

outlined above that will strengthen the treaty and make the world safer from the threat of nuclear terror.

I urge my colleagues to support this resolution.

SENATE CONCURRENT RESOLUTION 37—HONORING THE LIFE OF SISTER DOROTHY STANG

Mr. DEWINE submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 37

Whereas Sister of Notre Dame de Namur Dorothy Stang moved to the Amazon 22 years ago to help poor farmers build independent futures for their families, and was murdered on Saturday, February 12, 2005, at the age of 73, in Anapu, Para, a section of Brazil's Amazon rain forest;

Whereas Sister Dorothy, a citizen of Brazil and the United States, worked with the Pastoral Land Commission, an organization of the Catholic Church that fights for the rights of rural workers and peasants, and defends land reforms in Brazil;

Whereas Sister Dorothy's death came less than a week after her meeting with Brazil's Human Rights Secretary about threats to local farmers from some loggers and land-owners;

Whereas, after receiving several death threats, Sister Dorothy recently commented, "I don't want to flee, nor do I want to abandon the battle of these farmers who live without any protection in the forest. They have the sacrosanct right to aspire to a better life on land where they can live and work with dignity while respecting the environment.";

Whereas Sister Dorothy was born in Dayton, Ohio, entered the Sisters of Notre Dame de Namur community in 1948, and professed final vows in 1956;

Whereas, from 1951 to 1966, Sister Dorothy taught elementary classes at St. Victor School in Calumet City, Illinois, St. Alexander School in Villa Park, Illinois, and Most Holy Trinity School in Phoenix, Arizona, and began her ministry in Brazil in 1966, in Coroata, in the state of Maranhao;

Whereas, last June, Sister Dorothy was named "Woman of the Year" by the state of Para for her work in the Amazon region, in December 2004, she received the "Humanitarian of the Year" award from the Brazilian Bar Association for her work helping the local rural workers, and earlier this year, she received an "Honorary Citizenship of the State" award from the state of Para; and

Whereas Sister Dorothy lived her life according to the mission of the Sisters of Notre Dame: making known God's goodness and love of the poor through a Gospel way of life, community, and prayer, while continuing a strong educational tradition and taking a stand with the poor, especially poor women and children, in the most abandoned places, and committing her one and only life to work with others to create justice and peace for all: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress hereby honors the life and work of Sister Dorothy Stang.

AMENDMENTS SUBMITTED AND PROPOSED

SA 763. Mr. BURNS (for Mrs. FEINSTEIN) proposed an amendment to the bill S. 188, to amend the Immigration and Nationality Act

to authorize appropriations for fiscal years 2005 through 2011 to carry out the State Criminal Alien Assistance Program.

TEXT OF AMENDMENTS

SA 763. Mr. BURNS (for Mrs. FEINSTEIN) proposed an amendment to the bill S. 188, to amend the Immigration and Nationality Act to authorize appropriations for fiscal years 2005 through 2011 to carry out the State Criminal Alien Assistance Program, as follows:

At the end add the following new section:
SEC. 3. LIMITATION ON USE OF FUNDS.

Section 241(i)(6) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(6)) is amended to read as follows:

"(6) Amounts appropriated pursuant to the authorization of appropriations in paragraph (5) that are distributed to a State or political subdivision of a State, including a municipality, may be used only for correctional purposes."

MEASURE READ THE FIRST TIME—S. 1098

Mr. ALLARD. Mr. President, I understand that S. 1098, introduced earlier today by Senator KENNEDY, is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the title of the bill for the first time.

The senior assistant bill clerk read as follows:

A bill (S. 1098) to prevent abuse of the special allowance subsidies under the Federal Family Education Loan Program.

Mr. ALLARD. Mr. President, I ask for its second reading and object to my own request.

The PRESIDING OFFICER. The bill will be read the second time at the next legislative session.

ORDERS FOR TUESDAY, MAY 24, 2005

Mr. ALLARD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:45 a.m. on Tuesday, May 24. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and that the Senate then return to executive session and resume consideration of the nomination of Priscilla Owen to the Fifth Circuit Court of Appeals; provided that the time until 11:40 a.m. be divided equally between the leaders or their designees, and the time from 11:40 a.m. to 12 noon be equally divided between the two leaders; provided further that notwithstanding provisions of rule XXII, at 12 noon, the Senate proceed to the cloture vote on the Owen nomination, with the live quorum waived.

I further ask unanimous consent that the Senate recess from 12:30 p.m. until 2:15 p.m. for the weekly party luncheons.

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

PROGRAM

Mr. ALLARD. Mr. President, tomorrow, the Senate will resume consideration of the nomination of Priscilla Owen to be a U.S. circuit judge for the Fifth Circuit Court of Appeals. At 12 noon, we will proceed to the cloture vote on the Owen nomination, and that will be the first vote of the day. Given the events of the day, it is expected cloture will be invoked on this well-qualified nominee. We have had 4 days of substantive debate on the nomination. It is our hope that once cloture is invoked, we can quickly move to a vote on confirmation.

ORDER FOR ADJOURNMENT

Mr. ALLARD. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order, following the remarks of Senator HARKIN for up to 15 minutes, Senator BOXER for up to 15 minutes, Senator LEAHY; provided, that Senator KYL be also recognized prior to adjournment.

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

Mr. ALLARD. I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I ask unanimous consent that Senator LEAHY, because of his time schedule, speak prior to my statement, and I still be allowed my 15 minutes and Senator BOXER still be allowed her 15 minutes.

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

The Senator from Vermont.

Mr. LEAHY. Mr. President, I thank the Senator from Iowa for his courtesy. I apologize to the Senator from Colorado. I was distracted when he was giving the order to put us out. I should have realized, after 31 years here, when we are on autopilot. And, of course, the Senator was following precisely the agreement as usually somebody does in wrapup that has been worked out between the Democratic leader and the Republican leader and was totally within his rights. I apologize for interrupting.

Mr. ALLARD. I thank the Senator from Vermont for speaking up. We certainly did not want to shortchange on his right to speak. I was glad to see when we got to the last part of the iteration we had the Senator from Vermont included.

Mr. LEAHY. Mr. President, the distinguished Senator has always been protective of the rights of Members of both sides.

JUDICIAL NOMINEES

Mr. LEAHY. Mr. President, we have other Senators who wish to speak.

There has been a lot that has gone on here tonight. I will speak further on this tomorrow. I thought on this occasion it would not be inappropriate to quote again from "Profiles in Courage."

At the end of that book, President Kennedy included a eulogy. Interestingly enough, it was a eulogy in 1866 upon the death of Senator Solomon Foot, a predecessor of mine from Vermont. The eulogy for Senator Foot of Vermont was delivered by Senator William Pitt Fessenden of Maine. Senator Fessenden, like Senator Foot, was a Republican—in fact, all Senators from Vermont, every single Senator from Vermont, with the exception of one, has been a Republican. But Senator Fessenden would soon thereafter vote against his party to acquit President Andrew Johnson of charges of impeachment.

Senator Fessenden was the first of seven courageous Republican Senators who voted his conscience before his country rather than party. Despite the pressures and whatever the consequences, he exercised his judgment as a Senator, consistent with his oath to do impartial justice.

Let me just read what he said after the death of Senator Foot of Vermont:

When, Mr. President, a man becomes a member of this body, he cannot even dream of the ordeal to which he cannot fail to be exposed;

of how much courage he must possess to resist the temptations which daily beset him;

of that sensitive shrinking from undeserved censure which he must learn to control;

of the ever-recurring contest between a natural desire for public appropriation and a sense of public duty;

of the load of injustice he must be content to bear, even from those who should be his friends;

the imputations of his motives;
the sneers and sarcasms of inmorance malice;

all the manifold injuries which partisan or private malignity, disappointed of its objects, may shower upon his unprotected head.

All this, Mr. President, if he retained his integrity, he must learn to bear unmoved, and walk steadily onward in the path of duty, sustained only by the reflection that time may do him justice, or if not, that after all his individual hopes and aspirations, and even his name among men, should be of little account to him when weighed in the balance against the welfare of a people of whose destiny he is a constituted guardian and defender.

A number of our Senate colleagues today from both parties stood up to keep the Senate from making a terrible, an irreparable mistake—terrible and irreparable because, for the first time in over 200 years, the Senate would no longer have a check and balance. For the first time in over 200 years, the Senate would no longer be able to protect the rights of the minorities.

I applaud them for this. As I said, I will speak more tomorrow. I thank my distinguished colleague and dear friend from Iowa for letting me go ahead.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I am very pleased to hear about the bipartisan agreement that preserves minority rights in the Senate, that preserves the right of the minority to extended debate, that preserves the checks and balances that our Founding Fathers prized so highly.

My hope now is that after weeks of distraction, after weeks during which the majority leader threatened the nuclear option, to sort of blow up the Senate, now we hopefully can return to the people's business.

I thank the 14 Senators, I guess 7 Democrats and 7 Republicans, who worked so hard to bring us back from the brink and get us away from this nuclear option that really would have destroyed the smooth functioning of the Senate.

But we have been talking for weeks and weeks about this, about this nuclear option. People I have talked to have been absolutely astonished that the Senate has been distracted by these nuclear option threats. They keep asking me why haven't we been addressing the real concerns that keep Americans up at night: worrying about their jobs, their health care and their families' future. Why is the Senate spending its time on this narrow ideological agenda and ignoring the people's business?

The majority leader, the Senator from Tennessee, had planned to keep the Senate up through the night tonight as a prelude to detonating this nuclear option.

In anticipation of that, early yesterday, on my Senate Web site and through the news outlets, I informed the people of my State of Iowa I would be coming to the floor late this evening to share their concerns and their worries, the things that keep them up at night.

The response has been overwhelming. I said that my Des Moines office and my Washington offices would be open all night, answering calls and receiving e-mails. I encouraged Iowans to keep the calls and e-mails coming all through the night and to let me know what keeps them up at night. I had planned to spend as much time as possible answering the phones myself.

Since noon today, we have received over 600 e-mails and 500 phone calls. I thank all the Iowans who contacted me by e-mail or by phone. I had planned to read as many as I could tonight, during the long night that we were supposed to be here. Obviously, that is not going to happen. But we have been inundated with messages from Iowans telling us what they want the Senate to stay up all night working on. Believe me, detonating the nuclear option is not on their list.

To the contrary, my fellow Iowans are deeply concerned about "kitchen table" issues such as health care, job security, pension security, education, increasing the minimum wage, the war in Iraq, the price of gasoline.

Sherry, in Sioux City e-mailed me to make two points.

One, I do not like the GOP violating the rules and violating the Founding Fathers' checks and balances; and, two, I am retiring from teaching tomorrow and I am afraid most of my students will not be in good enough jobs to afford their own health care. Plus I myself must wait 24 months for health coverage because I don't qualify for Medicare.

Linda in Des Moines sent the following e-mail:

Mr. Harkin, thank you for asking. I will tell you what keeps me up at night. The fear I will get sick and not be able to work. I have to work some overtime every week right now to just get by. I have not been able to accumulate a savings to fall back on. What with more health care costs my employer is putting on me, higher gas prices, higher grocery costs. I have to run as fast as I can to just barely keep up.

Patricia in West Branch, IA, sent this e-mail:

I work two jobs, my husband 3, to send our son to college. We all need some relief from this worry. Education, health care, the poor who do not have homes or food. So let's worry about the real issues here.

Patty in Olin, IA, e-mailed me with what keeps her up at night:

Two Things: Gas and College 1.

Shirley in Eldridge, IA, e-mailed me with the following brief message:

I am bothered about rising health costs for retirees. I am concerned about the rising cost of gasoline and the rising cost of a college education. I am concerned that my grandchildren may not have the same opportunities that I and my children had to obtain an advanced degree.

This is the message that Al in Hinton, IA, sent me:

Health Insurance—I am seeing many educators who want to retire, some who need to retire, however they cannot, due to the cost of health care. They have worked 30 years and must keep working until age 65. After 30 years in the classroom, an individual has earned the right to retire. Please address health care, this is the National Crisis.

Sara in Anamosa, IA, shared a broad range of worries:

Dear Senator Harkin: I am a teacher who is concerned that American High Schools are not given the funds needed to train our students to compete in a global economy.

Sue, a librarian in Iowa City, told me:

I am concerned about the rising cost of a college education. . . . I worry that the divide between those who can afford college and those who cannot is growing ever wider. I don't think our economy will be well-served by making an education an opportunity that only the wealthy can afford.

Susan from Des Moines send me the following e-mail:

The fear that the Social Security system is going to be changed keeps me up at night. . . . My worry is not just for myself but everyone affected by the proposed revisions in the social security system.

Barbara from Mount Vernon, IA, had this to say:

What keeps me up at night is how I'm going to pay my bills and still provide care

for the kids. I serve at my job at Four Oaks, Inc. I'm a youth counselor at 4 Oaks serving children in a residential setting who have been abused or neglected. Some of the needs these children are the need for deep relationships with adults. With the high turnover in facilities such as mine, children go through hardship once again. Staff needs to move on to other fields where the pay will meet their day to day obligations. As a supervisor I do stay up at night worrying about the children and my own financial needs.

Shannon from Garwin, Iowa, sent me this message:

Dear Senator Harkin. I can easily tell you what keeps me up at night. Thank you for asking. I am a 30 year old Registered Nurse. . . . I have a very expensive health insurance plan that goes up every year. It does not cover my family, me only. My husband works as an electrician and has no insurance. Our children have health insurance that we pay for out of pocket. We have no dental. We worry constantly. Save for college? That is a joke in its self.

Ron, in La Mars, IA, said:

We need an aggressive program for alternative fuels. If we do not break away from foreign oil we will be bogged down in the Middle East forever.

Ann, an elementary school principal in Waukon, IA, had this to say:

There are many things that keep me up at night. Among these concerns are the rising meth problem in Iowa. The reduction of services to families through medicaid cuts and cuts in the department of human services. I have families who fear their foodstamps will be cut.

Here is Fabian from Bellevue, IA:

Collapse of the general economy in industrial and manufacturing sectors.

Patrick from Sioux City, IA:

We need to reform the health care and transportation systems in America.

Kim of Cresco, IA:

We need to be more focused on education in America than the filibuster.

Here is Sandra, who e-mailed me:

Dear Senator Harkin, these are the things that keep me up at night:

1. Social security—I think we just need to improve on the program that exists. I know that my husband and I and our children will not have the needed money to start our own savings account. Our children have good jobs, but there is no way they will be able to set-aside enough needed money to retire on.

2. As a health professional, I can tell you first-hand what is happening to people who cannot afford to pay health insurance and also, prescription drugs needed. I treat the results of that each day. Each month, we personally pay, out of our own pocket, nearly \$2000.00 for insurance and drugs. Our drugs are for diabetes and prostate problems, something we cannot help. That is \$24,000 a year, and farming is not that profitable. Something has got to change or we will not survive!

This is a comment from George:

I am 62 years old. I had surgery for prostate cancer 4 years ago. Post op I can not afford \$1000 month for health insurance and have not seen a doctor in 3 years for follow up procedures. I am sinking into depression (and debt) and see no way out

Doris, from Wellman said:

We need to raise the minimum wage.

Here is Ann, another person who e-mailed me:

I have families without jobs or such low-paying jobs they work several to make ends meet. Children are left unsupervised. How about increasing the minimum wage?

Mr. President, this is what Iowans are telling me, in 600 plus e-mails, and over 500 phone calls today. This is what they want the Senate working on. And we spent all this time talking about a filibuster, a nuclear option: This judge, that judge. People must wonder if we have become totally dysfunctional around here, so I am hopeful that, with this agreement, we are going to see a new day. I am hopeful that the majority leader will now turn his leadership and his energy to turn the Senate to the people's business.

Let's have a bill out here to raise the minimum wage and let's get an up-or-down vote on it. Let's get the Energy bill here on the floor so we can amend it and then have an up-or-down vote. Let's do something about health care. Why don't we extend the Federal Employees Health Benefit Program that all of us have—why don't we extend it to small businesses all over America so they, too, can have the same kind of health coverage that we in the Congress have?

How about pension security? Let's get legislation on the floor so we do not have more United Airlines, next maybe all the other airlines, perhaps even General Motors has now said they may not be able to meet their pension guarantees.

Education funding? How many times do we hear from our schools that we are not funding No Child Left Behind, that the guarantee we made almost 30 years ago now that we were going to fund the Individuals with Disabilities Education Act at 40 percent of the cost, now we are still at less than 20 percent?

This is what the vast majority of my Iowans say we should be working on. So I hope a new day is here. I hope, with this agreement that was forged, we can leave that past behind us and that we can now bring this type of legislation to the floor. Forget about the nuclear option and get on with the people's business here in the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I understand that I have 15 minutes. I might take 10 or I might want to take another 10 in addition. I ask unanimous consent I may speak up to 25 minutes.

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

Mrs. BOXER. What I want to say, before my friend from Iowa leaves, thank you so much, Senator HARKIN. I think what you addressed in your remarks is something that has been missing from this debate, and that is what the people are telling us back home. They, in my opinion, do not want to see the filibuster go away because they understand it is a very important part of the American fabric of politics for more than 200 years. They also understand,

without a doubt, that the issues that concern their everyday lives are just not being addressed. My friend laid them out beautifully.

In Iowa, CA, our people are feeling the same things. They are struggling with high gas prices, lack of health care, worried about the cost of health care, and education. They are absolutely frightened about the President's attack on Social Security. They want us to fight back. They want us to solve the Social Security long-range problem without reducing benefits, without taking away Social Security, and not turning Social Security into a guaranteed gamble. These are issues that are key. Transportation is another issue my friend mentioned. I thank Senator HARKIN for his contribution tonight.

I also thank my colleagues on both sides of the aisle who took this Senate back from a cliff where there were very treacherous waters below. They turned us away from a power grab by the majority, from a move that was clearly an abuse of power. They called it themselves, those who wanted this option, the nuclear option. They were right to call it the nuclear option because it would have been so devastating, not only to the Senate, not only to the people of this country, but to the foundation of our Republic—the checks and balances which were put into this system by our brilliant Founders who came together. As Senator BYRD reminded us tonight that Benjamin Franklin said: "I've given you a Republic, if you can keep it."

That is the key. Can we keep the Republic? We do not keep a representative democracy such as this if we allow one side, whichever side that is, to trample upon the rights of the other. What happens is you wind up trampling on the rights of the American people themselves.

The other day I was making a mental note of who supported the nuclear option, taking away the right of any Senator to filibuster a judicial nominee, who in this body supported that, versus those who thought it ought to be sustained and we ought to have that right. When we add up the number of people we represent on each side, the senators on the side that wanted to keep the filibuster represented far more people, millions more people. So this was a moment in time when the rights of so many of those people would have been taken away, just as the rights of their Senators would be taken away.

Again, I thank my colleagues on both sides who worked so hard to bring us back from this abuse of power. I hope that it means forever. I personally hope we never hear the words "nuclear option" again. It would be best for this country if we allowed the 200-year history plus of this country to sustain us.

The filibuster started in 1806. This is the filibuster's 200th year. It has been used sparingly. Let's look at how many times we have blocked President Bush's judges. I hope I don't have to bring this chart out again. I hope we

are done with this. But for tonight we need to summarize where we have been.

Mr. President, 208 to 10 is what caused all the angst by the Republicans. They wanted to take away our right to block 5 percent of George Bush's judges. As I have said at home in many meetings, if any one of you got 95 percent of what you wanted in your life, you would be smiling. I would be—unless I wanted everything and I thought I knew best and I was the smartest. We all go through those times when we think that way but one would hope at this point when we get here, after working a little bit here in the Senate—and I admit I didn't see it right in the beginning—we come to respect rights of the minority. The filibuster has been used rarely.

I also want to discuss what I call the filibuster fantasy world that cropped up in these debates. I will show a chart I was going to use in the debate which, thankfully, we do not have to have. But for the purposes of history, we ought to look at what was shaping up.

First of all, every day we came to the Senate we heard Republicans say: The Democrats started the filibusters on judges. That is funny, in a way, because the opposite is true. In modern times, the use of the filibuster began with Abe Fortas in the 1960s. I looked at a headline in the Washington Post from the 1960s. It said: "Filibuster Launched Against Fortas." This was President Johnson's, a Democrat, nominee to the Supreme Court. The first paragraph of that Post article said:

The Republicans launched an all-out filibuster against Abe Fortas.

That is a fact. The filibuster fantasy says that Democrats started the filibusters on judges.

The second fantasy we have heard repeatedly recently from Republicans is Republicans have never filibustered judges.

That one I can state from personal experience does not hold up—I don't have to rely on newspapers; I don't have to rely on hearsay; I don't have to rely on folk tales. I was here and I saw the Republican filibuster against two terrific people from California, Marsha Berzon and Richard Paez. Guess what? That was not in the 1800s or the 1960s. It was the year 2000. And do Members know who voted to continue to filibuster Richard Paez? BILL FRIST, the good doctor, who says he wants to take away our rights. Tonight he says he is backing off. He has no choice but to back off because, luckily, we had enough people from both sides of the aisle to pull us back from this precipice. BILL FRIST himself filibustered Richard Paez. Pretty amazing for him to say that we should never filibuster when he filibustered, when his Republican colleagues are on the record saying they were proud to filibuster and it is their constitutional right to filibuster.

So you can't rewrite the record book. We have a CONGRESSIONAL RECORD. We

had a vote to end the filibuster on Richard Paez, a wonderful candidate put up by President Clinton. BILL FRIST voted to filibuster that man. Yet he says if we Democrats vote to filibuster somebody, and I am quoting him, "we are behaving badly." He said that four times tonight. Bad behavior.

This is not a kindergarten class. This is not even high school. This is the Senate. When I decide to filibuster a judge, which is my prerogative, and will remain so, I am happy to say under this good agreement, I am not behaving badly, I am behaving as a Senator who has looked at this nominee, who has seen that this nominee is dangerous to America, who has seen that this nominee is extremist and will hurt the American families who I represent. Am I not behaving as a Senator? No, I am not behaving badly.

Let's look at the other Republican filibuster fantasies. They say all judges should get an up-or-down vote. Do you know how many votes Priscilla Owen had so far? Four. She is about to have the fifth. Janice Rogers Brown has had one. Clinton judges, 61 of them, most of them never made it out of committee. Most of them were pocket filibustered. They never had an up-or-down vote. Every one of George Bush's nominees have had an up-or-down vote. They may not have made the 60 votes they needed to make because for 200 years—plus the Senate has had the right for extended debate. These people could not get the 60 votes.

Why couldn't they get 60 votes? Because these nominees are so extreme. I will talk about one of them in a minute and tell Members why because it is an extraordinary circumstance. The President sent down a nominee who is out of the mainstream.

First, I want to tell you a story about ORRIN HATCH who was the Republican chairman of the Judiciary Committee for a time when Bill Clinton was President. ORRIN HATCH called me into his office and he said: Senator BOXER, if you want to get a vote on a judge from California, don't send me anyone from the liberal side. Send me mainstream judges, Senator. Send me mainstream judges and we will be OK. We had a great chat.

I said: Well, I am not so sure; maybe sometimes you want to have someone a little more liberal.

He said: Don't discuss it with me. Mainstream judges. That's it.

So for ORRIN HATCH, when Bill Clinton was President, he had a litmus test. Mainstream judges. I didn't think it was that unreasonable. Where is the litmus test now on mainstream judges? It has gone out the windows.

Alberto Gonzales himself said that Priscilla Owen's opinions were "unconscionable judicial activism". So we say to the President of the United States of America: Do what Bill Clinton did, send us mainstream judges and we do not have any problem with that. We will walk down this aisle proudly. Frankly, we did it 208 times. I am not

sure this President has any cause for alarm. He got 95 percent of his judges, but he wants it all, after all, he is George Bush. We had a King George. We had a king. Now we want a President of all the people. We do not want a king. We want him to govern. We do not want him to rule. There is a difference.

This wonderful agreement sustains our right in the future to step out if each of us determines there is a reason to filibuster.

Now, again, the filibuster fantasy is that Priscilla Owen and Janice Rogers Brown have never had a vote in the Senate. I have already stated, they just cannot make the 60-vote cut because they are so out of the mainstream.

Then there is this issue the Republicans have now said they want to change from the nuclear option to the constitutional option. Nothing in the Constitution prohibits filibusters. We know that. The Constitution says the Senate shall write its own rules, which brings me to another point.

Here is something I want the American people to know. I want my colleagues to understand. The Constitution says the Senate shall write its own rules, and Rule XXII of the Senate says if you want to change a rule of the Senate, folks, you have to get 67 votes to move to change the rules. It is important to do this when you change the rules of the Senate. The Constitution says we shall write our own rules. But the Senate rules do not envision a small group of Senators changing the rules. It ensures that a large group of Senators must approve of changing the Senate rules. If you have to change the rules, this is what you have to have 67 votes to close off debate for a rule change.

Guess what? My Republican friends who brought us the nuclear option knew they could not get 67 votes to destroy the system of checks and balances, to change our government as we have known it for so many years. They could not get 67 votes, not even close. They even had to have DICK CHENEY in the chair for this vote, folks, because it could be that close; 51, maybe. What do they do? How are they going to get around the rules of the Senate? Well, not to worry about the rules of the Senate. We will make a precedent.

The Parliamentarian will say that Senators have a right to filibuster, absolutely. The Parliamentarian will say we need 67 votes to change the rules of the Senate, but DICK CHENEY, sitting in the chair as a rubberstamp for this administration, as part of it, will say: I disagree with the Parliamentarian. We can change this right now by declaring by fiat no more filibusters of judges ever again. That is the new precedent.

I would ask my friends, what kind of an example is this to set for our children? Let's say our children go to school, and they know to get an 80 percent on a test is a B, and they get a 75 percent. Let's say they then go to their teacher and say: Oh, I got a 75 percent,

and I don't want to come home with a C. Can you just change the rules today for me and make it an A? Change the rules. Or if you are serving on a jury, and everyone has to agree on the guilt of someone, but, oh, they decide on this day, only 9 of the 12 have to agree.

I could go on and on with examples like this. The fact is, it is a terrible precedent for our children to see grown people in the Senate change more than 200 years of Senate history by going around the rules of the Senate.

I was here when I was just a freshman. I was annoyed with the filibuster. I was really annoyed. The Republicans were filibustering all the time. I thought it was terrible. One of my colleagues said: Let's change the rules.

I said: Great. I think President Clinton ought to get his whole agenda through. I am tired of hearing about what I don't agree with.

I was wrong. I did not know I was wrong. I was wrong. But one thing I did, I did not try to do it with some slipshod, fake precedent change. I tried to do it by getting 67 votes. We did not even come near 20 because it is a losing proposition.

The nuclear option would have been a disaster. And I have to tell you, out in the countryside, the polling is showing that the people are sick of this place. They do not understand what we are doing. We are irrelevant to them. And indeed it is no wonder we are viewed this way given all the effort we have expended on this nuclear option business. It simply fits into what the people have been saying for a while, that we just do not get it.

They are paying these gas prices at the pump, and what are we doing? Nothing. The President could release some strategic petroleum reserves. Oh, no, the first President in modern times never to do that. And, yes, gas is going down a few pennies, I am happy about that. But, believe you me, it is not going down far enough. What are we doing about that? Nothing that I could see. No, no, we are wasting our time on the nuclear option because the President wanted 100 percent of what he asked for. He did not want 95 percent. He wanted 100 percent of his judges.

Another President once tried to pack the courts, and his name was Franklin Roosevelt, a great Democratic President. Do you know what? When Franklin Roosevelt was in office, there were 74 Democrats in the Senate. Franklin Roosevelt was annoyed. He wanted 100 percent. He got 60 percent in the election, a lot more than this President did. He had 74 Democratic Senators. And he wanted to pack the courts. He wanted to double the number of Supreme Court Justices, put his people in play, have the Democrats in the Senate rubberstamp and make sure that his New Deal would live forever more.

Do you know what stopped him? Democratic Senators. They said: Mr. President, we admire you. We respect you. But we know it is wrong to pack the courts. It is not right. We want an

independent judiciary. Let us not change the rules in the middle of the game.

I was so hopeful that we would have some Republican Senators this time who had a sense of history, who understood better than I did when I was new here that the filibuster protects not only the minority but protects the American people.

I want to explain to you, in my final moments, why it is so important that we keep the filibuster. In this deal, three judges are going to go through, are going to have a simple majority vote. One of them is Janice Rogers Brown. Now, I am not thrilled about this because I think her record is so far out of the mainstream that she will hurt the American people. But I do not want to just put out rhetoric. I want to show you Janice Rogers Brown and some of the times in which Janice Rogers Brown, as a judge on the California Supreme Court, stood alone in her dissents. So when you ask me: Senator BOXER, why is it that you filibustered Janice Rogers Brown—and, by the way, I support this deal. Even though she will only need 51 votes, I still support the deal. But I have to tell you, I am going to fight to deprive her of those 51 votes, if I can. She stood alone on a court of six Republicans and one Democrat. She is a Republican. She stood alone 31 times because the court was not rightwing enough for her.

Let's look at some of the times Janice Rogers Brown stood alone, how way out of the mainstream to the extreme she is.

She said a manager could use racial slurs against his Latino employees. Can you imagine a decision like that? It is OK to use racial slurs against Latino employees. Janice Rogers Brown said that in *Aguilar v. Avis Rental Car*.

She is bad on first amendment rights. She argued that a message sent by an employee to coworkers criticizing a company's employment practices was not protected by the free speech first amendment, but she has been very protective of corporate speech. So she walks away from the individual but supports the right of corporate speech.

If you want individual rights protected, this is not your person. Here is one: She protects companies, not shareholders.

She is bad for rape victims. She was the only member of the court to vote to overturn the conviction of the rapist of a 17-year-old girl because she believed the victim gave mixed messages to the rapist.

Now, I just want to say something here. Every one of us here would come to the defense of a 17-year-old rape victim. And on a court of six Republicans and one Democrat, only one person stood alone, stood by the rapist, Janice Rogers Brown. So when I say I do not want her to be promoted, you can see why.

Janice Rogers Brown is bad for children and families. She was the only

member of the court to oppose an effort to stop the sale of cigarettes to children. Now, I do not know how you all feel about this, but this is 2005, and we know what an addiction to cigarettes can be. We do not want our kids being able to purchase cigarettes in stores. Janice Rogers Brown stood alone in *Stop Youth Addiction v. Lucky Stores*. She stood alone on a court of six Republicans, one Democrat. She stood alone and would not protect our children from the sale of tobacco.

Senior citizens: the only member of the court to find that a 60-year-old woman who was fired from her hospital job could not sue. This is what she said in this dissent, where she stood alone on a court of six Republicans and one Democrat. She said:

Discrimination based on age does not mark its victims with a stigma of inferiority and second class citizenship.

Really? Really? A 60-year-old woman was fired from her hospital job on age discrimination. State and Federal law prohibit age discrimination. Janice Rogers Brown stood alone and said there is no stigma. Someone fires you because you are old, and there is no stigma.

But that is the least of it. Janice Rogers Brown—

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

Mrs. BOXER. Mr. President, I ask unanimous consent for 1 minute to close.

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

Mrs. BOXER. Thank you, I say to my friend from Alabama.

Janice Rogers Brown has an attitude toward seniors which is extraordinary. She calls senior citizens cannibals. She says they are militant and they cannibalize their grandchildren by getting free stuff from the Government. I have to tell you, this woman is so far out of the mainstream, this is just a touch of the debate that is to hit the Senate floor.

So when we stand up as Democrats and say no to Janice Rogers Brown, we have a reason. It is not about the Senate. It is not about partisanship. It is about the American people and the American family.

Thank you, Mr. President. And I thank those Senators on both sides of the aisle for bringing us back from this precipice.

I yield the floor.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Alabama.

Mr. SESSIONS. Mr. President, I ask unanimous consent that I may be allowed to speak for up to 20 minutes in morning business.

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

Mr. SESSIONS. Mr. President, I would ask the Senator, before she leaves—I notice the debates over filibusters have seen people maybe flip and change their views—but I would ask her if it is not true that she just said a few moments ago that we must

keep the filibuster, but in 1995 the Senator was one of 19 Senators who voted to eliminate it entirely, not even just against judges but against the whole legislative calendar also?

Mrs. BOXER. If the Senator heard me speak, I spoke quite a while about that. I said how wrong I was, how green I was, how I was frustrated with the Republicans blocking things. And I was dead wrong. I also said that what we tried to do is change the rules, which takes 67 votes. We did not go in the dead of night to try and get it done. So, yes, the Senator is right. I was dead wrong. Tough to admit that, but I have been very open about that since the beginning of the debate.

Mr. SESSIONS. That is good. And I apologize for not being here and hearing your remarks to begin with. I would not have asked that.

Mrs. BOXER. I don't blame the Senator.

Mr. SESSIONS. Mr. President, I want to share a few thoughts at this time. There is no doubt that there has not been maintained in this body a successful filibuster against a President's nominee for a judicial office until this last Congress when the Democrats changed the ground rules, as they stated they were going to do, and commenced systematic leadership-led filibusters against some of the finest nominees we have ever had.

People say: Well, you people in the Senate are upset, and you are fractious, and there is too much of this, and you guys need to get together. But it was not the Republicans who started filibustering judges. And it was a historic change in our procedures when the Democrats started doing it. It caused great pain and anguish.

When you have somebody as fine as Judge Bill Pryor, who I know, from Alabama, the editor and chief of the Tulane Law Review, a man of incredible principle and intelligence and ability, and who always wants to do the right thing, to hear him trashed and demeaned really hurt me.

I am so pleased to hear today that those who have reached the compromise have said that we will give Bill Pryor an up-or-down vote. He had a majority of the Senate for him before, a bipartisan majority. At least two Democrats voted for giving him an up-or-down vote and would have voted for him, I am sure, if he had gotten that up-or-down vote. We would have had that done a long time ago except for having, for the first time in history, a systematic tactic of blocking those nominees from an up-or-down vote through the use of the filibuster on judges.

Priscilla Owen made the highest possible score on the Texas bar exam, got an 84-percent vote in Texas, was endorsed by every newspaper in Texas—a brilliant, successful private practitioner—and they have held her up for over 4 years. The only thing I can see that would justify holding her up was that she is so capable, so talented, that

she would have been on a short list for the Supreme Court. She should not have been blocked and denied the right to have an up-or-down vote.

Justice Janice Rogers Brown from California was on the ballot a few years ago with four other judges in California. She got the highest vote in the California ballot, 74 percent of the vote on the California ballot. California is not a rightwing State. She got three-fourths of the vote. And they say she is an extremist? Not fair. It is just not fair to say that about these nominees.

It was said by the Senator from California that they did not get 60 votes, they did not make the cut. When has 60 votes been the cut? The vote, historically, since the founding of this Republic, is a majority vote. Lets look at that. The Constitution says that the Congress shall advise and consent on treaties, provided two-thirds agree, and shall advise and consent on judges and other nominees.

Since the founding of the Republic, we have understood that there was a two-thirds supermajority for ratification and advice and consent on treaties and a majority vote for judges. That is what we have done. That is what we have always done. But there was a conscious decision on behalf of the leadership, unfortunately, of the Democratic Party in the last Congress to systematically filibuster some of the best nominees ever submitted to the Senate. It has been very painful.

And to justify that, they have come up with bases to attack them that really go beyond the pale. I talked to a reporter recently of a major publication, a nationwide publication. People would recognize his name if I mentioned it. I talked about why I thought the nominees had been unfairly attacked, their records distorted and taken out of context, and they really were unfairly misrepresenting their statements, opinions and actions. She said: Well, that's politics, isn't it?

Are we in a Senate now where because somebody is on a different side of the aisle, have we gotten so low that we can just distort somebody's record—a person, a human being who is trying to serve their country—we can do that to them? I don't think that is right. I don't think we should do it. But I do believe we are sliding into that and have been doing so.

For example, it was said recently by Senator BOXER that Judge Gonzales—now Attorney General of the United States—said that Priscilla Owen was an unconscionable activist. He did not say that about her. He did not. He has written a letter to say he did not. He testified under oath at a Judiciary hearing and said he did not. What he said was he reached a certain conclusion about what the legislature meant when they passed a parental notification statute, and based on that, he himself, he said, would have been an unconscionable activist if he voted other than to say that the child did not have to notify her parents. Other mem-

bers of the court reached a different conclusion about what the legislature meant with the statute, and he did not accuse anyone else of being an unconscionable activist. They have been running ads on television saying that as if it were a fact. It is not. Surely, we should have the decency not to do those kinds of things.

An allegation just made about Janice Rogers Brown was that she criticized the free speech of an employee for criticizing their boss. That is not exactly what the case was. What the facts were—that employee sent out 200,000 e-mails on the boss's computer system attacking the boss and the company. It was a disgruntled employee. How much do you have to take, clogging up the system with spam? One of the most liberal justices on the California Supreme Court joined with her in that view. That is not an extreme position. She wasn't saying a person could not criticize her boss.

Another comment that was really troubling to me—and I have to say it because Janice Rogers Brown, although very firmly established and highly successful in California, grew up in Alabama, a small town not too far from where I grew up. She left Alabama as a young teenager and went to California and ended up going to UCLA Law School and being awarded the distinguished graduate award there. She is a wonderful person. I have taken an interest in her history. She grew up in discrimination in the South. That is one reason they left. A sharecropper's daughter, she was not raised in an environment where African Americans were treated equally. That is a fact. They say now that she said it is OK to use racial slurs against Latinos. You have heard that comment. She said that Janice Rogers Brown said that.

That is not what she said. That is absolutely not the facts of that case. It is really sad to hear that said, and the facts would demonstrate that that claim against her is a totally unfounded charge.

Also, with regard to her position on the Supreme Court of California, she wrote more majority opinions in the year 2002 than any other judge on the court. When a majority reaches a view about the case, and a majority on the court decides how it should come out, they appoint someone to write the opinion for the majority. She wrote more majority opinions than any other justice on the court. How could she be out of the mainstream of the California court? I felt really compelled to make some comments about her and her record.

Mr. President, I will conclude tonight by once again recalling that when the Republicans had the majority in 1998, right after I came to the Senate in 1997, President Clinton was nominating judges. Two of them were very activist judge nominees for the Ninth Circuit Court of Appeals, the most activist court in the United States—the California, West Coast Court of Appeals. It

had been reversed 27 out of 28 times by the U.S. Supreme Court, I believe, the year before that and consistently was the most reversed court in America. Those two nominees, Berzon and Paez, which I strongly opposed—and I think a review of their record would show they have been activist and should not have been confirmed. But Orrin Hatch said in our Republican conference: No, let's don't filibuster judges; that is wrong.

I was a new Member of the Senate, as the Senator from California said she was. He stepped up and said: Don't filibuster. We need to give them and up-or-down vote. The then-majority leader, TRENT LOTT, moved for cloture to give them an up-or-down vote. I voted to give Berzon and Paez an up-or-down vote, and we did that. We invoked cloture, brought them up. The Republican majority brought up the Clinton nominees, and we voted them up. They were both confirmed, and they are both on the bench today.

Our record was one that rejected filibusters. Now, what happened after all of this occurred? It was a huge alteration of the Senate's tradition and, I think, the constitutional intent. I think the Constitution is clear that a majority is what we were looking for. So we were faced with a difficult decision of what to do and how to handle it.

I compliment Senator BILL FRIST, the majority leader of the Senate. He systematically raised this issue with the leadership on the other side. He provided every opportunity to debate these nominees so that nobody could say they didn't have a full opportunity to debate. He researched the history of the Senate, and he presented positions on it and why the filibuster on judicial nominees was against our history. He urged us to reach an accord and compromise. All we heard was no, no, no, you are giving a warm kiss to the far right, you are taking steps that are extreme, you are approving extreme nominees, people who should not be on the bench, and we are not going to compromise and we are not going to talk to you.

After considerable effort and determination and commitment to prin-

ciple, Senator FRIST moved us into a position to execute the constitutional option, also referred to as the nuclear option. It has been utilized, as he demonstrated, many times by majority leaders in the past. It is not something that should be done lightly, but it is certainly an approved historical technique that has been used in this Senate. As a result of that, and the fact that they were facing a challenge, I think it was at that point we began to have movement on the other side, and they realized this deal was not going to continue as it was and that, under the leadership of Senator FRIST, we were not going to continue this unprecedented, unhistorical action of filibustering judicial nominees.

So it was out of that that we had the agreement that was reached today. With that constitutional option hanging over the heads of a number of people, a serious reconsideration took place. I think a number of Senators on the other side have been uneasy about this filibuster. They have not felt comfortable with it, but it was leadership-led and difficult, apparently, for them to not go along. Although, I have to note that Senator Zell Miller and BEN NELSON consistently opposed it and supported the Republican nominees each and every time as they came forward.

So out of all of this, we have reached an accord tonight. It has led to what appears to be a guarantee that three nominees, at least—Priscilla Owen, Janice Rogers Brown, and William Pryor, who is sitting now as a recess appointee on the Eleventh Circuit—will get an up-or-down vote. I believe all three of them will, and should be, rightfully, confirmed as members of the court of appeals of the United States of America. They will serve with great distinction. I am sorry we don't have that same confidence that Judge Saad or Judge Myers will also get a vote. They may or may not, apparently. But we don't have the same confidence from this agreement that they will. I think they deserve an up-or-down vote also. But today's agreement was a big step forward.

Maybe we can go forward now and set aside some of the things of the past, and we will see Members of the other side adhere to the view of those who signed the agreement that a filibuster should not be executed except under extraordinary circumstances. Certainly, that is contrary to the position that they were taking a few months ago and certainly the position being taken last year.

So progress has been made. I salute particularly the majority leader who I believe, through his leadership and consistency, led to this result today. I am thrilled for Judge Pryor and his family because I know him, I respect him, and I know he will be a great judge. I am excited for his future.

Mr. President, seeing no other Senator here, I yield the floor.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:45 a.m. tomorrow.

Thereupon, the Senate, at 10:13 p.m., adjourned until Tuesday, May 24, 2005, at 9:45 a.m.

NOMINATIONS

Executive nominations received by the Senate May 23, 2005:

DEPARTMENT OF EDUCATION

TOME LUCE, OF TEXAS, TO BE ASSISTANT SECRETARY FOR PLANNING, EVALUATION, AND POLICY DEVELOPMENT, DEPARTMENT OF EDUCATION, VICE BRUNO VICTOR MANNO, RESIGNED.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

ARLENE HOLEN, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION FOR A TERM EXPIRING AUGUST 30, 2010, VICE ROBERT H. BEATTY, JR., TERM EXPIRED.

DEPARTMENT OF JUSTICE

ROD J. ROSENSTEIN, OF MARYLAND, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF MARYLAND FOR THE TERM OF FOUR YEARS, VICE THOMAS M. DIBIAGIO.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. ERIC T. OLSON, 0000