

that are in a history that never was but, rather, to approach it on the basis of moving forward, in a bipartisan way, to fill our constitutional responsibilities to grant these judges an up-or-down vote by our advice and consent so we can put people on the court in these very important positions to serve the American people.

Mr. CHAMBLISS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURR). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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. LEAHY. Mr. President, I ask unanimous consent to speak in morning business for not to exceed 14 minutes.

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

The Senator from Vermont.

MARLA RUZICKA

Mr. LEAHY. Mr. President, this is a matter which I and my friend from California, Senator BOXER, will be speaking about later this afternoon, and that is the tragic death of a remarkable young Californian, Marla Ruzicka.

Marla was the founder of a humanitarian organization devoted to helping the families of Afghan and Iraqi civilians who have been killed or suffered other losses as a result of U.S. military operations. She died in Baghdad on Saturday from a car bomb while she was doing the work she loved and for which so many people around the world admired her.

In fact, Tim Rieser, in my office, has worked closely with her. We received e-mails about the work she was doing, and even photographs of people she was helping arrived literally minutes before she died.

I will speak later today about this. But she was a remarkable person. When I spoke with her family in California yesterday, I told them this was a life well worth living, that most people would not accomplish in their lifetime what this 28-year-old wonderful woman accomplished in hers.

JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, I am going to speak on another matter. We have learned that those who are intent on forcing confrontation, breaking the Senate rules, and undercutting our democratic checks and balances plan to take their previous outrageous allegations of religious McCarthyism one step further and accuse Democrats of being "against people of faith" because we object to seven—seven—of the President's more than 200 judicial nominations.

If you followed the sick logic of this venom being spewed by some of the

leaders in this Chamber, we would have to say that 205 judicial nominees forwarded by the President, whom the Democratic Senators have helped to confirm, would seem not to be people of faith, even though that is as false and ridiculous on its face as is the charge leveled at Democratic Senators.

This disgusting spectacle, this smear of good men and women as "against faith" is expected to happen, in of all places, a house of worship, according to a front-page article last week in the New York Times. It will involve twisting history, as well as religion, because according to the report, those involved will claim that Democratic Senators are using the filibuster rule to keep people of faith off of the Federal bench.

This slander is so laden with falsehoods, so permeated by the smoke and mirrors of partisan politics, and so intertwined with one man's personal political aspirations that it should collapse of its own weight. But too many who should speak out against it remain violent.

Republicans on the Senate Judiciary Committee began blatantly to invoke obscene accusations like this one earlier in the Bush administration. They hurled false charges against Senators saying they were anti-Hispanic or anti-African American, anti-woman, anti-religion, anti-Catholic, and anti-Christian for opposing certain judicial nominees.

They never bothered to mention the same Senators who were making these slanderous statements had blocked, themselves, many, many—over 60—Hispanics, women, certainly people of faith. And they never bothered to say the Senators they were slandering had supported hundreds of nominees, including Hispanics, African Americans, women, and people of faith—Catholic, Christian, and Jewish. They never hesitated to stoke the flames of bigotry, and to encourage their supporters to continue the smear in cyberspace or on the pages of newspapers or through direct mail.

Actually, to the contrary, they seemed to like the way it sounded. Maybe it tested well in their political polls. Now they have decided to up the ante on such "religious McCarthyism," as a way to help them tear down the Senate and do away with the last bastion against this President's most extreme judicial nominees. It is crass demagoguery, and it is fueled by the arrogance of power.

They now seek to make a connection between the dark days of the struggle for civil rights, when some used the filibuster to try to defeat equal rights laws, and the situation we find ourselves in today when the voice of the minority struggles to be heard above the cacophony of daily lies and misrepresentations. This tactical shift follows on the rhetorical attacks aimed at the judiciary over the past few weeks in which Federal judges were likened to the KKK and "the focus of evil."

In the last few weeks, we have heard that, at an event attended by Repub-

lican Members of the Congress, people called for Stalinist solutions to problems, referring to Joseph Stalin's reference to killing people he disagreed with, and calling for mass impeachments. Wouldn't you think the Members of Congress, who have taken an oath to uphold the Constitution, would speak up or at least leave with their heads bowed in shame, instead of, apparently, enjoying it?

Last week, the Senate Democratic leadership called upon the President and the Republican leadership of Congress to denounce these inflammatory statements against judges. This week, I renew my call to the Republican leader and, in particular, to Republican moderates, to denounce the religious McCarthyism that is again pervading their side of this debate.

I ask my friends on the other side of the aisle to follow the brave example of one of Vermont's greatest Senators, Republican Ralph Flanders. Senator Flanders recognized a ruthless political opportunist when he saw one. He knew Senator Joseph McCarthy had exploited his position of power in the Senate to smear hundreds of innocent people and win headlines and followers, and campaign contributions, with his false charges and innuendo, without regard to facts or rules or human decency.

Senator Flanders spoke out during this dark chapter in the history of this great institution. He offered a resolution of censure condemning the conduct of Senator McCarthy. Now, in our time, a line has again been crossed by some seeking to influence this body. I ask my friends on the other side of the aisle to follow Senator Flanders' lead in condemning the crossing of that line.

I have served with many fair-minded Republican Senators. I am saddened to see Republican Senators stay silent when they are invited to disavow these abuses. Where are the voices of reason? Will the Republicans not heed the clarion call that Republican Senator John Danforth sounded a few weeks ago? And he is an ordained Episcopal priest. What has silenced these Senators who otherwise have taken moderate and independent stands in the past? Why are they allowing this religious McCarthyism to take place unchallenged? The demagoguery that is so cynically and corrosively being used by supporters of the President's most extreme judicial nominees needs to stop.

Not only must this bogus religious test end, but Senators should denounce the launching of the nuclear option, the Republicans' precedent-shattering proposal to destroy the Senate in one stroke, while shifting the checks and balances of the Senate to the White House.

I would like to keep the Senate safe and secure and in a "nuclear free" zone. Even our current Parliamentarian's office and our Congressional Research Service has said the so-called nuclear option would go against Senate

precedent and require the Chair to overrule the Parliamentarian. Is this how we want to govern the Senate? Do Republicans want to blatantly break the rules for some kind of a short-term political gain?

Just as the Constitution provides in Article V for a method of amendment, so, too, the Senate Rules provide for their own amendment. Sadly, the current crop of zealot partisans who are seeking to limit debate and minority rights in the Senate have no respect for the Senate, its role in our government as a check on the executive or its Rules. Republicans are in the majority in the Senate and chair all of its Committees, including the Rules Committee. If Republicans have a serious proposal to change the Senate Rules, they should introduce it. The Rules Committee should hold serious hearings on it and consider it and create a full and fair record so that the Senate itself would be in position to consider it. That is what we used to call "regular order." That is how the Senate is intended to operate, through deliberative processes and with all points of view being protected and being able to be heard.

That is not how the "nuclear option" will work. It is intended to work outside established precedents and procedures as explained by the Congressional Research Service report from last month. Use of the "nuclear option" in the Senate is akin to amending the Constitution not by following the procedures required by Article V but by proclaiming that 51 Republican Senators have determined that every copy of the Constitution shall contain a new section or different words—or not contain some of those troublesome amendments that Americans like to call the Bill of Rights. That is wrong. It is a kind of lawlessness that each of us should oppose. It is rule by the parliamentary equivalent of brute force.

The recently constituted Iraqi National Assembly was elected in January. In April it acted pursuant to its governing law to select a presidency council by the required vote of two-thirds of the Assembly, a supermajority. That same governing law says that it can only be amended by a three-quarters vote of the National Assembly. Use of the "nuclear option" in the Senate is akin to Iraqis in the majority political party of the Assembly saying that they have decided to change the law to allow them to pick only members of their party for the government and to do so by a simple majority vote. They might feel justified in acting contrary to law because the Kurds and the Sunni were driving a hard bargain and because governing through consensus is not as easy as ruling unilaterally. It is not supposed to be, that is why our system of government is the world's example.

If Iraqi Shiites, Sunni and Kurds can cooperate in their new government to make democratic decisions, so can Republicans and Democrats in the United

States Senate. If the Iraqi law and Assembly can protect minority rights and participation, so can the rules and United States Senate. That has been the defining characteristic of the Senate and one of the principal ways in which it was designed to be distinct from the House or Representatives.

This week, the Senate is debating an emergency supplemental appropriations bill to fund the war efforts in Iraq and Afghanistan. The justification for these billions of dollars being spent each week is that we are seeking to establish democracies. How ironic that at the same time we are undertaking these efforts at great cost to so many American families, some are seeking to undermine the protection of minority rights and checks and balances represented by the Senate through our own history. Yet that is what I see happening.

President Bush emphasized in his discussions earlier this year with President Putin of Russia that the essentials of a democracy include protecting minority rights and an independent judiciary. The Republican "nuclear option" will undermine our values here at the same time we are preaching our values to others abroad.

I urge Senate Republicans to listen carefully to what their leaders are saying, here in the Senate, and out across the country to their most extreme supporters. Consider what it is they are about to do and the language they use to justify it. Both are wrong. It would steer the Senate and the country away from democracy, away from the protections of the minority and away from the checks and balances that ensure the freedoms of all Americans.

I would also like to talk for a moment about the independence of the judiciary. I have expressed my concern that members of Congress have suggested judges be impeached if they disagree with the judges' decisions. Republicans rushed through legislation telling federal judges what to do in the Schiavo case, and then criticized the judges when they acted independently, judges appointed by President Reagan, by former President Bush, and by President Clinton. They were all criticized for that, although there are still those who are saying we should impeach the judges, or as I mentioned earlier in my speech, one speaker at a recent conference, to the cheers of some suggested Joseph Stalin's famous "No man. No problem" solution, because he killed those who disagreed.

I remember a group of Russian parliamentarians came to see me to talk about federal judiciary, and they asked, "Is it true that in the United States the government might be a party in a lawsuit and that the government could lose?" I said, "Absolutely right." They said, "People would dare to sue the government?" I said, "We have an independent judiciary, yes, they could." They said, "Well, if the government lost, you fire the judges, of course?" I said, "No, they are an inde-

pendent judiciary." And I remember the discussion around the conference room in my office. This was the most amazing thing to them, that the people who disagreed with the government could actually go to a federal court or a state court, bring a suit there and seek redress even if it meant the government lost. Sometimes it wins, sometimes it loses. I was a government prosecutor. I know how that works. I think they finally understood that the reason we are such a great democracy is that we have an independent judiciary.

I would call out to my friends on the other side of the aisle to stop slamming the federal judiciary. We don't have to agree with every one of their opinions but let's respect their independence. Let's not say things that are going to bring about further threats against our judges. We've had a lot more judges killed than we've had U.S. Senators killed for carrying out their duties. We ought to be protecting them and their integrity. If we disagree with what they've done in a case where we can pass a law and we feel we should, then pass a law and change it. Don't take the pot shots that put all judges in danger and that attack the very independence of our federal judiciary.

We remember our own oath of office. Part of upholding the Constitution is upholding the independence of the third branch of government. One party or the other will control the presidency. One party or the other will control each House of Congress. No political party should control the judiciary. It should be independent of all political parties. That was the genius of the founders of this country. It is the genius that has protected our liberties and our rights for well over 200 years. It is the genius of this country that will continue to protect them if we allow it to. It would be a terrible diminution of our rights and it would be one of the most threatening things to our whole democracy if we were to remove the independence of our federal judiciary. That would do things that no armies marched against us have ever been able to do. None of the turmoil, the wars, all that we've gone through in this country has ever been able to do. If you take away the independence of our federal judiciary, then our whole constitutional fabric unravels.

I will close with one little story. One day, years ago, on the floor of this Senate, there was an attempt, in a court-stripping bill, to remove jurisdiction of the Federal courts because one Senator did not like a decision they came down with. It was decided if there had not been a vote by 4 o'clock on a Friday afternoon, we would not vote on it. So three Senators took the floor to talk against it—myself, former Republican Senator, Lowell Weicker of Connecticut, and one other. We spoke for several hours, and the bill was drawn down.

Now, I do not remember what the decision was of the Federal court.

I may have agreed with it. I may have disagreed. I did not want to see us making the Senate into some kind of a supreme court that would overturn any decision we didn't like. On the way out, the third Senator came up to Lowell Weicker and myself and linked his arm in ours, and he said: We are the only true conservatives on this floor because we want to protect the Constitution and not make these changes.

I turned to him and I said: Senator Goldwater, you are absolutely right.

I was glad Barry Goldwater, Lowell Weicker, and I stood up for the Constitution, stood up for the independence of the Federal judiciary. It probably was unpopular to do so, but I think Senator Goldwater, Senator Weicker, and I all agreed it was the right thing to do.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT, 2005

The PRESIDING OFFICER. Under the previous order, the hour of 2 p.m. having arrived, the Senate will resume consideration of H.R. 1268, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1268) making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

Pending:

Mikulski amendment No. 387, to revise certain requirements for H-2B employers and require submission of information regarding H-2B nonimmigrants.

Feinstein amendment No. 395, to express the sense of the Senate that the text of the REAL ID Act of 2005 should not be included in the conference report.

Bayh amendment No. 406, to protect the financial condition of members of the reserve components of the Armed Forces who are ordered to long-term active duty in support of a contingency operation.

Durbin amendment No. 427, to require reports on Iraqi security services.

Salazar amendment No. 351, to express the sense of the Senate that the earned income tax credit provides critical support to many military and civilian families.

Dorgan/Durbin amendment No. 399, to prohibit the continuation of the independent counsel investigation of Henry Cisneros past June 1, 2005 and request an accounting of costs from GAO.

Reid amendment No. 445, to achieve an acceleration and expansion of efforts to reconstruct and rehabilitate Iraq and to reduce the future risks to United States Armed Forces personnel and future costs to United States taxpayers, by ensuring that the people of Iraq and other nations do their fair share to secure and rebuild Iraq.

Frist (for Chambliss/Kyl) amendment No. 432, to simplify the process for admitting temporary alien agricultural workers under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, to increase access to such workers.

Frist (for Craig/Kennedy) modified amendment No. 375, to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H-2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers.

DeWine amendment No. 340, to increase the period of continued TRICARE coverage of children of members of the uniformed services who die while serving on active duty for a period of more than 30 days.

DeWine amendment No. 342, to appropriate \$10,000,000 to provide assistance to Haiti using Child Survival and Health Programs funds, \$21,000,000 to provide assistance to Haiti using Economic Support Fund funds, and \$10,000,000 to provide assistance to Haiti using International Narcotics Control and Law Enforcement funds, to be designated as an emergency requirement.

Schumer amendment No. 451, to lower the burden of gasoline prices on the economy of the United States and circumvent the efforts of OPEC to reap windfall oil profits.

Reid (for Reed/Chafee) amendment No. 452, to provide for the adjustment of status of certain nationals of Liberia to that of lawful permanent residence.

AMENDMENT NO. 418

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that the pending amendment be set aside be in order that I may offer an amendment.

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

Mr. CHAMBLISS. I call up amendment No. 418.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Georgia [Mr. CHAMBLISS], for himself, Mr. ISAKSON, Mr. PRYOR, Mr. INHOFE, Mr. LUGAR, Mrs. DOLE, Mrs. LINCOLN, Mr. BAYH, Mr. REED, Mr. CHAFEЕ, and Mr. BYRD, proposes an amendment numbered 418.

Mr. CHAMBLISS. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To prohibit the termination of the existing joint-service multiyear procurement contract for C/KC-130J aircraft)

On page 169, between lines 8 and 9, insert the following:

PROHIBITION ON TERMINATION OF EXISTING JOINT-SERVICE MULTIYEAR PROCUREMENT CONTRACT FOR C/KC-130J AIRCRAFT

SEC. 1122. No funds appropriated or otherwise made available by this Act, or any other Act, may be obligated or expended to terminate the joint service multiyear procurement contract for C/KC-130J aircraft that is in effect on the date of the enactment of this Act.

AMENDMENT NO. 418, AS MODIFIED

Mr. CHAMBLISS. Mr. President, I send a modification to the desk and I ask unanimous consent that Senator ALLEN be added as a cosponsor.

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

The amendment is so modified.

The amendment, as modified, is as follows:

On page 169, between lines 8 and 9, insert the following:

PROHIBITION ON TERMINATION OF EXISTING JOINT-SERVICE MULTIYEAR PROCUREMENT CONTRACT FOR C/KC-130J AIRCRAFT

SEC. 1122. During fiscal year 2005, no funds may be obligated or expended to terminate the joint service multiyear procurement contract for C/KC-130J aircraft that is in effect on the date of the enactment of this Act.

Mr. CHAMBLISS. Mr. President, this amendment will prohibit any fiscal year 2005 funds from being used to terminate the C-130J multi-year procurement contract.

In hearings before this body over the past several weeks Department of Defense personnel have admitted that when they made the decision to terminate this contract in December of last year that they did not have all the information needed to make that decision. Since PBD 753 was drafted in December 2004, we have learned that the cost to terminate this contract is approximately \$1.6 billion.

Also over the past several months we have seen the C-130J, KC-130J, as well as C-130s operated by our coalition partners in Iraq perform superbly throughout USCENCOM. To date, C-130Js in Iraq have flown over 400 missions, with a mission capable rate of 93 percent and have performed all assigned missions successfully. KC-130Js have flown 789 hours in Iraq with mission capable rates in excess of 95 percent. Nevertheless, the Department of Defense has not yet submitted the amended budget request for this program that they discussed during hearings. That is why this amendment is necessary.

I am introducing this amendment to make sure that this program, which is performing extremely well and which meets validated Air Force and Marine Corps requirements, is not prematurely cancelled and that the Department of Defense follows through with their commitment to complete the multi-year procurement contract.

There are some issues with the current contract being a commercial contract versus a traditional military contract. My colleague, Senator MCCAIN, and I agree that a traditional contract is more appropriate in this case and applaud the Air Force's decision to begin