plan, we ask for the details, and nothing happens. What level of benefit cuts is the President advocating? How much of their guaranteed benefits is the President asking workers to relinquish? On this subject the White House has been evasive. The White House has been equivocating.

What about the volatility of the financial markets? Recent news reports serve as a vivid reminder that the stock market has severe ups and downs. What happens when it comes time to retire and a worker discovers that he or she does not have enough saved to ensure a decent, respectable living? What guarantee would the administration support to ensure a minimum benefit from each individual account? The White House will not respond to this question. There is not a sound to be heard by way of answering that question. What are the costs of the President's Social Security plan? The White House Budget Office has $754 billion, but the Vice President says trillions of dollars. How about that? How can this administration reconcile mounting debt and its own warnings about the need to limit the further growth of deficits with a plan that requires borrowing trillions of dollars more? Again, the White House has no response to the question.

This week, the Senate Finance Committee began hearings on the President's plan. I hope these hearings will yield more information. Our senior citizens need answers to these questions.

I sent a letter to this President earlier this year urging him to send a detailed legislative proposal to the Congress. Send it up, a detailed legislative proposal. I have asked questions of the Secretary of the Treasury at Appropriations Committee hearings as recently as this week. The Congress and the people have been patient in waiting for answers, but still no answers come forth. Honesty and candor are now required. We cannot legislate on rumors and guesses. The ducking and the dodging on the part of the administration serve only to fuel speculation that it is hiding something—yes, hiding something—from the public or, worse, seeking to cut benefits surreptitiously.

Fortunately, any legislation submitted by the President to change Social Security will require 60 votes to pass the Senate; that is, as long as the nuclear option has not descended upon the Senate, as long as the filibuster is still around. Any legislation submitted by the President to change Social Security will require 60 votes to pass the Senate. Long live the filibuster. It may be needed to protect Social Security. The danger of the nuclear option becomes crystal clear as we contemplate the momentous debate on Social Security which looms just down the road, just up ahead.

Only the Senate, here in this forum, only the Senate has the ability to insist on its right to unlimited debate. I hope the Senators will stop, look, and listen. Only the Senate, may I repeat, has the ability to insist on its right to unlimited debate. Let's maintain that right. It has been there for 217 years. Its roots go back to the English Bill of Rights to which William III and Mary subscribed on February 13, 1689, 100 years before our own Republic began, the Bill of Rights, enacted on December 16 in Parliament. The Bill of Rights guaranteed freedom of speech in commons, and our own Constitution in section 6, article I, guarantees that right which cannot be questioned in any other place. Retain it, maintain it, keep it, hold it, collapse it to thy breast.

Only the Senate has the ability to insist on its right to unlimited debate. No Social Security legislation will fly through this Senate without thorough scrutiny, unless the nuclear option is employed. Senators can insist and Senators will insist on the time they need to probe the details of the President's plan and to extract answers to their questions. The Senate will have the opportunity to amend, the Senate will have the opportunity to debate, and then, if it desires, the Senate will have the opportunity to amend and debate some more. And then some more. The threat of a filibuster means that no legislation will be enacted into law without bipartisan support in this Senate, which means that no benefits will be cut, no taxes will be increased, and no radical change codified without adequate debate.

The Senate will require a compromise if and when Social Security reforms are ever enacted, fulfilling its role exactly as the Founding Fathers envisioned. Yes, yes, that is why we have a Senate. Thank God for the Great Compromise which was agreed to on July 16, 1787. Praise God for that Great Compromise. But for it, the Presiding Officer would not be sitting at the desk. But for it, I would not be standing here. But for it, this might never have been a Republic. That is why we have a Senate with its rules for unlimited debate—Lord, God, keep it, save it, collapse it to thy heart—to forge compromise and to ensure moderation in the laws enacted.

To those who advocate chipping away at that rule, limiting Senators' right to debate in regard to judicial nominees, hear me when I say the crucial need for keeping those rules strong in order to encourage compromise and moderation is right before us as the Senate proposes to debate changes in Social Security. Hear me out there in the Plains, in the prairies, across the rivers from the Atlantic to the Pacific. We ought to engage in a genuine effort to end the rumors and help the public understand exactly what is being asked of them with regard to their Social Security benefits—your benefits.

I urge this administration to lay its case before the American people. Come on, open up, lay the case before the American people. Tell us what your plan is. Give us the details of your plan. The last thing we need at this late point with the Social Security storm looming on the horizon is to find another house has been built upon the sand.

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

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

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. MURKOWSKI). Without objection, it is so ordered.

Mr. DOMENICI. Madam President, how much time remains on the minority side?

The PRESIDING OFFICER. The minority's time is now expired.

Mr. DOMENICI. Madam President, do I understand that the Senator from New Mexico has up to 10 minutes at this point in morning business?

The PRESIDING OFFICER. The Senator has up to 30 minutes, if he would like.

Mr. DOMENICI. Thank you very much.

JUDICIAL NOMINATIONS

Mr. DOMENICI. Madam President and fellow Senators, I want to start by submitting a couple of editorials from papers in the State of New Mexico.

First of all, I want to start with an editorial from a paper in New Mexico called the Santa Fe New Mexican. I do not want to editorialize too much about this paper, but I think it is fair to say this is not a conservative newspaper. I believe it is fair to say it is a pretty liberal paper. It is probably even more than mildly liberal, very liberal. But I was impressed by their grasp of this issue and a statement that was in their editorial.

Madam President, I ask unanimous consent that these editorials be printed in the RECORD.

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

[Santa Fe New Mexican (New Mexico), Feb. 24, 2003]

BINGAMAN SHOULD LEAD DEMS' FILIBUSTER RETREAT

As legendary prizefighter Joe Louis said of an upcoming opponent reputed to be fast on his feet: ''He can run, but he can't hide.''

Senate Democrats, along with the Republican majority, fled Washington last week as their way of honoring Presidents' Day. The annual recess suspended their filibuster against a federal judgeship vote. The Dems are making an unwarranted stand, and an unseemly fuss, over the nomination of Miguel Estrada to the U.S. Court of Appeals for the D.C. Circuit.

The filibuster—protracted talking under senatorial privilege—had consumed a week of debate about Estrada before the senators left town. Now they're gravitating back to the Potomac, and the Dems can hide no longer. Resumption of their verbose balking will make them look ridiculous—at a time when the nation needs statesmen to stand up

against the White House warmonger and his partisans commanding Capitol Hill.

The Democrats have chosen a particularly poor target: Estrada, who came from Honduras as a boy and went on to lead his law class at Harvard, is better qualified than many a Democratic appointee now holding life tenure on one federal bench or another.

But after confirming so many less-qualified judges while they held power, Estrada's senatorial tormentors now offer ''reasons'' why he shouldn't be confirmed: too young; too bashful about answering leading questions; appointed only because he's Hispanic—or, to some senators' way of thinking, not Hispanic enough.

What really rankles with the Democrats, though, is Estrada's politics. He's a conservative. Surprise, surprise; we've got a conservative president, and it's the president who makes the appointments to the federal judiciary.

As the party on the outs, the Dems had better get used to like-minded appointments from the president. If their game-playing goes on, a disgusted American public might keep George W. Bush in office for the next six years. The country certainly didn't see any reason to balance Bush against a Democratic Congress when it had a chance just a few months ago. With their spiteful behavior toward Bush appointees, the Dems aren't exactly gaining goodwill.

If they find the Republican so repugnant, let 'em vote against him; at least they'll be putting their ideals—or their party colors—on display. But this is no Mr. Smith against some diabolical establishment; it's a bunch of sore losers making themselves even more so.

To break a filibuster by cloture takes 60 senators. The Senate's 51 Republicans need nine of the 48 Democrats, or eight of them and ex-Republican Jim Jeffords of Vermont.

New Mexico's Jeff Bingaman should lead the Democratic blockade-runners. By all measures, Bingaman is a class act; a lawyer who knows that senators have no business obstructing appointments on purely political grounds. He also knows that Republicans aren't going to hold the White House forever; that sooner or later a Democratic president will be choosing judges. And he realizes that Republicans, like their mascot, have long memories.

The last thing our justice system needs is an ongoing feud over appointments to district and appellate judgeships. Let Judge Estrada's confirmation be a landmark of partisan politics' retreat from the courtroom.

[Albuquerque Journal, Apr. 27, 2005]

FILIBUSTER PUTS BAR TOO HIGH FOR JUDGES

Despite the cumbersome robes, Texas Supreme Court Justice Priscilla Owen has managed to jump some pretty high bars. She garnered 84 percent of the vote in her 2000 campaign for re-election. She received the American Bar Association's highest rating as a nominee for the federal appeals court.

But since 2001, she hasn't been able to get the time of day on the Senate floor because Democrats will filibuster confirmation. That means Owen has to have a super majority of 60 votes—the number it takes to close off a filibuster. That bar is too high.

Democrats like to stress the number of U.S. District Court judges confirmed during the Bush administration. But the higher courts are the battleground, and there, Democrats have been able to hold Bush's confirmation rate (69 percent) well below that of recent presidents.

The Senate minority has used the filibuster or the threat of it on an unprecedented scale to deny Owen and 15 other appeals level nominees what the Constitution envisions, a straight majority vote.

Despite the time-honored Senate rule establishing senators' right to hold the floor and talk until death or until 60 votes can be rounded up, the time-honored norm has been to defer to the president, especially when the president's party holds a Senate majority.

What happens when traditions are trampled in the interest of short-term political goals? Other customs that have worked well become vulnerable to the escalating partisan crossfire over judicial nominees. For example, Judiciary Committee practice has been not to send a nomination to the floor without the accord of the senators from the nominee's state. Now that rule has been broken in the case of Michigan nominees.

The next level of escalation wasn't too hard to see coming: The majority party threatens to remove the filibuster option on judicial nominees. If that sounds radical, consider that 19 Democrats—including Sens. John Kerry, Edward Kennedy, Barbara Boxer and Jeff Bingaman—moved to eliminate the filibuster in 1995 when Democrats wielded majority power.

What they failed to do then, they may goad the Republican majority into accomplishing with regard to judicial nominations now. It would be an action both parties eventually could come to regret. The filibuster has allowed the minority to apply the brakes to majority will over the decades—but it was not intended to be a stone wall.

Senate leaders should keep talking and trying to avert a showdown on the filibuster. Democrats might negotiate for a Bush pledge to forgo recess appointments, to seek more pre-nomination advice along with Senate consent, and for expanded floor debate.

But, after every senator has had his moment on the floor, there should be a straight majority vote on the vast majority of this or any other president's nominees.

Mr. DOMENICI. Madam President, I want to read the operative paragraph from the Santa Fe New Mexican:

With this spiteful behavior toward Bush appointees, the Dems aren't exactly gaining goodwill.

If they find [these nominees] so repugnant, let 'em vote against [them]; at least they'll be putting their ideals—or their party colors—on display. But this is no Mr. Smith against some diabolical establishment; it's a bunch of sore losers making themselves even more so. . . .

This is not PETE DOMENICI speaking. I am reading from this editorial:

The last thing our justice system needs is an ongoing feud over appointments to district and appellate judgeships.

Now, yesterday, or maybe a day before, the major paper in the State, the Albuquerque Journal, had an editorial with a very interesting title: ''Filibuster Puts Bar [B-A-R] Too High for Judges.''

It is a very interesting editorial, with a play on words: ''Bar'' meaning the bench; and ''Bar,'' with the idea that you have to have 60 votes, is disavowed by this editorial. There is some nice recognition and discussion about the fact that a number of the Senators on the other side who are talking about this issue as if there was a filibuster allowed for judges—which I do not believe there is—the editorial explains that a number of Democrats were for doing away with the filibuster in its entirety about 10 years ago. At a point, that was a very major discussion here, and it was principally motivated by the Democratic Party, to get rid of the filibuster in its entirety. The editorial says how interesting and paradoxical it is that some of those who did not, at the time, want the filibuster around at all are arguing about it existing for judges—this is not conclusive but is interesting.

So I am here because I would like to make my case and explain to the Senate why this Senator from New Mexico thinks we should have an up-or-down vote on the circuit court judicial nominees of the President who are pending.

First, I want to make the point that I am not trying to change anything. So when people say, Republican Senators want to change the filibuster rule, I am for changing nothing.

What does that mean? That means I am for leaving the rule as it is. What does that mean? That means there is no filibuster rule relating to judges now. All the discussion about why should we change the rule is not the issue. The issue is, why are we denying circuit court judges an up-or-down vote—that is, majority rule—when that is what the precedent of the Senate has been for the last 200-plus years?

For anybody who thinks the filibuster rule is absolutely inherent in anything the Senate does, that the rule came down from the Constitution to the Senate as: Thou shalt have a filibuster rule, that is not so. Look in the Constitution. There is no mention of filibusters. As a matter of fact, the document is filled with references to majority rule. And where the Constitution requires that we have more than a majority, it says so. So look to the Constitution to see if there are any times when our Founding Fathers said a two-thirds vote or more than a simple majority are necessary, and you will find there are few occasions and they are mentioned specifically. Therefore, I would assume the Constitution does not require super-majorities for judicial nominees. If we tried to say otherwise, I assume it would be thrown out in a minute.

The question then is, what do we Republicans want? What do—maybe it won't all be Republicans in the end—we want now? We want judges who were nominated by this President for the circuit courts of appeal over a long period of time—and I will cite an example shortly—to have an up-or-down vote. I hope people understand, all these other questions that are asked of them, they beg the issue. The issue is, should a circuit court nominee who is otherwise qualified, meaning the American Bar Association and the people who work with them believe they are qualified, have a vote. That is the issue.

I cannot believe the majority of Americans, given that set of facts, would say no, you need to get two-thirds of the vote under those circumstances. What are those circumstances? Those circumstances are that some in this body don't like the

nominees. The Constitution didn't say this is an issue of whether you like the nominees. It said, you are voting advice and consent for the nominee. So the point is, you exercise your right by saying: I don't consent. In advising, I withhold my consent and say no. The Constitution doesn't say two-thirds of you must say you have advised and you consent. That is the issue.

As I see it on television and read about it, we can see people arguing that we shouldn't change. The filibuster is part of the fiber of the Senate. We should not alter it.

I have explained that it isn't part of the fiber of the Senate with regards to judicial nominees. As a matter of fact, even on other issues besides judges, it is not certain that it existed when we were founded. There is a long period of history when we are not even sure the filibuster existed. But I am not here saying the filibuster does not now exist. In fact, I am for the filibuster. I didn't vote in favor of getting rid of the filibuster. Half of my service in this body has been as a minority Senator. So I know what it is to be a minority Member who appreciates the filibuster. But I also don't like the filibuster sometimes. I get upset. I wonder why it holds up so much legislation.

I might add parenthetically that I don't like the way the filibuster is used around here now because it is used all the time for anything. Thirty times a year we have to have cloture filed. We didn't do that for 25 of the 30 years I have been here. It was very rare. In its earliest vintage, it was on matters of monumental importance to Senators, regions, or to Americans. Now every time we have a bill, if a few people say, we don't want to let that pass, you have a filibuster.

I am not for changing the filibuster because of irreverence toward the Senate's right to vote. I don't think I am voting to change it when I talk about judges, because you don't change if you are trying to say, do what we have been doing. I have tried my best to read, first, what is a filibuster. I have checked and I have read. I understand.

How do you get rid of it? I checked and I understand how you get rid of a filibuster. But I have also tried to find out when are filibusters used, and I have found that in the Senate it is not generally used with reference to voting on a nominee for Federal judgeships in the United States.

I am not in favor of our leadership pursuing a process that gives us an up-or-down vote, if that process gets rid of the filibuster for everything. I have already inquired. I am assured that is not the case. I have been assured we won't be voting on that. It will be only regarding judges.

So have we in the past filibustered judges? By that I mean, had a judge come down to the floor out of committee ready to be voted on and have we killed that judge's chance by filibustering? No, no. Never, never. One case is cited, and it is Abe Fortas.

Abe Fortas was a Lyndon Johnson appointee who was on the bench, already confirmed. The issue was, President Johnson wanted to put him in a vacancy that occurred for Chief Justice which you know we have to vote on. And the Senate got into a debate about whether he should get it, and there was great consternation on the floor of the Senate as to whether he should be confirmed for that. The truth is, he was not killed by filibuster. His name was voluntarily withdrawn. He later even left the Supreme Court. But the record is pretty certain that he was not killed by filibuster. That wasn't a judicial appointment, anyway. But even if you want to tie that in, that did not happen.

What have Senators around here said about this? I understand each can come down here and put it in whatever context they would like. My good friend, Senator KENNEDY from Massachusetts, said on February 3, 1998, page S295 of the CONGRESSIONAL RECORD:

> We owe it to Americans across the country to give these nominees a vote. If our Republican colleagues don't like them, vote against them. But give them a vote.

That is not me. That is Senator KENNEDY.

Senator LEAHY said, June 8, 1998, page S6521 of the CONGRESSIONAL RECORD:

> I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported . . .

Interesting. I have seen the distinguished Senator from New York—I haven't heard him personally, but I have seen him and heard him on television with his right fist like this saying: We don't need any right wing judges or we don't need the right wing pushing us to appoint radical judges.

I could as well put up my left hand, but I won't, and say we don't need anybody telling us to appoint liberal judges. But the distinguished Senator from New York said:

> This delay makes a mockery of the Constitution, makes a mockery of the fact that we are here working, and makes a mockery of the lives of very sincere people who have put themselves forward to be judges and then they hang out there in limbo.

That is dated March 7, 2000, page S1211 of the CONGRESSIONAL RECORD. I also told you about the New Mexico editorials.

So people will understand how gross this abuse of the filibuster is and how it is prompted by personal angst, not qualifications, I am going to refer to one judge as an example. Let's take the nominee Priscilla Owen, Fifth Circuit, and let's look at her in comparison with judges who are on that court who have come before the Senate. Let's look at the first one, Patrick Higginbotham, nominated by Ronald Reagan, graduate of the University of Alabama, University of Alabama Law School. How long did it take to get through here? Twenty-six days. Nominee Emilio Garza, President Bush appointee, University of Notre Dame, University of Texas Law School, judicial experience, Bexar County Texas District Court.

I am sure controversial people had a thing to say, but I am also sure this and the previous nominee were recommended or were certified to be qualified by the American Bar which, incidentally, most of the time this Senator has been here, that was the sine qua non. If you didn't have that, you were in trouble. And if you had it, conversely, that was pretty good. You must be qualified. That is what the old rule was. I am sure they had that. Forty-three days for him to be confirmed.

Here we have Fortunato Benavides, nominated by President Clinton, University of Houston, University of Houston Law School, previous experience, 13th Court of Appeals for Texas, Texas Criminal Court of Appeals, 99 days to be confirmed. He got nominated and confirmed in 99 days. There was a lot of commotion about him. He got here for a vote.

Now we have Priscilla Owen, George W. Bush's nominee, Baylor University, Baylor University School of Law, Texas Supreme Court, 1994 to the present. Both of these nominees were qualified, according to the American Bar, both of these, Mr. Benavides, Judge Owen, a lot of letters of commendation from those who know about their judicial temperament, their qualifications. I told you where she came from, where she was educated, where she served. Look at the time she's been waiting for a vote—I know Americans will better understand our dilemma—1,450 days waiting for us to say what the American people I believe would like us to say, and what I think the Constitution says we ought to say, and that is yes or no. Not maybe; not, ''well, I don't like their ideals so you need 60 votes.'' That is a pretty long time to leave a qualified judge hanging here unless you are absolutely certain that person is not qualified to be a judge.

There is a lot more one can say about this, but I believe, as one who has been here a long time—I think right now there are only four people here sitting longer than I in the Senate—we should get this over with.

This is hanging over the Senate in a very damaging way. With the passing of each day, more and more is said, more and more joining sides is taking place, digging in your feet, more and more groups outside are adding to the vitriolic nature of the debate. The talking heads—the news people who talk all the time on TV and speak on radio and write all the time—are choosing sides. They are feeding a frenzy, and we are suffering. But most of all, the American people are suffering because if we keep on, it is going to be hard to get our work done.

I close by saying that our friends on the other side are led by a Senator whom I honestly and sincerely say is a good leader for the minority, Senator

HARRY REID, an excellent Senator—I believe he is fair and honest. I believe he would like to get this issue out of his mind and out of here. But he has suggested that if the majority party insists on doing what we are entitled to do—voting for these judges up or down by a majority vote—if we do that, which, I repeat, is not changing anything, the business of America will stop. We will pass nothing here. The Senate will be dead. America's business will go nowhere; it will disappear. That is an extraordinary threat, a threat that those who are making it better clearly understand.

Does that really mean that we won't get a highway bill, an energy bill, an appropriations bill that pays for education, a bill that pays for the operation of our military, that we won't get an appropriations bill through here that pays for our parks, for the Indian schools of our country, and on and on? Have we really reached a point where the minority is saying, we are going to insist on enforcing a rule that doesn't exist, that denies an up-or-down vote on judges who are qualified, and if we don't get our way, Government stops?

You know, I hope everybody understands that. I hope it doesn't happen. I think that editorial I read from suggests that those who do that are not going to come out of this with any accolades—nobody is going to be proud of that. I believe that is almost a minimum way of saying it. I think that will inure to the minority party being considered to be irresponsible on behalf of the people of this country.

I thank the Senate for listening, and I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. ISAKSON. Madam President, I commend Senator DOMENICI for his remarks and for his service and commitment to the Senate and the United States. In some ways—I didn't plan it this way—it is kind of appropriate that he would speak and that I would follow. Senator DOMENICI has served this country in a long and distinguished career. He has been in this Senate for many years. You can tell by his thoughtful remarks he cares passionately about his traditions and about the responsibilities we have. I care deeply, too, but I am a new guy. I just got here. I didn't hear those speeches he quoted. I have read them, and I have heard a lot of speeches. I come from a little bit of a different perspective.

For a few minutes, I would like to tell you my opinion on the question of judicial confirmations and how I arrived at that. For, you see, although I address you as a Senator at this moment, the foundation of my beliefs is grounded in the preceding 2 years when I was a candidate for the Senate.

Beginning in January of 2002, the 108th Congress convened, and I was an announced candidate for this Senate seat. Shortly into that session, something changed in America—or at least changed here—because the holdup of judges for days counted, like Senator DOMENICI just recited, began to take place and the filibuster began to be used in a way it had never been used in the United States before.

As a candidate for the Senate, I was asked by members of the media, constituents, and Rotary and Kiwanis clubs: Mr. ISAKSON, if you were elected, what do you think the Senate ought to do? My answer was instinctively that I think every judge ought to get an up-or-down vote because, the way I understand it, that is the responsibility of the Senate. But as the intensity of the issue grew and as the campaign gained, as campaigns do, and the pressures grew, I did a little studying. I wanted to do my own homework. I didn't have history in the Senate, but I did have a Constitution.

On some of those long nights on the road between campaign stops, I would read about judicial confirmations, the Constitution, the responsibility of the Senate. For a few moments, I want to share, for informational purposes, with the Members here and those who may be watching or listening exactly what the Constitution says about the responsibility of this body.

It is very interesting. If you read the Constitution—I have a few underlined sections here. Everywhere the Constitution requires this body or the House to affirm a position by supermajority vote, it spells it out. A few years ago, we dealt with an impeachment issue, and the Constitution is clear: it takes a two-thirds vote to convict. We have dealt with constitutional amendments on a balanced budget and things of that nature, and the Constitution is quite clear: it takes a two-thirds vote. It is even so clear it says it takes a three-fourths vote of the States to ratify the amendment that it takes a two-thirds vote of the House and Senate to propose.

Then let's talk about advice and consent for a second. I want to read directly from the Constitution the provisions about the responsibilities of this Senate in advice and consent.

> He [referring to the President] shall have the power by and with the advice and consent of the Senate to make treaties provided two-thirds of the Senators present concur.

That is the first part of a compound sentence. It is saying that it is our responsibility to advise and consent on treaties, and it specifically requires two-thirds of us to do so for the treaty to be ratified.

Let me go to the second part of that compound sentence:

> And he [the President] shall nominate and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministries and councils, judges of the Supreme Court. . . .

Et cetera et cetera, with no requirement for a supermajority.

When I was running for the Senate and I was continually asked the question by opponents in the primary and later in the general and by the media: Mr. ISAKSON, what do you think about this business of judges not getting a vote? And if you are elected, what would you do? I said: It is really kind of simple to me. The Constitution says that it is a Senator's responsibility to advise and consent. The Constitution specifies it every place where it requires a supermajority vote. The Constitution, in the same sentence that it designates the responsibility for us to ratify treaties by a supermajority, confers upon us the responsibility to advise and consent with a majority vote of this body.

Since I have been elected and since I have been on the Senate floor and since I have heard all of the speeches, I have heard all of the adjectives assigned to the process we are debating. I will not get into any of them because they are more marketing than they are substance. But this document is not marketing; this document is substance. It has made the difference in the United States of America and any other country that has ever been formed since the creation of this Earth. While it may not be perfect, it is the best man ever did, and it is specific in what our responsibilities are. In no way does it say ''maybe,'' ''sometimes,'' or ''whatever.''

There is one point made from time to time which I would like to elaborate on and respond to. There are those who say: Well, but the Constitution, when it establishes the House and the Senate, the legislative branch, it says that both shall establish their rules under which they operate. Therefore, we are just using a rule to prohibit an up-or-down vote on the judges. Well, if you carry that argument to the logical extreme, what if we passed a rule that the Senate could pass by a majority vote the ratification of treaties? Could we contravene the Constitution? I think not, because the Constitution is specific. It is as specific in our responsibility for two-thirds to ratify treaties as it is specific in our responsibility for us to advise and consent on judges. I don't believe we could invalidate, through a rule, that responsibility any more than you can extrapolate that because we have a rule that includes a filibuster, that it applies to a constitutional responsibility and can invalidate our very requirement. It is just not really logical. That is not Republican or Democrat, it is not a marketing phrase or marketing phrase; it is real simple.

When I was sworn into the House of Representatives almost 7 years ago now, I was elected in a special election, and, unusual in the House of Representatives, when you are elected in a special election, you get to make a speech when you are sworn in.

I never worked harder on a speech in all my life because I knew I was going to be the only guy out of 435 down there, and I had 1 minute to say something intelligent. I struggled with what the right thing to do was.

Finally, I went back to my dad, who is not with us anymore, and he went

back to a quote he used to tell me as a young man. He loved Mark Twain. When we had one of those difficult decisions to make, he would always say: Son, remember what Mark Twain said. When confronted with a difficult decision, do what's right. You will surprise a few; you will amaze the rest.

A decision that is pretty simple has become very complex for this Senate. In the end, we should peel back the arguments and look back to the foundation under which all of us operate, and that is our Constitution. The question is simple and our responsibility is clear, and every judge nominated by this President, or any President, deserves an up-or-down vote one way or another. It is the responsibility of the Senate. It is the direction of the Constitution.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 3, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3) to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

Pending:

Inhofe amendment No. 567, to provide a complete substitute.

Bayh amendment No. 568 (to Amendment No. 567), to amend title VII of the Tariff Act of 1930 to provide that the provisions relating to countervailing duties apply to nonmarket economy countries.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Madam President, we have several pages of amendments that are out there. We repeat our invitation on behalf of myself and Senator JEFFORDS. We want to invite all Democrats and Republicans who have amendments to the highway bill to bring them down. It is going to get crowded later as we go on. Now we have time for adequate consideration, for deliberation, and we encourage Members to bring their amendments to the floor.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Madam President, I rise in support of the SAFETEA bill. Effective transportation is vital to our Nation, and I believe this bill will be an important step in helping to meet the country's transportation needs.

I would like to thank both Senator INHOFE and Senator JEFFORDS for working hard on this bill. The people of Oklahoma are blessed with the hard work Senator INHOFE has put forward, both in the Senate and when I had the opportunity to serve with him in the House.

This bill has required a lot of hard work and a lot of dedication. He has put forward an effort that I think we all appreciate. Sometimes we forget to say thank you for the hard work that goes into a bill such as this, including the hard work of the staff, I might add. The staff on both sides has been helpful in putting this legislation together.

In particular, I express my support for the public transportation title of the bill. While many people erroneously refer to this as the highways bill, it is actually a comprehensive reauthorization of the Nation's surface transportation programs, including transit. A healthy, well-functioning transit network can greatly enhance the effectiveness of other transportation modes, and as chairman of the Subcommittee on Housing and Transportation of the Banking Committee, I have had many opportunities to see the difference reliable public transportation can make for both individuals and communities.

I also express my thanks to the Banking Committee chairman, Chairman SHELBY. For many years he has been one of the leading champions for public transportation in the Senate. I appreciate his dedication. It has been a pleasure to work with him as subcommittee chairman on reauthorization of the mass transit programs.

I also recognize and thank Senator SARBANES, the ranking member of the Banking Committee, and Senator REED, the ranking member of the Housing and Transportation Subcommittee. They have been actively involved in the reauthorization process, and I appreciate the thoughtful perspective they brought to all of our discussions. Together I believe we have been able to accomplish a great deal to improve public transportation in a strong and bipartisan manner.

I thank again Senator INHOFE and all the other Republicans on the Environment and Public Works Committee for their hard work and leadership. I miss not being on the committee. I was on the committee when this bill first moved forward. I very much appreciate working with my colleagues.

Public transportation is a key component of our Nation's transportation infrastructure and provides safe, reliable, efficient, and economic service. Public transportation can create jobs and stimulate economic development, as well as reduce traffic congestion and pollution.

Because I represent the State of Colorado, some people wonder why I care about public transportation. Beyond the national policy concerns, these same people are often surprised when I explain how important public transportation is to my Colorado constituents.

Public transportation encompasses a great deal beyond the stereotype of subways and heavy rail. People in the Denver suburbs can now take light rail to their jobs downtown. Students in Boulder often use the bus system to get around town. Sick people on the eastern plains may rely on demand-responsive transit services to go to chemotherapy or dialysis appointments. Public transportation is important to many different types of people in many different locations. This bill will help ensure that all these people have access to reliable public transportation.

I believe the Senate passed an excellent transportation reauthorization bill this last year, and I was especially pleased with the transit title. I believe it made important progress in a number of areas while building upon the many successes of TEA–21. Fortunately, we come to the floor with substantially the same package, and I am hopeful this approach will speed things along and allow the bill to move forward with a minimal number of amendments.

I am very supportive of the formula changes made in the transit title. These go a long way toward addressing my longstanding concerns with the distribution of transit dollars. As my colleagues may know, one of my top priorities during the consideration of TEA–21 was to bring more equity to the distribution of transit dollars. Senator Rod Grams and I were able to make changes that allowed States such as Colorado to have greater access to this resource.

In drafting the reauthorization bill, greater equity has continued to be my top priority. While the traditional transit cities have many important needs, it is time to update the formulas to include other needs. Today's bill strikes a balance by providing for more traditional transit cities and also providing for new needs by creating several new formulas.

In particular, I strongly support the new growing States formula. Historically, many of the fastest growing areas in Western and Southern States have had a difficult time obtaining transit dollars. Yet their explosive growth makes transit all the more important. Mass transit can help growing areas reduce traffic congestion and air pollution, as well as increase access to jobs. The new growing States formula will help direct additional resources to the high-growth areas with the greatest need.

I also support the new transit-intensive cities formula. This new formula will reward smaller cities that are providing greater than average transit service. In addition to providing an incentive for cities to improve their transit service, I support the formula because it deliberately directs taxpayer dollars to areas that are utilizing them most efficiently.

Finally, I support the new rural low-density formula. This formula will help rural areas provide critically needed service. Rural areas and very small towns generally have older and less affluent citizens, the very people who often rely on public transportation. In