similar measure, S. 1072. I believe it is a critical step toward funding our Nation's transportation infrastructure and creating much needed jobs.

Now the real work begins. The Senate funding level is $295 billion. The House has passed its version, TEA–LU, at $284 billion over 6 years. And the President unfortunately supports the lower House number. In fact, he has threatened to veto any transportation bill that exceeds the $284 billion funding level.

I was proud to join 83 of my Senate colleagues in standing firm on the Senate level of $295 billion. The White House should take note that at least 84 Senators—a supermajority—support a higher number.

Reauthorization of TEA–21 is one of the most important job and economic stimuli that the 109th Congress can pass. We must work quickly to deliver the best conference report at the highest possible funding level. We should not let further delay stand in the way of real transportation infrastructure improvement, economic development, and job creation.

I would like to take this opportunity to discuss the benefits of this legislation for my home State of Illinois.

H.R. 3, as amended by the Senate, would make the largest investment to date in our Nation's aging infrastructure, $295 billion over the life of the bill. In short, SAFETEA would increase the State of Illinois' total Federal transportation dollars and provide greater flexibility. It would help improve the condition of Illinois' roads and bridges, properly fund mass transit in Chicago and downstate, alleviate traffic congestion, and address highway safety and the environment.

The bill would provide $184.5 billion over the next 5 years for highways and other surface transportation programs. Illinois has the third largest Interstate System in the country; however, its roads and bridges are rated among the worst in the Nation. The State can expect to receive more than $6.1 billion over the next 5 years from the highway formula contained in the Senate bill. That is a 33-percent increase over the last transportation bill, TEA–21.

With these additional funds, the Illinois Department of Transportation will be able to move forward on major reconstruction and rehabilitation projects throughout the State.

Mass transit funding is vitally important to the Chicago metropolitan area as well as to many downstate communities. It helps alleviate traffic congestion, lessen air emissions, and provides access for thousands of Illinoisans every day. H.R. 3, as amended by the Senate, includes $46.53 billion over the next 5 years for mass transit. Illinois would receive about $2.22 billion over the next 5 years under the Senate bill, a $286 million or nearly 15-percent increase from TEA–21.

This legislation also preserves some important environmental and enhancement programs, including the Congestion Mitigation and Air Quality, CMAQ, program. CMAQ's goal is to help States meet their air quality conformity requirements as prescribed by the Clean Air Act. The Senate bill would increase funding for CMAQ from $8 billion to $10.8 billion—an increase of 35 percent. Illinois received more than $460 million in CMAQ funds in TEA–21. The State is expected to receive an increase in CMAQ funds under the Senate bill.

With regard to highway safety, Illinois is 1 of 20 States that has enacted a primary seatbelt law. H.R. 3 would enable the State of Illinois and other States who have passed primary seatbelt laws to obtain Federal funds to implement this program and further improve highway safety.

I know this legislation is not perfect. Illinois' highway formula should be higher. Amtrak reauthorization and rail freight transportation funding are noticeably absent. And important road and transit projects from around my home State have not yet been included. I will work with Senator BARACK OBAMA, a member of the Environment and Public Works Committee, and my Illinois colleagues in the House to ensure that Illinois receives a fair share of transportation funds—highway, transit, and highway safety—in the final conference report.

I know my colleagues on the other side of the Capitol understand the importance of this legislation and I am hopeful that Congress can expeditiously work through the differences between the House and Senate bills in a conference committee. One of every five jobs in Illinois is related to transportation, including construction jobs. Unless Congress moves quickly, we will lose another construction season and the important jobs that are created by public investment in transportation.

Mr. President, with the passage of this legislation, the Senate has upheld its obligation to reauthorize and improve our Nation's important transportation programs. I am pleased to support SAFETEA.

MISSED SENATE VOTES

Mr. DAYTON. Mr. President, on May 11, 2005, I was necessarily absent from the Senate to attend the funeral of St. Paul, MN police officer, Sergeant Gerald Vick, who tragically lost his life in the line of duty on Friday, May 6, 2005. I joined over 2,000 Minnesotans in paying our final respects to this heroic peace officer, community leader, and devoted husband and father.

Had I been present to vote on the amendments to the Transportation Equity Act, I would have voted as follows:

On the motion to waive the Congressional Budget Act, in relation to amendment No. 605 and H.R. 3, I would have voted ''yea.''

On the motion to table Corzine amendment No. 606, I would have voted ''nay.''

On the Lautenberg amendment No. 625, I would have voted ''nay.''

On the Harkin amendment No. 618, as modified, I would have voted ''yea.''

Mr. INHOFE. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mrs. BOXER. Mr. President, did my friend wish to make some comments on the floor at this time?

Mr. INHOFE. Mr. President, first of all, no. I am not going to make any additional remarks. I was going to put us into morning business. I understand the Senator had some things she wanted to talk about.

Mrs. BOXER. If you could do that, if you could ask unanimous consent I be recognized first in morning business.

MORNING BUSINESS

Mr. INHOFE. I ask unanimous consent there now be a period for morning business, with Senators permitted to speak for up to 10 minutes on any subject, with Senator BOXER going first.

Mrs. BOXER. Reserving the right to object, and I will not object, but my statement will run 30 minutes. I ask that be amended at this point.

Mr. INHOFE. I have no objection.

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

The Senator from California.

THANKING SENATOR INHOFE

Mrs. BOXER. Mr. President, before my colleague, Senator INHOFE, leaves the floor, I truly wish to say to him, as my chairman, how much I have enjoyed working with him on the Environment and Public Works Committee. What an important bill we have done, all of us together, across party lines. I am very hopeful we can see this bill move forward so the American people can move forward with their lives. They need the highways. They need the transit. They need the jobs this bill promises.

I wished to thank him before he left the floor.

JUDICIAL NOMINATIONS

Mrs. BOXER. Mr. President, I have asked for this time so I could talk about the issue that is really hanging over the head of the Senate, as Senator BAUCUS said when he gave his support to the highway and transit bill: What we can do when we work together. What we can do when we set aside the partisanship. What we can do when we work for our people, rather than make up a phony crisis about the courts and threaten to change more than 200 years of tradition and threaten a nuclear option—which was named by the Republicans, by the way, when they thought about it because it is so vicious, it hurts so hard, it has such fallout that it will change the very nature of the Senate. But more importantly, it will change the way we now can protect the people of the United States of America.

This is a very simple chart. It shows the numbers 208 to 10; 208 represents

the number of judges President Bush has been able to get voted into office as a result of actions of this Congress since he got into power. Two hundred eight of his judges have gone through. This Senate has stopped 10, 10 of his nominees. Actually, some of my colleagues remind me now it is really only five because some of them are no longer up for judgeships or we have relented on a couple of them, but I am going to be fair to my colleagues on the other side of the aisle and paint the worst possible picture in terms of the number we have stopped—10.

This is a 95-percent success rate. I ask the people of this country to think about what it would mean in their lives if they got 95 percent of what they wanted. If their child came home on a regular basis with 95 percent from school? That is an A+. If their spouse said, ''Honey, I agree with you,'' 95 percent of the time and you got your way 95 percent of the time, you would be smiling.

When you went to work and you had a pretty tough boss, and your boss called you into the office and he said, ''You know, you are a fine worker, Barbara. You are a great worker. As a matter of fact, I have looked over your work, and I have agreed with you 95 percent of the time,'' I think that is the moment I would ask for a raise.

If you get what you want 95 percent of the time, you should have a broad smile on your face. You should feel good about yourself. You should feel great about yourself.

But you know what, if you wanted 100 percent all the time, if you never wanted to give 1 inch of space, if you demanded that your child get 100 percent every time, you would not be happy. I call it the arrogance of power.

What we are seeing in the United States of America is an arrogance of power. My colleagues—and particularly the White House—are not happy getting 208 of their judges but not getting 10 of their judges; they are not happy with 95 percent results. What do they do? They say: We want to change the rules of the Senate. All right, what are the rules of the Senate? The rules of the Senate say on a nomination as important as a judge, which is very key, following the Constitution, which says a President must take the advice and get the consent of the Senate, there can be extended debate on that judge. To stop that extended debate, it requires not 51 votes; it is 60 votes. That is how we have operated for a very long time.

By the way, it is important to note, it was even harder to get a nomination through. For a while, it was 67 votes. Before that, there was endless debate. You could never stop debate, ever. We have eased that rule.

We believe it is important for a lifetime appointment to the courts—and these are very important positions. They are paid a lot of money. They get a great retirement, not like United Airlines, they will get their retirement. We believe they ought to be terrific—mainstream, at least. And to stop extended debate, they have to pass a little bit of a higher threshold: 60 votes. Some of these nominees are so outside the mainstream they cannot get 60 votes. So the Republicans said: We will just change the rules. They looked in their little rule book, and they found it takes 67 votes to change the rules of the Senate, and they said: My goodness, we do not have that. Maybe we have 51 with the Vice President voting with us—he votes on a tie vote—but we do not have 67 votes. So let's go about it in a way that no one would ever expect. We will raise what we call a point of order, have a ruling of the Chair, and the Chair will rule—and it will be DICK CHENEY—that the Senate can no longer filibuster judges. Then we will have a little disagreement over that. They are getting 51 votes, they think. Maybe not. We do not know.

That is the nuclear option. A lot of my colleagues on the Republican side are nervous about it, and they will wind up, if they get 51 votes, changing the rules of the Senate without the 67 votes.

Imagine what would happen at a baseball game if in the middle of the game someone said there is no such thing as a home run, or it is an out if the ball bounces first and you throw the person out at first base. People would go nuts. You do not change the rules in the middle of the game. That is not the American way. And you do not do it in a backdoor effort. I have voted to change the rules, but I do not try a sneaky way. I said you have to get 67 votes to do it. If you do not get the 67 votes, the rules are the same.

I take my time on this because it is important the American people understand what the Republican leadership is trying to do. They tried to change the rules in the House because they did not want to investigate TOM DELAY, who is the leader over there. They changed the rules. It was so shocking, they backtracked after months of the American people saying: That is not the American way. The people of the United States of America are saying it today. They are saying it by 60 to 70 percent of the vote: Do not change the way the Senate has done its business.

Anyone who saw the movie ''Mr. Smith Goes to Washington'' knows that Jimmy Smith in that film was able to stand on his feet and be heard for a righteous and just cause. A little bit later, I will show an example of a judge we stopped and why it was important to stop her.

Let the American people and my colleagues understand. Here is what is important. This should not be about political parties, folks. When Franklin Delano Roosevelt was President—as we all know, a Democrat, considered one of the greatest Presidents ever—he made a huge mistake in his Presidency. He wanted to pack the Supreme Court. He did not like their decisions.

At the time, the Democrat party had 74 seats in the Senate. They could have done it in a heartbeat. All they needed was just a few to peel off, they had it. What did they do? Democrats in those days, colleagues, stood up to the most popular President in history. He had gotten more than 60 percent of the vote. They said: Mr. President, we think you are great, but we are not going to pack the courts just because you feel they are not upholding all of your New Deal. It is not fair. We need a check and balance.

I know young people watching or listening to this debate understand what we are talking about. The checks and balances built into our Constitution—the courts check the legislature and the courts check the executive branch. What my colleagues on the other side of the aisle, save a few, want to do is take away that check and balance, have one party rule. And, oh my goodness, they did not get enough of what they want—208 to 10—and they are throwing a fit and trying to change the rules of the Senate. That is wrong and doing it in a way that is absolutely contrary to what we say has to be done to change the rules, which is 67 votes.

Now, the next thing they will say is there have never been any judge filibusters until the Democrats. We have never done that, say the Republicans, we are so good we have never done it.

Let me tell the truth, the facts. Who started the filibuster in recent times? The Republicans. In 1968, Abe Fortas, to be Chief Justice of the Supreme Court—Democrats' choice—he did not get the required two-thirds at that time. They need 67 votes of Members supporting Abe Fortas. Republicans started it.

Then we had a filibuster for a while against William Rehnquist, but it was dropped; Stephen Breyer to be judge on the First Circuit Court of Appeals in 1980; Harvie Wilkinson to be judge on the Fourth Circuit Court of Appeals in 1984; in 1986, Sydney Fitzwater to be a judge; in 1992, Edward Earl Carnes; in 1994, Lee Sarokin; and in 1999, Brian Theodore Stewart. In 2000, two Californians were filibustered by my Republican friends: Richard Paez and Marsha Berzon. When we hear the Republicans say, we have not been, ever, for a filibuster, just say, you are making it up. They are making it up. Here they admit to a filibuster. Here is Bob Smith, Republican Senator, March 7, 2000:

> . . . it is no secret that I have been the person who has filibustered these two nominations, Judge Berzon and Judge Paez.

So when the Republicans say there has never been a Republican filibuster, they are making it up. Of course there has been.

By the way, that was their right.

ORRIN HATCH:

> Indeed, I must confess to being somewhat baffled that, after a filibuster is cut off by cloture, the Senate could still delay a final vote on the nomination.

Senator ORRIN HATCH at that time, I believe, was the chairman of the committee.

Again, Senator Bob Smith:

So don't tell me we haven't filibustered judges and that we don't have the right to filibuster judges on the floor of the Senate. Of course we do. That is our constitutional role.

Here we have a Republican Senator leading a filibuster against two of President Clinton's nominees and saying the filibuster is the constitutional role, and now we have Republicans saying: We have never, ever been involved in a filibuster.

I will talk about one of the nominees the Democrats have filibustered. I need to explain to my colleagues, and hopefully to others, how out of the mainstream some of these folks are who George Bush has nominated. Remember, we stopped 10. This is one of the 10.

Janice Rogers Brown—way outside of the mainstream to the extreme. This is one of her comments:

Where government moves in, community retreats, civil society disintegrates, and our ability to control our own destiny atrophies. The result is: Families under siege; war in the streets; unapologetic expropriation of property; the precipitous decline of the rule of law; the rapid rise of corruption; the loss of civility and the triumph of deceit.

This is what she thinks of our great Nation because we have a Government that does build the roads, that does help people out when they are in a bad situation, that may come in and say, yes, it is not a good idea to sell cigarettes to a kid who is 13. This is terrible. This is awful.

The ''precipitous decline of the rule of law; the rapid rise of corruption.''

The result is a debased, debauched culture which finds moral depravity . . . A virtue.

Now, I don't know about you, but I think the minimum wage is a part of America. Colleagues could decide they do not want to raise it for a couple of years. Right now, sadly, it hasn't been raised for a very long time, but I think most Americans think we are protected by the minimum wage.

This is what she said about the minimum wage, Janice Rogers Brown. I take a minute to say Janice Rogers Brown has served in the California Supreme Court since 1996. Her life story is amazing. It is remarkable. What I don't like is what she is doing to other people's lives. Her story is amazing, but for whatever reason, she is hurting the people of this country, particularly, right now, in my State. Of course, the President wants to move her over to Washington, DC, court.

She calls Supreme Court decisions upholding protections like the minimum wage and the 40-hour workweek ''the triumph of our own socialist revolution.'' I don't know or understand how anybody could think the 40-hour workweek or the minimum wage is socialism. She obviously does. She obviously would overturn it.

She accuses senior citizens of—and I hope everyone over the age of 55 will listen to what Janice Rogers Browns thinks of people over 55—she accuses senior citizens of ''blithely cannibalizing their grandchildren because they have a right to get as much free stuff'' as the political system permits them to extract. Free stuff? Is she talking about Social Security? That is not free. People pay into Social Security, and they deserve to get their monthly check. Free stuff. Senior citizens ''blithely cannibalize their grandchildren.'' I resent those comments as a grandmother. I would walk off a bridge for my grandson—and he knows it. I resent her painting of senior citizens.

That is why we held her up. That is why she is not sitting on the court today. Now, she may get there if my colleagues have their way. Let them explain why she would rule to overturn the minimum wage and the 40-hour workweek and overturn Social Security. It will be on their backs. We have stopped this woman from going further because of her decisions.

She declares:

Big government is . . . The drug of choice for multinational corporations and single moms, for . . . rugged Midwestern farmers and militants senior citizens.

She is back to that again. What is she afraid of—that some senior citizen will attack her? The crime rate among senior citizens is pretty low. Militant senior citizens? Give me a break. And we get accused of holding up decent people? This goes on.

I will go on with the story of Janice Rogers Brown—way outside the mainstream to the extreme. She argued a law that provided housing assistance to displaced elderly, disabled, and low-income people was unconstitutional. Her dissent said, because the city of San Francisco had a law that helped these disabled, elderly people, she said that ''private property . . . is now entirely extinct in San Francisco.''

What world does she live in? Has she tried to buy a house in San Francisco? It is the hottest real estate market in the country. But she says private property is entirely extinct. Let her go try to find some private property to buy in San Francisco. This woman is living on another planet, and we were right to stop her from getting on the bench. Whether it takes 60 votes or 51 votes to stop her, we are going to try to stop her.

Let's go on with more of her record. How about this? She said that a manager could use racial slurs against his Latino employees. Now, I say to every human being out there: What do we know about the workplace? We know people should feel OK about themselves in the workplace, that we work better together when we respect each other. Janice Rogers Brown said a manager could use racial slurs against his Latino employees—extreme in the main.

She argued that a message sent by an employee to coworkers criticizing a company's employment practices was not protected by the first amendment. In other words, you can't use your e-mail to write anything about your employer to other employees, although she said the corporations can say whatever they want any time of the day.

You know now why we have stopped Janice Rogers Brown. But we have more reasons, if you are not convinced.

Even when it comes to protecting shareholders, she is not fair. Anyone who owns a share of stock, listen to this one. She argued that a company could not be held liable for stock fraud by its employees who were offered a stock purchase plan since the stock was traded between third parties on the open market. So she comes out against the shareholders and protecting the companies.

Here is the amazing thing. Let me reiterate about Janice Rogers Brown. She serves on the California Supreme Court. There are six Republicans on the court—she is a Republican—and one Democrat. She dissented more than a third of the time. You would think she would have been happy to be with colleagues of her own party. She stood alone 31 times. And when you hear these cases, you will be amazed at where she stood. In other words, she went against five Republicans and one Democrat 31 times, and stood alone.

Let's check those cases out. How about this one: Rape victims; she was the only member of the court to vote to overturn the conviction of a rapist of a 17-year-old girl because she believed the victim gave mixed messages to the rapist. She stood alone on the side of a rapist, alone as a woman on a court that has six Republicans and one Democrat. Here is another case where she voted alone, the only member of the court to oppose an effort to stop the sale of cigarettes to children. It was a case where the supermarkets didn't want to be responsible. If somebody came up, maybe 13, maybe 12, maybe 11, maybe 14, I want a pack of cigarettes, she ruled against an effort to stop the sale of cigarettes to children. What planet is she living on now? If it was in the 1800s and we didn't know about cigarettes and what they do to you is one thing. But now is another thing. She stood alone.

I talked about senior citizens. I told you she is afraid of militant senior citizens. That is what she calls them. I told you that she said they cannibalize their grandchildren. Well, she was the only member of the court to find that a 60-year-old woman who was fired from her hospital job could not sue. This is the amazing thing she said, as she stood alone in this decision. A 60-year-old woman was fired from her hospital job. She said she has no right to sue based on age discrimination. This is her comment:

[D]iscrimination based on age does not mark its victims with a stigma of inferiority and second class citizenship.

Really? How do you think you would feel if you were fired because you were too old and suddenly that stigma was

attached to you and you lost your livelihood because maybe you had to work at age 60, as you waited for your Social Security check, which is a whole other issue. We hope we win that battle, too. But let me tell you, it makes it hard to win the battle of Social Security if you have on the court someone who calls senior citizens militant. It is going to be tough. That is why we have held her up.

By the way, her position in this case is contrary to both State and Federal law. This is one of the people we have stopped.

Just think about what we have been trying to protect the American people from. How about this? This is a woman who not only voted with a rapist against a 17-year-old girl, she was the only member of the court who voted to strike down a State antidiscrimination law that provided a contraceptive drug benefit to women. She was the only one. The State of California had required an equal health benefit to women and said: Your insurance will cover contraception because—guess what they decided. They decided it was better to avoid abortion, to cut down abortion, to make abortion rare. So they said they would give a benefit of contraception. She stood alone and tried to strike that down. Imagine.

She has been bad for workers. She was the only member of the court who voted to bar an employee from suing for sexual harassment because she signed a standard worker's compensation release form. Now, all of you probably know what that means. If you go for a job, you are usually covered by workman's compensation. But this woman had signed a waiver and said: I won't file a worker's comp claim. She didn't file a worker's comp claim, but she did file a sexual harassment claim because she was being sexually harassed. Every member of the court stood with the woman who was sexually harassed but Janice Rogers Brown. Six Republicans, one Democrat, and she stood alone again against a worker who was facing sexual harassment. The whole rest of the court agreed with the worker.

She was the only member of the court to find that a disabled worker who was the victim of employment discrimination did not have the right to raise past instances of discrimination that occurred. In other words, there was a disabled worker who filed a lawsuit, had a big story to tell about the past. She was the only judge to say: I don't agree with the worker; I agree with the company.

Here is another one. Janice Rogers Brown, bad on discrimination, the only member of the court to find that a State fair housing commission could not award certain damages to housing discrimination victims. She stood alone again.

Domestic violence: The Republicans want to put on the court a woman who stood alone 31 times against her fellow Republicans in cases like this—the only member of the court to find that a jury should not hear expert testimony in a domestic violence case about battered women's syndrome. We all know about battered women's syndrome, where a woman is beaten senseless by a boyfriend—in this case, probably a spouse—and later minimizes what he did to her. And the law in our State says it is valid evidence. If she reached out and she did something to prosecute this attacker, an explanation about battered women's syndrome will help her.

She was the only one who stood alone and said: I don't want to hear any expert testimony on this. She stood alone.

I ask unanimous consent for an additional 30 minutes.

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

Mrs. BOXER. Here is one. I want us all to remember the Enron case, a case where counties and cities and individuals were ripped off and went into debt—in our State, billions of dollars—by Enron, Enron who said they would deliver electricity and then made believe there was a shortage and jacked up the price billions of dollars. People went bankrupt and counties went bankrupt and the State went in the hole $9 billion. She was the only member of the court to find that a county could not sue a utility company for illegal price fixing that had substantially increased the county's costs for natural gas.

So here she is again hurting consumers, hurting local government, and standing alone in the process.

Here she is on a right to a fair trial. This is interesting. The courts have ruled over and over that when a criminal defendant comes into court before there is a verdict of guilt, you can't bring that criminal defendant in in shackles and in a prison uniform because you put in the jury's mind that the person is guilty. So you give the chance to the person to come in dressed as a civilian, then you find out the details and you find them guilty or innocent.

In this case, she was the only member of the court to find nothing improper about requiring a criminal defendant to wear a 50,000-volt stun belt while testifying, the only member of the court. That is how outside the mainstream she is.

If we could put back up the 208-to-10 number while I give the rest of my remarks, that would be fine.

What do we have here? We have a circumstance that 10 times out of 218, Democrats believed the President's choices were really harmful to the American people, would really be harmful to them, whether it is their minimum wage, whether it is their 40-hour workweek, whether it is the ability of all of us to protect our kids from cigarettes, whether it is to protect victims of violence, it goes on and on. You have seen just a handful of the cases.

So when somebody says to you: Well, those Democrats, they are blocking everybody—and if you listen to my Republican colleagues, that is what you would think—no, we have blocked 10. We have approved 208. In reality, now the number is 5, but circumstances have changed. I will lean over backwards to be fair and say it is 10. That is 95 percent. In each case of these 10 you will find out why we have done it. It is because these nominees are so outside the mainstream that they will hurt the people we represent.

Why is it important to say that a judge needs to have a 60-vote threshold to end extended debate? It is because it is a lifetime appointment. The President is supposed to work with the Senate before choosing a nominee, which he has not done, not on our side of the aisle. I tried hard with Mr. Gonzales when he was White House counsel. I met with him on numerous occasions, and he said: Senator BOXER, give me some names of Republicans. I gave him so many names of good Republicans for the Ninth Circuit.

I said: Look, these people are mainstream Republicans. They will fly right through here.

No, they couldn't be bothered with that. I know Senator FEINSTEIN has done the same, given them the names of people who would be quite acceptable. Who do they send us? People such as Janice Rogers Brown, people who are so outside the mainstream that we don't deserve to be here if we don't raise the arguments.

Now, what you are also going to hear is the Republicans have called this the nuclear option. They have renamed it the constitutional option. That is humorous—if you want to find humor in any of this. That is like saying that clock over there is a table. I suppose if I told you that often enough, maybe you would believe me that once upon a time that clock was a table. But the clock is a clock and the nuclear option is the nuclear option. It was named by the Republicans. But it is not popular out there because of the connotation, so they are trying to change it.

The ''constitutional option'' is the reverse of the truth. In the Constitution, it says nothing about guaranteeing a vote. It says the Senate shall write its own rules. Well, the Senate wrote its own rules and the Senate said it takes 67 votes to change our rules. Our colleagues don't have 67 votes to change the rules, so they are trying to do this sneaky parliamentary move to change the rules. What a way to govern because you didn't get 100 percent of what you want; you got 95 percent. I don't feel sorry for any President who gets 95 percent of what he wants.

I am telling you, Democratic or Republican Presidents have to work with the Senate and the House and they have to compromise. So it is very important to note that when you hear the Republicans saying all we want is the constitutional option, you say, where in the Constitution does it give you this right? Nowhere.

Then they will say this: Everybody deserves an up-or-down vote. Everybody. I don't know how many times we have given Janice Rogers Brown a vote. We gave Janice Rogers Brown a vote here once, and Priscilla Owen got a vote four times. Yes, the vote required 60 as the threshold to end extended debate, but they got their vote. Now, when you go back to Bill Clinton, 61 times his nominees got stuck in committee; 61 of Bill Clinton's nominees never got to have a cloture vote. They never got a vote. They were pocket-filibustered in committee. We have never done that. Every single Bush nominee who has come to the floor has had their vote. I know of none who have not had a vote. They just didn't meet the 60-vote threshold.

That is the second thing you are going to hear: All we are asking for is an up-or-down vote. They had that, but they had to meet the 60-vote threshold to end extended debate. Why? Because they are lifetime appointments, we are checking and balancing the power of the executive by saying don't send us people such as Janice Rogers Brown, who is so out of the mainstream. She sees a military uniform on every senior citizen and says senior citizens want to cannibalize their grandchildren. Excuse me? She says there is no private property left in this country. That is outside the mainstream to the extreme.

If we Democrats have the courage of our convictions to say no 10 times, give us a little respect; don't try to change the rules in the middle of the night. Do what the Democrats did in the 1930s. Think how good you would feel if you stood up to the President of your own party and said: Mr. President, we will follow you anywhere; we think you are terrific, and we support you in Iraq and on privatizing Social Security, and we support you in your huge deficits; we support you in these trade agreements, we support you this way and that way; but we don't think packing the courts is a good idea. Therefore, we are going to join with the Democrats and say no to this plan. It is very dangerous.

I want people to understand. The point of my discussion here today is to put a human face on these judges. This isn't about just numbers, although the numbers tell a heck of a story. The Republicans get 208 and not 10 and they are crying and doing this in a sneaky way, without getting 67 votes to do it. That alone is wrong. It is not playing fair, it is not the American way, it is not playing by the rules. The American people want to know it. If you want to fight with us, we will have a debate, but stick with the rules. Get your 67 votes so you can have the arrogance of power. Get your 67 votes so you can tread all over us. But don't do it in this sneak attack, challenging the Parliamentarian, and then having the Senator in the chair say, you know what, it is over; no more filibusters on judges.

If you do that, you are hurting the American people. Some people say it is about the traditions of our country, the right to unlimited faith, freedom of speech, ''Mr. Smith Goes to Washington,'' I will stand on my feet, that is my God-given right for my State to do that, and that is all true. But for me personally, as a Senator from the largest State in the Union, with 36 million people, I want to protect them. I want to protect the 17-year-old who got raped and not have her come before Janice Rogers Brown and have her stand alone and rule against her. I want to protect the worker who wrote a little e-mail to another worker and said I don't think the boss is being so fair, what do you think? They said we had 2 weeks vacation and now they are counting that day off as one of those days and it is not right, and have to be before Janice Rogers Brown who says the corporation can write anything they want, but you are too lowly. I don't want to have the American people subjected to a judge such as Janice Rogers Brown, who said any city that helps a disabled elderly person get housing is wrong and is destroying private property. I don't want to have my kids in a circumstance where they have to see their grandmother called a ''cannibal.'' I don't want to have a judge who overturns Social Security, who overturns the minimum wage, who overturns the 40-hour workweek.

The point is, I want to protect the people I represent. So if I don't stand up strongly against a judge such as her, I don't deserve to be here. The people of my State would be upset with me.

The right I have in this magnificent Senate today is the right of the minority. We have 45 Democrats here and 55 Republicans. I am counting JIM JEFFORDS as a Democrat for the purpose of discussion because he votes with us. So it is 55–45. JIM JEFFORDS is an Independent, but he votes with us. By the way, in the recent polls, the Independent voters are for the filibuster; 54 percent are for the filibuster. I want to protect the people I represent, because Janice Rogers Brown has been nominated for the DC Circuit Court, meaning one step below the U.S. Supreme Court. So she is going from the California Supreme Court, where she has dissented in a third of the cases, in a court that has—and you may be interested in this—six Republicans and one Democrat. Janice Rogers Brown has dissented 31 times. This is how out of the mainstream she is. I think it is important to note.

In the DC Circuit, there is a whole other area of the law that was protested—your right to breathe clean air, your right to drink clean water. This is important for us because environmental laws protect our health, and if we have someone in the court there who doesn't think Government has any right—and she obviously doesn't—to do anything because—what is it she said about Government? If you could put that chart up again. Whenever Government gets involved, this is what she predicts happens. We will show you the quote. Obviously, she doesn't think there is anyplace for Government because she says: ''Where government moves in''—I would say in a circumstance such as the Clean Air Act, where we tell folks you have to make sure the air is kept clean—''community retreats, civil society disintegrates, and our ability to control our own destiny atrophies . . . families are under siege.''

I don't know what country she is living in. She says: '' . . . unapologetic expropriation of property; the precipitous decline of the rule of law; the rapid rise of corruption, the loss of civility and the triumph of deceit.''

What an optimist. Why are we promoting someone who has this negative view of America? Doesn't she know this is a government of, by, and for the people? That is what we are about. Do we make mistakes sometimes? Yes. Do we have to make sure we fix our laws so they work better? Yes. But to say whenever Government moves in, community retreats, I wonder what she thought of the highway bill we just passed. She probably thinks it is awful because we take the gas taxes and we build highways, and we build transit systems because we think it is important for economic growth. But she says when Government moves in, community retreats, civil society disintegrates, and the result is families are under siege and there is war in the streets.

So, yes, I am here to say I did stand up against Janice Rogers Brown, and whether she has to meet a 60-vote threshold, which she has been unable to get, or a 51-vote threshold, I will be fighting against this nominee because she is way out of the mainstream. She walked away from judges in her own political party and stood alone 31 times. That is why we have said to the President: Why don't you talk to us about these nominees? We could have told you this one would have trouble. We would have given you the names of some fine conservative Republicans. But not someone who has this wonderful life story, but has a view of America that is amazing.

Here is what she once said in a speech:

> Most of us no longer find slavery abhorrent. We embrace it. We demand more. Big Government is not just the opiate of the masses; it is the opiate.

Her point is we are slaves to our Government. Well, again, I don't know what country she is living in. We are not slaves to our Government. We run the Government. We get to vote the people we want in and we get to vote them out. If we don't like what they do, we will let them know. She is out of step, calling senior citizens militant, saying they are taking all of the goodies and free stuff. She doesn't like the minimum wage, doesn't like the 40-hour workweek, doesn't like senior citizens. She never protected women. She doesn't protect our children. She doesn't protect our consumers. She

doesn't protect our workers. Why do we want someone such as that to get a promotion?

Therefore, the Democrats have said to the President, through our voice in the Senate: Send us someone else and we will be delighted to work with you. We have worked with you 208 times, Mr. President, and 10 times we said no.

We said you are out of the mainstream, and the response of a 95-percent success record by the Republicans—and a few are not going along with it, and bless them for that—is: We will take away your right, Democrats, to stand up for the things you think are important. We will take away your rights by changing the rules in the middle of the game, by skirting a 67-vote requirement for changing the rules. We will do it.

There is politics being played. The majority leader talked about this in a speech in a political way, which was wrong. He has not agreed to a compromise. Senator REID has offered several. The fact is, people have to know what is at stake.

I hope everyone within the sound of my voice will know the reason why Democrats have stood so firmly against the nomination of Janice Rogers Brown. It is because we care about the people we represent, and we care about mainstream judges, and we do not want to see such a radical individual get this position and begin to whittle away at the rights our people have won, at the fairness our people have won.

This is very important. This vote is going to change the Senate forever. But more than that, it will impact the lives of the people. Changing the Senate, changing tradition, changing the role of the minority to make a difference, to be heard, freedom of speech—these are all important. But at the end of the day, it is about our kids, our grandkids, our seniors, our families, our workers, the air we breathe and the water we drink, and this is all connected to the judges. This is not disconnected. This is the brilliance of our Founders who said the judicial branch, the judges, shall make sure that everything we do in the legislative branch and in the executive branch is constitutional, is right, is reasoned.

If we have people on the bench who believe that anything we do disintegrates our family; that anything we do, such as the highway bill, for example, turns into an expropriation of property and the rapid rise of corruption and the loss of civility and the triumph of deceit—this belongs somewhere else, not in the courts.

Mr. President, I thank you for your patience. I thank my staff who has done an extraordinary job for me in analyzing these decisions. This is not easy to do because you have to go line by line. I know the Presiding Officer knows these cases can be very long and confusing. My staff are attorneys. They are also very smart attorneys, and they were able to get to the point of these cases and bring home this message to people that when we fight against 10 judges out of 218, it is for a reason. It is not because we want to be difficult. It is because we believe when the Constitution says the Senate has the right to advise and consent on judges, it does not mean when the President feels like it. It does not mean between the hours of 11 and 1 on Wednesday. It means every time he sends a nomination to us, he should have, in fact, sought the advice and consent of the Senate.

We have a big debate coming up tomorrow. I just wanted to give a little reality check so people understand for what we have been fighting.

I thank the Chair. I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DURBIN. I ask consent I be recognized as in morning business and be allowed to speak as long as necessary.

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

JUDICIAL FILIBUSTERS

Mr. DURBIN. Mr. President, 51 years ago today the Supreme Court, just across the street from the Senate Chamber, issued one of its most famous rulings in the history of the United States of America. The ruling was Brown v. Board of Education. It may have been one of the most courageous decisions ever issued by the Court. It rejected the cruel legal fiction of separate but equal and said that in the United States of America there would be no second-class citizens.

What an amazing victory for justice. But for some time, in some States, the Brown decision remained a victory on paper only. In much of the United States, in the Deep South, the Brown decision was met with massive resistance. Governors refused to obey the court ruling. Three years after that court decision, 48 years ago today, on May 17, 1957, 36,000 people gathered in Washington, DC, for the first march on Washington.

This is a photo of that march. We all know about the famous 1963 march, but the 1957 gathering was really the forerunner to that 1963 march. In those days, in 1957, it was known as a Prayer Pilgrimage for Freedom in Washington, DC.

Take a look at some of the people who gathered on that day 48 years ago. Dr. Martin Luther King, 29 years of age, was among those who gathered to speak. His leadership had been tested by the crucible of the Montgomery bus boycott. His remarks at the 1957 gathering were not nearly as well known as his immortal ''I Have a Dream'' speech in 1963, but they are powerful and worth repeating on this the 40th anniversary of the day he first delivered them. Here is how Dr. Martin Luther King opened his remarks on that day. He said:

> Three years ago the Supreme Court of this nation rendered in simple, eloquent, and unequivocal language a decision which will long be stenciled on the mental sheets of succeeding generations. For all men of goodwill, this May 17th decision came as a joyous daybreak to end the long night of human captivity. It came as a great beacon light of hope to millions of disinherited people throughout the world who had dared only to dream of freedom.

Dr. King went on to say:

> Unfortunately, this noble and sublime decision has not gone without opposition. This opposition has often risen to ominous proportions. Many states have risen up in open defiance. The legislative halls of the South ring loud with such words as 'interposition' and 'nullification.'
>
> But even more, all types of conniving methods are still being used to prevent Negroes from becoming registered voters. The denial of this sacred right—

Dr. King said—

> is a tragic betrayal of the highest mandates of our Democratic tradition.

But Dr. King did not stop with this sad commentary on what he saw in America. He delivered his prescription for progress when he said:

> And so our most urgent request to the president of the United States and every member of Congress is . . . Give us the ballot, and we will no longer have to worry the federal government about our basic rights.
>
> Give us the ballot and we will no longer plead to the federal government for passage of an anti-lynching law; we will by the power of our vote write the law on the statute books of the Southland bring an end to the dastardly acts of the hooded perpetrators of violence.
>
> Give us the ballot, and we will transform the salient misdeeds of bloodthirsty mobs into the calculated good deeds of orderly citizens.

What a speech. Not nearly as heralded as his speech a few years later, but certainly what Dr. King said that day still touches the hearts of every American who dreams of the ideals of this great Nation.

Now, 51 years later, it is hard to imagine the way Brown v. Board of Education was received. Most Americans look back with pride to the end of segregation in our public schools. We regard it as a great achievement that 182 years after our Nation was founded, a new generation of Americans had the courage and conscience to confront the bitter legacy of slavery, the challenge that our Founding Fathers could not resolve with all their wisdom. These people had the courage to confront segregation and voting discrimination.

Many Americans didn't support Brown v. Board of Education, not in 1954, not in 1967. That is why 36,000 people gathered on the Mall 38 years ago today. Many southern States flatly refused to obey the Brown decision. The same ruling that Martin Luther King praised as a joyous daybreak, others denounced as judicial activism. Judicial activism—that is what they said