, Newt Gingrich, 10 years ago. It backfired, and he was out of office in about a year.

The people expect us to go do work, to do our jobs. They expect us to vote on judges, to lower natural gas prices,

to reduce the deficit, to fix the immigration laws, and to win the war on terror. We cannot do it if part of the Senate wants to shut the Senate down in every way.

Our Senate leader, BILL FRIST, has been working hard to avoid this train wreck. I still hope we can avoid it. I believe my colleagues in this body know the enormous respect I have for the new Democratic leader, HARRY REID. He and I worked together on American history. I had the privilege of being with him in a delegation for 8 days in Palestine, Israel, Iraq, Kuwait, Georgia, Ukraine, and France, and not once in those 8 days did the Democratic leader undercut the policies of the President of the United States. He conveyed the U.S. position. I am not surprised by that. That is the way it should be. But I am impressed by that. I am impressed by the Democratic leader. I am convinced he and the majority leader can make this Senate do its job if given the chance.

We need to avoid this train wreck if there is a way to do it. Twice I have offered in the Senate my suggestion about how I as one Senator could do it. I said 2 years ago that I would give up my right to filibuster a President's nominee for an appellate judgeship even if it were President KERRY or President Clinton or President REID or any other Democrat. I might vote against that nominee, but I would never filibuster as long as I were a Senator.

Now, if six Democrat Senators and six Republican Senators would say the same thing, then there would be no need for a rules change, and there would be no need for a train wreck. All we need are six Democrat Senators and six Republican Senators who believe there ought to be up-or-down votes regardless of the President's party and who believe it would be wrong to shut the Senate down. The right thing to do is to have an up-or-down vote on any of the President's Federal appellate judicial nominees. That has been the way we have done it for 200 years. The wrong thing to do is to shut the Senate down in every way.

I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DEMINT. Mr. President, I rise today to address the current institutional crisis in the Senate brought on by the insistence of a few on defeating the will of the American people in preventing the Senate from doing its job of voting on the President's nominees to the Federal bench.

We all know that the Constitution is very clear on this front. The judicial nominees are chosen solely by the

President with the advice and consent of the Senate. Until President Bush was elected, no one has ever interpreted this requirement to mean anything other than a simple majority vote. The Senate has never denied an up-or-down vote to any appellate court nominee who had majority support. But the Democrats have rejected this 200-year-old Senate tradition and, with it, the very will of the American people.

The Democrats lost the election, and they seem unwilling to accept the fact. Instead, they unilaterally change the rules and politicize the judicial confirmation process. This is extreme behavior and extreme tactics—threatening to shut down the Senate if we should dare to confirm a well-qualified nominee with bipartisan majority support. This is an epitome of arrogance—assuming they know better than the majority of their colleagues and the President. The people back home want to see these nominees treated fairly and given an up-or-down vote.

Is it fair to say to nominees that they are out of the mainstream when they have the support of the Democrats and the Republicans making up the majority of the Senate? I submit it is the obstructionists who are out of the mainstream when they block an up-or-down vote on nominations of justices such as Janice Rogers Brown for years.

Extreme, arrogant, out of the mainstream—this is the anything-goes Senate Democrats who are willing to go to any length to deny exemplary judges the opportunity to dedicate their lives to service to the American people.

By trying to shred the reputation of some of the most respected and admired judges in public service in this country, a few Senators are sending a very powerful message to any others who may aspire to the bench. They are telling us, don't bother. It appears to be increasingly likely that such talent, dedication, and personal sacrifice will be rewarded with attacks on the floor of the Senate and years of uncertainty while a bipartisan majority waits powerless to confirm these nominees.

I call for a return to tradition. The American people have done their jobs and expect us to do the same. We in the Senate need to do our jobs and confirm fair judges through a fair process.

I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

#### 50TH ANNIVERSARY OF POLIO VACCINE

Mr. McCONNELL. Mr. President, today we celebrate the 50th anniversary

of the polio vaccine. The people of my generation, who were youngsters at that time, remember full well the exciting development. Now polio is virtually eradicated.

The Committee on Foreign Operations, which I have had the privilege to either chair or be ranking member for the last decade or so, has appropriated about \$160 million toward that fight over the last 6 years.

Of course, the Rotary International, a private organization, deserves the lion's share of the credit for almost total eradication of polio. This private civic group with international chapters made this a project some 20 years ago and have collected and spent about \$600 million and delivered the vaccine in all parts of the world. So because of this, today we can celebrate, essentially, the complete eradication of this disease from the Earth. Rotary deserves a big part of the credit for that.

I rise to talk about this for another reason. It had an enormous impact on me personally. I was struck with polio when I was 2 years old. My dad was overseas fighting in World War II. Polio was similar to having the flu—you felt sick all over. Except when polio went away there were residual effects. In my case, when my flu-like symptoms went away, I had a quadriparesis in my left leg that was dramatically affected.

My mother was, of course, like many mothers of young polio victims, perplexed about what to do, anxious about whether I would be disabled for the rest of my life. But we were fortunate. While my dad was overseas my mother was living with her sister in east central Alabama, only about 40 or 50 miles from Warm Springs. As everyone knows, President Roosevelt established Warm Springs, where he went to engage in his own physical therapy, as a center to treat other polio victims. So my mother was able to put me in the car, go over to Warm Springs, and actually learn, from those marvelous physical therapists who were there, what to do.

They told my mother she needed to keep me from walking. Now, imagine this. You are the mother of a 2-year-old boy. And we all know how anxious little boys are to get up and get around and get into trouble. So my mother convinced me that I could walk, but I couldn't walk—a pretty subtle concept to try to convey to a 2-year-old. In other words, she wanted me to think I could walk, but she wanted me to also understand I should not walk.

Now, obviously, the only way to enforce that with a 2-year-old is to watch them like a hawk all the time. So I was under intense observation by my mother for 2 years. She administered this physical therapy regiment at least three times a day—all of this really before my recollection. But we now know the things that happened to us in the first 5 years of our lives have an enormous impact on us for the rest of our lives.

So this example of incredible discipline that she was teaching me during this period I always felt had an impact on the rest of my life in terms of whatever discipline I may have been able to bring to bear on things I have been involved in. I really have felt my mother taught me that before I was even old enough to remember.

So this went on for 2 years. My first memory in life was stopping at a shoe store in LaGrange, GA. We had left Warm Springs for the last time, and the physical therapist there had told my mother: Your son can walk now. We think he is going to have a normal childhood and a normal life. We stopped at a shoe store in LaGrange, GA, and bought a pair of saddle oxfords, which are low-top shoes—my first recollection in life.

Thanks to my mother, I had a normal childhood. I was not able to run all that well, but I played baseball and have had a normal life. The only impact of that early childhood experience with polio is that I have a little difficulty going down stairs. Most people do not want to go up stairs and do not mind walking down stairs. I like to walk up stairs and take an elevator down because an effected quadriceps impacts your ability to descend stairs.

So I am particularly moved by the fact that we can stand here today and say that polio is essentially eradicated from the face of the Earth. When I was a youngster, the fear of polio was enormous. Mothers, every summer, lived in fear that their children would come down with polio, and many did, many died. Many had much more serious aftereffects than I did, certainly.

But it is with great gratitude that I commend Rotary International today for this extraordinary accomplishment of getting this vaccine out all over the world so that we can essentially say, in 2005, that polio has been eradicated from the face of the Earth.

Mr. President, I ask unanimous consent that an article from the Wall Street Journal entitled "Polio and Rotary" be printed in the RECORD.

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

[From the Wall Street Journal, Apr. 12, 2005]

#### POLIO AND ROTARY

Today marks the 50th anniversary of the Salk polio vaccine. Poliomyelitis, also known as infantile paralysis, used to be one of childhood's most feared diseases. A few years after Dr. Jonas Salk announced his vaccine on April 12, 1955, nearly every child in the U.S. was protected. Today polio has disappeared from the Americas, Europe and the Western Pacific and is nearly gone from the rest of the world.

A too-little known part of this feat is the role played by Rotary, the international businessman's club, which 20 years ago adopted the goal of wiping out the disease. Rotary understood that medical breakthroughs are worthless unless people aren't afraid to immunize their children and efficient delivery systems exist to get the vaccine to them. And so it mobilized its members in 30,100 clubs in 166 countries to make it happen.