The advice and consent provision in the Constitution has served us for over 214 years up until the last Congress. That meant that the Senate should vote, and for over 200 years no nominee with majority support has been denied an up-or-down vote in this body, zero.

The Democrats have said that they have confirmed 98 percent of the President's nominees. The actual number is 89 percent. But even at that, are we to say that we are only going to follow the Constitution 89 percent of the time? Furthermore, this Senate's record on dealing with the President's appellate court nominees is the worst for any President in modern history. This President's record of having his appellate court nominees voted on is 69 percent, which ranks him lowest of any President in modern history.

It would be one thing if these nominees did not have the votes for confirmation, but they do. These nominees will have 54 or 55, 56, 57 votes for confirmation. It is wrong to deny them what the Constitution says they deserve and for us to ignore our constitutional responsibility to see that they have an up-or-down vote in this body.

The Democrats have said that it is their prerogative to debate. Well, that is great. Let us debate them on the floor of the Senate. But before they can be debated, a nomination has to be brought to the Senate floor for debate. We have a right to debate under the Constitution in the Senate.

They have also suggested that judges ought to have broad support; that they ought to have more than the necessary 51 votes for the simple majority that has traditionally been the case in the Senate. There is nothing in the Constitution about filibustering judges. There is nothing in the Constitution about requiring a super-majority to confirm judges. If the Founders had wanted judges to get a super-majority vote, they would have put that in there. They did it for treaties, for constitutional amendments, and for overriding a Presidential veto. Clearly, that was not the case with judges. It was the Founders' intention that the Senate dispose of them with a simple majority vote.

The Democrats in the Chamber have said that what we are trying to accomplish is ''the nuclear option,'' suggesting that somehow this is a radical process that we are trying to implement. Well, simply, that is not true. There is nothing nuclear about re-establishing the precedent that has been the case, the practice, and the pattern in this Senate for over 200 years.

What is nuclear is what is being discussed by the Democrats in this body, and that is shutting the Senate down over the issue of judicial nominees, which means important legislation to this country, such as passing a highway bill that will create jobs and growth in this economy, could get shut down, or an energy policy which is important in my State of South Dakota. We have gas prices at record levels, we have farmers going into the field, the tourism industry is starting its season, so we need to do something to help become energy independent. I am very interested in the issue of renewable fuels. I want to see as big a renewable fuels standard as we can get on the Energy bill, but we have to get it on the floor to debate it first. We cannot have these attempts, these threats—and I hope they are just that: threats—because it would be tragic, it would be nuclear, if the other side decided to shut this Senate down over the issue of judicial nominees.

The Democrats in this Chamber have tried to confuse the issue of legislative and judicial filibusters, clearly trying to confuse the public about what this means. Well, what we are talking about is simply the narrow issue of judicial nominees. It is part of this Senate's constitutional responsibility and duty, and we must take it very seriously. However, in the last Congress that became extremely politicized.

What we are talking about again is simply the issue of judicial filibusters. Incidentally, it was the Democrats who last voted on the filibuster in the Senate to do away with it back in 1995. It was a 76-to-19 vote. It had to do with the whole issue, not just judicial but legislative filibusters as well. Many of those Democrats who voted to end the filibuster still serve in this institution today.

The American people see this as an issue of fundamental fairness. They understand that this body's constitutional obligation, responsibility, and duty is to provide advice and consent, and that means an up-or-down vote in the Senate.

The Democrats in the Senate have said that this President's nominees are extreme. There are going to be a couple of them reported out of the Judiciary Committee today. Janice Rogers Brown received 76 percent of the vote the last time she faced the voters in California, which is not exactly a bastion of conservatism. Her nomination in this Senate has been stalled out for 21 months. Priscilla Owen will also be reported out today. She received 84 percent of the vote the last time she faced the voters in Texas. She has been waiting around for 4 years in the Senate to get an up-or-down vote on her nomination. She was endorsed by every major newspaper in the State of Texas. These nominees are not extreme. What is extreme is denying these good nominees a vote, and it betrays the role and responsibility the Founders gave the Senate.

So as we embark upon and engage in this debate that is forthcoming on judicial nominees, let us keep in sight and in focus the facts, and the role and responsibility this institution has to perform its duty. And that is to make sure that when good people put their names forward for public service, they at least are afforded the opportunity that every nominee with majority support throughout this Nation's history has had, and that is the chance to be voted on in the Senate.

I fully support what the other side is saying about wanting to debate these nominees. Let us do it. I am certainly willing and hopeful that we will be able to engage in a spirited and vigorous debate. Let us debate, but then let us vote.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Democratic leader is recognized.

JUDICIAL NOMINATIONS

Mr. REID. I understand we are in a period for morning business. I will use leader time.

Mr. President, I have the greatest respect for my friend from South Dakota, but his assertion of facts is simply without foundation. When the Democrats took the majority in the Senate, I, along with others, said that this was not payback time; we were not going to treat the Republicans the way they treated us during the Clinton years. During those years, they did not have the decency even to have hearings for judicial nominations; they simply left them, 60 in number, in the committee. We thought that was inappropriate, and that is the reason during the time that President Bush has been President—we were in the majority, and we are now in the minority—we have approved 205 judges for President Bush and turned down 10, which is a pretty good record.

For people to say there have not been judicial filibusters in the past is simply without historical foundation. In the early days of this Republic, there was no way to stop a filibuster. The only way one could stop a filibuster on judges or anything else was by virtue of agreeing to stop talking. Many judges were simply left by the wayside. They were talked out and they simply never came forward for a vote before the Senate.

The most noteworthy filibuster of a judge that would require a vote that failed was in 1881. There was a filibuster of a judge that went to a vote. Prior to that time, they never even went to a vote.

It was determined in the Senate in 1970 that it would be appropriate to figure out some way to break a filibuster—on judges, on Cabinet nominations, and on legislation. At that time the Senate changed its rules by a two-thirds vote and had filibusters broken, then, by 67 votes. In the 1960s it was determined that was a burden that was no longer necessary, and it was changed to 60 votes. From that time to today, there has been the ability to break a filibuster by 60 Senators voting.

There have been filibusters since that rule was changed in 1960, filibusters of judges. The most noteworthy, of course, was Abe Fortas. There was a filibuster, and there are wonderful statements in the CONGRESSIONAL

RECORD by Howard Baker at that time, who extolled the virtues of the filibuster.

During the time I have been in the Senate there have been filibusters of judges. I can name two that come to my mind: Berzon and Paez. We had a vote to break those here, on the filibuster. The majority leader voted against breaking those filibusters. So we have had votes on many occasions dealing with filibusters of judges. This is no new thing.

What we have to keep in mind is that we, the legislative branch of Government, are separate but equal. That is what checks and balances are all about. The President should not have, from the Senate, a rubberstamp for everything he wants. We have the advise and consent clause in the Constitution and we have the obligation to look at these judges. We have approved 205 and turned down 10. For people to suggest that you can break the rules to change the rules is un-American.

The only way you can change the rule in this body is through a rule that now says, to change a rule in the Senate rules to break a filibuster still requires 67 votes. You can't do it with 60. You certainly cannot do it with 51. But now we are told the majority is going to do the so-called nuclear option. We will come in here, having the Vice President seated where my friend and colleague from Nevada is seated. The Parliamentarian would acknowledge it is illegal, it is wrong, you can't do it, and they would overrule it. It would simply be: We are going to do it because we have more votes than you.

You would be breaking the rules to change the rules. That is very un-American. I ask my friends to look at what is going on in the press. In the Post today, David Broder, a nationwide columnist, talks about how bad it would be. Dick Morris, who certainly is no lapdog for the Democrats, has stated very clearly it would be the wrong thing to do. The political damage would be done to Republicans for many years to come.

This is something we should work out. This is something that should not cause the disruption and dysfunction of our family, the Senate family. If this is done, the Senator from South Dakota is absolutely right; we will be working off the Democrats' agenda. We will let things go forward. Of course, we will let things go forward to take care of the troops and let us make sure the Government is funded. We are not going to do the Gingrich plan.

But things around here work by unanimous consent. Maybe the majority wants an excuse not to complete business because most of their business is a little faulty anyway. But we have worked very hard and showed our good faith in the first quarter of this Congress. We have passed, for example, the class action bill; we passed the bankruptcy bill—both of which were 15 years in the making. These are bills the majority of the Senators on this side of the aisle opposed. But I thought it was appropriate that we do business the way we should be doing business: have people speak, debate the issue, and take your wins and losses as they come. We had a couple of losses. But the fact is, we believe the business of the Senate should be conducted in this manner.

I do not know what is going to happen in the Foreign Relations Committee as it relates to Bolton, but the fact is, that is how things should be decided. They should debate publicly and openly and then make a decision as to whether he is good or bad for the United Nations. They are going to have some more hearings in that regard. I think that is appropriate. But to think that just because you do not get your way that you are going to change the rules is wrong.

I have said once or twice on the Senate floor, when I was a little boy I took a big trip. My brother was 10 or 12 years older than I. He was working for Standard Stations in a place in Arizona. It was a little town. It seemed like a big town coming from Searchlight. It took quite a few hours to drive over there. I spent a week with my brother. I thought it was going to be a week, but he had a girlfriend and I didn't spend much time with him at all. I spent time with his girlfriend's brother. I could beat her brother in anything—all card games, board games, running, jumping, throwing. But I could never win because he kept changing the rules in the middle of the game. That is what is happening in the Senate. The majority can't get what they want so they break the rules to change the rules.

We believe the traditions of the Senate should be maintained. We believe if you are going to change the rules in the Senate, change them legally, not illegally.

I hope my friends, people of goodwill on the other side of the aisle, will take a very close look at this and see if it is the right thing to do. I think we do have people of goodwill on the other side of the aisle who understand the importance of maintaining the integrity of this body.

As Senator Dole said when asked on Public Radio last week what he thought about the so-called nuclear option, He said: Watch it because we are not going to be in the majority all the time. It will come back—these are my words, not his but the same meaning—it will come back to haunt us because the majority changes all the time.

I think it would be wrong for the Democrats to be able to do what the Republicans are talking about doing. I think it would be wrong for the Republicans to do what they are talking about doing. That is why we, Senator FRIST and I, working with our caucus, have to try to tamp down the emotions on this issue and do what we can to bring the Senate family together and do things the right way so we can continue to do legislation.

I spoke to the distinguished majority leader a few minutes ago. We want to do the highway bill. We have the Energy bill. Senator DOMENICI and Senator BINGAMAN are working hand in hand, more than they have in many years. They are going to come up with the Energy bill. The Senators are going to bring it to the floor and we will debate it.

As the President was told several days ago by Senator BAUCUS when they were called to the White House, Senator BAUCUS said: You do the nuclear option, there will be no Energy bill. That is the way things are and that is wrong.

(Ms. MURKOWSKI assumed the Chair.)

Mr. REID. Madam President, I hope we will be able to work our way through this issue and come up with something appropriate and move on. We have a number of judges who are pending now. They should not have to wait around.

In the situation we now have there is no question the committees are working so well together. Senator SPECTER and Senator LEAHY are working well together. I do not like the asbestos bill. I am not sure there is anything that can be done to make me happy about the asbestos bill because I have such strong feelings about the people who died of mesothelioma and asbestosis. But one of the things I did when I became leader, I told my ranking members that they were their committees. They could do whatever was appropriate in the confines of that committee.

Senator LEAHY did what he thought was appropriate. I may disagree with that asbestos bill, but he had every right to work with Senator SPECTER and come up with a bill. That bill is here at the desk right now. That is the way things should work.

Senators SPECTER and LEAHY have gotten so much done during the first few months they have been working together. There is a lot more we can do. That Judiciary Committee has some of the most interesting but controversial issues that we have. When you have two people working together as closely as LEAHY and SPECTER have been, we can expect some things on the floor of the Senate that will be interesting and controversial, but that is our job.

I repeat for the third time, I hope we can move forward and get the work of the American people done. That is what this is all about. We do not come here to please any particular constituency. We come here to please the people of our States and the people of this country. That is our job.

We need to recognize we have equal power to the judicial and executive branches of Government. A number of years ago, when President Kennedy was President, there was a chairman of the Rules Committee in the House by the name of Smith. He was a Democrat. President Kennedy was a Democrat. He called Mr. Smith because he

wanted an appropriate ruling from the Rules Committee of which Mr. SMITH was the chairman. And Smith wouldn't even return the President's call. He knew he did not have to. He stood for the legislative branch of Government. He didn't have to take orders or suggestions or even talk to the President.

He may have carried things a little too far, but that shows the strength of the legislative branch. We are as powerful as the judicial branch of Government and the executive branch of Government. When we come to the realization that we are not, it is not good for this country.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Madam President, I respect the Senator and I appreciate what he has to say about wanting to move the agenda. That is something I am very concerned about because of the Highway Bill, as well as the Energy Bill. Those are things that are lined up and need to be done. They are unfinished business from the last Congress. My concern from all this, and the Senator from Nevada has been here long enough, obviously, to know this, the Senate does set its rules and procedures. That is part of the Constitution. Back in 1980, of course, the Senate did the same things we are talking about doing here when the Democrats had control under Senator BYRD.

But more important, this needs to be based on facts. The facts are on our side in this debate. If you look back—the Senator from Nevada talked about historical precedents. The reality is what I said earlier is absolutely accurate, and that is there has not been a judicial nominee with majority support in the history of this Nation, up until the last Congress, who was denied an up-or-down vote in the Senate by a filibuster or by using the Standing Rules of the Senate to prevent that from happening. That simply is a fact.

It is also a fact that in the instance he referred to back in 1968, the Fortas nomination to the High Court, it was President Johnson's selection for Chief Justice. That was, I should say, a bipartisan attempt. It was a judge who did not have majority support in the Senate, and furthermore it was a judge about whom they were raising ethical issues.

The nominees we are referring to here are people of high quality. They are people who have been rated by the American Bar Association as being highly qualified to serve on the bench. They are not extreme, as the Democrats have suggested. They are judges who have been voted on in their States and won overwhelming majorities. These are people who deserve to be voted on in the Senate. This is about the tradition, it is about the precedent, it is about the history of the Senate, and it is about the Constitution. And it is about the responsibility, as Senators, that we have to see that these judicial nominees who are presented by the President for confirmation, for the Senate to perform its advise and consent role, are dealt with in an appropriate way.

I hope the Senator from Nevada will work with our leadership to try to fashion a way in which these judges can be voted on in the Senate. If they are not, we are setting an entirely new precedent for the future of how these judicial nominees are going to be considered in the Senate because this is unprecedented in the history of this Nation, what has happened in the last session of Congress, and what is being suggested by the Democrats in the Senate at this time. And that is that they will shut this institution down and keep other legislation from moving forward simply because they want to dictate to the majority and to the President of the United States about the kind of judges he ought to be submitting to the Senate for confirmation.

I have a couple of other colleagues here who want to speak to this issue, but it is important that this debate be about the facts. I hope we can have an opportunity to debate these judges. Then I hope we have the opportunity to vote on them.

I yield to the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Madam President, I, too, rise this morning to speak about an issue of great importance to me as a freshman of this body; more important, to the Senate as an institution; and most important, to America as a Nation: that is, what is clearly our horribly broken and partisan judicial confirmation process.

Two years ago, the Members of the Senate freshman class of the 108th Congress called on all of their Senate colleagues, Democrats and Republicans, to take a careful look at the Senate's process of confirming judicial nominees. They were fresh from the campaign trail in their respective States, fresh from talking to citizens every day in their campaigns. They heard over and over how dissatisfied people were with the partisanship, the bitter partisanship and obstructionism that they found in Washington, particularly in the Senate. They heard over and over that the clearest example of that was the horribly broken, bitterly partisan judicial confirmation process.

Unfortunately, their valiant efforts did not succeed in fundamentally changing and improving the process. Because of that, as I was on the campaign trail to run for the Senate last year, I heard those same themes, those same concerns from voters all across Louisiana. I know my other freshman colleagues heard the same things from voters in their States. They heard over and over how tired and upset people were at the bitter partisanship in Washington, particularly in the Senate; the endless obstructionism, the endless filibusters. Again, the clearest example of that in citizens' minds was the horribly broken, bitterly partisan judicial confirmation process.

I heard over and over in every part of the State, folks from all walks of life, folks from both parties: Do the people's business. Get beyond all of that game playing. Get beyond that bitter partisanship. The obstructionism, the filibusters, that is not doing the people's business.

Yesterday, I joined with many other Members of my freshman class, the current Senate freshman class, in again calling for the Senate leadership to work together to address the judicial crisis—I use that word for good reason—the judicial crisis we are facing.

As we stated in our freshman letter to our colleagues from Tennessee and Nevada, progress often requires us to make difficult but fairminded decisions. The time has come to prepare our damaged, broken judicial confirmation process. We need a genuine commitment to upholding the equitable principles of our judicial system, a sense of respect for our deeply rooted traditions, and the willingness to compromise.

Several judicial vacancies have been lingering not for months but for years, as my colleague from South Dakota has said, causing more than one jurisdiction to formally declare a ''judicial emergency.'' Because of long-term vacancies, it is imperative we, as Senators, respond promptly to these emergencies. It is unacceptable we should have judicial vacancies in our courts for up to 6 or more years in some cases. It is time to put aside the grievances, the obstructionism, the partisanship that has been built up.

A recent case in point is the nomination of Janice Rogers Brown to the U.S. Court of Appeals for the DC Circuit. Judge Brown, whose nomination has been pending since July 2003, as my colleague from South Dakota noted, is a highly qualified judicial candidate, as evidenced by her background and her training. Justice Brown has 8 years of experience on the California appellate bench, and she has dedicated all but 2 years of her 26-year legal career to public service. Right now, she serves as associate judge of the California Supreme Court, a position she has held since May 1997.

Justice Brown is the first African-American to serve on that State's highest court and was retained with 76 percent of the vote in her last election. California is not exactly a rightwing State. In 2002, Justice Brown's colleagues relied on her to write the majority opinion for the California Supreme Court more times than any other justice.

The daughter of sharecroppers, Justice Brown was born in Greenville, AL, in 1949. She came of age in the South, tragically in the midst of Jim Crow policies, having attended segregated schools in her youth. She grew up listening to her grandmother's stories about the NAACP lawyer who defended Martin Luther King, Jr., and Rosa Parks. Her experiences as a child and

those stories from her grandmother moved her to become a lawyer. In her teens, she moved to California with her family. She earned a B.A. in economics from California State in 1974. She earned her law degree from UCLA Law School in 1977.

In 2003, a bipartisan group of 12 of Justice Brown's current and former judicial colleagues wrote then-Judiciary Committee Chairman ORRIN HATCH in support of her nomination—again, a fully bipartisan group. Another fully bipartisan group of 15 California law professors did the same, as did a dean of the appellate bar in California, and the California director of Minorities in Law Enforcement. What those who know her best say is Justice Brown is a superb judge, conscientious, hard-working, intelligent, sensible, open-minded.

Yet Justice Brown, like multiple other judicial nominees, has been waiting and waiting and waiting for an up-or-down vote in the Senate. It is unfair to her. More importantly, it is unfair to the citizens of this country.

Some, like the distinguished minority leader, argue that this is some longstanding venerable practice. That is simply not true. A few minutes ago, the minority leader said in the early days of the Republic, filibusters were common. I hope, in the midst of this very important debate, he will read the history carefully because in the early days of the Republic, the Senate rules had no such thing as a filibuster. The Senate rules were pure majority rule because there was a motion that no longer exists to call the question, to end debate by a majority vote. So in the early days of the Republic—and this is crystal clear in history—there was no opportunity for filibuster because the Senate, just like the House, then and now, operated by pure majority vote.

Certainly it is clear this practice of judicial filibusters for appellate court nominees is brand new. It has never, ever happened for a nominee with majority support before the last Congress. They are very clear, very well-known examples that prove the point. What about Robert Bork and Clarence Thomas—very controversial nominations opposed by many on the Democratic side but neither was filibustered. Both got up-or-down votes in the relatively recent past. One was confirmed. One was not. That is how the process is supposed to work. That is how it did work until the last Congress.

Others say, yes, these floor filibusters are new but nominees have been held up in the committee before. That has been the functional equivalent of these filibusters we now see when the majority party in the past held up certain nominees in committee.

My response is very simple and very direct. We should change the committee rules as part of this process to ensure every appellate court nominee, every Supreme Court nominee gets to the Senate floor for an up-or-down vote within a certain amount of time. That will fully respond to any legitimate concerns in that regard. That will fully respond to any of those grievances from the past. They can come to the Senate, within a certain amount of time, under a mandate which we can put in the committee or the full Senate rules, and the committee can send them to the Senate with a recommendation we confirm that judge, or that confirmation can come to the Senate with a negative report by a majority of the committee.

We face an impasse. We must do whatever is necessary to end it. Inaction is no longer accessible. Now is the time to resolve it.

Like the complicated policy issues we tackle every day, we cannot avoid the judicial crisis and its surrounding confirmation issues without expecting our inaction to have a major impact on our country. The integrity of our entire judicial system is at stake. Indeed, the integrity of the Federal Government and Congress is at stake as citizens again and again say: Put the people's business first. Take up the people's business. Get beyond this horrible partisanship, obstructionism, and these filibusters.

In closing, I encourage all of my colleagues to take a careful look at the Senate confirmation process. I ask we work together to refine our judicial confirmation process and to break down those partisan walls that have stood in the way of advancing judicial nominations.

There is one compelling reason we need to do this. That is doing the people's business. That is serving the people—not partisan political interests—and the people, across the Nation, all of our citizens, are demanding it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. COLEMAN. Madam President, I was one of those new Members of the Senate elected in the class of 2002 my friend and colleague from Louisiana talked about. We did lament the partisan divide that certainly has been growing in this body for a while but has been clearly reflected in the battle over judicial appointments.

The President has the constitutional authority to appoint judges. That is very clear. It is an authority that has never, in the history of this country, up until last year, when my colleague across the aisle decided to filibuster those appointees, it has never in the history of this country required anything more than a majority vote. We are talking about judicial appointments.

The President must appoint folks who are qualified. There are standards by which one can review that. The American Bar Association is involved in that process and they, in fact, grade nominees. In the case of the President's appointees, each of those nominees received the endorsement—in effect, the label, the standard—of ''qualified'' or ''highly qualified.'' They met the basic test that has to be met.

What has happened in the last year is now a new political test put in place, a political test that has then required a new standard, an unprecedented standard in the history of this country. I repeat, in the history of this country, nominees who could get a majority vote have not been filibustered until last year.

The other side has said: We have confirmed so many judges, hundreds of judges, but when it comes to appellate court judges, the level below the Supreme Court, last year I believe it was 30 percent of those were filibustered, were stopped, and a higher percentage then face that this year. Our obligation in the Constitution is to advise and consent. It is not to advise and construct. Nominees deserve simply an up-or-down vote. That has been the process that has served this country so well for nearly 250 years.

I support the right of filibuster. I love that movie ''Mr. Smith Goes to Washington.'' I thought Jimmy Stewart was fabulous. I watched that as a kid, and I thought being on the floor of the Senate, standing and not stepping down, fighting for what you believe, is part of the history of the Senate.

It is not, by the way, the history of the United States for its entire existence. It was not the history of the United States, contrary to the words of the distinguished and learned minority leader from Nevada, it is not the history when this country began. But it has been part of our history. I recognize that.

By the way, it has not always been as glorious as when Jimmy Stewart was in that movie, standing on the floor of the Senate. The history of the filibuster, which now is being paraded as this icon of protection of rights, this history, unfortunately, has a history of being used to block anti-lynching legislation. It was used to block civil rights legislation. That has been the history of the filibuster. But I respect that history. I respect that tradition of filibustering legislation even if I disagree with it.

But never before has there been a tradition of using that filibuster, that tool, to block judicial nominees. That is what is different today.

I do believe the last effort to limit the filibuster occurred when Republicans took control of the Senate about 1994 and 1995; there were efforts to limit the filibuster. There were 19 votes for that effort. Every one of them were Democrats. Every one of them were my colleagues across the aisle, some of whom still serve in this institution today. That has been the history of limiting the filibuster. But the history is clear that, up until last year, the filibuster has not been used to block a nominee who has majority support.

I am also deeply concerned about what we are doing to civics with this discussion. I think we are confusing young people. When I grew up and studied civics, I understood what checks

and balances were. I am watching commercials today that talk about the effort of the Democrats to block judicial appointees is somehow applying the concept of checks and balances. I have to gather my 15-year-old daughter Sarah and tell her that is not what checks and balances are about. The concept of checks and balances has to do with the wisdom of our Founders to balance the power of the executive branch against the power of the legislative branch and the power of the judicial branch. That is checks and balances—a magnificent concept.

But checks and balances does not mean, and has never meant, that somehow the minority can block the majority from governing in an Executive Calendar, where the President has the authority to appoint individuals who he thinks are qualified, and then we measure that qualification—not politics, not their views on certain political issues, but their competence, their integrity, their capacity to do the job—and we then advise and consent, we give the up-or-down vote.

But checks and balances have nothing to do with the attempt of the minority, right here, to block the majority from simply confirming Presidential appointees. We are not talking about changing the legislative calendar. We are not talking about interfering with the right to filibuster on legislative issues. We are talking about upholding the Constitution.

It is interesting, if you go back—and like the Presiding Officer, I have been here only a few years—we have learned from some of our colleagues about the history of what went on before. In the past, the Senate did not filibuster judicial nominees. There were times when you had very liberal judges coming up for confirmation by Democratic Presidents, and you had Republicans controlling the process, and you had majority leaders such as Trent Lott supporting cloture for liberal nominees who, on the basis of ideology, they would not support.

Judge Paez, in the Ninth Circuit, I believe was one of the judges involved in the decision that you cannot say ''one Nation under God.'' I know many of my colleagues felt Judge Paez's views were extreme. But they respected the power of the President to make an appointee, and they respected the history and tradition of this institution that says: Give nominees an up-or-down vote. Paez got that up or down vote and was confirmed.

So my deep concern is somehow we are involved in almost this Orwellian doublespeak today that we are talking about checks and balances in a process that has no relationship to what checks and balances have always meant. Again, our young people should understand that.

We have bent over backward to protect minority views in this Senate. When it comes to appointments, the majority has a right and a responsibility to act. Then all of us have the right to vote yes or no. Let's do the right thing. Let's uphold the tradition of this institution. Give people the right to get an up-or-down vote when they are nominated for a judicial office.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. COLEMAN. Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

JUDICIAL NOMINATIONS

Mr. SALAZAR. Madam President, I come to this Chamber this morning to make a few comments in response to my colleagues from Minnesota, South Dakota, and Louisiana, concerning the judicial nomination process.

Let me say at the outset, I believe the work of this body and this Congress should be getting about the people's business. I believe this issue concerning the filibuster rule is something that is distracting this country and this Congress from doing what we should be working on.

In the Washington Post this morning, the headline story talks about the economic worries of America. The first two paragraphs of the article in the Washington Post read as follows:

> Inflation and interest rates are rising, stock values have plunged, a tank of gas induces sticker shock, and for nearly a year, wages have failed to keep up with the cost of living.
>
> Yet in Washington, the political class has been consumed with the death of a brain-damaged woman in Florida, the ethics of the House majority leader, and the fate of the Senate filibuster.

I would submit that we as a body have a responsibility to address the issues the people of this country care about. Those issues are about passing a transportation bill for America. Those issues are about getting an energy bill passed for the people of America that helps us get rid of our overdependence on foreign oil. Those issues are about making sure we address the most crippling issue affecting America today—and that is business and people alike—the issue of health care, which is bankrupting this country and many families throughout our States.

We get into this discussion here about what is happening with respect to judges. The fact is, what the majority is attempting to do is to simply break the rules. They are simply attempting to break the rules because they have the power.

Now, I live in an America that strongly supports the fact we have a power that was created by our Founding Fathers, distributed between the executive, with checks and balances, and the Congress, and different rules for the Senate. Part of that is assuring a guarantee when we make decisions for the American people, especially with respect to judges who have lifetime appointments, that we are appointing the very best people to those positions. The debate that is underway today concerning the so-called filibuster rule, from my point of view, is an effort to try to change the rules in midstream. It also is reflective of the abuse of power we see in Washington today. To be sure, when you look at the history of what has happened with judicial appointments in the last decade and a half or so, there have been 60 Democratic nominees from President Clinton who were rejected by this Senate. On the other hand, if you look at what has happened with President Bush's nominees, we have had over 96 percent of all of his appointees confirmed by the Senate.

Now, under anybody's scorecard, if you get a 96-percent success rate, I think you have done pretty well. You can ask my daughters, who are stellar students in their school; getting a 96-percent grade is pretty good. That is a much higher rating for President Bush's appointees than we had for prior Presidents.

So I would say this is not about these particular nominees. I have not yet taken my own position with respect to what I will do with these seven nominees. I will study their records, and I will make my decision based on those records. But, at the end of the day, this is whether we will uphold the cherished traditions of this Senate that have provided the kinds of checks and balances that have been important for this Senate to be able to function.

In my view, those rules force us, as Republicans and Democrats, to come together to work through the issues that are most important for our country. I believe the way this issue has been presented to this body and to the American people has been destructive not only to this body but also destructive to the real agenda on which we as the elected representatives of the people should be working.

That real agenda is about roads. It is about transportation. It is about energy. It is about health care. It is about the issues that affect every person every day. They are the kinds of issues that affect people when they get out of bed in the morning and wonder what is going to happen to their families, their children, and their parents. Those are the kinds of issues we should be working on as opposed to working on these kinds of very divisive issues.

AFGHAN SECURITY FORCES STANDARDS AMENDMENT

Mr. SALAZAR. Madam President, I would like to speak a little bit about amendment No. 454, which was adopted unanimously by the Senate last night. I appreciate and thank Senators COCHRAN and BYRD for the time they have spent working with me on this amendment. I also note and appreciate the work of Senators MCCONNELL and LEAHY on this matter. Their staff members, Paul Grove and Tim Rieser, were very helpful.

It is clear that success in Iraq and Afghanistan is dependent on how well