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House of Representatives

The House was not in session today. Its next meeting will be held on Monday, May 23, 2005, at 12:30 p.m.

Senate

FRIDAY, MAY 20, 2005

The Senate met at 9:31 a.m. and was called to order by the Honorable JOHNNY ISAKSON, a Senator from the State of Georgia.

The PRESIDING OFFICER. The guest Chaplain, Dr. Alan N. Keiran, Office of the Chaplain of the Senate, will lead the Senate in prayer.

PRAYER

The guest Chaplain offered the following prayer:

Let us pray.

God of second and third chances, help us to be as patient with each other as You are with us. Even as You forgive us when we don't deserve it, give us the grace to show mercy to others. As You see what we can become instead of who we are, infuse us with optimism so we may become all You want us to be.

God, the times require wisdom and courage. Give our Senators the wisdom not to mortgage the future for today's ephemeral successes, but strengthen them to stand for what is right and good and lasting. As You gave Your life for us, each day make us willing to die ourselves for the good of the many. We pray in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JOHNNY ISAKSON led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 20, 2005.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHNNY ISAKSON, a Senator from the State of Georgia, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. ISAKSON thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. ALLARD. Mr. President, today, the Senate will resume consideration of the nomination of Priscilla Owen to be a circuit judge for the Fifth Circuit. This will be the third consecutive day of debate on this well-qualified nominee. We have had a good debate on the Owen nomination, with a number of Members, on both sides of the aisle, speaking on the issue. As the majority leader announced yesterday, we will be seeking a unanimous consent agreement to set a time certain for a confirmation vote on the Owen nomination. If an objection is raised to a time agreement, a cloture motion will be filed later today.

Also, as announced by the leader, there will be no rollcall votes today. The next rollcall vote will be on Monday, and that vote will likely be in relation to a motion to instruct in order to request the presence of absent Senators. Additional votes are possible on Monday, and the leader will update that schedule on Monday.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF PRISCILLA RICHMAN OWEN TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT—RESUMED

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session for the consideration of calendar No. 71, which the clerk will report.

The bill clerk read the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

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

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

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. CORNYN). Without objection, it is so ordered.

The Senator from Georgia.

Mr. ISAKSON. Mr. President, I rise this morning to continue the debate with regard to the confirmation or advice and consent on the approval or denial of judges nominated by the President of the United States. I have listened to most of the debate and have participated in some of it. I have found something to be very interesting. We have not talked much about whether these seven, upon which a filibuster has been threatened, are qualified. We, instead, have argued as to whether something that was never used for 214 years is or is not a tradition.

So I thought this morning I would talk about one of these seven. We obviously are debating Priscilla Owen, from the Presiding Officer's home State of Texas. But I want to direct my remarks to Janice Rogers Brown, of California, who also has been threatened to be filibustered and not allowed to get a vote, up or down.

I thought, in preparing my remarks, I would research those who do not think she should get a vote and what they are saying about her record so I could at least come to the floor and debate what we really should be debating, and that is the qualifications of that judge. I went to a number of Web sites, and I found something very common that you usually find in this type of an issue. I found a couple of quotes, repeated over and over again, as exemplary of why Janice Rogers Brown is not in the mainstream.

So what I thought I would do today in my time is take those quotes and the sense from those two speeches she gave and ask the question, Is she out of the mainstream? For, you see, the two quotes that are used so much on the Web sites to disparage Justice Brown are two quotes from two speeches, both of which I have read, which I find to be quite remarkable. Both were made in the year 2000, and both are fundamentally about the beliefs of Janice Rogers Brown.

So I would like to analyze those two quotes for a second and ask us to ask the question, Is Janice Rogers Brown in the mainstream or is she not?

The first quote is from August 12, 2000, in a speech she made, entitled ''Fifty Ways To Lose Your Freedom.'' I apologize to the Chair. I am going to read precisely so I do not miss a word. This is a quote used to say she is not in the mainstream—one of them. She said:

> Some things are apparent. 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. The result is a debased, debauched culture which finds moral depravity entertaining and virtue contemptible.

That is a strong statement, but it sits there on its own without any thought or context to the speech that was made because the speech by Mrs. Brown was her belief in the innate goodness of people. What she refers to in her speech as to natural law is that we are born knowing right from wrong and good from evil. Her point is that when Government becomes so big, so intrusive, and so pervasive, it can do all of the things that she listed. And as to those things she listed, some people say that is not a mainstream statement. So I ask myself, let's look at those things she said could happen as we lose our freedom.

She said families are ''under siege.'' I think that is a fair statement in contemporary 21st century. Divorce continues to be up. Child abuse grows. Obviously, that has been a problem.

She talks about ''war in the streets.'' We do not have war in the streets, but we have gangs in the streets. We have crime in our streets.

''Expropriation of property.'' I look at the assault on private property rights, something we debate in this Senate; on ''the rule of law,'' where today it seems, in many cases, the whole goal is to avoid the rule rather than follow it.

''The triumph of deceit.'' Even in corporate America, look at WorldCom, a statement of deceit to represent a value that did not exist.

A ''debased culture.'' Well, I am a product of the 1950s and 1940s and 1960s, when I grew up, similar to Mrs. Brown. I do not know if this is a good example or not, but in the 1950s, when I was growing up, ''Father Knows Best'' was the No. 1 show. Today, it is ''Desperate Housewives.'' I think that tells us something about the direction we may have gone in terms of the value of entertainment.

And then let's talk about ''virtue'' for a second and finding it ''contemptible.'' We are in a time where Justices have ruled that ''under God'' does not belong in the Pledge of Allegiance and ''obscenity'' is in the eye of the beholder. Somewhere along the way, Janice Brown makes a very good point. When Government grows so large that it permeates every facet of society, and there are not restraints upon it, then the natural law of what we know as good and evil or right and wrong really loses its momentum.

Janice Brown made another comment in that speech which I found remarkable because it fundamentally talks about what she believes in terms of democracy and freedom. I want to quote that. She wrote:

> Freedom and democracy are not synonymous. Indeed, one of the grave errors of American foreign policy is the assumption that merely installing the forms of a regime like ours—without its foundation—will automatically lead to freedom, stability, and prosperity.

Is that out of the mainstream? I don't think so. Janice Rogers Brown was saying: You just can't say you are something unless you have fundamental foundations and values to underpin that. That is what has made this democracy of ours so great. That is why our freedom has endured, because we are built on fundamental foundations of right and wrong.

I, for one, as I consider whether I would give advice and consent on a justice to one of the highest courts in our Nation, like somebody who has that fundamental belief in natural law, that fundamental belief in right and wrong, and that fundamental belief that by human nature we are good people, and that freedom of good people, governed by natural law, is the greatest freedom of all.

There is a second quote that has been used over and over on Web sites. I want to share that quote, if I may. It is from another speech she made, although it is in the speech I mentioned on ''Fifty Ways to Lose Your Freedom.'' It is also given and quoted from a speech made in the year 2000 in April to the Federalist Society called ''A Whiter Shade of Pale.''

> My grandparents' generation thought being on the government dole was disgraceful, a blight on honor. Today's senior citizens blithely cannibalize their grandchildren because they have a right to so much ''free'' stuff as a political system will permit them to extract . . . Big government is . . . [t]he choice of multinational corporations and single moms, for regulated industries and rugged [midwesterners], and militant senior citizens.

That quote is cited to say that she is not in the mainstream, without explanation and out of context. I wanted to analyze it for a second. I am a little older than Janice Rogers Brown, but we are of the same generation. We are contemporaries. I was born in the early 1940s, she in the late 1940s. My grandparents found the Government dole contemptible as well, just as hers. My grandparents were sharecroppers, just as hers. In fact, my grandfather, for whom I am named, was a pretty successful tobacco warehouse man in Coffee County, GA, who lost it all in the Depression and sharecropped. During the summers in the 1950s, my mom would send me down there to work on the farm with him. I heard him say many times he never wanted to have to be on the Government dole.

That was not out of the mainstream then, and it is not out of the mainstream now. All of us want to find the prosperity of individual initiative and live and work in a country whose system of justice honors the greatest success that any of us can achieve.

But she made another good point when she talked about big government is, in many cases, the choice of multinational corporations and single moms. Taken out of context, somebody might say: Is that in the mainstream? Well, she is pointing out what you and I see

every day, and that is both single moms and multinational corporations have their own lobbies here to lobby us. In terms of corporations, that may be for tax treatment or regulation. In terms of single moms, it may be for benefits. But the bigger government grows, the more pervasive it gets, the more those lobbies may grow.

And she says for regulated industries and rugged midwesterners. Yesterday I had a meeting with an energy company that is regulated, and rugged midwesterners—including Senators in this body—are out for ethanol benefits all the time. And she was pointing out that how big government can get and how pervasive it may be can make all of us possibly too dependent on that big government.

As far as the statement about senior citizens cannibalizing their children's future, I understand why somebody might say that is a strong statement. But the debate of the day, outside of this issue of the filibuster, is about Social Security, and the debate to follow that will be about Medicare, and the fact that the two combined, of which I, a senior citizen, will very shortly benefit from, will, if not reformed, cannibalize my grandchildren's future.

Janice Rogers Brown is not only not out of the mainstream, somebody might have even called her a prophet in the year 2000 when she made both of these speeches. The analogy she drew and the conclusions she made are now the contemporary issues of the day.

I did a radio interview this morning in my State of Georgia to one of the most listened to stations in the city of Atlanta. I was asked by the host: Mr. ISAKSON, you were in the minority in the Georgia Legislature for years and were the leader for 8. Do you understand Mr. REID and the minority's point on the filibuster?

My answer was: Yes, I understand it. When I was in the minority in that role in the legislature, I tried to take every advantage of every rule. But there is a point in time at which you do what is right. You do what the master rule tells you to do.

For us, the master rule is the Constitution. And in article II of that Constitution, it delegates to the President the authority to appoint Justices to the Supreme Court and several courts created thereunder, and it gives the Senate the responsibility to advise and consent, advice and consent that is not delineated in any way in that sentence or in that document to require anything other than a simple majority.

In fact, there are seven places in the Constitution where it says we have to have a supermajority: Impeachment is one, ratifying the Constitution. Sometimes it is two-thirds; sometimes it is three-fourths in terms of the States ratifying the Constitution. The Constitution is specific. It is specific on judges that the Senate advises and consents, without designation of a supermajority.

For the public who listens to the debate about filibusters and tradition, that really is the issue. The rule of the Senate invoking cloture that requires 60 votes to bring up a simple majority vote is the application of a rule to supersede the constitutional dictate that this Senate vote up or down on Janice Rogers Brown and Priscilla Owen. That is ultimately the issue. To me, it is that simple.

Another reason I chose to talk about Janice Rogers Brown is because she is a daughter of the South. Because of the admiration I have for her—she and I grew up in the same South. We grew up in the most significant change that part of the country ever went through, when civil rights changed, beginning with Brown v. Board of Education in 1954, and I, as a student in school, went through that transition where the schools were integrated. And in college, while I studied political science, the debate in this body and the most famous filibuster of all was about the civil rights laws that were passed in the 1960s.

Janice Rogers Brown was born at a time and in a year where her ascension to the bench on the Supreme Court of California or the Federal courts would not have seemed possible because of the rules of the day in the South. But she and I grew through a time where this Congress—in fact, this Senate—saw fit to memorialize the civil rights laws and equalize the treatment of every American.

That is why I believe Janice Rogers Brown deserves a vote up or down. I care and I respect how any Member of this body will vote. But voting not to vote, to deny someone the opportunity to which they have been nominated by the President, elected by a majority of the electors in the last election, is not right. It is not, as Janice Rogers Brown referred to it, the natural law. We all know basically the difference in right and wrong. Denying that vote is wrong.

My remarks this morning are to say simply to those who would say that Janice Rogers Brown is not in the mainstream: I ask you to do what I have done. Read her speeches that are quoted. Read them all. When you read the speech ''Fifty Ways to Lose Your Freedom,'' don't read the 1 paragraph out of context; read all 18 pages and read it a second time. Understand that this is a woman who wants everybody to understand that she believes in right and wrong. She believes in the appropriate role of Government. She believes in empowerment of the individual. Every thought of all these quotes ends up being based in that very fact, the natural law of the belief of human beings in right and wrong and the empowerment of the individual. I hope Janice Brown is in the mainstream because I believe that is what the mainstream believes. And those who think it is not have to believe the opposite, which is less power of the individual and shades of gray when it comes to right and wrong. We need on the bench those who see things clearly and speak their mind.

In my meeting with Janice Rogers Brown, I told her I was going to speak about her because I had been so impressed with her record and because I had gone back and read those speeches. She told me this at the end of our meeting: I respect anyone voting either way on me. In fact, in a way, I am glad my speeches are now being read. They should know what I think, and they should know what I believe. I should know how they feel.

I hope sometime after next Tuesday, after we finally come, hopefully, to a vote on Priscilla Owen, we will come to a vote on Janice Rogers Brown, and we will find confirmed to another court another justice who believes in the power of the individual and the difference in right and wrong.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DODD. Mr. President, it is with no small measure of reluctance that I rise on the floor of the Senate to speak on the matter of extended debate, the filibuster rule. I certainly wish—and I believe many of my colleagues on both sides of the proverbial aisle wish—we were engaging in some other matter. Certainly, there are other matters that are far more pressing in the eyes of the American public than the discussion we have been having over these last several days and will have over this weekend and early into next week.

As is the tradition of this institution, the majority has the right to set the agenda, and they are doing so, obviously, with their insistence upon this particular debate and preoccupation with changing the Senate rules with a simple majority. Eliminating the extended debate rule of this institution when it comes to judicial nominations is a matter of grave importance. I can think of no other issue that I have been engaged in over the years that has as many profound implications for how this institution will function in the years to come if the majority prevails in its desire to change these rules.

Like many others, I wish we were debating the issues here and trying to do something more about gasoline prices, education, and health care. In a sense, we are engaging in a filibuster, I suppose, in terms of our ability and willingness to engage in debate on the matters that are most pressing to the American public.

We are a unique institution. There have been 1,884 of us who have served here in 217 or 218 years. It is a rather small group when you think of it—a Nation of more than two centuries in age and yet not even 2,000 people have been so fortunate as to have been chosen by their respective States to sit

and represent their interests in this unique institution we call the Senate.

So I begin this discussion by admitting to my colleagues that this is no passing matter of interest to any of us here. It is one of the most important debates we are ever apt to have. In fact, it may be the most important. Even for those who just arrived here 1 or 2 years ago, or 4 or 5 years ago, the outcome of this debate will have profound and long-term implications for the ability of this institution to continue to play the important role it has in the history of our Nation.

We have all been honored by our constituents with the privilege of serving here, and we have all come to learn that the Senate is not simply a place where we come to work every day; it is a supreme monument, in my view, to human civilization. It is one of mankind's most noble achievements, the establishment of the Senate. It is unique in all the world in many ways as a place founded on timeless and time-tested principles: respect for human freedom, respect for minority rights, and checks on the tendency of any leader or party to accumulate and abuse power.

The majority leader of the Senate, like the rest of us, is one of its temporary stewards. He is, like the rest of us, a transient member of this enduring institution. He proposes to change the Senate rules to eliminate the right of extended debate with respect to judicial nominations. He is considering doing so by a procedure that, in my view, is outside of the rules of the Senate. I take the floor to discuss and debate this proposal. In doing so, I engage with our colleagues in a practice that is as old as the Senate itself.

I know other colleagues have come to the floor in recent days and hours to debate this proposal. Some have spoken in support and others in opposition. Our debate is in keeping with the deliberative rules and practices that have been a hallmark of this institution since it was conceived during that steamy Philadelphia summer 218 years ago.

This is not just a matter of professional interest for me either; it is intensely personal as well. I vividly recall as a young boy sitting in the Senate gallery watching my father, a Member of this institution, and his colleagues debate the great issues of their time. They were passionate debates, and the use of the filibuster was very much in play. Civil rights, war, poverty, and other issues were demanding the attention of this institution.

I remember, as well, as a teenager sitting on the floor of the Senate, where these young men and women sit today, as a Senate page during some of the civil rights debates of the early 1960s. We watched Senators such as Lyndon Johnson, Everett Dirksen, Paul Douglas, and Jacob Javits. We watched them debate sometimes with great passion and vehemence. We watched them negotiate, as well. They were well schooled in the art of advocacy and equally well schooled in the art of compromise. They understood the obligation of party, but they were no less committed to fulfilling their obligations to this great Senate and the country in which they lived.

I particularly recall watching the Senator for whom our first office building, the Russell Building, is named. The Presiding Officer, of course, knows of this individual as well as any member here. Senator Russell led a very determined minority, insisting on the right to be heard on the issue of civil rights. Theirs was not a popular position. My father and others vehemently opposed the position of Senator Richard Russell—despite their great friendship, I might add. My father and others were frustrated at the possible ability of Senator Russell and a minority of Senators to defeat civil rights legislation. Senators who supported civil rights—my father included—did indeed protest the use of extended debate by their adversaries. They even attempted to lower the threshold of Senators required to end such debate. One could hardly blame them, I suppose. Tens of millions of Americans were being systematically and often brutally denied their basic rights.

Using Senate rules and practices to block civil rights legislation was understandably seen by many Senators—most, in fact—as an affront to American values. Nevertheless, efforts to eliminate the rights of the minority to engage in extended debate with respect to civil rights legislation ultimately failed. The noble cause of racial equality ultimately prevailed in the Senate, and so did the practice that for so long thwarted its triumph.

Therein resides the central paradox and the towering majesty, I might add, of this great institution, the Senate. What makes this place so revered and unique is what can simultaneously gall us about it the most—the practice of extended debate. From 1789 until 1917, 128 years, this practice of extended debate, if you will, was absolute in its scope. All Senators had to consent—all of them—to close debate on any matter at all. For a subsequent period of 58 years, two-thirds of the Senate was required to end debate—though only on a ''pending measure,'' meaning a legislative matter.

It would not be until 1949 that something less than unanimous consent would be required to close debate on nominations—1949, a little more than 50 years ago. Currently, three-fifths of the Senators, of course, chosen and sworn are required to close debate on any matter. A motion to proceed to the consideration of a change in Senate rules requires an even higher threshold—two-thirds of Senators—to close debate.

As far as I know, the proposal of the present majority leader to require a simple majority to close debate is without precedent. There is not a single rule allowing a bare majority to force a vote on a judicial nomination. Certainly, his proposal would, if successful, fundamentally alter the nature of the Senate and the balance of power as created by the Framers of the Constitution.

Part of the difficulty here is the fact that over 50 percent of this body has primarily served under one set of circumstances. Thirty-six members of the 55 in the majority have primarily served in the majority. Close to half of the Democrats in this body have primarily served in the minority. I have served in this institution for a quarter century, since 1981. I have served in this body under every imaginable configuration in its relationship to the House of Representatives and the Presidency. I have served in both Houses. I have served when this institution was held by the Democrats and the House by Republicans, and the reverse, when the House was held by Democrats and this institution by Republicans. I have served under both Democratic and Republican administrations.

You need to serve here under different circumstances, I say with all due respect to my colleagues who have been here a limited amount of time, to appreciate how this institution functions. You need to sit there and be a minority member to understand the importance of minority rights. You need to be there as a majority member to understand the importance of setting the agenda. But it is almost impossible, I say with all due respect, to understand the delicacies and the rhythms of this institution if you have just been here a limited amount of time, serving under one set of circumstances. That, in a sense, is one of the problems.

It is also a problem that too many of our Members have come from the other body, the House of Representatives. I am included. The other body has become highly divisive. It is highly partisan, with reasons and faults on both sides. But Members who have come from that institution to this institution too often bring some of that luggage, in effect, some of that passion that existed in the House, and have allowed it to contaminate this institution. We need to stop it.

Too often, over the last number of days, I have heard Members cite speeches given by other Members here. In my earlier days here, that would have never happened. You might debate with one other Member and remind them of something they said earlier, but a sort of free-flowing attack on other Members of the Senate does this institution ill service, in my view. We ought to have more respect for this place, for the role it has played historically, and the role it will play, and get back to the business of doing what the Senate does best.

One of the reasons the extended debate rule is so important is because it forces us to sit down and negotiate with one another, not because we want to but because we have to. I have

helped pass many pieces of legislation in my 24 years here, both as a majority and minority Member of this institution. I have never helped pass a single bill worth talking about that didn't have a Republican as a lead cosponsor. I don't know of a single piece of legislation here that didn't have a Republican and a Democrat in the lead. We need to sit down and work with each other. The rules of this institution have required that. That is why we exist. Why have a bicameral legislative body, two Chambers? What were the Framers thinking about 218 years ago? They understood the possibility of a tyranny of the majority. And yet, they fully endorsed the idea that in a democratic process, there ought to be a legislative body where the majority would rule.

So the House of Representatives was created to guarantee the rights of the majority would prevail. But they also understood there were dangers inherent in that, and that there ought to be as part of that legislative process another institution that would serve as a cooling environment for the passions of the day. So the Framers—at the suggestion of two Senators from Connecticut, I might add, the State I am privileged to represent, Roger Sherman and Will Oliver Ellsworth; hence the compromise is called the Connecticut Compromise—sat down and said: There is a danger if we don't adopt a separate institution as part of the legislative branch where the rights of the minority will also prevail, where you must listen to the other side in a democracy, pay attention to the other side.

In fact, minority interests, we have learned, historically have been on the right side of the issue on many occasions in our history. Had there not been a place called the Senate, we might never have enjoyed the privilege of seeing our country recognize the value of those positions over time.

This institution and its rules have given this country remarkable leadership over these 218 years, and central to that rule has been the extended debate clause, which forces Senators to sit down and work with one another. That is why we have a 6-year term. That is why only one-third of us are up every 2 years. That is why we have a term longer than the President or the House Members. That is what the Framers had in mind. They were worried about too much control residing in one branch or the other. So they created this remarkable institution.

I say this again with all due respect. I listened to our colleague from Hawaii, Senator INOUYE, who gave his maiden speech on the floor of the Senate supporting the filibuster rule during the civil rights debates. The first thing he said in that debate was: I am most reluctant to get up because I understand the tradition of this institution of taking a little time before you get up as a new Member and talk about what needs to be done.

I am not suggesting people ought to go back to the 19th century, or early 20th century, and sit back and wait and bide their time. But it is important to learn how this place functions. There are rules here, clearly. But there is something beyond rules; there are traditions that are not written down in any book anyplace but which make the place function. When you read Robert Caro's book ''Master of the Senate,'' about Lyndon Johnson and the golden age of the Senate, the days of Calhoun and Clay and Webster, the days in the early 1950s, when giants served here and engaged in the great debates of their times, it was not necessarily the rules of the Senate that created those great moments in history; it was the quality of the individuals here who respected the rules and worked within them, because they understood the value of this institution.

That is what worries me so much about this debate. We are not paying attention to each other here. We have come to believe, I suppose, that the sum of the special interests in this country equals the national interests. They never have and they never will, in a sense. We need to focus on the history of this place, the role we can play, and the importance this institution can play in the years ahead. As I said at the outset, we are only stewards here.

I have been here a quarter of a century. It is a fraction in time. And what do we do with our time? When our tenure is over and our legacy is written, the history of our service, the question will be asked—what did we do with our time? We do not get a chance every day to make a huge difference. There are only going to come a handful of opportunities that will be of great value when you look back on your service and think of the best moments you had.

Some of the best moments, I promise, for those recently arriving in the Senate, will be the moments when you stood up and defied, in a sense, the passions of the day, the trend of the day, and said: I am going to do something different. I am going to step out of the predictable role and try and do something people may not expect.

Over my service here, those Members who have done that are the ones who have enjoyed their service and look back on their service with the greatest sense of pride.

This institution deserves some leaders today who are willing to stand up and protect it and defend it. I know passions are running high. I know the temperature is getting hotter and hotter by the day. But this issue we are debating will probably fade in memory. It will be hard to recall a few years from now what it was we were debating when the filibuster rule was involved. I do not minimize this issue of judicial nominations. I respect my colleagues who feel passionately about this issue. But I promise them, within a matter of months or years, you will be hard pressed to recall the names of the people involved or exactly where they were going to serve, on what bench.

Yet the rules we change will profoundly affect how we are going to engage effectively in the other matters that come before us. If the majority decide they simply do not like the rules in any one Congress and change it with a simple majority, then the rules will mean almost nothing if they can change them with 51 votes.

The reason our Founders set such a high standard over the years is because they wanted some perpetuity to those rules. And if, after all of this, we are able to say with regard to extended debate that you are going to eliminate that as well, then obviously there is a fear this same procedure, this elimination of extended debate, will also be used to limit debate on other matters beyond judicial nominations. Once you set the precedent, it is not that long a leap to go from judicial nominations to substantive matters.

Throughout our history, the right of extended debate has never been seriously questioned, in my view, as other than a vital foundation of our Republic. It has been the catalyst for achieving the most remarkable feature of our civilization: the degree to which we have been able to provide our citizens with great freedom and great stability.

The Senate was created, in the words of James Madison, ''first to protect the people against their rulers; secondly to protect the people against the transient impressions into which they might be led. . . .''

He went on to say:

> The use of the Senate is to consist in its proceeding with more coolness, with more system, with more wisdom, than the popular branch.

The word ''Senate'' comes from the Latin word ''senatus,'' wise men, wise people. We always associate wisdom with tenure, with service, with experience, and the people who have had life experiences and bring them to this institution. That is the word ''Senate,'' that is what it means.

In order to carry out this mission, of course, the Framers endowed this institution with a few extremely important qualities and powers. First, as I mentioned, the Framers gave Senators terms of office, as I mentioned, three times longer than House Members and one-third longer than the President's.

Second, as I mentioned as well, the Framers ensured that only one-third of the Senate stands for election every 2 years, thereby making it a continuing body.

Next, the Framers created a body dramatically different from the House. Each State would be represented by two Senators no matter how small or large, ensuring that the interests of smaller States would not be trampled upon by the more popular jurisdictions.

And, finally, the Founders insulated the Senate from sanction for debate by explicitly granting it the power to ''determine the rules of its own proceedings.''

These constitutionally mandated attributes have proven extraordinarily

successful in ensuring the Senate is a bulwark against popular passions that move in time from the left to the right, back and forth. None of us can predict within a matter of days, hours, weeks, months, how the country's popular opinion moves and changes. And yet having a place where those passions are not going to dictate the outcome every day is essential to the stability of this great Republic, in my view.

With these great rights come responsibilities, of course. The Senate was given special powers to try impeachments, ratify treaties, and, most critically for our purposes today, to confirm nominees. Perhaps nowhere other than in the advice and consent responsibility of the Senate, laid out in article II, section 2 of the Constitution, do we see the Framers' keen preoccupation not only to respect the principle of majority rule but, as important, to limit the possibility of an overreaching Executive and the tyranny of the majority.

The President nominates, but the President's power is balanced and checked by the power of the Senate to provide advice and consent. Remember, Mr. President, what were the personal experiences of the Framers? They came off an experience where one individual, a king, had made exclusive decisions that affected the lives of millions of people, and they were suspicious of an awful lot of power being accumulated in too small a place or too few hands.

With respect to the judiciary, the third and separate equal branch of Government, the powers of the President and the Senate are deliberately and carefully counterimposed. Robert Caro, the author whom I cited earlier, has observed that very point. Caro says in his book:

> . . . [I]n creating the new nation, its Founding Fathers, the Framers of its Constitution, gave its legislature . . . not only its own powers, specified and sweeping . . . but also powers designed to make the Congress independent of the President and to restrain and act as a check on his authority, [including] power to approve appointments, even the appointments made within his own Administration. . . . And the most potent of these restraining powers the Framers gave to the Senate. . . . The power to approve Presidential appointments was given to the Senate alone; a President could nominate and appoint ambassadors, Supreme Court Justices, and other officers of the United States, but only ''with the Advice and Consent of the Senate.''

The proposal contemplated by the majority leader would, with all due respect to the leader, in my view, undermine the Senate's role in our constitutional democracy. I know that has been said by many others. It would surrender enormous power to the Executive and upset, in our view, the system of checks and balances created by the Framers.

It would have us move to a majority cloture rule on that portion of our business that girds the independence of the judicial bench.

There is an irony to this proposal that cannot go unstated, and should not go unexamined. It proposes to limit the Senate's exercise of its power in the matter of nominations rather than legislation. Yet one can argue convincingly that it is precisely in the area of nominations—particularly judicial nominations—that the Framers intended that power to be most utilized.

We must remember that during the Constitutional Convention, only after lengthy debate was the power to appoint judges committed to the President as well as to the Senate.

In the closing days of that Convention, the draft provision in the Constitution still read as follows:

> The Senate of the United States shall have the power to . . . appoint . . . Judges of the Supreme Court.

On four separate occasions, proposals were made to include the President in the process for selecting judges. And on four occasions in those closing days, those proposals were rejected. Why? John Rutledge of South Carolina said it best: ''The people will think we are leaning too much toward monarchy'' if the President is given free rein to appoint judges.

The final compromise was characterized by Gouverneur Morris of Pennsylvania as giving the Senate the power ''to appoint Judges nominated to them by the President.'' In Federalist Paper No. 76, Hamilton explained the Senate's review would prevent the President from appointing judges to be ''the obsequious instruments of his pleasure.'' As Federalist No. 78 confirms, the Founders were determined to protect the independence and the integrity of the courts, and they believed the chief threat to the independence and integrity of our courts was a President who had nearly unchecked authority to appoint judges.

Against this backdrop, it is, indeed, ironic and troubling to this Senator that the majority leader now suggests that we restrict deliberation, debate, and the rights of the minority with respect to the nominations process, and thereby enhance the ability of the majority to turn this Senate into a rubberstamp for Presidential nominees, Democratic or Republican.

The majority leader and his supporters refer to this effort as the constitutional option. Yet in the name of the Constitution, they are advocating a change that defies the history of the very document they claim to honor. They eagerly lecture this body about preserving fidelity to the original intent of the Framers. Yet they now act with reckless disregard, in my view, for that intent.

At its most fundamental, this Senate is a testament to the rights of the minority. Small States, such as mine—I suggest even the Presiding Officer's State falls into this category—we have an equal say to California, Texas, Illinois, and New York, and the Senate's tradition and its rules protect debate and guarantee that we cannot be trampled upon, overrun by larger jurisdictions. That is part of our unique character.

This tradition of extended debate to preserve minority rights as smaller States offends no constitutional edict at all. In fact, it endorses it. In the words of former Chief Justice Burger, ''there is nothing in the language of the Constitution, or history, or cases that requires that a majority always prevail on every issue.''

Nor is there any place in the Constitution entitling anyone—judicial nominees included—to a so-called up-or-down vote on the floor of this institution.

It has been noted by the Democrats in this debate that there were some 69 nominations sent by President Clinton to the Judiciary Committee, appellate and district court judges, for which none of them were given a hearing. Some said that is a form of filibuster. I agree, it is.

There is nothing, I argue to my Democratic friends, that said President Clinton had an absolute right for those nominees to have a hearing in the Judiciary Committee. He had an obligation to send us nominees. We had no obligation to guarantee them a hearing in the Senate of the United States, any more than President Bush's nominees necessarily have an absolutely right to a simple up-or-down vote in this Chamber. Neither side is right in that regard.

The Senate, under Republican control during President Clinton's tenure, was exercising its rights. I did not like the outcome. I did not like the result. But the Senate Judiciary Committee had a right not to give them a hearing.

Democrats today argue—I think with equal cause—that these nominees have no right to an up-or-down vote any more than President Clinton's nominees had a right to a hearing. That is exactly what the Framers were saying. That is exactly what the people wanted when they wrote the provisions of our Constitution creating the Senate.

In addition, nowhere does the Constitution or record of the Constitutional Convention say or even suggest that the advice and consent function of the Senate should be less with respect to judicial nominees than other nominees.

The reason there is no such distinction is simple: it is illogical on its face. How can anyone argue that we should have the right to extended debate with respect to some obscure agency nominee who can serve for a couple of years, but that we should not have that right with regard to lifetime appointments to the Federal bench? Such an outcome not only defies the history of the Convention, it defies logic. And this is called the ''constitutional option''? To call it by this name, in my view, dishonors the genius of those men who conceived the Constitution.

The majority leader's proposal will, without question, diminish the Senate's power in relation to the Executive, and in so doing will diminish the power of each and every Senator, regardless of party, to stand up for his or her State.

Let me say to those who have been here only serving in the majority, only serving under a Republican President—my wish as a Democrat is that this would happen more quickly—I do not know when it will happen, but it will happen, I promise you. If you are here long enough, you will serve in the minority. You will serve with a Democratic President. And for those of you who want to absolutely guarantee that Presidents can guarantee a right on their nominees coming up here, you will rue the day when it comes. You will rue the day, and you will look back on this debate and wonder why there were not more people standing up reminding each other of the importance of this institution and what the Framers had in mind in trying to protect us against absolute guarantees for nominees to lifetime appointments which no other appointees in our entire Federal system enjoy.

If my colleagues do not know this from their own experiences, I suggest they consider the experience of one of our colleagues, a Republican, who a few weeks ago ran into the problem. He announced at the beginning of the week his intention to place a hold on nominees to a certain commission. By the end of the week, the President had recess-appointed each and every one of those nominees. The considered views of our Republican colleague were of no consequence. They were disregarded out of hand.

Do any of us think this or any other President will be more or even just as likely to consider our views on judicial nominations if we surrender power to this President or any future President? I for one do not. Colleagues, if that happens, if we cede power to the Executive, you may never get it back.

Of all the issues that we will face in this and future Congresses, from war and economic growth, to health and education, none is more important than this debate because how we resolve this issue will in many respects determine how, indeed, we resolve all the others.

The ACTING PRESIDENT pro tempore. The Senator's time has expired

Mr. DODD. I ask for 1 additional minute, if I may.

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

Mr. DODD. I thank the Chair.

As I said a few minutes ago, those of us fortunate to serve in this body are but its temporary custodians. We are stewards of an institution governed by rules that have withstood the test of more than two centuries in time. Now is not the moment to scrap such rules simply to achieve objectives that are, in essence, transient and partisan in nature, even though they are deeply felt by their proponents.

I know of no other branch of government, in this or any other nation for that matter, that would willingly surrender power to another branch. This is a moment for Senators, as Senators, to stand up for the Senate.

The disagreements we have today will likely be forgotten. They will fade like so many grainy snapshots into the dim recesses of our collective national memory. But to change the rules of the Senate, to do so by evading rather than abiding by the rules of this Chamber, would do lasting damage not only to this institution but to the Republic it has served so long and so well.

Future generations will not remember why those rules have been changed, but they will live each and every day with the consequences of this decision. I urge my colleagues to reject this proposal and let us get back to the business of functioning as the Senate should.

I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

The Senator from Texas.

Mr. CORNYN. I thank the Chair.

Mr. President, people who are following the debate on the Senate floor about this nominee, Priscilla Owen, might be forgiven if they think the sky is falling or perhaps the end is coming for the Senate as a unique institution in American Government, or somehow that the nuclear option is going to simply blow the place up and all of us with it.

I think you can read an awful lot into the rhetoric that is being used and the tone that is being used during this debate to see what it is all about. I worry, as well, that when we talk about statistics, when we talk about what percentage of President Bush's nominees were confirmed, which ones were not, how President Clinton's nominees were treated, what percentages were confirmed, what percentages were not, that we fall into the deplorable habit of treating people like mere statistics. But I would only add that one violation of the Constitution is one too many. And when it comes to giving an up-or-down vote to a President's judicial nominee, which has happened for 214 years up until 4 years ago this last May 9, we are simply talking about treating people as they deserve to be treated—with respect. We are talking about treating Presidents who have won national elections with the respect they deserve, not as a rubberstamp but to provide the advice and consent that the Constitution contemplates when it comes to judicial nominees.

You would think the end is near for this institution listening to some of the rhetoric, when all we are talking about is trying to restore this 214 years of unbroken tradition of providing an up-or-down vote for any nominee who enjoys bipartisan majority support in this Chamber as this nominee, Priscilla Owen, does.

If you want to talk about statistics—and our friends on the other side of the aisle have—they have time and time again essentially argued this is payback for how they perceive Republicans treated nominees of President Clinton. And one of the names they mention is Richard Paez, who was nominated by President Clinton, who was ultimately confirmed by less than 60 votes of the Senate. All we are asking is that Priscilla Owen be treated with the same courtesy and according to the same standard that Richard Paez was treated when he was given an up-or-down vote and was confirmed by less than 60 votes.

A number of my colleagues on this side of the aisle have done an excellent job of presenting, in a comprehensive fashion, the legal and constitutional framework that exists for the Senate's authority to determine its own rules, and that is really all we are talking about—the Senate determining its own rules. I believe the case that has been made for the Senate continuing to do that is a strong one. In fact, that is why Senators on the other side of the aisle, including the former Democrat majority leader, the senior Senator from West Virginia, the senior Senator from Massachusetts, and the senior Senator from New York, have all stated in the past as recently as 2 years ago that, of course, a majority of Senators has the power to set rules, precedents, and procedures. Indeed, that is why the power of the Senate majority to set rules, precedents, and procedures has sometimes been referred to as the Byrd option, or otherwise, the constitutional option.

But let me begin my remarks by making a simple point I made last night, and let me reiterate it. I much prefer the bipartisan option to the Byrd option. America works better, the Senate works better, and our constituents are better served when we act in a bipartisan and cooperative manner. I would much prefer to wake up each day not anticipating the battles in this Chamber but, rather, to anticipating the opportunity to do what I came here to do, and that is to serve the interests of my constituents and the Nation by trying to get things done, trying to solve problems. That is why I believe we were sent here. I have done my best to take advantage of every opportunity I have seen in order to work in a bipartisan manner. I would simply choose collaboration over contention any day of the week.

But we know that bipartisanship is a two-way street, that you cannot claim to be bipartisan when a partisan minority seeks to obstruct, and has successfully obstructed for the last 4 years, a bipartisan majority from getting a simple up-or-down vote for nominees such as Priscilla Owen. In order to have true bipartisanship, both sides must agree to treat each other fairly and apply the same rules and standards regardless of who happens to be President, whether it is a Republican or Democrat, and regardless of who is in the majority, whether it is a Republican or Democrat majority. But bipartisanship, we know, is difficult when long held understandings and the willingness to abide by basic agreements and principles have unraveled so badly as it has these last 4 years.

What are we to do when these basic principles and commitments and understandings have simply unraveled so badly? What are we to do when Senate and constitutional traditions are abandoned for the first time in more than 2 centuries; when both sides once agreed that nominees would never be blocked by the filibuster, and then one side says, well, that agreement never existed; when our colleagues on the other side of the aisle boast in fundraising letters to their donors of their ''unprecedented'' obstruction and then come to the Senate floor and claim that precedent is on their side and that somehow this side, the bipartisan majority, is somehow blowing up the Senate by exercising a ''nuclear option''? What are we to do when the former Democrat majority leader claims on one day that the filibuster is somehow sacrosanct and sacred to the Founders and then demonstrates by his own words that he has successfully killed filibusters in the past on the Senate floor?

In 1995 he stated:

I have seen filibusters. I have helped to break them. The filibuster was broken, back, neck, legs and arms.

Finally, what are we to do, Mr. President, when they claim on one day that all they seek is more time to debate a nomination, and then claim on another day there are not enough hours in the universe to debate the nomination? Indeed, as we stand here 4 years after this fine nominee was proposed, we know there has been more than adequate time for debate. There has been a lot of debate. But this is not about debate. This is not about the Senate's traditions. This is about raw political power of a partisan minority to obstruct a bipartisan majority from exercising the power conferred upon that bipartisan majority by the Constitution.

It is clear that a partisan minority is now seeking to impose a new requirement during these last 4 years, that nominees will not be confirmed without the support of at least 60 Senators. This, by their own admission—at least at one point by their own admission—is wholly unprecedented in Senate history. But thinking about it, Mr. President, the reason they have now sought to adopt this double standard and this increased threshold before a nominee can even get a vote, the reason for it is simple, and that is because the case for opposing this fine nominee, Priscilla Owen and her fellow nominees, is so weak that the only way they can hope to defeat their nominations is by applying a double standard and changing the rules. That is the only way they can hope to win—this partisan minority. We have heard a lot of talk about some of the decisions this judge has made when she served on the Texas Supreme Court, as she still does. I think the distinguished Senator from Georgia, who is currently occupying the Chair, spoke eloquently about another nominee, Janice Rogers Brown, who is also accused of ''being out of the mainstream'' and shown how thin and baseless that allegation is—and by the way, Janice Rogers Brown is accused of being out of the mainstream for exercising her first amendment right as an American citizen in a speech, two speeches, not in the course of her judicial decisionmaking. Does that mean that citizens should somehow be constrained in what they can talk about lest they be deemed disqualified to serve as a Federal judge later on because some Senator or some group of Senators think that they are ''outside of the mainstream''? I hope not.

A number of Senators have mentioned the case called Montgomery Independent School District v. Davis. This is one of the cases they cite as an example for Justice Owen ''being out of the mainstream.'' But, of course, I doubt they have read the opinion. This is about a schoolteacher a local school board dismissed because of her poor performance and because of her abusive language toward her students. This teacher admitted that she had referred to her students as little blank blank blanks—a four-letter expletive that I will not repeat on the floor of this body. When confronted with this statement, she justified the use of this expletive to schoolchildren, mind you, on the bizarre ground that she uses that same language when talking to her own children—clearly unacceptable conduct.

The senior Senator from New York has said that this teacher was wrongly dismissed. Other Senators criticized Justice Owen about this case as well. I have children. Many Senators have children. Certainly the people across America who have children understand. Are Justice Owen's opponents really arguing that this teacher's opponents acted inappropriately, that she was wrongly dismissed for using that language and mistreating her students in such a way?

If you read the opinion, as I doubt the critics have, preferring, rather, to speak off of talking points written by political consultants who engage in character assassination for their profession, Justice Owen simply said that the local school board was justified in dismissing the teacher—hardly a decision which is out of the mainstream.

As it turned out, the majority of the court disagreed and held that the school board could not dismiss the teacher, on legal grounds. But Justice Owen's dissenting opinion simply concluded that the majority:

. . . allows a State hearing examiner to make policy decisions that the Legislature intended that local school boards make.

She also argued that the majority ''misinterpreted the Education Code.''

This partisan minority in the Senate has accused Justice Priscilla Owen of judicial activism. But the people of America understand what judicial activism is and, conversely, what it is not. The American people understand a controversial judicial activist decision when they see one, whether it is the radical redefinition of some of our society's most basic institutions, such as marriage; whether it is expelling the Pledge of Allegiance from classrooms of schoolchildren because the phrase ''one nation under God'' is invoked; or whether it is the elimination of the ''three strikes and you are out'' law and other penalties against hardcore convicted criminals; or the forced removal of military recruiters from college campuses. Justice Owen's rulings fall nowhere close to these sort of activist decisions, this category of cases that to me defines the phrase ''judicial activism.''

There is a world of difference between struggling to try to do the job judges are duty-bound to perform—that is, to interpret ambiguous expressions of a statute—there is a world of difference between that and refusing to obey a legislature's objectives altogether and instead substituting that judge's own opinion or own social or political agenda for what the legislature, the elected representatives of the people, had said the law should be.

If the Senate were to follow more than 200 years of consistent tradition, dating back to our Founding Fathers, there would be no question but that this judge, and this fine and decent human being, would be given the up-or-down vote and confirmed for the Fifth Circuit Court of Appeals. President after President after President have gotten their judicial nominees confirmed by a majority vote, not a supermajority vote of 60 votes or more. By their own admission, a partisan minority in this body is using unprecedented tactics to block her nomination. Here again, the reason is simple. As any careful examination of the decisions made by this good judge reveal, the case for the opposition is so weak that the only way they can defeat her nomination is by applying a double standard and changing the rules.

It is not just me who says that a supermajority requirement is unconstitutional and violates the Senate traditions for over 200 years. Legal scholars across the political spectrum have long concluded what we know in this body instinctively—that to change the rules of confirmation, as this partisan minority has done starting 4 years ago, badly politicizes the judiciary and hands over control of the judiciary to special interest groups—something we all ought to want to avoid.

The record is clear: Senate tradition has always been majority vote, and the desire by some to alter those Senate rules has been roundly condemned by legal experts across the political spectrum.

In fact, Lloyd Cutler, who recently passed away, who was really the dean of lawyers, who advised Presidents, both Republican and Democrat, during the course of his professional lifetime, wrote ''The Way to Kill Senate Rule XXII,'' which was published in the Washington Post in 2003. He said:

A strong argument can be made that the requirements of . . . a two-thirds vote to amend the rules are . . . unconstitutional.

Liberal USC law professor Erwin Chemerinsky wrote in 1997, ''Rule XXII''—that is the rule that requires 60 votes in order to get a vote that is being invoked now for the first time in more than 200 years against nominees. We are not talking about legislation, as I know the Chair understands and which has been clear but sometimes gets muddled. Professor Chemerinsky writes:

Rule XXII is unconstitutional in its requirement that change be approved by two-thirds vote to change the Rule. The effect of declaring this unconstitutional is that the current Senate could change rule XXII by majority vote. In other words, a majority of this Senate could eliminate the filibuster if a majority wished to do so.

I believe a majority does wish to do so when it comes to breaking the log-jam over nominees, not with regard to legislation. There is a general consensus, bipartisan consensus in the Senate, that, for our own reasons, it is important to preserve the filibuster for legislation. But, of course, that only affects how we conduct our business, not how we interact with a coordinate department of Government or branch of Government known as the executive branch in exercising advice and consent when it comes to the nominees by a President elected by the American people.

To employ the Byrd option is not a radical move. It would merely be an act of restoration. I say it again. There is nothing radical about the Byrd option, yet our colleagues on the other side of the aisle have called it, not the Byrd option or the constitutional option, but the nuclear option, to suggest that somehow there is something radical about it.

But all we need to do is to look at the senior Senator from West Virginia, who was then majority leader, who used the constitutional option—and this is the reason it is sometimes called the Byrd option—on four occasions—in 1977, in 1979, in 1980, and again in 1987—to establish precedents that changed Senate procedure during a session of Congress. Other leading Senators from the other side of the aisle have, at some times in the past—perhaps not today but in the past—recognized the legitimacy of that procedure, of the Byrd option, including the senior Senator from Massachusetts and the senior Senator from New York, as recently as 2 years ago.

The establishment of Senate rules and procedures by majority vote is commonplace. As a matter of fact, on most days, as the occupant of the chair knows, we operate by unanimous consent; that is, everybody agreeing—or at least no one objecting. The constitutional power of a majority of the Senators to strengthen, improve, and reform Senate rules and procedures is expressly stated in the Constitution. It was unanimously endorsed by the U.S. Supreme Court, and it has been supported and exercised by the Senate on numerous occasions.

For those who may be students of the Constitution, all you have to do is look at article I, section 5, which clearly states that, ''[e]ach House may determine the Rules of its Proceedings.''

The Supreme Court has unanimously held in United States v. Ballin that, unless the Constitution expressly provides for a supermajority vote, the constitutional rule is majority vote. Again, as the Senator from Georgia pointed out earlier this morning, when it comes to amending the Constitution, when it comes to ratifying treaties, it is clear that an explicit supermajority requirement is there. But failing that, where the Constitution is silent about a supermajority requirement, the U.S. Supreme Court said majority rule is the standard.

I point out again, perhaps the most eloquent and learned Member of this body, when it comes to Senate rules and procedures, is the distinguished senior Senator from West Virginia. I know as a new Senator I have watched and listened and tried to learn from him about those Senate rules. He is truly a master of that subject. Yet Senate Democrats have spent considerable time dismissing how the Founders would somehow be offended if a majority of Senators acted to prevent a partisan minority of the Senate from using filibusters against nominees. One of their own, one of the Senate's great historians, this same distinguished senior Senator from West Virginia, stipulated on the Senate floor that our Founders did not tolerate filibusters.

He said:

The rules adopted by the U.S. Senate in April, 1789, included a motion for the previous question. The previous question allowed the Senate to terminate debate. ''Mr. President, I move the previous question'' or in the House ''Mr. Speaker, I move the previous question,'' and if that gains a majority, no further debate, the previous question will be voted on.

As the senior Senator from West Virginia has previously written in his four-volume history of the U.S. Senate:

It is apparent that the Senate in the first Congress disapproved of unlimited debate. In fact, for the first several Congresses, from 1789 to 1806, a majority of Senators always had the power to bring debate to a close through majority vote through the motion for the previous question under Senate Rule IX.

I realize we are getting down into the weeds quite a bit when it comes to parsing Senate rules and the history of the Senate for the American people who might be listening to this debate, but in the end, I believe what we are talking about is the ability in this body to write its own rules and establish its own procedures, which is clearly provided for in the Constitution, and to use procedures that have been used on the other side of the aisle when they were deemed appropriate and when a majority of Senators supported that change.

We are also talking about restoring fundamental fairness to the judicial selection and nomination process. Is there anybody in America today who believes that the way we are handling the confirmation of judges is a good and positive thing? Or do the vast majority of Americans believe, as I do, that it has become unnecessarily contentious and fractious and divisive, and that we need a fresh start when it comes to this process?

I believe a good place to start would be to restore this 200-year tradition, which provides for a majority vote, something that was accepted without any real debate until 4 short years ago when the standard was somehow increased to 60 votes for confirmation rather than the 51 votes which had applied for the entire history of the Senate—4 short years ago.

Finally, it is worthy of note that in addition to the constitutional support I have mentioned, and that of legal scholars and established Senate precedent and tradition, many of the editorial writers in the mainstream media also acknowledge that the Byrd option is not a radical option, that the Senate making its own rules and procedures is not radical, it is what we do.

The New York Times even, by its own admission, in 1995, endorsed a proposal by Senators HARKIN and LIEBERMAN that

. . . would have gone even further than the nuclear option in eliminating the [power of the] filibuster . . .

entirely, including for legislative matters.

We do not propose that. We just propose giving these nominees an up-or-down vote when it comes to the Executive Calendar.

The Austin American-Statesman, in Texas, has recently editorialized that:

a simple majority could change the rule on cloture from a supermajority to 51 votes . . . [and] it has always been a viable political tool.

All we are suggesting.

The Philadelphia Inquirer said:

There is nothing especially sacred about the filibuster.

The Los Angeles Times states:

We urge Republican leaders to press ahead.

They wrote that in an editorial entitled ''Nuke the Filibuster.''

Let me conclude by reiterating what I said at the beginning of my remarks. I would prefer the bipartisan option to the Byrd option any day. America works better, the Senate works better when we do things together in a bipartisan and collaborative way. It is time for us to fix the broken judicial confirmation process. It is time for us to end the blame game, fix the problem, and to move on. It is time to end the wasteful and unnecessary delay in the process of selecting judges that hurts our justice system and harms all Americans.

It is simply intolerable that a partisan minority will not allow a bipartisan majority to conduct the Nation's business. It is intolerable that the standards now change depending on

who is in the White House and which party is the majority party in the Senate. It is intolerable this nominee, this fine and decent human being and this outstanding judge, has waited 4 years for a simple up-or-down vote.

We need a fair process for selecting fair judges after full investigation, full questioning, full debate, and then a vote.

Throughout our Nation's more than 200-year history, the constitutional role and the Senate tradition for confirming judges has been majority vote. That tradition must be restored.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Mr. LEVIN. Mr. President, the Senate holds a revered place in the history of the world and in the imagination of people throughout the world. We proudly serve in the world's greatest deliberative body. We say that so often that those words can lose their impact, but we must never lose sight of our profound responsibility to this institution as keepers of its legacy.

The enduring strength and beauty of the U.S. Senate is that we not only operate by rules, but that those rules provide protections for the minority. More than 200 years of Senate rulings have affirmed that this body stands against the ''tyranny of the majority'' that our Founding Fathers cautioned us about.

Today, for temporary political advantage, some would destroy part of what makes the Senate unique. The so-called ''nuclear option'', if implemented, will deface this Senate monument by allowing a majority, for the first time in our history, to operate by fiat instead of by rule.

The issue we are grappling with is a transcendent one, above and beyond the qualifications of a particular judge. We will answer the question: will the rule governing our deliberations be changed by fiat, by an arbitrary ruling which runs head on against Senate Rule XXII. That rule guarantees Senators' right to speak until 60 Senators vote to end debate and is also at the core of our being a deliberative body.

The leadership of the majority party in the Senate has threatened to use an extraordinary and radical parliamentary procedure, the so-called ''nuclear option'', to end filibusters in the Senate. Interpreting a rule which is ambiguous or silent on a matter is one thing. The ''nuclear option'' requires a presiding officer to rule in a way which goes directly against the unambiguous language of Rule XXII.

Whether or not to change the rules is a matter for debate and deliberation, but there should be no question of how to change the rules. That should occur through the procedures laid out in the Senate rules themselves.

Robert Caro, the distinguished historian and author of the landmark work, Master of the Senate, recently wrote a letter to the Chairman and ranking member of the Senate Rules Committee in which he pointed out that:

> The Founders, in their wisdom . . . gave the Senate the power to establish for itself the rules governing exercise of its powers. Unlike the unwieldy House, which had to adopt rules that inhibited debate, the Senate became the true deliberative body that the Framers had envisioned by maintaining the ability of its members to debate as long as necessary to reach a just result.

Caro continued:

> For more than a century, the Senate required unanimous consent to close off debate. The adoption of Rule XXII in 1917 allowed a two-thirds cloture vote on ''measures'', but nominations were not brought under the rule until 1949. In short, two centuries of history rebut any suggestion that either the language or the intent of the Constitution prohibits or counsels against the use of extended debate to resist presidential authority. To the contrary, the nation's Founders depended on the Senate's members to stand up to a popular and powerful president.

The right of extended debate in the Senate is an integral part of our system of checks and balances and an important historic protection of the rights of the minority in our country. But it is not only the filibuster rule and the valuable protections it provides which the ''nuclear option'' is threatening. It is the Senate's rulemaking process and it's the very character of the Senate.

Whether to change Rule XXII has been debated throughout our history and that debate will continue. But, how to change our rules is a totally different matter. The ground rules for doing so, the process for changing the rules, should be defended by us all because that process is laid out in the Senate rules.

Under the so-called ''nuclear option,'' the Presiding Officer of the Senate would arbitrarily end debate. The ruling would be challenged and a simple majority would then be urged to uphold the ruling of the chair. In ruling by fiat, instead of by applying Senate Rule XXII for ending debate, the Presiding Officer would have to ignore the advice of the non-partisan Senate parliamentarian and the Senate's 200 years of precedent.

If Senators want to propose a change in the rules of the Senate, the right way to do so is to follow the procedures in the Senate's rules for changing the Senate's rules, not ripping up the rule book for a momentary advantage.

In previous attempts to change the filibuster rule by breaking the rules, the Senate has refused to do so. The Senate has consistently maintained that changes to Rule XXII governing the right to extended debate must be made in accordance with the Senate rules and cannot be done by decree, by a ruling of the Presiding Officer which needs only to be sustained by a simple majority.

In 1949, Vice President Alben Barkley, contrary to Senate precedent and against the advice of the Senate Parliamentarian, ruled that despite the fact that Rule XXII as it then existed provided only that the ''pending matter'' was subject to cloture, that it also applied to a motion to proceed to the consideration of the bill.

The Senate rejected Vice President Barkley's ruling by a 46–41 vote. Significantly, 23 Democratic Senators, nearly half of the Democrats voting, opposed the ruling by the Vice President of their own party. Later, the Senate, using the process provided by the Senate rules, by a vote of 63–23, adopted a change in Rule XXII to include a motion to proceed.

Vote after vote, decade after decade, the Senate has maintained that changes to the cloture rule must be done in accordance with the existing Senate rules and cannot be done by fiat of the Presiding Officer which needs but a simple majority to be sustained. The history is dry and difficult, but is essential for our understanding of the tenacious way this body has rejected attempts to change the filibuster rule by circumventing the rules. I am setting that history forth in an addendum to these remarks.

The majority leader says that he won't use the ''nuclear option'' except on filibusters of judicial nominations. But, why wouldn't a future majority leader, in pursuit presumably of some lofty purpose, not use a similar arbitrary procedure, the fiat of the Presiding Officer, sustained by a simple majority, to further limit and perhaps eliminate the filibuster or alter other Senate rules for that matter. As a Detroit Free Press editorial asked, '' . . . [W]here does such situational rule changing stop?''

Any future majority could use the ''nuclear option'' to change any of the Senate's rules, if the ''nuclear option'' we are debating is pursued and succeeds. The Senate, almost inevitably, would slide toward becoming a second House of Representatives. That body is tightly controlled by its majority through its Rules Committee which severely limits debate and dictates what amendments can and cannot be offered. The character of the Senate would be destroyed as a uniquely deliberative body as would its role as the defender of rights of the minority and its essential role in the system of checks and balances. Expediency can destroy the uniqueness of this body.

The majority leader has said, ''At the end of the day, one will be left standing: either the Constitution . . . or the filibuster.'' Hopefully, both will be left standing. The only way for that to happen is if the ''nuclear option'' is rejected and we say ''no'' to changing the rules of this body by fiat. Again, the majority leader maintains that he has no intention of eliminating filibusters except on judicial nominations. But, if one accepts the position that the filibuster is unconstitutional for a judicial nomination, why is it not equally unconstitutional for all nominations? And, if the advise and consent clause is read to mandate an up-or-down vote, a future majority leader could by decree decide that the enumerated legislative

powers in Article I also mandate majority up-or-down votes and, for instance, rule out of order supermajority, 60-vote budget points of order.

But, with all due respect to the leader, no rule of the Senate should be dependent for its enforcement on the whims and promises of a majority leader, any majority leader. To leave the fundamental rules of the Senate vulnerable to a change of mind by this majority leader or the whim of a future majority leader undermines the principles of normal procedure and fairness on which we all rely. A rule must bind the Majority Leader and the majority itself. That principle is the bedrock on which the rule of law rests. Playing by the rules is something we all learned as kids in the schools and on the playgrounds of America. Rule XXII is a rule we must live by unless and until it is amended by the procedures in our rules. The ''nuclear option'' would change Rule XXII by decree of the Presiding Officer. An exception to Rule XXII's requirement for sixty votes to end debate on a matter would be created by arbitrary ruling—by decree.

Arthur Vandenberg, one of my predecessors from Michigan is one of the giants of Senate history. His portrait was recently added to the Senate Reception Room outside of this chamber where he joined six other greats of the Senate. Senator Vandenberg, a Republican leader in the Senate, addressed the Senate in 1949 prior to the Senate's rejection of Vice President Barkley's effort to change the cloture rule. His comments speak directly to the situation we find ourselves in and I want to share some of his remarks today.

Senator Vandenberg said,

. . . I continue to believe that the rules of the Senate are as important to equity and order in the Senate as is the Constitution to the life of the Republic, and that those rules should never be changed except by the Senate itself, in the direct fashion prescribed by the rules themselves. One of the immutable truths in Washington's Farewell Address, which cannot be altered even by changing events in a changing world, is the following sentence: 'The Constitution which at any time exists, until changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all'. I respectfully submit,'' Senator Vandenberg said, ''as a basic explanation of my attitude, that I accept this admonition without reservation, and I think it is equally applicable to the situation which Senators here confront, though obviously the comparison cannot be literal. . . . [T]he Father of his Country said to us, by analogy, 'The rules of the Senate which at any time exist, until changed by an explicit and authentic act of the whole Senate, are sacredly obligatory upon all.'

Senator Vandenberg continued:

I have heard it erroneously argued in the cloakrooms that since the Senate rules themselves authorize a change in the rules through due legislative process by a majority vote, it is within the spirit of the rules when we reach the same net result by a majority vote of the Senate upholding a parliamentary ruling of the Vice President which, in effect, changes the rules. This would appear to be some sort of doctrine of amendment by proxy. It is argued that the Senate itself makes the change in both instances by majority vote; and it is asked, What is the difference? Of course, this is really an argument that the end justifies the means.

Senator Vandenberg continued:

I think there is a great and fundamental difference, Mr. President. When a substantive change is made in the rules by sustaining a ruling of the Presiding Officer of the Senate—and that is what I contend is being undertaken here—it does not mean that the rules are permanently changed. It simply means that regardless of precedent or traditional practice, the rules, hereafter, mean whatever the Presiding Officer of the Senate, plus a simple majority of Senators voting at the time, want the rules to mean. We fit the rules to the occasion, instead of fitting the occasion to the rules. Therefore, in the final analysis, under such circumstances, there are no rules except the transient, unregulated wishes of a majority of whatever quorum is temporarily in control of the Senate. That, Mr. President, is not my idea of the greatest deliberative body in the world. . . . No matter how important [the pending issue's] immediate incidence may seem to many today, the integrity of the Senate's rules is our paramount concern, today, tomorrow, and so long as this great institution lives.

Senator Vandenberg continued:

. . . [I] want to be sure that none of my colleagues shall feel under the slightest compunction to vote on a friendship or loyalty basis so far as I am concerned. This is a solemn decision—reaching far beyond the immediate consequence—and it involves just one consideration.

He concluded, with that ''one consideration'':

What do the present Senate rules mean; and for the sake of law and order, shall they be protected in that meaning until changed by the Senate itself in the fashion required by the rules?

In summarizing, he got to what is the root of the nuclear option. He did it almost 60 years ago on a similar occasion, but how prescient are his comments relative to the situation in which we find ourselves today. Senator Vandenberg:

. . . [T]he rules of the Senate as they exist at any given time and as they are clinched by precedents should not be changed substantively by the interpretive action of the Senate's Presiding Officer, even with the transient sanction of an equally transient Senate majority. The rules can be safely changed only by the direct and conscious action of the Senate itself, acting in the fashion prescribed by the rules. Otherwise, no rule in the Senate is worth the paper it is written on, and this so-called ''greatest deliberative body in the world'' is at the mercy of every change in parliamentary authority.

How I wish every Senator would read Senator Vandenberg's speech before we vote on the nuclear option.

In a recent address on this subject, former Senator and Vice President Al Gore recalled the words of Sir Thomas More, the famous British jurist and author:

When More's zealous son-in-law proposed that he would cut down any law in England that served as an obstacle to his hot pursuit of the devil, More replied: ''And when the last law was cut down and the devil turned round on you, where would you hide . . . the laws all being flat? This country is planted thick with laws, from coast to coast . . . and if you cut them down, and you're just the man to do it, do you really think you could stand upright in the winds that would blow then?''

Vice President Gore observed:

The Senate leaders remind me of More's son-in-law. They are now proposing to cut down a rule that has stood for more than two centuries as a protection for unlimited debate. It has been used for devilish purposes on occasion in American history, but far more frequently, it has been used to protect the right of a minority to make its case.

Our former colleagues Senators Malcolm Wallop of Wyoming and Jim McClure of Idaho, both conservative Republicans, recently wrote in the Wall Street Journal:

. . . [I]t is naive to think that what is done to the judicial filibuster will not later be done to its legislative counterpart . . . [E]ven if a Senator were that naive, he or she should take a broader look at Senate procedure. The very reasons being given for allowing a 51-vote majority to shut off debate on judges apply equally well—in fact, they apply more aptly—to the rest of the executive calendar, of which judicial nominations are only one part. That includes all executive branch nominations, even military promotions. Treaties, too, go on the executive calendar, and the arguments in favor of a 51-vote cloture on judicial nominations apply to those diplomatic agreements as well. It is little comfort that treaty ratification requires a two-thirds vote. Without the possibility of a filibuster, a future majority leader could bring up objectionable international commitments with only an hour or two for debate, hardly enough time for opponents to inform the public and rally the citizenry against ratification.

Former Majority Leader George Mitchell, writing in the New York Times, has recalled the words of Senator Margaret Chase Smith, another of the great Senators sent to us from the State of Maine, in her famous ''Declaration of Conscience'' on June 1, 1950, speaking out against the excesses of Senator Joe McCarthy, a Member of her own party:

I don't believe the American people will uphold any political party that puts political exploitation above national interest. Surely we Republicans aren't that desperate for victory . . . While it might be a fleeting victory for the Republican Party, it would be a more lasting defeat for the American people. Surely it would ultimately be suicide for the Republican Party and the two-party system that has protected our American liberties from the dictatorship of a one-party system.

As Senator Mitchell writes:

The circumstances are obviously different; there is no McCarthyism in the current dispute. But the principles of exercising independent judgment and preserving our system of checks and balances are at the heart of the Senate rules debate. Senator Smith embodied independence and understood the Senate's singular place in our system of checks and balances. Our founders created that system to prevent abuse of power and to protect our rights and freedoms. The president's veto power is a check on Congress. The Senate's power to confirm or reject judicial nominees balances the president's authority to nominate them. The proposal by some Republican senators to change rules that have governed the Senate for two centuries now puts that system in danger.

Mr. President, the nuclear option—this extra-legal changing of the Senate

rules—will cause a permanent tear in the Senate fabric because it violates a deeply held American value: playing by the rules. Our rules themselves provide the process for changing the rules. Using it in an arbitrary way—the Presiding Officer ruling by fiat—will produce a deeply embittered and divided Senate because it tears at the heart of the way we operate as a Senate. The Presiding Officer is supposed to be an impartial umpire, not a dictator. He is supposed to apply the rules, not rewrite them.

This Senate is an enduring monument of political history. Its uniqueness is perhaps most embodied in rule XXII, which is at the heart of our being a deliberative body and the source of protection of the minority. I plead with our colleagues: Do not deface this Senate monument by eliminating by fiat that right of the minority. Do not trample on rights so essential to the institution's deliberative nature. Do not deface this Senate monument by amending the rules by fiat. Instead, seek to change our rules, if you deem it wise, according to the procedures set out in our rules. But do not take this fateful, unprecedented, and misguided step that is being proposed.

Few are privileged to serve in this special place. Let those who follow us here look back at what we will do in the fateful days which lie ahead and say that the institution they aspired to was preserved and protected by its present custodians.

The Constitution, in article I, section 5, states that ''Each House may determine the rules of its proceedings . . .'' The rules of the U.S. Senate have protected minority rights and the system of checks and balances through the right of senators to extended debate. Senate rule XXII provides that 60 votes are required to end debate in the Senate and to bring a matter to a vote. It makes no distinction as to whether that matter is legislative, the ratification of a treaty or the confirmation of a nomination. Throughout the Senate's history, our rules, including rule XXII, have served not only to protect the minority, but also to encourage the majority and the minority to work out their differences. That is because to do anything of great significance in the Senate, it is necessary to put together 60 votes forces the majority to deal with at least a part of the minority. As much as any other factor, this has been a bulwark against the most corrosive forms of partisanship.

With respect to nominations, the need to gain the support of at least 60 Senators has historically encouraged presidents of both parties to seek the advice of Senators from both parties, and to select judicial nominees who are in the mainstream and who can attract the support of Members of both parties. That is particularly important because Federal judges have a profound impact on the functioning of our Nation, not only because they have lifetime appointments, but—because they are the final arbiters of the constitutionality of our laws.

During the administration of President Bush, the Senate has, as in the past, been carrying out its constitutional responsibility. Since the start of the current administration, the Senate has confirmed more than 200 of President Bush's judicial nominees. Only 10 of the President's nominees have not been confirmed. That is an approval rate of more than 95 percent. This is a better confirmation rate than was achieved during the Clinton, the senior Bush, and the Reagan administrations. This also stands in stark contrast to what happened during the Clinton administration when more than 60 of President Clinton's judicial nominees were blocked by the Republican majority in the Judiciary Committee from even getting a hearing, much less a confirmation vote.

Some of our Republican colleagues like to assert that filibusters aimed at nominations are unprecedented. They are clearly wrong. Their assertions usually contain carefully crafted hedge words. For example, they refer to ''nominations reaching the Senate floor'' being entitled to an up or down vote. Some of our Republican colleagues refer to ''the Senate tradition of giving nominees an up-or-down vote''. Well, what about those more than 60 Clinton judicial nominations, who were bottled up for years in the Republican controlled Judiciary Committee without being given even a hearing? Blocking nominees in the committee by refusing to give them a hearing is, in effect, filibustering the nomination. When former Foreign Relations Committee Chairman Jesse Helms was opposed to the former President George H.W. Bush's nominee to be U.S. Ambassador to Mexico, William Weld, a former Republican Governor, was an up-or-down vote permitted? No, Senator Helms refused to hold a vote in the Foreign Relations Committee and in that way eventually defeated the nomination. There are many such examples.

And what about the so-called holds that Senators use to delay and as a result deny nominees an up-or-down vote? Just recently, one of our Members placed a hold—an implied threat to filibuster a nomination—blocking an up-or-down vote on President Bush's nominee to head the Base Closing Commission. The President had to get around that hold by giving his nominee a recess appointment, which doesn't require Senate action.

One of the statements that is used to support the nuclear option is that there has never been a successful filibuster of a judicial nominee. That statement flies in the face of the history of the filibuster of the nomination of Abe Fortas to be Chief Justice of the Supreme Court in June of 1968. Republican opponents of the filibuster at that time argued that the Senate has the obligation to be more than a mere rubberstamp for the President. Further, they argued that because Federal judges are lifetime positions, it is even more important to protect the guarantee of the minority's right to speak at length in the Senate on judicial nominations than on legislative matters.

Another Michigan Republican, Senator Robert Griffin, who was the Republican whip, was a leader of the Fortas filibuster. He said at the time:

> Whatever one's view may be concerning the practical effect of Senate rules with respect to the enactment of legislation, there are strong reasons for commending them in the case of a nomination to the Supreme Court.

Senator Griffin argued that:

> If ever there is a time when all Senators should be extremely reluctant to shut off debate, it is when the Senate debates a Supreme Court nomination. If Congress makes a mistake in the enactment of legislation, it can always return to the subject matter and correct the error at a later date. But when a lifetime appointment to the Supreme Court is confirmed by the Senate, the nominee is not answerable thereafter to the Senate or to the people, and an error cannot be easily remedied . . .

After 5 days of extended debate on the Fortas nomination, there was a vote on a cloture motion to end the debate. While a majority did support Fortas, by a vote of 45 to 43, there was not the supermajority needed to end debate. An up-or-down vote was prevented by the successful filibuster, and the nomination was subsequently withdrawn.

So the statement that there has never been ''a successful'' filibuster of a judicial nominee is wrong. But, it is also too clever by half for another reason. There have been many times that Senators have tried to defeat presidential judicial nominees by filibuster, but failed. The fact that they weren't successful in stopping the confirmation isn't relevant. They succeeded in requiring 60 votes to end debate. Supreme Court Justice Stephen Breyer was filibustered when he was nominated for a vacancy on the circuit court by President Carter in 1980. Cloture was invoked by a 68 to 20 vote. Twenty-four Republican Senators voted against cloture, in other words, to continue a filibuster, including some of our present colleagues.

In 2000, the opponents of the nominations of both Marsha Berzon and Richard Paez, nominated to the circuit court by President Clinton, required cloture votes requiring 60 votes to end debate. Cloture was invoked on the Berzon nomination, 86 to 13, and on the Paez nomination, 85 to 14. A number of current Members of the Senate majority voted against cloture and voted to deny them an up-or-down vote.

Even the current majority leader, who proposes the nuclear option to eliminate filibusters on judicial nominations now that a GOP President is in the White House, voted against cloture; he voted to require 60 votes for the Clinton nominee Richard Paez. Many Senators who tried to defeat nominees

by forcing supermajority votes with Clinton judicial nominees, now want to take away by fiat the right of other Senators, under our rules, to exercise that same advise and consent power.

Mr. President, we must be ever mindful of our responsibility to protect the unique role of this institution. I urge my colleagues to reject the reckless course of the nuclear option. I hope that every one of my colleagues will take the time to read the speech of Senator Vandenberg on the floor of this Senate, facing a very similar situation to the one we face, where there was intended to be, and in that case was, a ruling—a ruling—a fiat of the Presiding Officer which would have changed the rules of the Senate.

It is even more clear here than it was then that it is a change in the rules which is involved. Back then, one could have argued that it was only an interpretation of the then-existing rule XXII which was at issue. The majority of the Senate rejected that because, to the majority, it was quite clearly a change in the rules.

Senator Vandenberg and others carried the day with their eloquence about the meaning of this body and its need to live by the rules and to change the rules according to the procedures set forth in the rules. That wisdom is surely as relevant today as it was back then.

I hope all of us will consider the consequences of changing the rules by fiat, by a ruling of the Chair, not guided by the Parliamentarian, who is an objective umpire, not following the precedent of this body, which has faced similar efforts before to change the rules by decree of a Presiding Officer, and which has rejected that course over and over again. If we will take our own history and the meaning of this body into consideration, and to take it to heart, I believe we will do as previous Senates have done, which is to reject an arbitrary approach to adoption or modification of the rules that guide us.

Mr. President, I ask unanimous consent that an addendum to my statement be printed in the RECORD.

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

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

ADDENDUM

In 1953, Senator Clinton Anderson raised a point of order that, under the Constitution, the Senate should be free to adopt its rules at the beginning of a Congress and, until that happened, the Senate would be governed by general parliamentary rules which would allow a simple majority to end debate and adopt new rules. The Senate rejected this effort by a vote of 71–21 at the urging of Majority Leader Robert Taft and Minority Leader Lyndon Johnson. Taft argued that the Senate is a continuing body and that the rules carried over from one Congress to the next. The Senate's rules could be amended at anytime during the Congress but had to be done in accordance with existing Senate Rules which require a supermajority vote to end debate on the rule change.

In 1957, led by then-Majority Leader Lyndon Johnson and Minority Leader Robert Taft, the Senate, by a 55–38 vote, again rejected a similar attempt by Senator Clinton Anderson.

In 1963, Senator Anderson made an attempt to circumvent Rule XXII by a simple majority. He moved to proceed to a resolution, at the beginning of the Congress, to lower the number required for cloture and sought a ruling from Vice President Lyndon Johnson that, under the Constitution, only a simple majority would be needed to end debate at the beginning of a Congress. The Vice President submitted the constitutional question to the Senate, ''Does the majority of the Senate have a right under the Constitution to terminate debate at the beginning of a session and proceed to an immediate vote on a rule change notwithstanding the provisions of the existing Senate rules?'' The Senate tabled the constitutional point of order by a vote of 53–42, again affirming the Senate position that changes to the rules must be considered under the procedures set out by the existing Senate rules.

In 1967, Senator George McGovern moved to proceed to a resolution to amend the cloture rule. Senator McGovern used a compound, self-executing motion which, if adopted, would have automatically cut off debate and required the chair to put the question on the motion to proceed to a majority vote. The motion was out of order on its face and was akin to an unanimous consent agreement in the Senate which would prescribe consideration of a measure, but instead of requiring the consent of all Senators, only a simple majority vote was required. Senator Everett Dirksen made a point of order against the motion and Vice President Hubert Humphrey submitted the constitutional question to the Senate which sustained the Dirksen point of order, thus rejecting the McGovern motion by a vote of 59–37.

In 1969, Senator Frank Church moved to proceed to a similar proposal to reduce the number required to invoke cloture and filed cloture on the motion to proceed. Senator Church then inquired of the Chair, ''If a majority of the Senators present and voting, but less than two-thirds, vote in favor of this motion for cloture, will the motion have been agreed to?'' Vice President Hubert Humphrey responded in the affirmative. The vote for cloture was 51–47, far short of the two-thirds then required under the rules. The Chair announced that the Senate would now proceed under cloture based on a simple majority vote. The decision was immediately appealed and the Senate overturned the decision of the Chair by voting against a motion to sustain the ruling of the chair, 45–53. Among the 53 Senators rejecting the Vice President's ruling were 23 Democrats, members of his own party.

Floyd Riddick, the Parliamentarian Emeritus, who served as the Senate's Parliamentarian from 1964 through 1974, describes the events of that day: ''Vice President Humphrey . . . announced the vote and arbitrarily announced that the motion to invoke cloture was agreed to, just as he had advised he would do in response to a parliamentary inquiry. Senator [Spessard] Holland took an appeal from the ruling of the Chair and the decision of the Chair was reversed. I might say I had advised the vice president that he would never get away with such an announcement . . . I think he felt politically obligated to do that at this stage of the game. The Chair was just not sustained.''

Mr. Riddick, a most authoritative source on the Senate Rules and author of ''Riddick's Procedure'', the volume all Senators consult frequently on the Senate's precedents and practices, added: ''I certainly would not ever question the motives of a vice president. . . . When he raised the question with me if there would be a chance of ruling that a majority vote was sufficient, I said: ''Absolutely no, Mr. President, Rule 22 says it takes two-thirds, and until the rule is amended to allow it I don't see how you could rule that way.''

In 1975, Senators Walter Mondale and James Pearson introduced a resolution to allow cloture with a three-fifths vote of those present and voting. Senator Mondale made several motions over the next several days to proceed to the consideration of the resolution. Similar to 1967, a compound and self-executing motion that would automatically cut off debate on the motion to proceed and require the Chair to put the question if adopted by a simple majority was used. Majority Leader Mike Mansfield raised a point of order against the motion and Vice President Nelson Rockefeller submitted the point of order to the Senate for debate as a constitutional question. While on three separate votes the point of order against the motion to proceed to the resolution was tabled, the Senate never ultimately adopted the motion or ended debate by simple majority vote. The Senate reversed this precedent almost immediately and voted to reconsider the last vote on the motion to table the point of order by a vote of 53–38. When the question recurred on the motion to table the point of order, the Senate voted 40–51 and the motion to table failed—constituting an affirmation by the Senate of the point of order that the Mondale motion violated the Senate's rules.

Later, to eliminate any doubt, the Senate sustained the Mansfield point of order by a vote of 53–43 and went on to consider and ultimately invoke cloture by a vote of 73–21. The Senate then amended Rule XXII under the existing Senate rules.

Some claim that precedents for the ''nuclear option'' were established during Senator Byrd's tenure as Majority Leader. Our distinguished colleague from West Virginia is this body's foremost expert on the Senate's rules. He has, himself, addressed the inaccuracy of that assertions: ''Simply put, no action of mine ever denied a minority of the Senate a right to full debate on the final disposition of a measure or matter pending before the Senate. Not in 1977, not in 1979, not in 1980, or in 1987—the dates cited by critics as grounds for the nuclear option.

The Congressional Research Service confirms that only six amendments have been adopted since the cloture rule was enacted in 1917, and 'each of these changes was made within the framework of the existing or entrenched rules of the Senate, including Rule XXII.'''

Mr. LEVIN. I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, today the Senate Chamber has the feel of a Hollywood stage set. The Senate clock, centered above the Vice President's chair, is in a countdown second by second to the appointed hour and minute when a nuclear explosion may render the Senate inoperative, or at least do substantial damage to this institution. We cannot expect Jimmy Stewart to stride across the center floor to save the day, as he did in ''Mr. Smith Goes to Washington.'' It is up to us, the Members of this body, to save the day. It is up to us to save the Senate. It is up to us to do the job America sent us here to do.

If 100 Members of the Senate, with the same values and common backgrounds, experienced in elected politics, cannot cross the aisle to compromise, what hope is there for the deep-seated disagreements and hatreds in Iraq, Darfur, Laos, the Congo, Ivory Coast, and all around the world?

Today I am renewing my suggestion that the leaders, Senator FRIST and Senator REID, liberate their caucuses to vote without party straitjackets. From extensive discussions I have had with Members on both sides of the aisle, I remain convinced that most Democrats would reject the obstructive tactics of the unprecedented pattern of filibusters, and most Republicans would reject the constitutional or nuclear option to change the Senate rules.

This controversy did not arise because Democrats concluded that Miguel Estrada and nine other of President Bush's circuit court nominees were so unqualified that they should be filibustered. Rather, these systematic filibusters were initiated as payback for Republican treatment of President Clinton's nominees. These filibusters are a culmination of a power struggle between Republicans and Democrats as to which party could control the judicial selection process through partisan maneuvering.

To reach a compromise, the first step is for both parties to concede publicly that both parties are at fault. As debate has raged on the Senate floor for days and really weeks, there has been very little willingness on the part of Senators to acknowledge that the actions of their own party are at fault. I believe that is indispensable if we are to reach a compromise, to start off with the proposition that the division of fault is 50/50.

The pattern of delay arose during the last 2 years of President Reagan's tenure, after the Democrats had gained control of the Senate and the Judiciary Committee in the 1986 election. President Reagan's circuit court nominees were delayed and denied, with some seven denied hearings, and two additional nominees were denied floor votes. The pattern of delay and denial continued through 4 years of President George H.W. Bush's administration. President Bush's lower court nominees waited an average of 100 days to be confirmed, which was about twice as long as had historically been the case.

The Democrats also denied hearings for more nominees. For President Reagan, the number was 30; for Bush senior, the number jumped to 258. When we Republicans won the 1994 election and gained the Senate majority, we exacerbated the pattern of delays and blocking nominees. Over the course of President Clinton's Presidency, the average number of days for the Senate to confirm judicial nominees increased even further to 192 days for district courts and 262 days for circuit courts. Through blue slips and holds, 60 of President Clinton's nominees were blocked, and blocked in key circuits. So it was no surprise when the Democrats were searching for a way to return the favor and to keep vacancies in the same circuit courts because of what they concluded was inappropriate treatment.

When the Democrats initiated the unprecedented move of a pattern of filibusters—and it is true, there had been filibusters in the past, but never a pattern, never a systematic effort, as has been evidenced recently—President Bush responded similarly in an unprecedented move by interim appointments. It had never happened in the history of the Republic that the Senate, even by filibuster, would be greeted by an interim appointment by the President. That impasse was broken when President Bush agreed to refrain from further recess appointments.

Against this background of bitter and angry recriminations, with each party serially trumping the other party to get even or, really, to dominate, it is obvious that the issue does not involve the qualifications of the nominees. In the exchange of offers and counteroffers between Senator FRIST and Senator REID, Democrats have made an offer to avoid a vote on the constitutional or nuclear option by confirming one or perhaps two of the filibustered judges, Priscilla Owen, Janice Rogers Brown, William Pryor, and William Myers, with the choice to be selected by Republicans. An offer to confirm any one of these four nominees is an explicit concession that each is qualified for the court and that they are being held hostage as pawns in a convoluted chess game which has spiraled out of control. If the Democrats believe that each is unqualified, a deal for confirmation of any one of them is repugnant to the basic democratic principle of individual, fair, and equitable treatment. And more importantly, it violates Senators' oaths on the constitutional confirmation process. If these nominees, any one of them or two of them, are unqualified, what is the justification for Senators to confirm them under a deal? Such dealmaking confirms public cynicism about what goes on behind Washington's closed doors.

Instead, my suggestion is that the Senate consider each of the four without the constraints of voting. Let the leaders release their caucuses from the straitjacket of voting and even encourage Members to vote their consciences on issues of great national importance. It should not be a matter of heresy for someone in this Chamber to suggest that Senators exercise their own individual judgment and follow their consciences as opposed to voting. But the regrettable fact of life is the dominant force and the dominant power in this Chamber is voting. When you come to a matter of a change of the Senate rules materially affecting the rights of the minority, there should be no question that the party line ought not to be the determinant.

In a press conference on March 10, 2005, Senator REID referred to the nuclear option and said:

> If it does come to a vote, I ask Senator Frist to allow his Republican colleagues to follow their conscience. Senator Specter recently said that senators should be bound by Senate loyalty rather than party loyalty on a question of this magnitude.

Senator REID concluded that he agreed. Well, that is some progress. But Senator REID did not make any reference to my urging him to have the Democrats reject the party-line straitjacket voting on filibustering.

The fact is that the harm to the Republic by confirming all of the pending circuit court nominees is, at worst, infinitesimal compared to the harm to the Senate that would occur whichever way the vote would turn out on the constitutional or nuclear option. None of these circuit judges could make new law, because all are bound, and each one has agreed on the record, to follow U.S. Supreme Court decisions.

While it is frequently argued that circuit court opinions are in many cases final because the Supreme Court grants certiorari in so few cases, circuit courts, as we all know, sit in panels of three. Since at least one other circuit judge on the panel must concur, no one of the nominees can unilaterally render an egregious decision. If a situation does arise where a panel of three circuit judges makes an egregious decision, it is subject to correction by the court en banc of the circuit. And then there is also the opportunity for review by the Supreme Court if it is really outlandish or egregious.

What is the overhang of this Chamber is the imminence of a Supreme Court nominee. I have heard one of the distinguished senior Senators from the other side of the aisle say: Confirm them all. Eliminate the filibuster on all of them, because the real issue is what is going to happen with the confirmation of a Supreme Court nominee. And if the filibuster were to continue on a Supreme Court nominee, given the many 5–4 Court decisions, we know we would then have 4–4 decisions so that the circuit opinion would stand; there would be no determination on very many tremendously important questions; and the Supreme Court of the United States would be rendered dysfunctional.

As we are debating this issue, there has been a move among a number of Senators to find six Democrats who would forsake the filibuster, except in what has been categorized as ''extraordinary circumstances,'' if six Republicans would vow to vote against the constitutional or nuclear option.

I have attended some of those meetings. The attendance has shifted with many Senators, more than 12, participating. I do not know how many. It is not exactly the old style floating crap game, but it is a moving dialog. There are moving discussions. There are moving targets, and there are moving Senators.

On Tuesday afternoon, when a group of us met downstairs in the first floor off the Senate Chamber, one of the Democrats said: Suppose we take the floor and add Judge Saad of Michigan, and suppose you take two and give us three, or suppose we take three and give you two. It seemed to me that the latter suggestion of taking three to confirm, rejecting two, would be a sound proposition. I cannot subscribe to the idea that a group of 12, however they may ultimately be constituted, ought to make the decision on who is to be confirmed and who ought not to be confirmed. It is my view that ultimately that is a decision for this body.

To achieve that end in a principled way, I have urged the majority leader, Senator FRIST, to do a whip count among Republicans. If anybody is watching on C–SPAN 2, by way of brief explanation, a whip count is when there is a tabulation by talking to each of the Republican Senators, and the same process may occur on the Democratic side to discern how those Senators are going to vote.

It is a common practice. If the whip count were to be conducted, we might know in advance what the result would be, and if the result would be that two or more of the filibustered judges would be rejected, then the Democrats would have won their point.

So much of what we are engaged in today is a matter of saving face. This whole controversy has been escalated so far that neither side is prepared to back down. Neither side is willing to back down. In the wings, we have all of these press conferences on the Senate steps. We have various groups meeting. We have the commercials on the air—perhaps started with Gregory Peck in 1987 on the Judge Bork nomination, continuing until the past weekend, and continuing to this day. It is hard to turn on the television set without finding a commercial. Last week, my State of Pennsylvania was inundated with commercials demanding that Senator ARLEN SPECTER vote to ''save the Republic.'' Nobody is quite sure what it means to ''save the Republic,'' the way the debate is going on.

These commercials are, in my opinion, counterproductive, certainly not effective, and realistically viewed, insulting. If we take the play from the groups, the play from the press conferences, the play from all of the opinion makers out there—the newspaper writers and editorialists, and the so-called groups—one group is shouting to the Democrats: Filibuster forever, filibuster forever. The other side is shouting to the Republicans: Pull the trigger, pull the trigger. So what if it is a nuclear detonation, as long as our side wins.

What I think needs to be done is the issue ought to be returned to the Senate. It ought to be returned to the 100 Members of this body. And if the leaders do not liberate their Members to pass their individual consciences on these issues in the context of a whip check to get an idea of what will happen, then a small group of Senators will take control of the Senate; a small group of Senators will have struck a deal; a small group of Senators will pledge, with sufficient numbers, not to carry on the filibuster; and a sufficient group of Senators on the other side will have a sufficient number of votes not to implement the constitutional or nuclear option.

What we need to do is return this decision-making power to this body. One idea I advanced many years ago with S. Res. 146, joined by Senator BYRD, was a resolution to establish an advisory role for the Senate in the selection of Supreme Court justices. The thrust of this resolution was that it would be useful to create a pool of recognized candidates of superior quality for consideration by the President. The pool would be considered by consulting with the chief judges of the various State supreme courts, bar associations, professors, circuit courts of appeal, and chief judges from across the country. This sort of body would be available to the President.

It is my judgment not to reintroduce that Senate resolution at this time because, in the current context—the current incendiary context—of the prospect of the nomination or nominations which may be upon us any day now, it is my conclusion that this would not be an appropriate time to promote the idea, but that it ought to wait until the time when heads are cooler and the country is not so badly divided on this issue, and when the Senate is not so badly divided on this issue.

It is my personal view that the option of a filibuster for extraordinary, egregious circumstances ought to be retained, but not in the context of the way it has been used in the immediate past, as a pattern of delay that is directed at getting even or getting back.

When it comes to this issue of extraordinary circumstances, it seems to me each Senator individually would have to make a determination as to what he or she thought constitutes extraordinary circumstances. I have engaged in legal research on the subject. There is no way, in my opinion, to delineate it, to write it down so there will not be some area of disagreement. But just as Senators must make an individual determination of what constitutes extraordinary circumstances to resort to the filibuster—hopefully, in very rare cases—so must those who make a pledge not to invoke the constitutional or nuclear option have the understanding that an individual's determination as to whether the extraordinary circumstance exception applies is being exercised in good faith.

Good faith is something we ought to talk about a little more in this Chamber. It is the brother to following our individual consciences. If we do that, we have the sensibility and the background and the intelligence and the experience to make the appropriate decisions. I have spoken twice before on this subject, as the CONGRESSIONAL RECORD shows—once on April 21, and again on May 9—in a real effort to try to promote some ideas that will lead to a resolution and a compromise. As we approach—it is 4 days away—a Tuesday cloture vote on Priscilla Owen, the countdown is narrow. The Presiding Officer sits in the Vice President's chair by designation, and the clock above him ticks. It has the feel of a Hollywood stage. We are set for a countdown, where second by second, the hours and minutes go by as we come to the critical votes, the first of which will be the cloture vote on Texas Supreme Court Justice Priscilla Owen. And what may follow, when the count reaches zero, when the roll is called—if it is to be called—is a vote on the constitutional or nuclear option. It is still my hope we will avoid that vote.

Either way the vote comes out, it will be harmful to the Senate. If the option is rejected, it will embolden the Democrats, as well as whichever may be the minority party at any time in the future. It will embolden the minority party to recklessly use the filibuster, as I think it has been used in the 108th Congress. It may embolden the minority party further to filibuster nominees like John Bolton, whose nomination for U.N. ambassador is very much in doubt. If the option is passed, it will embolden the appointers into having greater latitude on the nominees who may be submitted.

When you deal with the doctrine of separation of powers, there is a well-established principle that to have a little play in the joints is a good thing, where it is uncertain as to how a vote will turn out. And I think at this reading, it remains uncertain how a vote on the constitutional or nuclear option will turn out. There is a greater chance for compromise.

In an earlier floor statement, I analogized our controversy here to the controversy between the United States and the Union of Soviet Socialist Republics in the Cold War. I have seen some of my colleagues pick up on that analogy. If there is any certainty in our troubled world—if the United States and the Soviet Union could avoid a nuclear confrontation on mutually assured destruction—so should the Senate.

I yield the floor.

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

Mr. JEFFORDS. Mr. President, I would like to take a few minutes today to caution the majority from pursuing what is referred to as the ''nuclear option'' in an effort to change Senate rules and forbid unlimited debate on judicial nominations.

Some of my colleagues say they are seeking this change because they want judicial nominees to get a vote. This view is a shift for those who denied more than 60 of President Clinton's judicial nominees a vote either in committee or in the full Senate.

Unlike those nominees, President Bush's nominees have received votes by the full Senate. Those votes determined that these nominations should not move forward.

Some in the majority did not like the outcome of those votes, and that is why we are here today in what has been described as ''a historic moment'' in Senate history. But I fear that we are making history for all the wrong reasons.

I do not find it the least bit alarming that we are challenging a handful of judicial nominees while at the same time we have approved more than 200 of the President's choices.

These judges will be appointed for life, and it is our job—no, our responsibility—to ensure that these judges are worthy of the role. Despite what some would have the public believe, the system is working just as it is supposed to work.

Perhaps if this administration had consulted the Senate on these nominees, rather than show such determination to test our will, we would not be in the unfortunate position we are in.

But instead of heeding the warning signs, this administration plowed recklessly ahead.

A success rate of over 95 percent apparently wasn't good enough, so the administration resubmitted the names of its most controversial picks.

I believe that a 95 percent success rate is a record this Senate should be proud of. Unfortunately, some in the majority don't share my view.

The right in the Senate to unlimited debate is an important part of our system of checks and balances. It ensures that a bipartisan consensus is reached by more than a bare minimum majority of Senators when we are faced with critical issues.

There are those in the majority who believe, contrary to the U.S. Constitution, Senate rules, and Senate precedent, that all judicial nominees must have an up-or-down vote on the floor of the Senate.

Nothing in the Constitution, nothing in the Senate rules, and nothing in the way the Senate has functioned in the past supports that belief.

In fact, my colleagues in the majority have themselves required 60 votes in order to pass judicial nominees.

Back in 2000, during consideration of the nominations of Richard Paez and Marsha Berzon to the Ninth Circuit Court of Appeals, 60 votes were required in order to reach a final vote on these two Clinton nominees.

During the debate on these nominations, then-Senator Bob Smith of New Hampshire made a very important point concerning the need for unlimited debate on judicial nominations.

He said:

> I think it is fair that judges who are appointed forever, who will be making decisions long after we are out of here, probably when our children are coming into voting age, or our grandchildren, whatever the case may be . . . we have a responsibility to look very carefully at them.

As I prepare to become a grandfather for the first time any day now, I am struck by these remarks.

Some of the judicial nominees we approve today may be interpreting laws and deciding constitutional questions when my grandson graduates from high school, when he votes for the first time, and perhaps even when he starts his own family.

It seems logical, given this scenario, that we require some lifetime appointments to receive more than the support of a bare majority of Senators.

I am also concerned that if the nuclear option is invoked and unlimited debate on judicial nominations is forbidden, this precedent will eventually be extended to other nominations and legislation.

I fear the ultimate goal of some of those pursuing this nuclear option will be to extend the filibuster prohibition beyond judicial nominees. We will then have two bodies that are purely run by a majority and not protective of the rights of the minority.

It is nice to hear the majority leader say that he has no intention of extending this precedent.

However, it rings a little hollow to me when we all know that come January 2007, there will be a new majority leader in the Senate. This individual, Republican or Democrat, will not be bound by the promises made by the current majority leader.

This week, the editorial pages of a local Vermont newspaper noted the irony of the timing of this debate. That editorial, printed in the Times Argus of Barre, VT, said:

> The majority in the United States Senate wants to remove one of the important and traditional political tools—the filibuster—that protects the rights of the minority party, even as Secretary of State Condoleezza Rice goes to Baghdad to urge the majority there to put aside its long-standing grudges and guarantee minority rights.

So why is it that we are urging the fledging democracy in Iraq and in other nations around the world to respect minority rights, while some in the Senate want to trample those same rights and threaten the balance of power that we hold so dear right here in our own democracy?

I am afraid I do not have the answer, but it concerns me beyond words.

In my more than 30 years in Washington, I have always tried to decide each issue on its merits, rather than to provide a rubberstamp to comply with the wishes of leadership.

I fear that we are here today because some in the majority would prefer that the Senate just act as a rubber stamp for the President's desires.

I refuse to spend the last 19 months of my term in the Senate being a rubberstamp.

I will oppose changing the Senate rules for this purpose, and I hope my colleagues will join me in protecting the rights of the minority by protecting the right of unlimited debate in the Senate.

In concluding, I suggest that my colleagues listen to the words of Charles Mathias, a former Republican Senator from Maryland, who recently wrote:

> Make no mistake about it: If the Senate ever creates the precedent that, at any time, its rules are what 51 senators say they are—without debate—then the value of a senator's voice, vote and views, and the clout of his state, will be diminished.

I do not know of a single Senator who would desire this outcome, but I fear it could happen if this body agrees to change the Senate rules that have served this chamber so well for so long.

This is truly a historic moment in Senate history.

I hope my colleagues will join me to maintain our system of checks and balances, keep the Senate the Senate, and protect each individual Senator's right to unlimited debate.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I commend the distinguished Senator from Vermont whose independence and wisdom has been demonstrated in this body in the time I have been here. Some of what I am about to say will echo what he more eloquently said.

I spoke earlier this week about why the elimination of the filibuster on judicial nominations would be ill advised as a matter of policy and why violating the existing Senate rule which governs how we can properly change the Senate's rules of procedures should be unthinkable and would be unconscionable. It would set a terribly damaging precedent for this great institution, damage that would be permanent and irreparable, a precedent that the existing rules and procedures of the Senate can at any time and for any reason or for no reason be disregarded or changed or a new rule added by a majority vote of the Senators present at that time. Just make a motion to the Presiding Officer, who could ignore the advice of the Senate's professional Parliamentarian, make his or her own ruling, and a majority vote would either uphold or overturn that decision.

That essentially means the majority of this body at any time can do whatever they want to do, however they want to do it, as long as they ratify it by their own majority vote. None of the rules of procedure would have any permanent standing or reliability, no matter how long they have been in existence.

If the majority of Senators decides it does not like those rules of procedure, or if they cannot get the results they want by following them and they can just disregard them or change them any time and then vote themselves right by doing so, we have lost the integrity of this institution. What kind of society would we have if that precedent, reestablished here, became standard operating procedure by our fellow citizens all over this land?

Another point I would like to raise, after listening for the last couple days

to the stated reasons by the proponents of this so-called nuclear option, is that many of them say the U.S. Constitution's advice and consent clause requires an up-or-down vote by the full Senate. I raise this point respectfully and seriously because each of us, the day we take office as a Senator, takes a sworn oath right here in the Senate Chamber, right in front of our family, our friends, and the American people, administered by the Vice President of the United States, with our hand on the Bible. And that oath says in part:

I will support and defend the Constitution of the United States. . . .

It goes on to say:

. . . I will bear true faith and allegiance to the same.

And it ends with our saying:

. . . so help me God.

I know for myself that was the most serious and important oath I have ever taken, and I believe that every other Member of this Senate is as fully committed to upholding that oath as I am and is acting now and wants to continue to act in all good faith to uphold it at all times.

We sometimes have honest differences in our views of what particular words in the Constitution mean and what they instruct us to do. Those honest differences have arisen since this body commenced its work on March 4, 1789, sometimes between Members of the two parties, sometimes between Members of the same party, sometimes between Members of different parts of the country, or those representing large States and small States, and for many other legitimate reasons.

In most of our actions and decisions in the Senate, our interpretations of the words of the Constitution and our application of those words individually and as a collective body will be reviewed and can be tempered or even rejected by other public officials and institutions.

All the legislation we pass must be agreed to by the House, must be agreed to by the President or vetoed by him, and overridden with a two-thirds vote here and in the House. Then, if properly challenged by someone with legal standing, it can be further reviewed as to constitutionality by Federal courts and, as the ultimate arbiter of constitutionality, the U.S. Supreme Court.

So with all the legislation we act upon and most other matters that come before us, our constitutional understandings, interpretations, and applications are subjected to a rigorous process of checks and balances.

Those checks and balances, however, do not exist for Senate approval or disapproval of Presidential nominees because the Constitution clearly and explicitly authorizes the Senate and the House, each of those bodies, to determine the rules of their proceedings. Previous Federal courts have ruled those words mean exactly what they clearly say.

The Constitution then defines this proceeding we are engaged in now as ''the advice and consent of the Senate.'' That wording, its meaning, and its intent are unfortunately much less clear. The section of the Constitution says in its entirety the President ''shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.''

That means almost everyone in the Federal Government is subject to the advice and consent of the Senate unless Congress, by law, chooses to waive that requirement for specified ''inferior''—that is the Constitution's word, not mine—officers. That is why as members of the Armed Services Committee we regularly report to the full Senate rosters of ''appointments,'' most of which are promotions, of 2,000, 3,000, over 4,000 officers in the U.S. Armed Forces. They must then be approved, and they usually are approved en bloc by the full Senate.

Proponents of the nuclear option are saying this clause of the Constitution, particularly the words ''advice and consent,'' requires that every Presidential judicial nominee gets an up-or-down vote by the full Senate. If that is the view of the majority of the Senate, how can it not also apply equally to every other nomination described in that section of the Constitution?

The Constitution, the section I just read, makes no distinction in defining our role and responsibility to advice and consent between Presidential nominees for executive branch or judicial offices. It makes no distinction between term limited or lifetime appointments, and it gives us no authority to make those distinctions either, except that by law we cannot require the Senate to approve certain lower level positions.

As I understand the majority leader's intention for next week, just from published reports I have read, he will ask the Presiding Officer of the Senate to rule that the Constitution's words ''advice and consent'' require an up-or-down vote by the full Senate—on all Presidential nominations covered by those words in the Constitution? No, I think that is not the case. Only for judicial nominations. Would that ruling, that constitutional requirement of an up-or-down vote by the full Senate, apply then to all judicial nominations that come to the Senate? No, not as I understand it; not to those that are blocked by the Judiciary Committee, not to those that are blocked by the custom—it is not even a written rule or procedure in the Senate—that two Senators, sometimes only one Senator, in the majority, can prevent any vote by anyone, a committee or the full Senate, on a Presidential nominee.

Where, I ask my colleagues in favor of the nuclear option, who contend the Constitution requires this up-or-down vote by the full Senate, where does the Constitution permit the Senate leadership or a Senate committee or one Senator to make those distinctions between one judicial nominee or another or between judicial nominees and other Presidential nominees in that same section of the Constitution?

I believe the ambiguity in the meaning of the term ''advice and consent'' certainly provides us with reasonable latitude in defining what that term requires the Senate to do. It does not, however, permit us to apply one definition to one group of nominees and apply a different definition, and therefore different Senate rules and procedures, to the other nominees to which those same words equally apply.

Every Senator here is entitled to his or her own views about filibusters. Whether they are good or bad instruments of public policy, they are properly debatable. They are entitled to their own views. We are each entitled, within far greater constraints, to our own best conscientious interpretation of the Constitution, especially words or clauses where well-informed and well-intentioned people can reasonably differ. We are not entitled, however—in fact we are forbidden—to rewrite, reinterpret, selectively apply, or ignore those words just because we do not like them or agree with them. We have sworn an oath to uphold, to support, and defend them, every one of them. If we disagree with them, if we believe they are not right for our constituents and our country, we have the right to change them. But, according to the rules and the procedures in the Constitution, we do not have the right to change them otherwise; just as we have the right to change Senate rules and procedures, but only by following the rules in the Senate to do so.

Following the rules, obeying the laws, upholding the Constitution—those are the foundation of our country. At a time when we are demonstrating to other parts of the world, other countries and citizens, how to set up democracies and make them successful and make them survive and thrive, we will make a tragic, terrible error if we violate those founding, fundamental principles ourselves. The country and the world will be watching next week to see what we do.

I yield the floor.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Arkansas.

Mrs. LINCOLN. Mr. President, I do not come to the floor often to speak, but today I do come out of a sense of duty and a real spirit of purpose, to express my strong opposition to changing the rules of debate here in the Senate. As a pragmatic Democrat who has raised more than a few eyebrows in my own party over the years for putting

progress on critical issues ahead of loyalty to any political party or ideology, I am alarmed frankly that we have reached a point in the Senate when confrontation is the choice over consensus, considering the history of the debate on this issue, and the consequences of what is being contemplated.

To understand the consequences of the debate in which we find ourselves engaged today, I think it is so helpful to briefly review the basic facts regarding the confirmation of judicial nominees in the Senate in recent years. Since President Bush took office in January of 2001, the Senate has confirmed 208 of the lifetime judicial nominees he has appointed, and the Senate has withheld consent from 10 of those nominees. In other words, the Senate has confirmed more than 95 percent of the judicial nominees put forward by President Bush since he took office more than 4 years ago. As a result, there are only 45 judicial vacancies today, which represents the lowest judicial vacancy rate since President Reagan was in office.

When you compare that to more than 60 judicial nominees who were blocked in the Judiciary Committee under the Republican control during President Clinton's term in office, I quite frankly think it is a pretty good record of which the President should be proud and with which the Republican leadership should be pleased.

Put another way, when my 8-year-old twin boys come home from school with a 95 percent on their report card or on their test, I don't stomp my feet and send them to their room. I do not get angry with them and tell them to go back to school tomorrow and break those rules next time so you can get 100 percent on that test.

No, that is not what we do. That is not the example we set. That is not what we ask of a body or individuals who are guided by rules. That would be outrageous.

I would say to my children: Good job, keep up the good work. Work a little bit harder.

Am I suggesting Democrats of the Senate deserve a medal for fulfilling their constitutional role in considering and confirming judicial nominees through advice and consent? Of course I am not. But I also do not think the record before us even comes close to justifying an attempt to undermine one of the fundamental principles of this institution—freedom of speech and of debate; making sure everyone's opinion does count—which protects the rights of every citizen in my State and in this entire Nation.

In my view, the proposal put forward by the Senate majority leader to limit the ability of Senators to debate judicial nominees represents what will become a first step, if successful, in weakening the role of the Senate and the role the Senate plays in our system of Government in providing the kind of checks and balances against an overreach by the executive branch or the political parties or any other branch of Government which happens to be in the majority at any given time. And it can be either one of us.

I believe the protections and safeguards that are part of the fabric of our system of Government have served our Nation well and they are critical, regardless of which political party controls the White House and the Congress.

Most importantly, I sincerely believe what is being proposed by the majority could seriously threaten my ability as a Senator from the great State of Arkansas to effectively represent the needs of my constituents. As I have listened to many of my colleagues debate this issue over the past several weeks, I have reflected on the role of the Senate as an institution and how and why it came into being. Coming from a small State such as Arkansas, which has only 6 voting delegates in Congress out of the entire 535, I do not take lightly the fact that the compromise which gave birth to the Senate was based on the principle that all States, regardless of their size, and all Senators privileged to serve in this body, are on equal footing. The Senate was deliberately designed to protect the interests of small States such as mine and to provide a restraint on the ability of a temporary majority on any issue before this body to prevail unchecked.

Recently, in order to get the attention of this administration, I had to use tools. I had to use some of those tools I have as a Senator, to simply get an answer, a letter answered on international child abduction, on the way Southern producers in agriculture were being treated in this budget. It was not an issue of me getting all of what I wanted. It was simply an issue of me getting an answer—me, a small State, someone representing a small State, being able to get an answer on principle and on idea and purpose, from the administration. That is what we are talking about, everyone being represented.

The debate we are having and the issues at stake are much more important to me than my political party. With all due respect, they are also more important than any individual nominee or judgeship. If we start down this road, I fear where it will lead us. This week we are debating the role of the Senate as an institution in the consideration and confirmation of judicial nominees. Next week or next year, will we be debating a change of the rule or the Senate precedent during a consideration of the President's plan to privatize Social Security or his proposal to shortchange Southern farmers in a farm bill? Where will we have that ability to speak out and make sure we are clearly heard?

I hope not, which is why I am standing up here today to defend the powers vested in me as a Senator from Arkansas, to represent my constituency.

But if getting 100 percent—if that is why we are here, if that is what this debate is about and that is what the majority leader is looking for—if getting 100 percent of what you want all the time is the purpose here, when will we ever be content? When will the majority ever be content? And how can we say these things will not happen?

The majority leader stated that he believes filibusters against any judicial nominee are unwise and unreasonable. While I disagree with him, I still respect his opinion and his right to debate that issue in the Senate, or anywhere else, for that matter, at great length. What troubles me, though, is his willingness to discard an institutional power regarding consideration of judicial nominees, even when, according to reports, the Senate Parliamentarian believes the so-called nuclear option does not conform to the rules of the Senate. Let us all take time and think about what nuclear fallout is like. Look at the photographs of nuclear fallout. Look at what happens when nuclear reaction occurs. There is great devastation.

What happens if the rules of debate in the Senate in the future will be viewed by the majority party that happens to be in charge at any given time as unwise or outdated and dispensable? I do not want to find out. This body is too precious. It does too much. It is too important to the balance that makes this Nation great.

It is my sincere hope and prayer that the Senate as an institution can survive the current impasse intact, and I think we can. I am aware Members on both sides of the aisle are considering a short-term compromise which would, in a limited fashion, preserve the current rules of debate regarding judicial nominees for the remainder of this Congress.

I am hopeful a constructive solution which preserves the integrity of our system of checks and balances can be achieved. But I regret that the current political environment has put the Senate in this position and has left us with so few options that we come today in sadness that we have even come this far.

After having served now in the Senate for over 6 years and prior to that in the House of Representatives for 4, I have enormous respect for the role each Chamber plays in our system of Government. Based on that experience, I am convinced that for the sake of the Senate as an institution and the vital role it plays now and will play into the future, long after everyone in this body is gone, I believe the way out of this standoff is for Members of both parties to work together to defend the Senate, to defend our rules, to defend this great deliberative body as an institution while also working to prevent showdowns with the White House over judicial nominees from occurring in the first place.

I met with Miss Owen. She is a nice woman. This is not to say that she is

not a nice person. We are here to say, when the opportunity comes, we need a clear and substantial amount of this body to say this is the person for this job. Her peers from her own party have labeled her a judicial activist. We are not here to say she is not a nice lady. We are here to say she is not the right person for the job. That should be the opportunity we have in the Senate.

To come to those conclusions will require communicating and cooperating in good faith. It will also require trust, and most of all respect—respect across the aisle and across Pennsylvania Avenue.

I am not probably one of the most typical of politicians or Members. I don't come from a big legal background or even a big political background. I am a farmer's daughter from east Arkansas. Right now, one of my biggest responsibilities along with serving in this great Senate is to be a good parent and to show my children what it means to be truthful and respectful.

Last night, I was fortunate enough to sit on the sidelines and watch a Little League game, a precious Little League game of players, who were not the best but weren't the worst, playing their heart out. But they still lost. And to see a coach who has made so much difference in their life and in their performance, to sit them down as he always does after the game, making sure he points out all the positive things that each one of them has done, points out some of the things they could do better, but at the end he says to them: Let me tell you, in this game we respect the rules, we respect the umpire, and we respect the other team. And because we do, we are all the better for it.

Those of us in this body need to dig down deep in each of our souls and look for the respect, the respect for the other team, the respect for the rules, for the game, the institution, and for the umpire.

We have an opportunity now to set an example for our children. There is a saying on my wall in the kitchen at my home. It says: When I'm dead and gone it's not going to matter what kind of car I drove. It's not going to matter how big my house was. All of those things are probably not going to matter, but the fact that I may have in some way made an impact on the life of a child, my life will have mattered.

This body, this institution has an opportunity to set an example, not just to each of us together as Senators to show one another the trust and the respect this body engages us to do, but also the opportunity to show this Nation and the world, and more importantly our children, that rules do matter and that you cannot just change the rules in the middle of the game because it does not suit you, and if you don't get 100 percent of what you want, that rules and the decision of the umpire matters. Most importantly, respecting the other side and the other team in this game is ultimately what makes it worth playing.

I call on my colleagues today to step back and reflect on how the balance of power in our government will change and how the Senate will be weakened, perhaps for all time, if the proposal of the majority leader is adopted. I do think it is the wrong path and something Members in both parties will come to regret in the years to come. Again, my hope and my prayer is that we do not forget all of those that are watching, that we do not forget the rules of the game and how important they are, and most importantly I hope we do not forget what a critical role respect plays in all of the games of life that we play.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, the issue before us is pretty simple. It is this, shall we continue the two-century tradition of voting up or down each President's judicial nominations? That is it. That is all we are talking about.

Making your way through all the histrionics—and there have been a lot of them on both sides—that is absolutely all we are talking about. Shall we continue the two-century tradition of voting up or down, eventually, on this President's or any President's judicial nominees?

The Democrats have decided they will use the Senate rules to prevent an up-and-down vote on some of President Bush's judicial nominees by using this as a consistent tactic for the last 2 years to block a vote on nominees a majority of us want to confirm. They are using the Senate rules in a way they have never before been used. They know that. Everyone knows that. There is no disputing that. They had a meeting. They decided to do it. And they are doing it.

Now, they may have past grievances such as the practice used by both parties to allow a single Senator to block a nominee in a committee. I know all about that grievance. In 1991, the first President Bush nominated me to be the U.S. Education Secretary. I was enthusiastic about it. I had been the Governor of my State. I was President of the University of Tennessee. I came up and sold my house, moved my family up, put my kids into school, and then one Senator from Ohio put a hold on my nomination. So I sat there in the committee for about 3 months, not even knowing who it was, or knowing what the problem was.

After a while, that Senator, who happened to be a Democrat—they were in the majority then—said in a public hearing with me: Governor Alexander, we have heard some disturbing things about you, but I don't want to bring them up now, here, with the lights all around, and all the people and your family here.

I said: Please, Senator, bring them all up. I would rather have them out here.

That went on for 3 months. I didn't know what to do, so I went to see Senator Warren Rudman who most people would say is one of the most respected Members of this body over the last 30 years. I said: Senator Rudman, what can I do? A Democrat Senator has, by himself, blocked my possibility to be the Education Secretary. I moved my family up here, I sold my house, my kids are in school, what do I do? He said: Keep your mouth shut.

I said: What do you mean, keep my mouth shut? This is unjust.

He said: Let me tell you a story. In 1976, President Ford nominated me to be on the Federal Communications Commission, and the Democrat Senator from New Hampshire put a hold on my nomination.

I said: What happened?

He said: Well, I just swung there. Nobody knew what was going on. Pretty soon back in New Hampshire they were saying: What is wrong with Warren? Has he done something wrong? Did he beat his wife? Did he steal something? Why won't the Senate consider him and confirm him? After 4 or 5 months I was so embarrassed I just asked the President to withdraw my nomination.

I said: Is that the end of it?

He said: No, then I ran against the so and so who put a block on me, and I was elected to the Senate in his place.

So that is how Warren Rudman got over being blocked.

JEFF SESSIONS, our distinguished colleague from Alabama, ran into a nearly similar situation. He was rejected by the committee. He was the U.S. attorney from Mobile, Alabama and the committee would not send his nomination to the floor. They held him up in the committee.

Senator SESSIONS got over that. He even got himself elected to the Senate. So Senator Rudman got over it, I got over it, Senator SESSIONS got over it. I didn't like it, and I still don't like it. But I got over it.

There are various ways to get over whatever grievous injustices were done to the Democrats before the distinguished Senator from Texas, who is presiding, and I were elected to the Senate in 2002.

Senator FRIST, the majority leader, has repeatedly offered to fix the problem I just described. He has said let all the nominees from a Democrat President or Republican President, let them eventually all come out of committee. He has said if there is not enough debate—and I respect the idea of extended debate in the Senate—let there be 100 hours of debate on every single nominee. Then Senator FRIST has said, let there eventually be a vote, an up-or-down vote, as there has always been.

Now, it is not believable for my friends on the other side to suggest, as they are, that they are doing nothing new. They know they are. I will give one example.

Everyone remembers the Senate debate about Clarence Thomas. Among other things, it made Dave Barry's career when he wrote columns about the

Senate hearings. Everyone remembers those hearings. Everyone remembers how passionate they were and how much information came out. There was a new saga every day. No television drama approached it. There was never more passion in recent times in a Supreme Court nomination than when the first President Bush nominated Justice Clarence Thomas.

He was nominated in July of 1991 by President Bush. This Senate completed those hearings that were on television, that we all remember, and there was a vote in October of 1991, up or down. In that case, it was up, he was confirmed 52 to 48.

I have yet to find one single person who even remembers anyone suggesting 14 years ago that the Senate should not vote on Clarence Thomas. Everyone knew that after all the histrionics, all the debates, that the greatest deliberative body in the world would eventually vote.

So we are standing on the Senate floor conjuring up our own versions of history, inventing nuclear analogies, shouting at each other while gas prices go up and illegal immigrants run across our border. The Democrats are using the rules to block the President's nomination in a way they have never used before in 200 years. So we Republicans are now threatening to change the rules to prevent the Democrats from manipulating the rules in a way that has never occurred before.

That is what this is all about.

I have a simple solution for the unnecessary pickle in which we find ourselves in this body. I offered it 2 years ago. I have offered it several times this year. This is it. I have pledged and I still pledge to give up my right to filibuster any President's nominee for the appellate courts, including the Supreme Court of the United States. If five more Republicans and six Democrats did that, there could be no filibuster and there would be no need for a rules change.

For the past 2 weeks, perhaps two dozen different Senators have flirted with variations of this formula. But they have not been successful because they have insisted on including exceptions. I hope these Senators who are still having this discussion succeed. I expect 80 percent of the Senate hopes they succeed. This oncoming train wreck is bad for the Senate, it is bad for the country, it is bad for the Democrats, and it is bad for the Republicans.

We look pretty silly lecturing Iraq on how to set up a government when we cannot agree on having an up-or-down vote on President Bush's judicial nominees. My suggestion is forget the exceptions. Twelve of us should just give up our right to filibuster, period. Let's do it. Let's get on with it. That ends the train wreck.

We have a war in Iraq. We have natural gas prices at $7—these are record levels. We have highways to build. We have deficits to get under control. We have a health care system that needs transformation. We have judicial vacancies to fill.

I have said I will never filibuster a President's judicial nominees. I said it 2 years ago when JOHN KERRY might have been President. For me, that meant then—and it means today, and tomorrow—that if a President Kerry or a President Clinton nominates some liberal I do not like, I may talk for a long time about it, I may vote against the person, but I will insist that we eventually vote up or down, as the Senate has for two centuries.

If 11 colleagues would join me in this simple solution, then we could get down to business, then we might look once again like the world's greatest deliberative body.

I say to the Presiding Officer, when you and I came to the Senate a little over 2 years ago, we talked about what our maiden addresses would be. We still call our first major speech our ''maiden address.'' I say to the Presiding Officer, remember, we were sitting next to each other in the front row, anxiously looking forward to hearing ourselves give our maiden addresses. I wanted to make mine about putting the teaching of American history and civics back in its rightful place in our schools so our children could grow up knowing what it means to be an American.

But as I sat here listening to the debate on Miguel Estrada, I was so surprised and so disappointed in what I heard that I found myself getting up one night and making a speech on Miguel Estrada, which I had no intention of doing.

During the debate, I was listening to this story of the American dream: This young man from Honduras coming here, speaking no English, going to Columbia, Harvard Law School, being in the Solicitor General's Office. He is the kind of person who when the Presiding Officer and I were in law school, and we would hear about people like that, we would say there are just a handful of people that talented, that able. We were envious, at least I was. He is exactly the kind of person who should have been nominated. Yet we could not even get a vote.

I thought about my time as Governor, for 8 years, of Tennessee. I appointed about 50 judges, and I remember what I looked for when I made those appointments. I looked for good character. I looked for good intelligence. I looked for good temperament. I looked for a good understanding of the law and for the duties of judges. And I especially looked to see if this nominee had an aspect of courtesy toward those who might come before him or her on the bench. I appointed some Democrats. I appointed the first women appeals judges and the first African-American judges in Tennessee. I thought it was unethical and unnecessary for me to ask questions of those judges about how they might decide cases that might come before them.

I still feel the same way about the Federal judges we nominate. I am distressed that we have turned this process into an election instead of a confirmation. It has become an election about the political issues instead of a confirmation about the character and intelligence and temperament of fair-minded men and women who might be placed on the bench.

I remember when I came to this body for the first time, not as a Senator, but as a staff member to Howard Baker, later the majority leader. It was 1967. The ones worrying about protecting the minority's rights at that time were the Republicans. There were only 36 Republicans. I came back in 1977 to help Senator Baker set up his office when he was elected Republican leader, and there were only 38 Republicans. So most of us in this body understand that we may be in the minority one day. But that does not mean there should be an abuse of minority rights.

The best way I can think of to stay in the minority for any party, whether the Democratic Party or Republican Party, is to say what the Senator from New York said in December, in the Washington Post. He said that if the Republicans decide to change the rules to make sure the Senate continues the 200-year tradition of voting on the nominees the President sends to us, that it ''would make the Senate look like a banana republic . . . and cause us to shut it down in every way.''

Mr. President, shut down the Senate in every way? During a war? During illegal immigration? During a time of deficit spending, with a highway bill pending, with gas prices at record levels, with natural gas at $7? Shut the Senate down in every way?

I can promise you I know what the American people would think of that. Any group they can fix the responsibility on for shutting this body down and not doing its business will be in the minority or stay in the minority. Even now, they are beginning to shut us down. We are not allowed to hold hearings in the afternoon because of objections by the other side. The American people need to know that. It is the wrong thing to do.

I had the privilege of hearing, yesterday, when I was presiding, a very helpful speech by our leading historian in the Senate, Senator BYRD. He talked about how extended debate has always been a part of the Senate's tradition. I know that is true. I value that. I respect that. And I do not want the Senate to become like the House. I know that George Washington said, or is alleged to have said, that the Senate serves like the saucer for a cup of tea or a cup of coffee. The House heats it up, and you pour it in a saucer to cool it in the Senate. But I do not ever remember George Washington saying it ought to stay in the saucer long enough to evaporate. I think he said just to cool it.

The Constitution and our Founding Fathers have made it very clear that they always intended for Presidents' judicial nominees to be given an up-or-

down vote. I have studied very carefully, and I will submit, in my full remarks to the RECORD, my understanding of those founding documents. The language of article II, section 2, in the clause immediately before the nominations clause, for example, specifically calls for two-thirds of the Senate to concur, but in the nominations clause there is no such provision. I do not believe that is an inadvertent omission.

During the drafting of the Constitution, Roger Sherman of Connecticut argued at great length for the insertion of a comma instead of a semicolon at one point to make a section on congressional powers crystal clear.

Shortly after the Constitutional Convention, Justice Joseph Story, appointed to the Supreme Court by President James Madison, wrote his Commentaries on the Constitution, and he stated explicitly:

> The president is to nominate, and thereby has the sole power to select for office; but his nomination cannot confer office, unless approved by a majority of the Senate.

This was Justice Joseph Story.

In some ways, what Members of the other side are doing would gradually erode the President's power to, in the words of our Founders, send to us ''the object of his preference'' for us then to consider. I trust the President, elected by a vote of the entire nation, to find the right men and women to send up here to be considered for judge or justice and sent back to him then to be appointed. Our advice and consent is in the middle of that process.

I suppose the Founders could have allowed the Congress to appoint the justices or the judges, but they did not. Gradually, however, the Senate has inserted itself more and more prominently in that process. I am not sure that the instances I know about suggest that if we were doing it all over again, we would trust the Senate to do a better job than our Presidents, Democratic or Republican, in picking the men and women to serve on our courts.

Here is an example from my own experience. Back in the 1960s, I was a law clerk to the Honorable John Minor Wisdom of the Fifth Circuit Court of Appeals in New Orleans. Actually, I wasn't a law clerk; I was a messenger. He had already hired a Harvard law clerk, and he told me he could only pay me as a messenger, but if I would come, he would treat me as a law clerk. So I did. The reason I did it was because even at that time, 1965, Judge Wisdom was considered by my law professors at New York University Law School to be the leading civil rights judge in America and one of the finest appellate judges in America.

This is what I found when I got there. We were in the midst of school desegregation across the South. It was a time of great turmoil. Judge Wisdom, for example, ordered Mississippi to admit James Meredith to the University of Mississippi. And what was going on during that time was that the district judges across the South were basically upholding segregation and the Fifth Circuit appellate judges were overruling them and desegregating the South.

At that time, the Senate was not as intrusive in the appointment of judges as it is today because the President, President Eisenhower, only had to confer by custom with Senators of his own party in the appointment of circuit judges. Well, he didn't have any Republicans to confer with in the 1960s. All of the Senators were Democrats. They approved district judges who, in case after case after case, upheld segregation. But President Eisenhower nominated for the appellate bench Republican judges, John Minor Wisdom, Elbert Tuttle for whom Senator BOND of Missouri was law clerk, and John R. Brown of Texas. Those three judges, who would have been blocked, if the present policies of the Senate were in place, by Senators from their home States, were able to preside over the peaceful desegregation of the South.

I have seen no evidence in history that the Senate's increased involvement in the coappointment of appellate judges or justices improves the selection of those judges.

These are qualified men and women the President has sent here who deserve an up-or-down vote. I have mentioned Miguel Estrada. I have spoken about Charles Pickering, former judge, now retired, a graceful man who hasn't had a word of recrimination to say about what was done to him. He was battered for his record on civil rights when, in fact, he should have been given a medal for his record on civil rights: For testifying against the founder of the White Knights of the Ku Klux Klan, who had been called America's most violent living racist in the middle of the 1960s; for putting his children in public schools at a time when many families in Mississippi were putting their children in segregated schools. He was a leader in civil rights, as well as a good judge.

And Bill Pryor's credentials on civil rights have been questioned. He was a law clerk, not a messenger, a law clerk to Judge John Minor Wisdom, who had enormous pride in Bill Pryor, who was elected attorney general of the State of Alabama and repeatedly has shown that he separated his conservative personal views from interpreting the law. He was going right down the line in following the Supreme Court in school prayer cases, abortion cases, and reapportionment cases.

And Priscilla Owen, about whom we have been talking, graduated cum laude from Baylor Law School, justice of the Supreme Court of Texas, reelected to the Texas Supreme Court with 84 percent of the vote, has bipartisan support from other Texas Supreme Court justices. And Janice Rogers Brown, 9 years on the California Supreme Court, appointed in 1996, the first African-American woman to sit on the court, approved by 76 percent of the voters.

Let me end my remarks where I began. Make your way through all the discussion, all of the analogies to nuclear war, and the issue before us is pretty simple—shall we continue the two-century tradition of voting up or down on the President's judicial nominees? I believe we should. I have suggested a way we can remove ourselves from this pickle in which we find ourselves.

I have said, as I did 2 years ago, regardless of who is President, I will never vote to filibuster that President's judicial nominees. If five other Republicans and six other Democrats would say the same thing, we could then get on about our business of confirming or rejecting the President's nominees, of tackling the big deficits, passing the highway bill, trying to lower gas prices, spreading freedom around the world, supporting our troops in Iraq and Afghanistan and around the world, and in reestablishing ourselves, in the eyes of America and the rest of the world, as truly the world's greatest deliberative body.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, are we now switching to this side of the aisle for an hour?

The PRESIDING OFFICER. There are still 4 minutes remaining on the majority side.

Mr. LEAHY. I would not take that from my friend from Tennessee. He has that available to him.

Mr. ALEXANDER. Mr. President, I am glad to yield that 4 minutes to my friend from Vermont.

Mr. LEAHY. Mr. President, so we will be back to the hour to hour—why don't we go back into the hour-to-hour system.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, today, we are continuing to debate the Republican leader's bid for what I believe is one-party rule through his insistence to trigger the nuclear option. It is kind of a ''king of the hill'' situation. While playing king of the hill, you say ''might makes right,'' but it doesn't; it makes wrong in this case. Through the misguided efforts to undercut the checks and balances that the Senate provides in our system of government, it is the need to protect the rights of the American people, the independence and fairness of the Federal courts and, of course, minority rights in the Senate.

Our time would be much better used if we were doing something about the dramatic rise in the price of gasoline over the past 5 years, or the enormous and unprecedented increase in the national debt during the past 5 years; or what has happened when we have seen the huge budget surplus that former President Clinton left his successor, which has now turned into the largest

budget deficit in the lifetime of anybody in this Chamber. These are things that could help the American people.

Yesterday I urged that we get on with the business of the American people. I spoke about a number of specific items of legislation, including the bipartisan NOPEC bill, S. 555, that sit idle. That bill would provide the Justice Department with clearer tools to challenge the cartel price-setting activity of OPEC and help to lower gas prices for working Americans. I mentioned defense and law enforcement measures, as well. The Democratic leader, Senator CORZINE and others made similar points about important legislative priorities. Senator CARPER and I talked about the effect this extended debate is having on the bipartisan asbestos compensation bill. On Wednesday the Chairman cancelled a markup of the bill and on Thursday our markup was limited to two hours and many Senators were unavailable due to this floor debate.

But instead of bringing us together to make progress, our friends on the other side of the aisle insisted the Senate debate at length a nomination that has been debated over the last 3 years, after being voted down by the Judiciary Committee 3 years ago. In fact, a couple of years ago, the Republican majority staged a 40-hour talk-a-thon on judicial nominees. It was at the conclusion of that political exercise, that 40-hour talk-a-thon, that we discovered the Republican staff had been stealing files from the Judiciary computer service for at least 3 years.

That extended debate, staged by the majority, amounted to significant lost opportunities for progress on matters at that time including, ironically, asbestos reform, which is something before us today. At that time, we had approved a lot of judges. Through Senate Democratic cooperation we had approved 168 and turned down 4. In fact, during the 17 months when I chaired the Judiciary Committee, we approved 100 of President Bush's nominees. That is actually a speed record. By the end of last year, at the end of President Bush's first term, we had already confirmed 204 judges. We reduced judicial vacancies to the lowest level since President Reagan. We are now at 208 confirmations. So we have confirmed 208 and, depending upon whose count you go by, we have blocked 5 to 10. We have confirmed well over 95 percent, as a practical matter.

I thank the Senators who joined in the debate yesterday for their contributions: Senator BYRD, Senator KENNEDY, Senator KERRY, Senator BAUCUS, Senator BINGAMAN, Senator LAUTENBERG, Senator MIKULSKI, Senator HARKIN, Senator CARPER, and Senator NELSON of Florida. They know, and everybody in this place knows that if you had a secret ballot on the nuclear option, it would fail miserably. The press knows it and Senators know it. We have all talked with Members on the Republican side who say: I don't want to vote for this thing. I know it is wrong. I started asking, What if there was a secret ballot? Well, of course, that would go down. That is because Senators know it is wrong—wrong in terms of protecting the rights of the American people, wrong in terms of undercutting our Federal system of checks and balances, and it is wrong in protecting the minority rights in the Senate, saying we will have a one-party rule system.

Well, one-party rule may work in some countries. It has never, ever worked in the United States of America. We can be thankful for that. We are the strongest democracy in the world because we have never let this country come to one-party rule. Democratic Senators will not be able to rescue the Senate and our system of checks and balances from the breaking of the Senate rules that the Republican leader is planning to demand. Democratic Senators cannot protect the rights by ourselves; we cannot protect the checks and balances by ourselves. If the rights of the minority have to be preserved, if the checks and balances are to be preserved, if the Senate's unique role in our system of Government is to be preserved, it is going to take at least six republicans standing up for fairness and for checks and balances.

I know a number of Republican Senators realize this nuclear option is the wrong way to go. I have to believe enough Republican Senators will put the Senate first, put the Constitution first and, most importantly, put the American people first and withstand momentary political pressures when they cast their votes.

I have spoken to Senator ISAKSON about his comment earlier this year about the effort to bring democracy to Iraq. I know he spoke about it yesterday. The Senator observed that a Kurdish leader in the middle of Iraq said he had a ''secret weapon'' to instill democracy. When they asked what the ''secret weapon'' was, he said it was one word—filibuster.

The Senator went on to observe:

> If there were ever a reason for optimism about what this supplemental provides the people of Iraq and their stability and security, it is one of their minority leaders proudly stating one of the pillars and principles of our Government as the way they would ensure that the majority never overran the minority.

He was right. We have that same pillar here. We have had a lot of discussion on the floor of the Senate. A couple weeks ago, we voted for billions of dollars to improve law enforcement in Iraq; at the same time, we voted for a budget to cut law enforcement in the United States. We voted billions of dollars to improve infrastructure in Iraq; we voted for a budget that cuts it in America. We voted for item after item for Iraq, at the same time voting to cut similar items in America.

This is not a debate on the Iraq war, but if we are going to praise the Iraqis—and I hope and pray that they will have a democracy someday in that country—and say the reason they can have democracy is that they will have the filibuster and they can protect minority rights, maybe it is time we say let's do as much for the United States as we do for Iraq.

The Iraqi National Assembly was elected in January. In April, it acted, pursuant to its governing law, to select a presidency council by the required two-thirds vote in the assembly, a supermajority.

More recently, Cabinet members for a number of political parties, and religious and ethnic groups were announced, many in the minority parties. Use of the nuclear option in the Senate is akin to Iraqis in the majority political party in the assembly saying they have decided to disregard the governing laws and pick only members of their own party for the government and do so by a simple majority. They might feel justified in acting contrary to law because the Kurds and Sunnis were driving a hard bargain.

One thing we have learned through history is that if you govern through consensus, it is not as easy as ruling unilaterally. That is why dictators can rule unilaterally. But we have never been a dictatorship, thank God, in this country, and I believe we never will be. That is why our system of government is the world's example because we have always protected the views of all Americans, majority and minority, and we have done it in a way through a check and balance so both sides can be heard. That way it requires consensus. More difficult, yes, but then the democracy lasts, and that is the reward.

If Iraqi Shiite, Sunni, and Kurds can cooperate in their new government to make democratic decisions, why can't Republicans and Democrats in the Senate? After all, there are only 100 of us, and we are not shooting at each other—not literally, anyway. If the Iraqi law and assembly can protect minority rights and participation, so can our rules and the Senate. That has been the defining characteristic of the Senate and one of the principal ways in which it was designed from the beginning of this country to be distinct from the other body.

Recently, the Senate passed, as I said, an emergency supplemental appropriations bill to fund the war efforts in Iraq and Afghanistan. The justification for spending billions of dollars of American taxpayers' money in Iraq is we are trying to establish democracies. How ironic that at the same time we are undertaking these efforts—not just of money but of the lives of our wonderful men and women, a great cost to so many American families—the Republican majority in the Senate is seeking to undermine the protection of minority rights and checks and balances. Our men and women are dying, and while our Treasury is spending the money to bring checks and balances in Iraq, we are getting rid of it here.

Let me mention some of the recent statements of the President as he discussed democracy in other countries. When he came back, I praised him. Earlier this month, he met with President Putin of Russia. At his press conference from Latvia, President Bush noted:

> The promise of democracy is fulfilled by minority rights, and equal justice under the rule of law, and an inclusive society in which every person belongs.

President Bush was right when he said the promise of democracy requires the protection of minority rights. It requires that in Latvia; all the more important, it requires it in the world's oldest existing democracy.

On that same recent, foreign trip the President correctly observed: ''A true democracy is one that says minorities are important and that the will of the majority can't trample the minority.'' That which is necessary to constitute a true democracy in Eastern Europe is needed, as well, here in the cradle of democracy.

Again, earlier this year in another press conference with his good friend, President Putin, the President correctly observed—and I praised him for this:

> Democracies always reflect a country's customs and culture, and I know that. But democracies have certain things in common: They have a rule of law and protection of minorities, a free press and a viable political opposition.

The President was right when he spoke in Eastern Europe, but that which is necessary to constitute a true democracy in Eastern Europe is needed as well here in the cradle of democracy.

I agree with all of these observations. I commend the President, as I have already. I hope all Senators will read them and agree we have to uphold the rule of law and the rules of the Senate that are designed to protect the minorities as a viable political opposition. This country is never under one-party rule. This country always has checks and balances of both parties.

Others besides the President have spoken. Let me tell you what Secretary Rice said recently while overseas. She said this in Georgia:

> It is not easy to build a democracy . . . It means having a strong legislative branch. It means having a strong independent judiciary . . . along with freedom of speech, freedom of worship and protection of minority rights, that's how you build a democracy.

I told Secretary Rice that I agree with her, those are the components of a democracy. But we have the same components in the United States. We need to maintain the Senate as a strong legislative branch to serve as a check on the Executive, no matter what party, Democratic or Republican, controls the Executive. We need a strong independent judiciary—not a Republican judiciary, not a Democratic judiciary, an independent judiciary—to serve as a check on the political branches. We need to protect free speech and freedom of religion, and to maintain our democracy in the United States, we have to protect minority rights.

On her way to Moscow recently, the Secretary of State stated:

> [T]he centralization of State power in the presidency at the expense of countervailing institutions like the Duma or an independent judiciary is clearly very wrong.

She was speaking about how developments undercut democracy in Russia. But so, too, here in our great and wonderful country of America, democracy is undercut by the concentration of power in the Executive, removing checks and balances and undermining the independence of our judiciary. It is ironic that President Bush and Secretary of State Rice speak so eloquently—and I agree with what they have said—about the fundamental requirements of a democratic society when they meet with world leaders outside the United States, but, unfortunately, the Bush administration and the Senate Republicans are intent on employing this nuclear option to consolidate power in this Presidency in this country.

Senators ought to have enough faith in their own ability, Senators ought to have enough understanding of their independence—and the fact that each one of the 100 of us is elected independently—to be willing to stand up. We do not work for the President. We do not work for the Vice President. We represent our country and our States, and we should be independent.

They know, as all Americans know, democracy relies in the sharing of power, on checks and balances, and on an independent court system, one that protects minority rights, and on safeguarding human rights and human dignity. This nuclear option is in direct contradiction to maintain those values, those components of our democracy.

Just as Abu Ghraib and other abuses make it more difficult for our country to condemn torture and abuse when we speak to the rest of the world, this nuclear option uses a partisan effort to consolidate power in a single political power and institution and will make all the lectures we give to leaders of other countries ring hollow.

I remember when the Soviet Union broke up and it became a democratic country. A group of Russian parliamentarians came to the United States and visited the House of Representatives and the Senate. Several came to see me, and they wanted to talk about our independent judiciary. Finally one of them said: I have this question. It has really been bothering me. I have heard that in the United States people sometimes go into Federal court and sue the Government.

I said, Yes, it happens all the time.

He said, But we have also heard that sometimes the Government loses.

I said, That is right.

They said, Well, don't you fire the judge if he lets the Government lose?

I said, No, it is an independent Federal judiciary. They are independent of the executive branch. They are independent of the Senate. They are independent of the House of Representatives. They make those decisions.

This was such an eye opener to them. The rest of that afternoon, that is what we talked about.

They said, It really works, then?

I said, Yes, and if you have it work that way in Russia, you will be a much safer country.

They still haven't gotten that far. Let's hope someday they do.

Chief Justice Rehnquist is right to refer to our independent judiciary as the crown jewel of our democracy. It is a dazzling, brilliant, shining crown jewel. Judicial fairness and independence are also essential if we want to maintain our freedom. We have to stop the dangerous and irresponsible rhetoric slamming the Federal judiciary. We do not have to agree with every one of their opinions. I cannot believe that any one of 100 Senators who has followed every single Federal opinion would agree with every single one of them. I might agree with one, the distinguished Presiding Officer may disagree with the same one, or vice versa. We do not have to agree with every opinion. But let us respect their independence. Let no one say things that might bring about further threats against our judges as they endeavor to do their jobs serving justice. Let us not stand up on the floor of our Congress and speak of impeaching judges if we disagree with them. Justice Sandra Day O'Connor was right to condemn such virulent talk.

Judge Joan Lefkow of Illinois testified before the Senate Judiciary committee this week. This is a woman whose husband and mother were murdered by somebody who disagreed with her decisions. She sacrificed too much for us not to heed her words when she asked us to lower the rhetoric, lower the attacks on Federal judges. We 100, and the 435 in the other body, of all people ought to know better. We ought to be protecting them physically and institutionally. We should not take the easy rhetorical potshots that put judges in real danger when they attack the very independence of our Federal judiciary.

When the U.S. Supreme Court decided the Federal election in 2000, as a lawyer, as a Senator, I thought the 5-to-4 majority engaged in an incredibly overreaching act of judicial activism to effectively decide a Presidential election. But I went on the floor of the Senate and I went before the press and I called for Americans to respect the opinion of the Court because it was the final word. I thought the word was wrong, but I believed as Americans we must respect it.

I attended the argument, during the arguments of Bush v. Gore, with my Republican counterpart in the Senate Judiciary Committee in order to show the country that we had to get along and work together. You didn't hear

Democrats saying let's impeach Justice Scalia when we wholeheartedly disagreed with his action.

Part of upholding the Constitution is upholding the independence of the third branch of Government. One political party or the other is going to control the Presidency. One party or the other will control the House of Representatives. One party or the other will control the Senate. But no political party—neither Democratic nor Republican—should control the judiciary. It has to be independent of all political parties. That was the genius of the Founders of this country. It is the genius that has protected our liberties and our rights for well over 200 years. It is the genius of this country that will continue to protect us unless we allow something to destroy it just for short-term political gain.

It would be a terrible diminution of our rights to remove the independence of the Federal judiciary. It is a diminution of our rights no matter what party we belong to, no matter what part of the country we are from. It would be a diminution of our rights that none of the armies that have marched against our country has ever been able to do. If you take away the independence of our Federal judiciary, then our whole constitutional fabric unravels.

That is what we Democrats are trying to protect. That is what we are defending. The nuclear option is a threat to the protection of the minority, the independence of our judiciary, the protection of Americans rights and our democracy. It removes checks and balances.

How can the most powerful Nation, the wealthiest Nation history has ever known, be able to maintain itself without the protection of checks and balances? How can we? And how can we represent to the rest of the world we are the example they should follow? How can we tell other countries, as they become democratic, this is what they should follow?

I know I will be speaking further. I see the distinguished Senator from North Dakota. I know he is seeking to speak. I will yield the floor.

Mr. DORGAN. Mr. President, I think we are waiting for Senator LIEBERMAN who is to appear on the floor momentarily. I was going to seek to say a few words following Senator LIEBERMAN, but I understand he is on his way to the floor right now and I would prefer not to proceed without him, so I think we will put ourselves in a quorum for a moment.

I make a point of order a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LIEBERMAN. Mr. President, I rise to speak on the so-called nuclear option which cloud hangs over the head of this Senate on this Friday afternoon.

The media, and sometimes Senators, speak of this debate, this possibility that the 60-vote majority requirement for confirmation of judicial nominations will be scrapped, as an internal struggle within the Senate. It is that, of course. But it is not only that. In my opinion, certainly when one judges its effect, it is not primarily that. This is about the judiciary, the judicial branch of our Government.

If you go back to the beginning of our Government, every student who takes a civics course knows there are three branches of the Government: executive, legislative, and judicial. The judicial branch, as I was taught—I presume people are still taught it this way—is the most independent because it is protected at the Federal level from politics, from the passions of the moment. It is there to arbitrate disputes, to uphold our most fundamental liberties, to take the principles in the Constitution in the laws we adopt and relate them to the lives of the American people in every generation.

It is, I want to repeat, charged with a significant responsibility and that is to be the one of the three branches of Government that is above political passions, that is there to protect—I would call them the eternal principles on which the Declaration, the Constitution, the Bill of Rights were fashioned. That is what is on the line. It is a direct question. It is a simple question, but it challenges a lot of our values.

The question really is, Will we require nominees to lifetime appointments on the Federal bench, the district court, circuit courts and, of course, the Supreme Court, will we require nominees for lifetime appointments to the Federal bench to receive the votes of at least 60 Members of the Senate? Will we require judges who will have a lot to say about the nature of law, values, freedom, and rights in our country—not just for the term of this President but for as long as they live—to receive the votes of at least 60 Members of the Senate?

In a time in the history of the Senate which is, unfortunately, increasingly partisan and polarized and too often unproductive, I speak really about the partisanship and polarization. Will we require, in having that standard of 60 votes thereby, that any nominee to the lifetime appointment to the Federal bench receive the support of the Members of more than one of our political parties?

Remember, I talked about the judiciary having that unique role in our constitutional system and our governmental system to be independent of political passions and polling and what is popular at the moment, to protect our freedom to arbitrate disputes, to uphold our best values. Don't we want to require that 60 votes be obtained for this lifetime appointment, which in the current practical, real political context—with 55 Members of one party, 45 in the other, it could soon switch. Some hope sooner than others hope, but it could switch. Do we want just those 55 Members of one political party today, and it could be another political party tomorrow, to determine confirmation of appointees for lifetime service on the Federal bench?

We are in much better shape as a country if we can look forward with much more of a sense of confidence and with a sense of pride that we have fulfilled the values and the purpose that the Founders of this country put in the judiciary if we require 60 votes. That is what is on the line. The nuclear option would blow that up and say it would require 51.

Others have spoken and can speak about the impact this might have on our working relationships in the Senate, on our ability to deal with other problems. But for me, the fundamental question is, Will we continue to require those 60 votes.

I speak for myself, but I believe I speak for most other Members of the Senate, it is never the first choice to filibuster anything. Not for me. And certainly not on a judicial nomination. I have voted in my 16½ years—I have not counted them up—I assume, on hundreds of judicial nominations. As we know from the most famous chart in America today, the President has had confirmed 208 of 218 of his nominees. I have been here since the first President Bush was in office, so I have voted on several hundred judicial nominees, and I believe I have filibustered maybe 10.

I, as one Senator, want to preserve my right if I believe this President or the next President nominates someone I just do not believe by their record, by their experience, by their testimony before hearings, is qualified or fit to serve on the Federal bench for the rest of their lifetime. I want the right to demand that nominee prove that he or she can obtain the support of at least 60 Senators.

That is what is on the line. It is on the line for the judiciary, but it suggests what is on the line for the Senate overall. Over the years, and I must say my attitude has changed on this as I have watched the Senate become more partisan and polarized, it seems to me, and now I am speaking more broadly than the judicial nominations which will be the focus of the nuclear option if the button is pushed, that in a Senate that is increasingly partisan and polarized—and therefore, unproductive—that the institutional requirement for 60 votes is one of the last best hopes of bipartisanship in moderation because to not only confirm a judicial nominee but to pass legislation, if you have the right to demand 60 votes, and the President proposes legislation, individual Members of the Senate do so, you have to go beyond the Members of your own party. I suppose if one party gets 60 votes, that argument is all over but not totally because even within

that 60 they may have to work to get it.

In the current context, that is what we are talking about. It could flip again to another party, my party being in the majority. It requires on every measure that to pass something you have to get more than the Members of your own party. You have to get more than people of one philosophical or ideological point of view. You have to get to 60. It is often not very hard to do that. That is why I say, the 60-vote supermajority requirement is today, in a partisan Senate, one of the last best hopes, pressures, for bipartisanship in the most literal sense. You cannot get to 60 votes with Members of one party, and for moderation, which is where America has always done best, and where I am convinced the majority of the American people still rest.

There were polls that came out this week. The polls are snapshots, and we should never be governed by them, but the one from the Wall Street Journal and NBC should be taken as a warning. People talk about the popularity of the President, up or down, whether people support a Social Security program or don't. But the polling data on Congress, in terms of the popularity of Congress, with trust or whatever the word was, is at an all-time low since this particular poll began to be taken in 1994. I think the public is fed up with the partisanship. I think they want us to get something done.

The tragedy of it is that all 100 of us ran for the Senate, not to come and have fights with one another, sound and fury that produce nothing. We came here to get something done. But we are in this cycle where the campaigns never seem to stop.

The Presiding Officer knows from the founding of our country, thank God, there was very spirited politics and campaigns. In some of the early campaigns, centuries before television, people said pretty tough stuff about one another, but I think through most of our history, when the campaigns ended, those elected focused on governance, on leading the country, on doing something for the people who sent us.

It seems to me too often that the campaigns never stop. As a result, we do not get as much accomplished as we should get accomplished, and the needs remain great to keep our country safe, improve the quality of our education, health care, to protect the environment, to continue to work together with business to stimulate the economy.

These are the consequences of the perpetual campaigning and increased partisanship. It is not the place to talk of the causes of it, but I want to describe it as I have experienced it and to say that if we end the 60-vote requirement, I fear it will get worse, that it will get more partisan, less productive, and we will do less for the people's business.

This is why I have been participating over the last week, and a little bit more in the extraordinary, in some sense unprecedented, discussions, negotiations between a group of Senators of both political parties who share many of the views that I have just expressed and want to avoid the nuclear option and to bring us back from the precipice.

I hope these negotiations end successfully. It would not only be in the Senate's interest, it would not only be in the interest of our independent judiciary, it would be in the interest of the American people who want us to get some things done to improve their lives and make them safer.

If those negotiations do not conclude successfully, I hope Members of the Senate individually will, in good conscience, reach a judgment that pushing the button on the nuclear option is a response, in its way, to a passion of the moment, a concern that filibusters have been used against judicial nominees.

Colleagues of mine on this side have said, over and over again, made the point—it is, in my opinion, the fact—208 out of 218 of President Bush's nominees have been confirmed, a much higher percentage than President Clinton had. But there are people, obviously, in this Chamber angry about the small number who have not been approved. It is a anger of the moment.

I appeal to all my colleagues not to yield to the anger of the moment and do serious damage not just to this institution but to the values upon which our Constitution and our country rest. That is what is on the line. It is a big moment for the Senate. I hope and pray and, ultimately, believe we will rise to the challenge and do what is right.

I thank the Chair and yield the floor.

The PRESIDENT pro tempore. The Senator from North Dakota.

Mr. DORGAN. Mr. President, my understanding is that I believe, by previous order, there are 5 minutes remaining on this side.

The PRESIDENT pro tempore. There is 3½ minutes remaining.

Mr. DORGAN. I spoke to the previous Presiding Officer and indicated I had wished to speak for 15 minutes. I ask unanimous consent to do that, provided that the other side has equal opportunity to extend their time as well.

The PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered. The time is extended.

Mr. DORGAN. Mr. President, I have said on a previous occasion how proud I am to be here in the Senate. For these years I have served, it has been an enormous privilege. I come from a small town in ranching country and wheat country in southwestern North Dakota. I never thought I would meet a Senator or a President, but yet, because of the great quilt-work of this democracy, I have been elected to the Senate now on three occasions and am enormously proud to serve.

I do not come here to be a partisan. I am proud of my political party, however. I think we have two grand political parties in this country. Both, from time to time, have made great accomplishments and have made great mistakes. I fear we are on the precipice of one of those great mistakes. That is why I came to speak again on this subject.

There is plenty of blame, I suppose, to go around to both parties on a range of issues. I think sometimes about the poem written by Ogden Nash, about a man who drinks too much and a woman who scolds him about it. Ogden Nash wrote this:

He drinks because she scolds, he thinks;
She thinks she scolds because he drinks;
And neither will admit what's true,
That he's a drunk and she's a shrew.

So Ogden Nash described circumstances of blame, circumstances of how two different people see the same situation differently.

We come now to a big decision on the floor of the Senate. David Broder, who I think is one of the excellent writers here in Washington, DC, with the Washington Post, has written a piece about what we are doing. He says:

> But dwarfing all these individual dramas [in the debate] is the question of what the vote means [the nuclear option vote means] for the Senate as an institution. Two of the main props of the Senate's identity are at stake. The tradition of unlimited debate, going back to the Senate's earliest years. . . . [and] the continuity of the Senate rules. . . .

What does this mean about ''unlimited debate'' and ''the continuity of the Senate rules''? I have the rule book for the Senate. These are the Senate rules. The Senate rules provide that to change the rules of the Senate requires 67 Senators, 67 votes.

The majority now wishes to change the rules, but they do not have 67 votes. They are displeased about that. So they want to ignore the Parliamentarian—that would be their strategy—ignore the Parliamentarian, who would rule that what they are attempting to do is not within the rules, and then they would change the rules with 51 votes.

They call this the nuclear option, self-described as a nuclear option by a member of their caucus. I suppose they use that term because they know that for a majority party to violate the rules in order to change the rules would have an enormously destructive impact on this body.

Some years ago, I went to the 200th birthday of the writing of the Constitution. It was held in the assembly room of Constitution Hall in Philadelphia. Again, I have told my colleagues in the Senate, I graduated from a small high school class of nine students. I found myself 1 of 55 people designated to go into that room where, 200 years earlier, 55 people had written the Constitution, this little book that, on page 17, says, ''We the People of the United States.'' They wrote that 229 years ago.

On its 200th birthday, 55 of us went into that room. The chair where George Washington sat as he presided

is still there. Ben Franklin sat over here, Mason over there, Madison over here. They wrote: ''We the People,'' and they described a system of self-government that represents the power of one. All of the power in this country is vested in the power of one person casting one vote at a time on a prescribed date in this country—every even-numbered year. The late Claude Pepper used to call it the ''miracle of democracy.'' Where every even-numbered year, the American people get to grab the steering wheel and decide which way to nudge this great country of ours, which direction it wants this country to move.

This Constitution set up something very important because they understood that for self-government to work, there needed to be checks and balances. They had a belly-full of King George. They just had a belly-full. They did not want that kind of oppressive government. They wanted self-government with checks and balances. So they established a government with separation of powers, a government in which the concentration of power would be prohibited by a series of checks and balances.

It has not been a perfect government, but it is the best I know of on the face of this small planet Earth. That separation of powers and those checks and balances are essential, they are critical, to the working of our Government.

Now, the question of how judges are appointed, was part of the debate of the Constitution. In fact, some wanted the Congress to appoint judges. But the compromise was that we would have a two-part process. The President would propose, or nominate, people for a lifetime appointment on the Federal bench. Incidentally, these are the only people who are given lifetime appointments, the judges who sit on the Federal bench, so that they would be impervious to the passions of the moment, impervious to changes in passions, and have fealty toward this document, the Constitution.

So they decided the President shall nominate and the Congress shall advise and consent. The President can say: Here is who I want. The Congress can say: Yes or no.

We have had a lot of problems with judicial nominations over the years. In the 1990s, I recall at least 60 names were sent up here, and they did not get a vote. Many on the other side now stand up on the floor of the Senate and say: We want the right to vote. Let's vote on all these nominees; forgetting that 60 of them—60 of them sent here by President Clinton—did not get a vote. In fact, many of them did not have the courtesy of one day of hearing. But 60 of them did not get a vote. I did not hear one person stand up on the other side and say: We demand to bring these to a vote. No. They were busy blocking—blocking—those judges.

Now, there is a kind of a born-again quality about this issue, and they say: We want everyone to have a vote. Well, they have all had a vote. It is just that 10 of them only got a cloture vote and did not get the 60 votes required. And because they did not get 60 votes, out of 218 judicial nominees, 208 were approved and 10 were not. So we have people around here whose nose is completely bent out of shape because 10 out of 218 did not get approved. And, incidentally, the 208 out of the 218 who have been approved for this President represents a much higher percentage than the previous President or the President before that. And, we also have the lowest vacancy rate on the Federal bench since many years ago.

But having said all that, we now have a proposal by the majority party to exercise the so-called nuclear option.

Why do we have that proposal? I guess they have decided they are going to do it because they can. They can decide to ignore, as David Broder, the dean of the Washington press corps describes, the two main props of Senate identity—unlimited debate and the continuity of the Senate rules.

There are reasons to have, perhaps, some sort of a self-described nuclear approach on the Senate floor. Perhaps we should have a nuclear approach to deal with the loss of jobs. Maybe that would be helpful. Maybe we ought to have this energy, this passion, this demand to explode something here to be in support of American jobs, to stop the hemorrhaging of jobs overseas. Read the paper this morning. Two more companies shut their plants, fired their workers. They are going to Mexico. It happens every single day. Mexico, China, Indonesia, Sri Lanka, you name it; we don't have the energy on the floor to deal with that. The majority party only wants to talk about the few judges that were not approved by the Senate. Why? Because I believe they have forgotten about the important elements of this Constitution dealing with checks and balances, and the separation of power.

As I said, there are many things we ought to be discussing on the floor of the Senate with great passion. How about health care? The cost of health care, the cost of prescription drugs, the dramatic increase in these costs that are devastating families, devastating to businesses, and devastating to the Federal budget. Anything going on, on the floor of the Senate about that? Not at all.

We have two things happening here. One, Air Force One is traveling around the country because they say there is a crisis in Social Security. There is not. Social Security will remain fully solvent until George W. Bush is 106 years old. That is hardly a crisis. No. 2, we have on the floor of the Senate this extreme tension because the majority party has decided it wants to violate the rules of the Senate to change the rules. Why? Because it can.

There are so many other things we ought to be working on, so many other things we ought to be doing to put this country back on track, such as dealing with the trade deficit, and the hemorrhaging of American jobs. I mentioned General Electric announced a plant closing; 470 people are going to lose their jobs. That was yesterday in the newspapers. They made refrigerators. They were proud to do it. Those refrigerators will now be made in Mexico, and those 470 people will be out of work. I would love to come to the floor to talk about that. I have offered amendments. I can't get to first base. That is not part of what happens around here.

The majority party is upset because they didn't get every judge, so they want to do what is called a nuclear option. As I said, I am enormously proud to serve here. Most of the things that we face should require us to work together. We all have the same ends. We want the best for the United States of America. We want our country to do well, to expand, to provide opportunity. We want to help with the things that families talk about at night when they sit around the supper table: Do I have a good job; does my job pay well; do I have job security; are we sending our kids to schools we are proud of; do our grandparents have access to decent health care; do we live in a safe neighborhood? All of these issues are central to what all of us ought to be thinking about and working on as hard as we can.

It is not about a Republican answer or a Democratic answer. It is about our responsibility, as 100 Senators, men and women of good will, with presumably the skills to get here and the need to come together to work on these issues.

This nuclear option is so destructive. It was said once that preceding every great mistake, there is a split second when those who are about to make that mistake have the opportunity to turn back and find a more productive course. We are at that split second. This will, indeed, be a great mistake if those who attempt this do not turn back. Abraham Lincoln once said: Die when I may, let it be said of me by those who know me best that I always plucked a thistle where I thought a flower would grow and planted a flower.

The party of Abraham Lincoln is, at this point, not planting flowers, rather, they are plucking thistles and planting thistles in the middle of this Chamber. I hope those who think this is a clever move, those who think this is a new strategy that they can win, will understand they ultimately will lose by failing to respect the traditions of the Senate, the rules of the Senate, and the concept of unlimited debate that makes this institution different than any other in the country.

We all come from different corners of America, different size cities, different backgrounds, different education. But I believe we are all people of good will. We all came here with the same hope in our heart, hope for a better America.

My hope would be that in the coming 2 or 3 or 4 days, those who have led us to this moment and this position preceding a great mistake, will rethink that position and see if we can't get back to the main agenda facing this country and its citizens.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Texas is recognized for 15 minutes.

Mr. CORNYN. Mr. President, I appreciate the eloquent comments of our colleague from North Dakota. I, too, wish we could get on with the Nation's business dealing with the high price of gasoline, which is hurting our economy and hurting consumers and people who need to commute to and from work to do their job.

I wish we could get on addressing the issues of the uninsured and lack of access to good quality health care by too many Americans. I wish we could talk about securing our borders and how we deal with our inability to control our borders and the threat that that presents to our national security. If we could simply get the up-or-down vote that was recognized as the Senate tradition for 214 years before the last Congress, we would be addressing those other issues.

But here we are, having debated for 19 days on the floor of the Senate about this nominee, Justice Priscilla Owen. Interestingly, that is 2 more days than the nominations of all nine sitting members of the U.S. Supreme Court took.

So while our colleagues on the other side of the aisle talk about preservation of the tradition of unlimited debate, this is not about debate. We have heard the distinguished Democratic leader say there is not enough time in the universe to debate these nominees. It is not about debate. Some have complained that on this side we are impeding the free speech rights of Senators.

Anybody who has been listening to the debate knows that there has been no impeding of free speech on the floor of the Senate. Some have said this is about minority rights. This is not about minority rights. We respect minority rights in the Senate. We always have, and we always will. But the fact is the American people sent a majority to the Senate that stands ready to confirm these nominees. It is not just people on our side of the aisle. If we were permitted to cast a vote, a bipartisan majority would confirm these nominees today. This amounts to a veto, in effect. A partisan minority has attempted to cast a veto of bipartisan majority rights.

I heard the distinguished Senator from Connecticut, whom I respect enormously, but I disagree with his comments today that somehow he now understands the wisdom of requiring 60 votes before we can confirm a nominee to a Federal court, when the fact is, from time immemorial, since the beginning of this institution, only 51 votes were required to confirm a nominee. And now all of a sudden, President Bush is elected and reelected, and we are going to raise the level to 60 votes. That is changing the rules in the middle of the game. That is not fair. What we need is a resolution of this issue based on principle.

That principle has to be one of fundamental fairness. That is, the same rules apply whether it is a Republican President or a Democratic President, whether there is a Republican majority or a Democratic majority. That, to me, is the principle on which this matter can be resolved—not based on some bogus suggestion or some deal cut by a handful of Senators that would throw some nominees overboard, confirm others, and not leave the issue of a potential U.S. Supreme Court vacancy resolved.

We need this matter resolved after 4 years. After 4 years, patience ceases to be a virtue. We need to get on to the issues the Senator from North Dakota and others talked about. And we will. But now is the time to resolve this issue once and for all.

I point out the speciousness of this 60-vote requirement and how it does represent a departure from past practice. We can see going back to 1979, through 2000, where judges nominated by President Carter, judges nominated by President Reagan, judges nominated by the first President Bush, and judges nominated by President Clinton were confirmed and are sitting on the Federal bench today with less than 60 votes. So any suggestion that we on this side are somehow trying to change the rules just does not withstand scrutiny. It is not true. All we are asking for is a restoration of that majority tradition.

Let me say that for the last 3 days—actually, for the last 4 years—we have debated three key questions on the floor of the Senate. Really, I do think it boils down to these three key issues:

First of all, do nominees such as Priscilla Owen, whose picture is to my right—somebody who I know personally and worked with for 3 years on the Texas Supreme Court, who I know to be a fine, decent human being and outstanding judge—deserve confirmation to the Federal bench or, at a minimum, do they deserve an up-or-down vote? No one is suggesting that any Senator violate their conscience. Indeed, if any Senator believes they cannot in good conscience vote for this or any other nominee, of course, we would expect them to cast a ''no'' vote on the confirmation. But we would expect at least for them to allow there to be a vote.

The second question is: Is this new idea of a supermajority requirement for the confirmation of judges both unprecedented and wrong?

Third, is the use of the Byrd option—the constitutional point of order we have heard much discussed, which has been exercised in the past—appropriate in order to restore Senate tradition to the confirmation of judges and to ensure that the rules remain the same, regardless of which party controls the White House and which party has a majority in the Senate?

I firmly believe the case has been made, and that the answer to each of these questions is ''yes.''

Let me reiterate. First, do nominees such as Justice Priscilla Owen deserve confirmation to the Federal bench or, at minimum, an up-or-down vote?

Of course, they do. This is a distinguished jurist and public servant, who enjoys bipartisan support in the State of Texas of statewide elected officials who are Democrats, 15 members of the State bar association, the premier association for the legal community in our State, which supports this judge because she is a good judge. There are those who oppose Justice Owen's nomination and, of course, that is their right. Some Senators have even criticized her rulings. Others, including myself, have defended those rulings. The debate has been extensive and Justice Owen's record, I believe, has prevailed.

Indeed, I submit it is precisely because Justice Owen's record is so strong that a partisan minority of Senators now insist that she may not be confirmed without the support of at least 60 Senators, a demand that is, by their own admission—at least at one time—unprecedented in Senate history. Why? Because the case for opposing her is so weak that the only way it can be defeated is by changing the rules to defeat her nomination. They know it. Before her nomination became caught up in the partisan special interest politics that seem to dominate the opposition to her nomination, the top Democrat on the Judiciary Committee predicted Owen would be swiftly confirmed.

On the day of the announcement of the first group of nominees—that is, by my recollection, on May 9, 2001—more than 4 years ago, the ranking member of the Judiciary Committee said he was encouraged and that I know them well enough that I would assume they will all go right through.

Just a few short weeks ago, the minority leader announced that Senate Democrats would give Justice Owen an up-or-down vote, albeit only if Republicans agreed to deny the same courtesy to other nominees. Now, that, as much as anything—and the distinguished senior Senator from Pennsylvania made this point—really, by the sort of bargain that has been offered, the political deal that has been offered to allow an up-or-down vote on some nominees and throw others overboard, it is clear their complaint is not with Justice Owen. If, in fact, the minority leader announced he would give her an up-or-down vote if we simply toss some of the others overboard, to me that demonstrates the lack of merit of their complaints and accusations when it comes to this judge and her record.

In the end, these concessions are understandable because the case against Justice Owen is simply not convincing. The American people know a controversial ruling from the bench when

they see one, whether it is the radical redefinition of our society's most basic institution, marriage, or the expulsion of the Pledge of Allegiance and other expressions of faith from our public square, or the elimination of the ''three strikes and you're out'' law and other penalties against multiple-time convicted criminals, or the forced removal of military recruiters from college campuses. Justice Owen's decisions as a judge fall nowhere near this class or category of cases. There is a world of difference between struggling—as any good judge will do—to try to determine what legislative intent is by parsing the words of a statute, trying to figure out what did the legislature mean—there is a huge difference between that and refusing to obey a legislature's directives altogether and substituting one's own views for that of the elected representatives of the people.

The second question to reiterate is: Is this new idea of a supermajority requirement for confirmation of judges unprecedented and wrong? The answer is yes and yes. Indeed, our colleagues across the aisle have said so in the past time and time again. Unprecedented? Well, of course, it is. President after President after President have gotten their judicial nominees confirmed by a majority vote, as we just showed a moment ago, not by a supermajority vote of 60.

Indeed, by their own admission, Justice Owen's opponents in this body are using unprecedented tactics to block her nomination. A leading Democratic Senator has boosted of their unprecedented tactics in his fundraising e-mail to Democratic donors.

Is it wrong? Well, of course it is. Senators on both sides of the aisle have firmly stated in the past that judicial nominees should never be defeated by a filibuster, and legal scholars across the political spectrum have long concluded what we in this body know instinctively: that to change the rules of confirmation, as a partisan minority has done, badly politicizes the judiciary and hands over control of this confirmation process to a handful of special interest groups.

Finally, the third and last question: Is the use of the Byrd option appropriate in order to restore Senate tradition to the confirmation of judges to ensure the rules remain the same regardless of which party controls the White House or which party controls a majority in the Senate?

Again, of course it is. It is, as we have demonstrated in the past, perhaps most appropriately called the Byrd option. Others have called it the constitutional option, or merely just a point of order. But it is called the Byrd option precisely because the former Democratic majority leader has exercised this authority on behalf of numerous Senators on numerous occasions in our history.

It is precisely why the former majority leader boasted just 10 years ago on the floor of the Senate of how ''I have seen filibusters, I have helped to break them, and the filibuster was broken—back, neck, legs, and arms. It went away in 12 hours. So I know something about filibusters. I helped set a great many of the precedents that are on the books today.''

The senior Senator from Massachusetts and the senior Senator from New York have similarly recognized the authority of the majority of Senators to establish precedents by way of a point of order or the Byrd option or the constitutional option.

Over the last 3 days a number of Senators on both sides of the aisle have taken to the floor of this body to offer their answers to these three central questions. There have been disagreements, but I hope they have been respectful disagreements.

It has been suggested by some that we are facing a constitutional crisis. I beg to differ. America is strong. Our constitutional system works. And it is perfectly normal and traditional for Senators to debate, to disagree, and vote. Indeed, it has been on the floor of the Senate over our Nation's history that we have debated the great constitutional and public policy issues of our day, and this is one of them. But it is not a crisis.

It is perfectly normal and traditional for a majority of Senators to vote on the rules and parliamentary precedents of this body. Senators have been doing that from the beginning of this great institution. There is nothing radical about Senators debating the need to confirm well-qualified judicial nominees. There is nothing radical about a majority of Senators voting to confirm judicial nominees, and there is nothing radical about a majority of Senators voting to establish Senate precedents and rules.

In short, what we have on the floor of the Senate right now is a controversy, a disagreement, not a crisis. This controversy can be resolved, and undoubtedly will be resolved, as it has always been resolved, by an up-or-down vote of the Senate. This controversy can be resolved, as it has always been resolved, by simply determining which side of the question enjoys the support of a greater number of Senators. And once the controversy is resolved, we can and we should get back to work on the rest of the people's business.

This is a controversy, a disagreement, not a crisis. And I hope that in the coming days, we will complete our debate and resolve this controversy in a respectful way, consistent with the greatest traditions of the Senate.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. CORNYN. Mr. President, we have completed our third day of consideration of the nomination of Priscilla Owen and, therefore, I ask unanimous consent that there be an additional 10 hours of debate equally divided on the nomination, and that following that time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

Mr. REID. I object.

The PRESIDENT pro tempore. Objection is heard.

Mr. CORNYN. Mr. President, I ask unanimous consent that there be an additional 15 hours of debate equally divided on the nomination, and that following that time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

The PRESIDENT pro tempore. Is there objection?

Mr. REID. Reserving the right to object, Mr. President. The mere fact that I can object shows this is a debatable motion. I do object.

The PRESIDING OFFICER. Objection is heard.

Mr. CORNYN. Mr. President, I will refrain from making other offers of unanimous consent for additional debate time at this time.

CLOTURE MOTION

With that objection, on behalf of the majority leader, I send a cloture motion to the desk.

The PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 71, the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

Bill Frist, Arlen Specter, Trent Lott, Lamar Alexander, Jon Kyl, Jim Talent, Wayne Allard, Richard G. Lugar, John Ensign, C.S. Bond, Norm Coleman, Saxby Chambliss, James M. Inhofe, Mel Martinez, Jim DeMint, George Allen, Kay Bailey Hutchison, John Cornyn.

Mr. CORNYN. Mr. President, on behalf of the majority leader, this cloture vote will occur on Tuesday, and the leader will announce the precise timing of that vote next week.

MORNING BUSINESS

Mr. CORNYN. I now ask unanimous consent there be a period of morning business with Senators permitted to speak up to 10 minutes each.

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

NATIONAL POLICE WEEK

Mr. LEVIN. Mr. President, as we commemorate National Police Week, I would like to recognize the courageous

men and women who serve our families and communities as law enforcement officers. I would also like to honor the memory of those who gave their lives in the line of duty. These officers, and their families, have paid the ultimate sacrifice for the safety of others.

The first National Police Week was celebrated in 1962 when President John F. Kennedy signed an Executive Order designating May 15th as Peace Officers Memorial Day and the week in which that date falls as ''Police Week.'' The weeklong tribute to our Nation's local, State and Federal police officers honors those who died in the line of duty and those who continue to serve and protect us every day at great personal risk.

According to the National Law Enforcement Memorial Fund, 1,649 law enforcement officers have been killed in the line of duty in the last 10 years. In 2004 alone, 153 officers lost their lives, including 7 from Michigan. As in past years, the names of these officers have been permanently engraved on the National Law Enforcement Officers Memorial along side more than 17,000 others.

We can further honor the sacrifices of these brave men and women by passing important legislation to support our law enforcement officers. That is why I have joined Senator BIDEN as a cosponsor of his COPS Reauthorization Act. The COPS program was created in 1994 and is designed to assist State and local law enforcement agencies in hiring additional police officers to reduce crime through the use of community policing. Nationwide, the COPS program has awarded more than $11 billion in grants, resulting in the hiring of 118,000 additional police officers. Unfortunately, authorization for the COPS program was permitted to expire at the end of fiscal year 2000. Although the program has survived through continued annual appropriations, its funding has been significantly cut. The COPS Reauthorization Act would continue the COPS program for another 6 years at a funding level of $1.15 billion per year, nearly double the amount appropriated for fiscal year 2005. Among other things, this funding would allow State and local governments to hire an additional 50,000 police officers and improve their ability to analyze crime data and DNA evidence. At a time when we are asking more of our police departments than ever before, I believe we should be devoting more resources to the COPS program, not less.

Supporting our law enforcement officers also requires that we take up and pass common sense legislation to help keep them safe while they carry out their duties. Shootings have been the leading cause of death for law enforcement officers over the last ten years and more can be done to keep powerful weapons out of the hands of violent criminals. We should listen to law enforcement groups like the International Association of Chiefs of Police, the International Brotherhood of Police Officers, and the National Fraternal Order of Police which have called for reauthorization of the 1994 assault weapons ban. In addition we should be working to pass legislation to close loopholes that allow potential criminals to buy dangerous weapons like the Five-Seven armor-piercing handgun. Our law enforcement community deserves no less.

In honor of their memories, the names of law enforcement officers from Michigan who died in the line of duty during 2004 are:

Officer Matthew E. Bowens of Detroit, died February 16, 2004;

Officer Gary Cooper Davis of Bloomfield Township, died May 13, 2004;

Officer Jennifer T. Fettig of Detroit, died February 16, 2004;

Deputy Sheriff Perry Austin Fillmore of Clinton County, died March 27, 2004;

Deputy Sheriff John Kevin Gunsell of Otsego County, died September 12, 2004;

Officer Mark Anthony Sawyers of Sterling Heights, died June 5, 2004; and

Detective John Raymond Weir of Sault Ste. Marie, died November 7, 2004.

ADDITIONAL STATEMENTS

TRIBUTE TO ALABAMA'S WINNERS OF THE WE THE PEOPLE: THE CITIZEN AND THE CONSTITUTION COMPETITION

• Mr. SESSIONS. Mr. President, I would like to take this opportunity to recognize a group of students in my home State of Alabama. On April 30, 2005, students from Vestavia Hills High School in Birmingham, AL, traveled to Washington, D.C. to take part in the national finals of We the People: The Citizen and the Constitution national competition. This competition is an extensive educational program developed specifically to educate young people about the United States Constitution and Bill of Rights.

More than 1,200 students from across the country participated in a 3-day academic competition. They participated in a simulated congressional hearing in which they ''testified'' before a panel. Students got to demonstrate their knowledge and understanding of constitutional principles. Additionally, they had the opportunity to evaluate, take, and defend positions on relevant historical and present day issues.

Prior to their trip to Washington, these outstanding students from Vestavia Hills High School proved their knowledge of the United States Constitution, by winning their statewide competition, thus earning them the chance to come to our Nation's capital to compete at the national level. I am proud these students represented the State of Alabama on a national level in this year's We the People competition.

I would like to pay special tribute to the teacher of the class, Amy Maddox. The students of Vestavia Hills High School participating in the We the People: The Citizens and the Constitution competition are the following: Matthew Barley, Katie Barzler, Maria Begamaz, Michelle Blackburn, Brandon Demyan, Lorey Feagin, Anne Hackney, Ashley Holmes, Abby Jones, Staci Karpova, Thomas Lide, Kristin McDonald, Freman Meri-Glenn, Tucker Reeves, Luke Romano, Erin Snow, and Christopher Willoughby. I would like to applaud their efforts.

Mr. President, the achievements of these students are continued proof that the civic education initiative we approved in this chamber is paying dividends. We the People, which is part of the civic education initiative of the No Child Left Behind legislation, is giving students the lifelong skills they need to be effective, engaged, and informed citizens. I commend the Center for Civic Education and the National Conference of State Legislatures for their leadership in sponsoring this excellent service learning-type program. I also would like to commend Janice Cowin, the state coordinator from the Alabama Center for Law & Civic Education for her work in administering the program in my State.•

MESSAGE FROM THE HOUSE

At 2:22 p.m., a message from the House of Representatives, delivered by one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2361. An act making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 2361. An act making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes; to the Committee on Appropriations.

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

S. 1084. A bill to eliminate child poverty, and for other purposes.

S. 1085. A bill to provide for paid sick leave to ensure that Americans can address their own health needs and the health needs of their families.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated: