DOING THE WILL OF THE PEOPLE

Mr. REID. Madam President, I support the memorandum of understanding. It took the nuclear option off the table. It is gone for our lifetime. We don't have to talk about it anymore. I am disappointed there are still the threats of the nuclear option. Let's move on. We need not go over this, but there were 218 nominees of the President and we turned down 10.

All filibusters are extraordinary. There will be filibusters of judges and of other things. That is what the Senate is all about. That is what the 14 Senators acknowledged. I admire and respect what they did. I am thankful they kept me advised as to what they were doing. It is too bad there were not other opportunities to make a ''deal'' between the majority leader and me.

We have to understand that the Senate needs to operate. I say to my friend, the distinguished majority leader, there was an agreement made on three judges. We feel the merits of those three judges are not good and that we need time to talk about those three judges. We will continue to do that. The rules of the Senate have not been changed. That is what is so good about the agreement of these 14 Senators, who rose above the battle and did the right thing.

I am willing to work with the majority leader. I have said that publicly and privately. But we have to be realistic. Unless we work into next week, we cannot do all these judges. If that is the order—that we are going to work into next week—people should be told that now. We are willing to work within the confines of the rules of the Senate. If cloture is invoked today, the rule is you get 30 hours. We are happy to work on that to shorten it a little bit and to have a vote sometime tomorrow and then go to other matters. I would think we could go to another judge—a controversial judge. We have indicated that the judges from Michigan are not controversial. They were held up on procedural things because of longstanding problems with the Michigan Senators. We would need to debate that for a while.

We are here to work the will of the Senate. Again, I am somewhat disappointed that we still hear threats of nuclear option. That is gone. Let's forget about it. I am happy that one of the things the 14 talked about is having some consultation with the President. I am confident that will work out better for the White House and the Senate. I hope that transpires. We here want to move forward. We have so much that needs to be done.

The distinguished majority leader has talked about things that need to be done, such as the Bolton nomination, which is also controversial. We will be happy to try to work to some degree to make that as easy as possible for everybody. It is a difficult issue. I have spoken to Senator BIDEN early this morning. He has a plan as to what he feels should be done on Bolton. None of this is going to take an hour or two. There are things we have to talk about with Bolton.

As I indicated last night, last night was a good day for the Senate and today is a good day. Let's move forward and work as the Senate feels it should work. There have been no rule changes. We are here to do the will of the people of this country.

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

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

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume executive session to consider the following nomination, which the clerk will report.

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

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 11:40 shall be equally divided between the two leaders or their designees.

The Senator from Alabama is recognized.

Mr. SESSIONS. Madam President, I will say a few things about the compromise that was reached last night. It has a lot of good things in it. I think, first and foremost, it represented a consensus of a group of Senators who would represent the majority, saying that filibusters are not to be routinely utilized in the confirmation process. As a matter of fact, they said only in ''extraordinary circumstances'' should a filibuster be utilized.

This was a rejection of what we have seen for over 2 years in the Senate. It was a movement toward the historical principles of confirmation that I think are very important. I think it is worthy of note that the majority leader, Senator BILL FRIST, who just left the floor, moved so ably on this issue. He spent nearly 2 years studying the history, seeking compromises, working with colleagues on both sides of the aisle, and as of a few weeks ago had, I believe, quite clearly achieved a majority of the Senators who were prepared to exercise the constitutional option to establish the rule that we would not filibuster judicial nominees. We have not had a judicial filibuster in 214 years and we should not have one now. A majority in this Senate was prepared to act to ensure that we would not have one.

It was only at that point that serious discussions began on a compromise and, as a result of those discussions, seven Senators on each side agreed they would act in a certain way and issued the statement they did. It does not reflect the majority of either party, but it does reflect, in my view, the fact that a majority of this Congress does not believe that filibusters are the way to go and should not occur except in extraordinary circumstances.

Frankly, I think that is not the principle we need to adhere to. When President Clinton was President and he sought nominees that he chose for the Federal bench, and people on the Republican side discussed whether a filibuster was appropriate, the Republicans clearly decided no and allowed nominees such as Berzon and Paez to have an up-or-down vote. They were given an up-or-down vote and both were confirmed, even though they were controversial. I think that was significant.

I have to tell you how thrilled I am that Judge Bill Pryor will be able to get an up-or-down vote. He is one of the finest nominees who has come before this body. The hard left groups out there, who have been driving this process, attacked him early on and misrepresented his positions, his character, his integrity, and his legal philosophy. They called him an activist, when he is exactly the opposite of that, and they created a storm and were able to generate a filibuster against him. He had a majority of votes in the Senate, if he could have gotten an up-or-down vote. But he was denied that through the inability of the majority to cut off debate and have a vote.

I am so glad the group of 14 who met and looked at these nominees concluded he was worthy of being able to get a vote up or down. I have to say that has colored my pleasure with the agreement, even though I know some other good judges or nominees were not part of the agreement.

I want to point this out. The minority leader seems to suggest that filibusters are here to stay and they are normal and logical, and get over it and accept it, and that, oh, no, the constitutional option can never be used. That was not in that agreement and that is not what is in the hearts and minds of a majority of the Senators in this body. If this tactic of filibustering is continued to be used in an abusive way, or in a way that frustrates the ability of this Congress to give an up-or-down vote to the fine nominees of President Bush, there has been no waiver of the right to utilize the constitutional option.

As I understand it, even yesterday Senator BYRD, on the Senate floor, admitted the constitutional option is a valid power of the Senate majority. I would say this. It ought not to be abused; it ought not to be used for light or transient reasons. It ought to be used only in the most serious circumstances—the most serious circumstances of the kind we have today when, after 200 years of tradition, 200 years of following the spirit of the Constitution to give judges up-or-down

votes, the Senate is systematically altered as it was in the last Congress. That is why it was brought out, and with the threat of the constitutional option and a majority of Senators who were prepared to support it, a compromise was reached. I believe it is significant.

Finally, I want to note it is exceedingly important that we, as Members of this Senate, understand how judges should be evaluated, how they have basically always been evaluated, except in recent times. How should they be evaluated? They should be evaluated on their judicial philosophy, not their political views or their religious views. There are nominees who have come before this Senate who have demonstrated through a career of practice that they comply with the law, whether they agree with it or not. Some of them are pro-life, some of them are pro-choice, some of them are for big Government, some of them are for smaller Government, some of them are for strong national defense, some of them are not. That is not the test and cannot be the test.

We had one situation that troubled me. I was pleased eventually that this nominee was confirmed. A man and a woman—the man was nominated for judge and had been No. 1 in his law school class. They had written a letter to the members of their church, a Catholic Church in Arkansas, and they discussed their view of marriage in the Christian tradition. They affirmed that and quoted from Scripture. We had persons attack that nominee because they said it somehow elevated a man over a woman. That is not the rich tradition of marriage as was explained in their letter. But it led to that attack. That made starkly clear in my mind what is at stake here. This is the question: Are we to expect that every nominee that comes here has to lay out their personal philosophy, their marital philosophy, their religious beliefs, and we sit and judge them on whether we agree with that?

Is that the way you judge a judge to see if they are qualified: Do I agree with their theology? Do I agree with their political philosophy? Do I agree with their opinion on Franklin Delano Roosevelt? Is that what we do?

We cannot do that. We should not do that. We ought to be pleased that a nominee has cared enough about his or her country to speak out on the issues that come before the country. We ought to be pleased that they have been active and they care and they participate in the great political debate in America. But we ought not say to them, because you said one thing about abortion, and you are pro-life or you are pro-choice, you can never follow the law of the Supreme Court or the Constitution and, therefore, we are not going to allow you to be a judge. We cannot do that. That is a wrong step.

I think that was implicit in this compromise—at least I hope it was. I think it said that judges, such as Judge Bill Pryor who, when asked did if he said abortion was bad, answered: Yes, sir, I do. And when he was asked: Do you still believe it? He said: Yes, sir. I do. He had a record, fortunately, that he could then call on to show that he was prepared to enforce the law whether he agreed with it or not. If he had been in the legislature, he might have voted differently. But as a judge or as attorney general, he had a record on which he could call to show that he enforced the law.

For example, Judge Pryor would certainly have opposed partial-birth abortion, one of the worst possible abortion procedures. But as attorney general in the 1990s, when Alabama passed a partial-birth abortion ban, he wrote every district attorney in the State on his own motion—he did not have to, but he had the power to do so as attorney general—and told them that portions of that bill, with which he probably agreed, were unconstitutional and should not be enforced.

Later, when the Supreme Court of the United States rendered the Stenberg decision that struck down an even larger portion of the foundation of partial-birth abortion statutes that had passed around the country, he wrote another letter to the district attorneys and told them the Alabama statute was unconstitutional.

Does that not prove what we are about here? It is not your personal belief but your commitment to law that counts?

What about the circumstance when he was accused of being too pro-religion? I do not think the facts show an abuse of his power in any way. In fact, he found himself in the very difficult circumstance in Alabama of being the attorney general and having the responsibility to prosecute or present the case against the sitting chief justice of the Alabama Supreme Court who placed the Ten Commandments in the supreme court building. The chief justice had been ordered to remove it by the Federal courts, and he did not remove it. Other judges removed it. Attorney General Bill Pryor presented that case, and Judge Moore was removed from office.

That was a big deal. It was a tough deal. Time after time, he has done that.

Priscilla Owen also is a nominee of the most extraordinary qualifications. She made the highest possible score on the bar exam in Texas. That is a big State and bar exams are not easy. She is a brilliant lawyer, highly successful in the private practice of law in Texas. They encouraged her to run for the supreme court. She did so. She won. The last time she ran, she received 84 percent of the vote in Texas. This is a professional lawyer/jurist, brilliant, hardworking, a woman of great integrity and decency. She has questioned the concept or the idea that judges have a right to go back and reinterpret the meaning of the Constitution or statutes and read into them whatever they like to make them agree with the judge's philosophy. Many today seem to think they are at liberty to do this. In fact, some judges go back and try to twist, bend, stretch the meaning of words to promote agendas in which they believe. Priscilla Owen does not believe in that and has spoken against it.

Her philosophy as a judge reflects restraint, and a dedication to following the law. That is what she has stood for, and she has been criticized roundly as being an extremist—a judge who received 84 percent of the vote and was endorsed by every newspaper in the State.

Judge Priscilla Owen also was rated by the American Bar Association unanimously well qualified, the highest rating they give. This is not an extremist.

What was it here? Outside groups who have made a history of identifying and attacking these nominees have mischaracterized her, just as they did Judge Pryor. Both of these nominees, for example, have tremendous support within their State, tremendous bipartisan support in conference.

That is why I am confident the 14 people who got together and reviewed this situation felt they could not leave her or the other two judges off this list. They just could not deny Janice Rogers Brown, Priscilla Owen, or Judge Bill Pryor an up-or-down vote. They were too decent, had too much of a good record, too many supporters in the African-American community, in the Democratic leadership of their States, and that is why they were given this vote.

I think perhaps we are now moving forward to a new day in confirmations. I hope so. We have been far too bitter in attacking good people. Records have been distorted dishonestly, particularly by outside groups and sometimes that has been picked up by Senators. My Democratic colleagues have outsourced their decisionmaking process at times, I am afraid. They have allowed the People for the American Way and Ralph Neas and the Alliance for Justice, the people who spend their lives digging up dirt, sullying people's reputations, twisting facts, taking cases out of context, taking statements out of context, taking speeches out of context, posturing and painting nominees as things they are absolutely not, to influence their decisions. It is wrong. Hopefully, we are now moving in a better direction.

I am also hopeful that as a result of this agreement, the nomination process in the future will go better. Maybe even issues such as transportation, energy, and defense will go better in this Congress. I hope so. I will try to do my part.

I want to say one thing, the constitutional option has not been removed from the table. We cannot allow filibusters to come back and be abused. We absolutely cannot. The majority should never allow that historic change

to occur while they have the ability to resist and that ability still exists. I believe the majority leader, BILL FRIST, is correct in that analysis. He has stated the ideals of this Senate. He has reminded us of the history and traditions of the Senate. He has reminded us that Republicans were faithful to that tradition and the Democrats need to be, too. So I hope we will be able to move forward with the consideration of more and more nominees as President Bush goes forward in his term, and that as we do so, they will be given a fair hearing. I hope that Senators on both sides of the aisle will look at the facts and allegations about nominees to make sure those are truthful, accurate, and fair characterizations of them, and not mischaracterizations, not distortions, not misrepresentations of what they are and what they have done. If we do that, we are going to be OK.

Let me say this about President Bush. He has gone to the American people. He has stated his case to them. He stated clearly and effectively he believes that judges should be committed to the rule of law, should follow the law, that they should not be activist, they should not seek to impose personal and political agendas through the redefinition of words of statutes or our Constitution. The American people have affirmed him in that.

The Senate obstruction and filibuster of Federal judges has been a big issue in the last two election cycles in this Senate, and Republicans have, as a result, in my opinion—it is my opinion, I will admit—picked up six new Senate seats. I think a large part of that is because people in these States have been concerned about the obstruction of good and decent nominees, and the people of this country are of the opinion that their liberties are in jeopardy when an unelected lifetime-appointed judge starts setting social policy. If they are not happy with my vote on social policy, I can be removed from office, but a judge has a lifetime appointment, and the American people understand that. They understand that an activist judge is, indeed, antidemocratic. It is an antidemocratic act when a judge, without accountability to the public, starts setting social and political policy, as we have seen too often in recent years.

As a result, I believe we need to return to our traditions that have served both sides well, and if we do that, we can move forward, I believe, to a better process on judges and other issues that come before this body. I am cautiously optimistic for the future.

I yield the floor and reserve the remainder of our time on this side.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I understand that by previous agreement, time is allocated; is that correct?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. KENNEDY. And there is to be 1 hour for one side, 1 hour to the other side, prior to the leadership time?

The ACTING PRESIDENT pro tempore. There is 47 minutes remaining for the minority.

Mr. KENNEDY. Madam President, I yield myself 10 minutes.

First, I commend my friend and colleague, our leader, Senator REID, for his perseverance during these past several weeks and adherence to the great traditions of the institution of the Senate. It has been an extraordinary example of devotion to the Senate, to our Constitution, the checks and balances which are written into the Constitution. Our President has a veto, and the Members of Congress have the right to speak. There are those who would like to muzzle, silence, effectively cut off the debate in the Senate. With this agreement of last evening, that time, hopefully, has ended. It certainly has been for this Congress.

I was listening to some of my colleagues earlier. I read from the agreement about rules change:

> In light of the spirit and continuing commitments made in this agreement, we commit to oppose the rules changes in the 109th Congress, which we understand to be any amendment to or interpretation of the Rules of the Senate that would force a vote on a judicial nomination by means other than unanimous consent or rule XXII.

The current rule. There it is. Yet we heard the mention by the leader earlier this morning that he believes somehow the nuclear option is still alive and well.

It does seem to me the American people want to get about the American people's business. This has been an enormous distraction.

I listened to my friend and colleague from Tennessee who says we want to follow the rules and traditions of the Senate, so we are going back to the regular order. If we go back to the regular order, we are going back to the traditions and rules as they stand: You have the vote of every member on this side. That is not what the majority leader was talking about. He was talking about we will go back to the regular order; he was going to change the order with a whole series of changed rules.

That is what the members of this side and the courageous Republicans on the other side found offensive. We believe we ought to be about our people's business. We have approved 95 percent of the Republicans' nominees. I am sure some are, perhaps, pro-choice; many of them—probably most of them—are pro-life. They have still gone through. The real question is whether we are going to be stampeded and be silenced with regard to judges who are so far outside of the mainstream of judicial thinking that it was going to be the judgment of the majority leader that he was going to change the rules in a way that would deny the Senate's Parliamentarian, who has been the safeguarder of these rules for the 214 years of the Senate, and bring in the Vice President, who was going to rule according to his liking rather than to the traditions of the Senate.

That kind of abridgement, that kind of destruction, that kind of running roughshod over the Senate rules is offensive to the American people and offensive to us. It was avoided by the actions that were taken last evening in which our Democratic leader was the principal architect and supporter.

Yesterday was a day that will live in American history, and our grandchildren and their grandchildren will discuss what happened. They will do so with much more insight than we can today because they will know what the results of yesterday's agreements actually turned out to be. I hope that history will judge us well as an institution. We came close to having a vote that threatened the essence of the Senate and of our Government. It risked destruction of the checks and balances among the branches that the Framers so carefully constructed. It risked destruction of the independence of the judiciary, which is at the heart and soul of this issue. It risked an accumulation of power in the President that might have turned back the clock toward the day when we were subjects instead of citizens.

We have avoided that confrontation and have done so within the traditions of the Senate: discussion, debate, negotiation and compromise. Moderation and reason have prevailed. As in any compromise, some on each side are unhappy with specific aspects of the result, but the essence is clear. A majority of this body does not want to break its rules and traditions. Those rules and traditions will be preserved.

This body's self-regulating mechanisms will continue to be a moderating influence, not only within the body but also on the other House and the other branches of Government. Once again, the Senate has reminded the Chief Executive that we are not merely occupants of a beautiful building at the other end of Pennsylvania Avenue. We taught George Washington that lesson when we rejected one of his Supreme Court nominations. We taught Thomas Jefferson that lesson when we refused to convict an impeached Justice whose opinions Jefferson did not like. We taught Franklin Roosevelt that lesson when he tried to pack the Supreme Court. We taught Richard Nixon that lesson when he sent us a worse nominee after we defeated his first nominee for a Supreme Court position.

As even the Republicans in the agreement group said, this agreement should persuade the President to take more seriously the advice portion of the advice and consent. If the President understands the message and takes it to heart, his nominees will be better off, the courts will be better off, and the Nation will be better off.

Our principal goal was to preserve the ability of the Senate to protect the independence of the Federal courts, including the Supreme Court, and we

have succeeded in doing so. We have sent a strong message to the President that if he wants to get his judicial nominees confirmed, his selections must have a broader support from the American people.

As a result of this agreement, we can hope that no Senator will ever again pretend that the Constitution commands a final vote on every Executive nominee, for it has never done so and it does not do so now.

We can hope that no one will again pretend that there has never been a filibuster of a judicial nominee when they can look across the Senate floor at three Democratic Senators who witnessed the Republican filibuster against Justice Fortas and Republican Senators who participated in other judicial filibusters. We can hope that no one again will pretend that it is possible to break the fundamental Senate rule on ending a filibuster without shattering the basic bonds of trust that make this institution the world's greatest deliberative body.

I believe history will judge that we have not failed those who created America two centuries ago by what we have done. We have fought off those who would have destroyed this institution and its vital role in our Government for shameful partisan advantage. By rejecting the nuclear option, the Senate has lived up to its responsibilities as a separate and equal branch of Government.

I say to my colleagues on both sides of the aisle, that agreement does not change the serious objections to the nominations that have been debated in the past days. Those of us who care about the judiciary, who respect mainstream values, who reject the notion that judgeships are spoils to be awarded to political fringe groups, will continue to oppose the nomination of Priscilla Owen, Janice Rogers Brown, and William Pryor because they would roll back rights and freedoms important to the American people.

Now that these nominees are slated to get a vote on the floor, I hope courageous and responsible Republicans will show their independence from the White House and thoroughly examine the records of each of them. If they do, I hope they will agree that these nominees should not be given lifetime appointments to the Nation's courts, where they will wield enormous power over the lives of all Americans.

Those of us who oppose the nomination of Priscilla Owen have done so with good cause because her record makes clear that she puts her own ideology above laws that protect the American people. I have made that case. I just remind our colleagues of what the Houston Chronicle said. The Houston Chronicle, from her own area, wrote that her record shows less interest in impartiality and interpreting law than in pushing an agenda. She too often contorts rulings to conform to her particular conservative outlook. Those are not fringe groups. That is the Houston Chronicle.

Austin American-Statesman: Priscilla Owen is so conservative she places herself outside of the broad mainstream of jurisprudence and she seems all too willing to bend the law to fit her views.

Those are not leftwing fringe groups. That is the Austin American-Statesman.

San Antonio Express News: She has always voted with a small court minority that consistently tries to bypass the law as written by the legislature.

I have included at other times in the RECORD the 10 different occasions when the current Attorney General of the United States criticized Priscilla Owen for being outside of the mainstream of judicial thinking. I ask unanimous consent that six or eight of those, and the cases, be printed in the RECORD.

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

EXAMPLES OF GONZALES'S CRITICISMS OF OWEN

In one case, Justice Gonzales held that Texas law clearly required manufacturers to be responsible to retailers that sell their defective products. He wrote that Justice Owen's dissenting opinion would "judicially amend the statute" to let manufacturers off the hook.

In a case in 2000, Justice Gonzales and a majority of the Texas Supreme Court upheld a jury award holding that the Texas Department of Transportation and the local transit authority were responsible for a deadly auto accident. He explained that the result was required by the "plain meaning" of Texas law. Justice Owen dissented, claiming that Texas should be immune from these suits. Justice Gonzales wrote that her view misread the law, which he said was "clear and unequivocal."

In another case, Justice Gonzales joined a majority opinion that criticized Justice Owen for "disregarding the procedural limitations in the statute," and "taking a position even more extreme" than had been argued by the defendant in the case.

In another case in 2000, private landowners tried to use a Texas law to exempt themselves from local environmental regulations. The court's majority ruled that the law was an unconstitutional delegation of legislative authority to private individuals. Justice Owen dissented, claiming that the majority's opinion "strikes a severe blow to private property rights." Justice Gonzales joined a majority opinion criticizing her view, stating that most of her opinion was "nothing more than inflammatory rhetoric which merits no response."

Justice Gonzales also wrote an opinion holding that an innocent spouse could recover insurance proceeds when her co-insured spouse intentionally set fire to their insured home. Justice Owen joined a dissent that would have denied coverage of the spouse, on the theory that the arsonist might somehow benefit from the court's decision. Justice Gonzales' majority opinion stated that her argument was based on a "theoretical possibility" that would never happen in the real world, and that violated the plain language of the insurance policy.

In still another case, Justice Owen joined a partial dissent that would have limited the right to jury trials. The dissent was criticized by the other judges as a "judicial sleight of hand" to bypass the Texas Constitution.

Mr. KENNEDY. This is Attorney General Gonzales on the supreme court with Priscilla Owen, critical of her of being outside the mainstream. That is the point we have basically made.

This week, the American people are saying loudly and clearly that they are tired of the misplaced priorities and abuse of power by the rightwing. This agreement sends a strong message to the President that if he wants to get his judicial nominees confirmed, his selections need to have broad support from the American people.

Going forward on any nomination, the President must take the advice and consent clause seriously. The Senate is not a rubberstamp for the White House. The message of Monday's agreement is clear: Abuse of power will not be tolerated. Attempts to trample the Constitution will be stopped.

Over the last few weeks, the Republican Party has shown itself to be outside the mainstream, holding up the Senate over the judges while gas prices have jumped up through the ceiling, stubbornly insisting on the Social Security plan that cuts benefits and makes matters worse, passing a budget that offers plenty to corporations but little to students, nurses, and cops, and running roughshod over ethics rules. These are not the priorities of the American people. The American people want us to get back to what is of central concern to their lives, the lives of their children, their parents, and their neighbors. That is what we ought to be about doing, and preserving the Constitution and the rules of the Senate. The agreement that was made in a bipartisan way does that, and it should be supported by our colleagues in the Senate.

I reserve the remainder of our time.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

Mr. GRAHAM. Madam President, No. 1, there has been a lot said about last night. I was one of the signatories of the agreement. I think last night gives us a chance to start over. Seldom in life do people get a chance to start over and learn from their mistakes.

There have been some mistakes made for about 20 years on judges, and it finally all caught up with us. It started with Judge Bork. He was the first person I can remember in our lifetime who was basically subjected to "how will he decide a particular case," and he was attacked because of his philosophy, not because of his qualifications. It has just gotten worse over time. Clarence Thomas—we all remember that.

The truth is, when the Republicans were in charge of the Judiciary Committee, there is a pretty good case to be made that some of President Clinton's nominees were bottled up when we had control of the Judiciary Committee, and they never got out into the normal process.

Where do we find ourselves now? It started with an attack on one person because people did not like the philosophy of that person, which was new for the Senate. Before that, when a judge

was sent over, we looked at whether they were qualified ethically and intellectually.

One has to understand that there is a consequence to an election. When a President wins an election, that President has a right to send nominees over to the Senate for Federal courts. It has always been assumed that conservative people are going to pick conservative judges, and moderate and liberal people are going to be somewhere in the middle. That has worked for 200 years.

The bottom line is, the President can send over somebody who they think is conservative, and they can be fooled. They can send somebody they think is liberal, and over a lifetime they may change. What we have been able to do as a body is to push back but eventually give people a chance to be voted on.

I was a ''yes'' vote. Senator DEWINE and myself were ready to vote for the nuclear option this morning if we had to, the constitutional option. It can be called whatever one wants to call it, but it would have been a mess for the country. It would have been better to end this mess now than pass it on to the next generation of Senators because if the filibuster becomes an institutional response where 40 Senators driven by special interest groups declare war on nominees in the future, the consequence will be that the judiciary will be destroyed over time. People can get rid of us every 6 years, thank God, but once a judge is put on the bench, it is a lifetime appointment. We should be serious about that.

We should also understand that people who want to be judges have rejected the political life, and when we make them political pawns and political footballs, a lot of good, qualified men and women who are moderate, conservative, or liberal will take a pass on sitting on the bench. If the filibuster becomes the way we engage each other on judges, if it becomes the response of special interest groups to a President who won who they are upset with, the Senate will suffer a black eye with the American people, but the judiciary will slowly but surely become unraveled.

That is why I think we have a chance to start over. That is why I voted for us to start over, and I hope we have learned our lesson.

As to Priscilla Owen, it is the most manufactured opposition to a good person I have seen short of Judge Pickering, only to soon-to-be Judge Pryor and a close third is Justice Brown. What has been said about these people is beyond the pale. They have been called Neanderthals. If one has somebody they know and care about and they are thinking about being a judge, I think they need to be given fair warning that if they decide a case that a special interest group does not like, a lot of bad things are going to be coming their way.

Do we really need to call three people who have graduated near the top of their class, who have had a lifetime of service to the bar, Neanderthals? We have a chance to start over, and we better take it, because one thing the American people have from this whole show is that the Senate is out of touch with who they are and what they believe because we have allowed this thing to sink into the abyss. Priscilla Owen got 84 percent of the vote in Texas, and JOHN CORNYN knows her well. He served with her. She graduated at the top of her class; scored the highest on the bar exam. She has been a solid judge. What has been said about her has been a cut-and-paste, manufactured character assassination. Whether she is in the mainstream, the best way to find out is when people vote. When Priscilla Owen finally gets a vote here soon, you are going to see she is very much in the mainstream, if a supermajority of Senators count for anything. She is going to get votes. She is going to get a lot more than 50 of them. So is Judge Pryor.

The problem I have had with Bill Pryor and the way he has been handled is that he is the type person I grew up with. He is a conservative person. He is a good family man. But he has made some calls in Alabama that are unbelievably heroic, when it comes to politics and the law. Being for the Ten Commandments is a big deal in Alabama. Judge Moore, Justice Moore took that and rode that horse and beat it to death and it got to be a hot issue in Alabama and it got to be a hot issue all over the country. The attorney general of Alabama, Bill Pryor, followed the law and took on Justice Moore. He didn't have to, but he chose to.

At every turn he has proved to me he is bigger than the political moment. When he gets voted on, I am going to take this floor and we are going to talk a little bit longer about him. The people in Alabama across the board should be proud of Bill Pryor. He is going to make a heck of a Federal judge.

Now, where do we go? This agreement was among 14 Senators who believed that starting over would matter—14 Senators from different regions of the country, supported by their colleagues in a quiet fashion, more than you will ever know. What happens in the future depends on all of us working together. It depends on trust and good faith. The White House needs to talk with us more, and they will. Our Democratic friends need to understand that the filibuster as a tool to punish George W. Bush is not going to sustain you very long and will put you on the wrong side of the American people and will eventually destroy the judiciary.

The agreement says that in future nomination battles, the seven Democrats will not filibuster unless there are extraordinary circumstances. What does that mean? Well, we will know it when we see it. It means we will keep talking. It means they don't have to lay down in the road if there is a Supreme Court fight. There is going to be a Supreme Court nomination coming, probably soon, and that is what this is about. But our seven Democratic colleagues decided to find a middle way to bring some calm to the body. I think we can get a conservative justice nominated and confirmed if we try hard. Nobody should expect anything less from George W. Bush. But there is a way to get there from here and I do believe the seven Democrats who signed this agreement will work very hard to make that happen along with all Senators at the end of day.

But if there comes a point in time in the future when one of the seven Democrats believes this person before them is so unacceptable they have to get back in the filibuster business, here is what it means to the Republicans—because I helped write the language. It means we will talk, we will listen, and we will discuss why they feel that way. But it means I am back in the ball game. If one of the seven decides to filibuster and I believe it is not an extraordinary circumstance for the country, for the process, then I have retained my rights under this agreement to change the rules if I think that is best for the country. That is only fair. My belief is we will never have to cross that bridge. But those who say this is a one-sided deal misrepresent what happened in that room. This is about moving forward, avoiding conflict in the future by talking and trusting.

But there may come a time, and I hope to God it doesn't happen, where we go different directions. The only reason we will ever go different directions is that we will start playing politics again and lose sight of the common good.

The two nominees who were in category two I think will get back in the process in a fair way. The truth is all of the nominees were never going to make it. There are some Republicans who will vote against some of these nominees. But they all deserve a fair process and they all deserve to be fairly treated. None of them deserve to be called Neanderthals.

It is my hope and my belief we will get this group of nominees fairly dealt with. Some are going to make it and some will not. But they will get the process back to the way it used to be. As to the future, it is my belief that by talking and working together in collaboration with the White House, we can pick Supreme Court Justices, if that day ever comes, so that everybody can be at least happy with the process, if not proud of the nominee. That is possible because we have done it for 200 years. But please don't say, as a Democrat, you can do anything you want to do in the 109th Congress and nothing can happen, because that is not true.

I have every confidence we can get through this mess, but there is no agreement that allows one side to unilaterally do what it would like to do and the other side be ignored. Because if that were the case, it wasn't much of an agreement.

I look forward to voting for Justice Owen, I look forward to voting for

Judge Pryor, I look forward to voting for Justice Brown, and putting to rest the idea that these nominees were out of the mainstream.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Before my friend and colleague from South Carolina leaves, I want to congratulate him and my colleagues on both sides of the aisle for bringing us to this point. The most important point about what has happened in the last 12 hours is we have maintained the checks and balances in the Senate. We are retaining the ability for minority views to be heard. That is most important.

It is not always Democrats versus Republicans. It could be little States, such as the State of my friend from Delaware, whom I see on the floor, versus Michigan or California. It could be different groups of people. It could be Great Lakes Senators banding together to protect our Great Lakes versus others who want to divert water. It could be a variety of issues.

The fact that the Senate is the place we can come together and minority views can be heard is a part of our democratic process. It is a part of our democracy that has held us together for over 200 years. I commend my colleagues for standing up and saying no to eliminating the filibuster and no to eliminating the checks and balances of our Government.

It involves some compromise, as these agreements always do. While I personally will not support the nomination of the person before us today, I understand that in order to maintain the broad principle of checks and balances in the Senate, in order to allow us to exercise our minority views at a future point if there are extreme nominees coming forward, this was an important compromise to make.

Part of that is an important piece that Senator LEVIN and I contributed to the process of allowing the Senate to move forward on three nominees of the Sixth Circuit from Michigan. So there are compromises that have been made in the interests of the larger good, in the interests of maintaining the checks and balances, the ability for us to work together on both sides of the aisle to get things done for the American people. That is why we are here.

Now we need to get about the business of getting things done for people. When I go home every weekend, when I talk to my family in Michigan, when I talk to everyone I represent—families all across Michigan, they say, We want you to focus on jobs, American jobs. We want our jobs here. We want to reward work in this country and know that when we work hard every day and play by the rules, we are going to be able to care for our families and that we have respect for the dignity of work and that we will reward Americans who are working hard every day.

They say to me they are desperately concerned about their pensions. Look what is happening. We in this body need to be focusing on protecting the pensions, the retirement security of all the Americans who worked all their lives. They put that money aside and they count on that pension in retirement for themselves and their families. Now they are seeing that American dream eroded. Pension security, strengthening Social Security, making sure health care is available to every American—these are the issues that, in this body, we need to be working on together because they directly affect every single person we represent.

I am hopeful we will now be able to put this aside and we will be able to move on with the people's agenda for this country, creating opportunities for everybody to succeed, rewarding work, making sure we are protecting and expanding American jobs and American businesses, making sure we are energy independent.

We will be having legislation brought before us shortly. I know there is important bipartisan work going on. But we need to say we are going to be independent in terms of energy resources and that we are going to move forward as well on issues that relate to national security—not only a strong defense abroad but making sure our police officers and firefighters have what they need, and our emergency responders, so that we have security at home. When somebody calls 911, they will know they are going to get the response they need in terms of their security.

We have a lot of work to do. People are expecting us to get about the people's business. I am very proud that last night our leader on this side of the aisle, the Democratic leader, Senator REID, spoke to those issues. In praising where we are now, the fact that we will continue to have the rules and checks and balances of the Senate, he also then spoke about the fact that we have to get about the people's business because every day when people get up in the morning they are wondering what is going to happen that day for themselves and their families.

It is our job to do everything we can to make sure their hard work is rewarded and opportunities for the future, for our children and grandchildren, are protected. This is a fight for the future. It is a fight about where we need to go as a country. Our families are counting on us to turn to the things they care about every day. The values and priorities of the American people need to be what we are talking about and acting on in this Chamber. I am hopeful we will very quickly turn to those matters: jobs, health care for every single American, opportunities for our kids to be successful, energy independence, a strong defense here and abroad. If we do that, then we will be able to hold our heads high, because we will have done those things that matter most to the families we represent.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, when I was in college and law school, there was a character played by the actress Gilda Radner on ''Saturday Night Live,'' who was known best for purporting to do the news and would engage in this screed about some subject, and then she would be corrected, only to have her then reply, ''Never mind.''

I thought about that when I have contemplated the occurrences of the last few days, particularly the last day when it came to the sort of apocalyptic terms that were used as we approached breaking the logjam over the President's long-delayed judicial nominees. But for this secret negotiation conducted by 14 Senators that none of the rest of the Senate was a party to, we would be, I believe, about the process of reestablishing the precedent of majority rule that had prevailed for 214 years in the Senate, that would say any President's nominees, whether they be Republican or Democrat, if they have the support of a majority of the Senate, will get an up-or-down vote in the Senate. Senators who believe these nominees should be confirmed can vote for them and those who believe they should not be confirmed can vote against them.

I was not a party to the negotiations and what happened in this room off the Senate floor, but I do have some concerns I wanted to express about what has happened.

It is important to recognize what this so-called agreement among these 14 Senators does and what it does not do. First of all, one of the things it does, it means that at least three of the President's nominees—Bill Pryor, Janice Rogers Brown, and Priscilla Owen—will get an up-or-down vote on the Senate floor and that they will be, I trust, confirmed to serve in the Federal judiciary.

What this agreement by these 14 Senators does not do, it does not give any assurance that other nominees of the President—Mr. Myers, in particular, and others—will get an up-or-down vote that they deserve according to the common understanding of the Senate for more than 200 years by which those who enjoyed majority support did get that vote and did get confirmed.

What this agreement says, we are told, is that seven Democrats and, presumably, seven Republicans reserve the right to filibuster judicial nominees under extraordinary circumstances, but we are left to wonder what those extraordinary circumstances might be. What makes me so skeptical about this agreement among these 14 is that extraordinary circumstances are in the eye of the beholder.

Looking at the litany of false charges made against Priscilla Owen for the last 4 years makes me skeptical that any nominee, no matter how qualified, no matter how deserving, that under appropriate circumstances our colleagues, some of our colleagues, will find the circumstances extraordinary and still reserve unto themselves what

they perceive as their right to engage in a filibuster and deny a bipartisan majority our right to an up-or-down vote.

It is clear to me this agreement among these 14 to which 86 Senators were not a party does not solve anything. What it does do is perhaps delay the inevitable. Senator DEWINE, in particular, one of the signatories of this agreement, says this is an effort to break the logjam on these three nominees, hopefully, change the standard by which at least seven Senators on the other side of the aisle will engage in a filibuster, and perhaps start anew.

I hope Senator DEWINE is correct in his reading and his understanding of this agreement. I was not a party to it; presumably, 84 Senators were not a party to it. Negotiations took place in a room where I didn't participate, where the American people were not given the opportunity to listen and judge for themselves.

The thing that disturbs me most about this temporary resolution, if you can call it that, is that while 7 Republicans and 7 Democrats were a party to this agreement, a product of these negotiations, the fact is that the 7 Republicans of this 14 would have agreed to close off debate and would have agreed to allow an up-and-down vote, while it is clear that the 7 Democrats would not have agreed otherwise to withhold the filibuster and allow an up-or-down vote.

What reminds me so much of Roseanne Rosannadanna on Saturday Night Live and Gilda Radner, now in effect what they are saying after 4 years of character assassination, unjustified attacks, and a blatant misrepresentation of the record of these fine nominees, they are saying, in effect, never mind, as if it never happened. But it did happen. It is important to recognize what has happened. It is a blight on the record of this body, and it is further evidence of how broken our judicial confirmation process has been.

I have nothing but admiration for the courage of our majority leader in bringing us to this point. I believe if he had not had the courage and determination—and, I might add, our assistant majority leader, MITCH MCCONNELL—if our leadership had not had the determination to bring us to this point, I have no doubt that we would not have reached at least this temporary resolution. They are entitled to a whole lot of credit for their courage and their willingness to hold the feet to the fire of those in the partisan minority who would have denied a bipartisan majority the right to an up-and-down vote on these nominees.

This agreement of these 14 Senators delays but does not solve the problem. Of course, we all anticipate that before long, there will be a Supreme Court vacancy which will test this definition of what these 14 call extraordinary circumstances. I wonder whether this standard will be applied to the other nominees who were not explicitly covered by this agreement; that is, other nominees who have been pending for years who were not given, as Justice Owen, Justice Brown, and Judge Pryor have been, the opportunity for an up-or-down vote.

Let me say I hope I am wrong. But there is plenty of reason to be skeptical about this so-called agreement of these 14. Perhaps we will see a triumph of hope over experience, but our experience over the last 4 years has been a bad one and one which I don't think reflects well on the Senate.

I hope I am wrong. I hope what has been established is a new precedent that says that the filibuster is inappropriate and will not be used against judicial nominees because of perceived difference in judicial philosophy, that people who have certain fundamental convictions will not automatically be disqualified from judicial office. I hope that is where we are. As we know, though, extraordinary circumstances could be interpreted by some to mean that if you can vilify and demonize a nominee enough, that, indeed, the filibuster continues to be justified. We know from the false accusations made against too many of President Bush's nominees how easy that is to do.

After $10 million—that is one estimate I have heard—in the various special interest attack ads have been run against Priscilla Owen and Janice Rogers Brown and others, after $10 million or more, perhaps, the American people are told, never mind, we did not really mean it; or even if we did mean it, you are not supposed to take us seriously because what this is all about is a game.

This is about the politics of character assassination, the politics of personal destruction. In Washington, perhaps people can be forgiven for believing that happens far too much. Indeed, that is what has happened with these fine nominees. But now they are told, particularly in the case of Justice Owen, after 4 years, never mind, all the things that were said about you, all the questions raised are beside the point, and you are not going to serve on the Fifth Circuit Court of Appeals after waiting 4 years for an up-or-down vote.

I worry some nominees in the future will simply say: I am not going to put my family through that. I think about Miguel Estrada, who waited 2 years for an up-or-down vote with the wonderful American success story, but after 2 years he simply had to say: I can't wait anymore. My reputation cannot sustain the continued unjustified attacks. I am simply going to withdraw.

Unfortunately, when we have good men and women who simply say, I can't pay the price that public service demands of me and demands of my family, I fear we are all losers as a result of that process.

I am skeptical of this agreement made by 14 after secret negotiations that we were not a party to. Perhaps I am being unduly skeptical. I hope I am wrong. I hope what has happened today and I hope we are reassured over the hours and days that lie ahead that what has been established is a new precedent, one that says we will not filibuster judicial nominees, we are not going to assassinate their character, we are not going to spend millions of dollars demonizing them.

I hope I am wrong and that we have a fresh start when it comes to judicial nominations. The American people deserve better. These nominees deserve better. This Senate deserves better than what we have seen over the last 4 years.

I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Delaware.

Mr. CARPER. Mr. President, a week ago, I stood in this Chamber and I reminded Members to look back some 200 years. The issue of how we are going to nominate and confirm judicial appointees is not a new issue. At the 1787 Constitutional Convention in Philadelphia, there were many issues to resolve. One of the last issues resolved was, who is going to select these Federal judges to serve a lifetime appointment?

Ben Franklin led the forces on one side in an effort to try to curb the powers of this President we are going to establish to make sure we did not have a king in this country. And Ben Franklin and those who sided with him said the judges ought to be selected by the Senate, by the Congress.

There was another school of thought that prevailed as well in the Constitutional Convention, those forces led by Alexander Hamilton. Hamilton and his allies said: No, the President should choose the people who are going to serve lifetime appointments to the Federal bench.

In the end, a compromise was proposed and voted on. Here is the compromise: The President will nominate, with the advice and consent of the Senate, men and women to serve lifetime appointments to the Federal bench. That compromise was voted on. It was defeated. They wrangled for a while longer and came back and they voted on the same compromise again. It was defeated. They went back and wrangled among themselves and came back and voted a third time on the same compromise. And it was accepted. That was 1787.

A lot of years have passed since then, and this issue, this check and balance that was embedded in our Constitution, is one we have revisited over and over again. We did it this week. It was a big issue when Thomas Jefferson was President, the beginning of his second term when he sought to stack the courts and was rebuffed by his own party. That was in the 1800s. It was a big issue in the 1900s when FDR, at the beginning of his second term, sought to stack the courts, pack the courts. He, too, was rebuffed largely by his own party.

Is this compromise hammered out over the last couple of weeks going to

last forever? My guess is probably not. Just as this has been an issue of contention for over 200 years, it is probably going to be a source of controversy for a while longer.

My friend from Texas, who spoke just before me, talked about the mistreatment of those who have been nominated to serve on the Federal bench by President Bush over the last 4 years. He mentioned a number, as it turns out, about 10 out of over 200, who were confirmed over the last 4 years. He mentions the 10 who, frankly, have had their lives disrupted, and in some cases were held up to poor commentary in the public and in the Senate with respect to their worthiness to serve on the bench for a lifetime appointment.

I like to practice treating other people the way I want to be treated. I know most of us try to live by that credo. Sometimes we fall short. I know I do. But I think just to be fair we ought to go back to the first 4 years of when Bill Clinton was President. It was not just 5 percent of his nominees who were not confirmed. Some 19 percent of his nominees were not confirmed. It was not that they were denied a vote on the floor, they never got out of committee.

One person—one person—could put a hold, stop a nominee from even having a hearing in the Senate Judiciary Committee. A handful of Senators in the committee could deny a nominee ever coming out of committee to be debated and voted on in the Senate. And somehow the idea that Bill Clinton could only get 81 percent of his nominees confirmed the first 4 years was OK for some, but yet a 95-percent approval rate for this President's nominees in his first 4 years was unacceptable. I see an irony there. I hope others do, too.

Let me talk about the compromise that is before us. Most compromises I have been familiar with, frankly, do not leave either side especially happy for the final result. And that certainly is true in this case as well. But in the final analysis, the center of this body has held, barely, but it has held. A critical element of our Nation's system of checks and balances has been tested, but it still lives. For that, most of us should be happy—and if not happy, we should at least be relieved.

I believe the path to a productive legislative session has been reopened, too. And almost like Lazarus rising from the grave, I think prospects for arriving at a middle ground on a whole range of issues we face has a new lease on life. We need to transfer the trust that I hope has grown out of this negotiation among the seven Democrats and seven Republicans. I salute them all for the good work they have done. I am not going to get into naming names, but they know who they are, and I am grateful to each of them.

But what we need to do, as a body, as a Senate, is to transfer some of the trust that is a foundation of this agreement. We need to capture that trust and turn it to addressing some of the most pressing issues that face America: our huge and growing dependence on foreign oil, an enormous trade deficit and budget deficit, reining in the growth of health care and trying to make sure more people have health care available, winning this war on terrorism, and finding ways to improve our Nation's air quality. All those issues beg to be addressed.

For this Senator, the good news that comes out of this agreement over the last 24 hours is that now we can turn to our Nation's business. We can get back to work. We need to. America wants us to.

For the President and our friends in the White House, let me say, in going forward on judicial nominees, if you will consult with the Congress—Democrats and Republicans—we can actually approve most of those nominees. If this President will nominate mainstream judges, conservative judges—I expect them to be Republicans—if he will nominate those, for the most part, if they are not outside the mainstream, they will be approved. If the President will actually consult with the Senate, as the Constitution calls for, we will be better off, he will be better off, and, frankly, our Nation will be better off.

The same applies to the legislative agenda that is now before us. For if the administration, the President, will work not just with Republicans but with Democrats, too, we can make real progress, and when we look back on the 109th Congress, we can say, with pride, that we got a lot done that needed to get done.

I yield back the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, how much time is remaining on this side?

The PRESIDING OFFICER. Under the previous order, debate will continue until 11:40. The minority side has 20 minutes remaining. The majority side has 1 minute remaining.

Mr. LEAHY. I thank the distinguished Presiding Officer, my neighbor across the Connecticut River.

Mr. President, last night I spoke, praising the Senators on both sides of the aisle who came together to avert the so-called nuclear option. I see on the floor the distinguished Senator from Pennsylvania, the chairman of the Senate Judiciary Committee. I think those Senators have made his and my work a lot easier. I also commend the distinguished Senator from Delaware for his comments.

This President, with the compliance of the Republican majority, has tried to push the Senate across an unprecedented threshold that would forever change and weaken this body. This move would have stripped the minority of the crucial rights that have been a hallmark of this chamber, and it would have fundamentally altered the brilliant system of checks and balances designed by the Founders.

This misguided bid for one-party rule, the nuclear option, has been deterred for now. This ill-advised power grab was thwarted through the work and commitment of a bipartisan group of 14 Senators who have prevented the Republican majority leader from pulling this potentially devastating trigger. Pursuant to that agreement, I expect a few Democrats who had previously voted against cloture on the Owen nomination in the last Congress to vote in favor of cloture today. I understand that they are taking this action to save the Senate from the nuclear option and to preserve the filibuster.

This Republican tactic put the protection of the rights of the minority in this chamber in serious risk. That protection is fundamental to the Senate and to the Senate's ability to act as a check and balance in our national government. That protection is essential if we are to protect the independence of the Judiciary and the Judiciary is to remain a protector of the rights of all Americans against the overreaching of the political branches.

I will continue to work in good faith, as I have always done, to fulfill the Senate's constitutionally-mandated role as a partner with the Executive branch in determining who will serve in the Judiciary. I urge all Senators to take these matters to heart and to redouble our efforts to invest our advice and consent responsibility with the seriousness and scrutiny it deserves. As I have said before, just as Democratic Senators alone could not avert the nuclear option, Democratic Senators alone cannot assure that the Senate fulfills its constitutional role with the check and balance on the Executive. I believe Republican Senators will also need to evaluate, with clear eyes, each of the President's nominees for fitness. If they have doubts about the suitability of a nominee to a lifetime judicial appointment, well, they can no longer look the other way and wait for Democratic Senators to save them from a difficult vote. And there will be a number of difficult votes on the horizon on a number of problematic nominees. There may be even more.

But I also remind everybody that while the Senate is supposed to serve as a check and balance, the whole process begins with the President. I have served here with six Presidents. Five of them have consulted with the Senate and worked with the Senate. President Ford, President Carter, President Reagan, former President Bush, and President Clinton have done that. Frankly, if this President would work with Senators on both sides of the aisle to identify and nominate consensus choices, we can easily add to the tally of 208 confirmations. If the White House will take the view that the President should be a uniter and not a divider, then we can make significant progress.

The design of checks and balances envisioned by the Founders has served us well for over 200 years, and the agreement made last night has preserved it.

Judicial nominations are for lifetime appointments to what has always been revered as an independent third branch of Government, one that while reliant on the balance between the executive and legislative branches, is actually controlled by neither.

For more than two centuries, these checks and balances have been the source of our Government's stability. It has been its hedge against tyranny. We have to preserve them in the interests of the American people. We do that so the courts can be fair and independent. We should not look at our Federal judiciary as being a Democratic judiciary or a Republican judiciary. It should be independent of all of us because they are the backstop to protect the rights of all Americans against encroachment by the Government. And all Americans have a stake in that, no matter who may control the Government at any given time.

The Senate remains available as a rudder that checks against abuse of power, and as a keel that defends the independence of the judiciary. As the distinguished senior Senator from West Virginia, Mr. BYRD, noted last night, the Senate has answered the call sounded by Benjamin Franklin at the conclusion of the Constitutional Convention by preserving our democracy and our Republic, as the Senate has been called upon to do so many times before.

Now we have before us the controversial nomination of Priscilla Owen. I will probably speak to this nomination more after the cloture vote, the cloture vote which now is a foregone conclusion. For some reason we are still having it, but there is no question, of course, that the Senate will now invoke cloture.

Three years ago, after reviewing her record, hearing her testimony, and evaluating her answers, I voted against her confirmation, and I explained at length the strong case against confirmation of this nomination. Nothing about her record or the reasons that led me then to vote against confirmation has changed.

I believe she has shown herself over the last decade on the Texas Supreme Court to be an ends-oriented judicial activist, intent on reading her own policy views into the law. She has been the target of criticism by her conservative Republican colleagues on the court, in a variety of types of cases where the law did not fit her personal views, including in cases where she has consistently ruled for big business and corporate interests in cases against workers and consumers.

The conservative Republican majority of the Texas Supreme Court has gone out of its way to criticize her and the dissents she joined in ways that are highly unusual and in ways which highlight her ends-oriented activism.

In FM Properties v. City of Austin, the majority called her dissent ''nothing more than inflammatory rhetoric.''

In Montgomery Independent School District v. Davis, the majority, which included Alberto Gonzales and two other appointees of then-Governor George W. Bush, is quite explicit in its view that Justice Owen's position disregards the law and that ''the dissenting opinion's misconception . . . stems from its disregard of the procedural elements the Legislature established,'' and that the ''dissenting opinion not only disregards the procedural limitations in the statute but takes a position even more extreme than that argued for by the board. . . .''

In the case of In re Jane Doe, the majority includes an extremely unusual section explaining its view of the proper role of judges, admonishing the dissenters, including Justice Owen, for going beyond their duty to interpret the law in an attempt to fashion policy. In a separate concurrence, then-Justice Alberto Gonzales says that to construe the law as the dissent did ''would be an unconscionable act of judicial activism.''

I understand he now says that when he wrote that opinion he was not referring to her. I recognize why he is saying that. Of course, he has to defend not Governor Bush's appointment but now President Bush's nomination. But a fair reading of his concurring opinion leads me to see it as a criticism of the dissenters, including Justice Owen. And he admitted as much in published statements in the New York Times before Justice Owen's first hearing before the Judiciary Committee.

In the case of In re Jane Doe III, Justice Enoch writes specifically to rebuke Justice Owen and her fellow dissenters for misconstruing the legislature's definition of the sort of abuse that may occur when parents are notified of the minor's intent to have an abortion, saying:

> Abuse is abuse; it is neither to be trifled with nor its severity to be second guessed.

In Weiner v. Wasson, Priscilla Owen went out of her way to ignore Texas Supreme Court precedent to vote against a young man injured by a doctor's negligence. The young man was only 15 years old. Her conservative Republican colleagues on the court, led by then-Justice JOHN CORNYN—now the junior Senator from Texas—lectured her about the importance of following that 12-year-old case and ruling in the boy's favor, calling the legal standard she proposed ''unworkable.''

In Collins v. Ison-Newsome, yet another case where Justice Owen joined a dissent criticized by the majority, the court was offended by the dissenters' arguments. The majority says the dissenters agree the court's jurisdiction is limited, ''but then argues for the exact opposite proposition. . . . This argument defies the Legislature's clear and express limits on our jurisdiction.''

These examples show a judge out of step with the conservative Republican majority of the Texas Supreme Court, a majority not afraid to explain the danger of Priscilla Owen's activist views.

Justice Owen has made other bad decisions where she skews her decisions to show bias against consumers, against victims, and against just plain ordinary people, as she rules in favor of big business and corporations. In fact, according to a study conducted last year by the Texas Watch Foundation, a nonprofit consumer protection organization in Texas, over the last 6 years, Priscilla Owen has not dissented once from a majority decision favoring business interests over victims, but has managed to differ from the majority and dissent in 22 of the 68 cases where the majority opinion was for the consumer.

As one reads case after case, her legal views in so many cases involving statutory interpretation simply cannot be reconciled with the plain meaning of the statute, the legislative intent, or the majority's interpretation.

This all leads to the conclusion that she sets out to justify a preconceived idea of what the law ought to mean. This is not an appropriate way for a judge to make decisions, but it is a way for a judge to make law from the bench—an activist judge.

Justice Owen's activism and extremism is noteworthy in a variety of cases, including those dealing with business interests, malpractice, access to public information, employment discrimination and Texas Supreme Court jurisdiction, in which she writes against individual plaintiffs time and time again, in seeming contradiction of the law as written. A few examples of this include:

FM Properties v. City of Austin, where Justice Owen showed her willingness to rule in favor of large private landowners against the clear public interest in maintaining a fair regulatory process and clean water. Her dissent, which the majority characterized as, ''nothing more than inflammatory rhetoric,'' was an attempt to favor big landowners. At her first hearing, and since, Justice Owen and her supporters on the Committee have tried to recast this case as something more innocent, but at the time she wrote her dissent, Justice Owen was certainly clear about the meaning of this case—property rights for corporations.

GTE Southwest, Inc. v. Bruce, is another example where Justice Owen wrote in favor of GTE in a lawsuit by employees for intentional infliction of emotional distress. Despite the majority's recitation of an exhaustive list of sickening behavior by the supervisor, and its clear application of Texas law to those facts, Justice Owen wrote a concurring opinion to explain that the conduct was not, as the standard requires, so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency. The majority opinion shows Justice Owen's concurrence advocating a point of view that ignores the facts in evidence in order to reach a predetermined outcome in the corporation's favor.

City of Garland v. Dallas Morning News, Justice Owen dissented from a majority opinion and, again, it is difficult to justify her views other than as

based on a desire to reach a particular outcome. In this case, she seeks to shield government decision-making from public view.

Quantum Chemical v. Toennies, another troubling case where Justice Owen joined a dissent advocating an activist interpretation of a clearly written statute, this time in the context of employment discrimination. The majority concluded that they must rely on the plain language of the statute as amended, which could not be any clearer that under Title VII discrimination can be shown to be a motivating factor, contrary to Justice Owen's more activist view.

Mr. President, I said time and time again that when somebody walks into a Federal court, they should not have to say, I may be treated one way because I am a Republican and a different way because I am a Democrat, or one way because I am a plaintiff and a different way because I am a defendant, or one way because I am rich, and a different way because I am poor. They should be treated on the merits of the case, no matter who they are.

In Priscilla Owen's case, it was almost predetermined how she would rule based upon who you are. The rich and powerful are protected. The poor or those hurt by the rich and powerful—she is going to rule against you. This is judicial activism.

After all these years, I am sure the President will get the votes to put Priscilla Owen on the court. But would it not have been better to have nominated somebody who would unite us and not divide us?

Last night, 14 Senators—7 Republicans and 7 Democrats—said: We will protect the Senate, actually protect the Constitution, protect advice and consent, and protect the checks and balances by giving the death knell to this so-called nuclear option. That was a good first step. But I urge the President to look at what was also said in that agreement. They called upon the President to now finally work with Senators from both parties in these lifetime appointments. No political party should own our Federal courts. In fact, no political party should be able to control our Federal courts. Let us work together to have courts that actually work, that are independent of the executive, independent of being swayed, and are truly independent. We can do that and call on the President to do what every President since I have been here—the five before him—has always done, and that is work with both Republicans and Democrats, work to unite us, not divide us.

The PRESIDING OFFICER. Under the previous order, Member time is reserved until 11:40, and the time between 11:40 and 12 o'clock is reserved for both the majority and minority leaders.

Mr. LEAHY. Mr. President, I yield the balance of my time to the Democratic leader to use as he wishes.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. REID. Mr. President, I ask unanimous consent that the couple of extra minutes be divided between the majority leader and me.

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

Mr. REID. Mr. President, in my remarks this morning, I will speak very briefly about the Priscilla Owen nomination and, more generally, about the negotiations that led to the defeat of the so-called nuclear option. As I said this morning, the nuclear option is off the table, and we should stop talking about it after today. I continue, though, to oppose the nomination of Priscilla Owen for the U.S. Court of Appeals.

As a member of the Texas Supreme Court, Justice Owen has consistently ruled for big business, corporate interests, and cases against workers and consumers. Her colleagues on the Texas court, including the man who is now Attorney General of the United States, Alberto Gonzales, have criticized her decisions. Judge Gonzales even called one of her opinions an act of ''unconscionable judicial activism.'' In case after case, her record marks her as a judge who is willing to make law from the bench rather than following the language of the statute and the intent of the legislature. Even on the conservative Supreme Court of Texas, Justice Owen is a frequent dissenter, and her opinions reveal an extreme ideological approach to the law.

As a result of the agreement announced last night, it is clear that this nominee will receive an up-or-down vote. I intend to vote against her confirmation. I urge my colleagues to do so as well. I specifically urge my Republican colleagues to render an independent judgment on this, and the other nominations will follow in the months to come. I am confident they will.

If Justice Owen is confirmed as a Federal judge, I hope she surprises those of us who have fought her nomination. Perhaps her experience as a judicial nominee has exposed her to a broader range of views, and that experience may make her more sensitive to concerns regarding privacy, civil rights, and consumer rights. I have never questioned her intellectual capabilities.

The agreement that will allow Justice Owen to receive an up-or-down vote also had the effect of taking the nuclear option off the table for this Congress and, I think, in our lifetime. I wish to review what I believe was at stake in this debate. The agreement makes clear that the Senate rules have not changed. The filibuster remains available to the Senate minority, whether it be Democrat or Republican.

Last night, the seven Democrats agreed that filibusters will be used only in extraordinary circumstances. In my view, the fact that there have been so few out of the 218 nominations in the last 4 years means that filibusters already are rare.

In any event, the agreement provides that ''each signatory must use his or her own discretion and judgment in determining whether [extraordinary] circumstances exist.'' This, of course, is a subjective test, as it always has been.

The 14 Democrats and Republicans who entered into the agreement last night, and the rest of us who were prepared to vote against the nuclear option, stood for the principles of extended debate, minority rights, and constitutional checks and balances. For 200 years, the Senate rules embodying those principles have protected our liberties and our freedoms. Those rules have not made life easy for Presidents and parties in power, but that is the way our Constitution was written, and that is good.

Most every occupant of the White House, most every majority on Capitol Hill, has grown frustrated with the need to build consensus instead of ruling by their own desires. But that is precisely what our Founding Fathers intended. That is our Constitution.

Those Founders created this body as a place secure from the winds of whim, a place for deliberation and honorable compromise. It is why Nevada, with its little over 2 million people, has as much to say in this body as California, which has 35 million people. It is why sometimes we are governed not by the principles of ''one man, one vote'' but by the principles of one person who rises with a voice of conscience and courage.

When Thomas Jefferson and Franklin Roosevelt tried to pack our courts, patriots of both parties put aside their personal interests to protect our American rights and rules. In Caro's definitive work, ''Master of the Senate,'' he has a wonderful 10 pages where he talks about Roosevelt's attempt to pack the court. It is so revealing. Roosevelt calls Senate leaders to the White House—Democratic leaders—and the President didn't live in the White House, as they do now. His Vice President, James Garner, a former Senator, walked out of that meeting shaking his head and said that the President will not get his support on this, and he didn't. He didn't get the support of a majority of the Democrats. When Jefferson and Roosevelt tried to pack our courts, it didn't work because Members of their own parties rose up against them. They were both Democrats.

Nothing in the advice and consent clause of the Constitution mandates that a nominee receive a majority vote, or even a vote of any kind. According to the Congressional Research Service, over 500 judicial nominees since 1945—18 percent of all judicial nominees—were never voted on by the full Senate. Most recently, over 60 of President Clinton's judicial nominees were denied an up-or-down vote. In contrast, we have approved 208 of President Bush's 218 nominees.

Last night, when I came to the floor, I said it is a happy night for me because the 8 years of the Clinton judicial situation are gone. I said last

night that the 4 years of problems with the Bush administration, as it relates to judges, are gone. Why? Because we are going to start legislating as Senators should. If there is a problem with a judge, that issue will be raised.

There will be occasions, although very infrequent, where a filibuster will take place. That is what the Senate is all about.

The difference between a 95-percent confirmation rate and a 100-percent rate is what this country is all about. That 5 percent reflects the moderating influence and spirit and openness made possible by the advice and consent clause of our Constitution.

When our Founders pledged their lives and fortunes and their sacred honor to the cause of our Revolution, it was not simply to get rid of King George III. It was because they had a vision of democracy. James Madison, the Father of the Constitution, wrote:

> The accumulation of all powers legislative, executive, and judiciary in the same hands, whether of one, a few, or many—and whether hereditary, self-appointed, or elective—may justly be pronounced the very definition of tyranny.

Stripping away these important checks and balances would have meant the Senate becomes merely a rubberstamp for the President. It would have meant one political party, be it Republicans today or Democrats tomorrow, could effectively seize control of our Nation's highest courts. It would have removed the checks on the President's power, meaning one man sitting in the White House could personally hand out lifetime jobs whose rulings on our basic rights can last forever.

It is too much power for one person. It is too much power for one President. It is too much power for one political party. It is not how America works.

Our democracy works when majority rules not with a fist but with an outstretched hand that brings people together. The filibuster is there to guarantee this.

The success of the nuclear option would have marked another sad, long stride down an ever more slippery slope toward partisan crossfire and a loss of our liberties. Instead, this is the moment we turned around and began to climb up the hill toward the common goal of national purpose and rebuilding of America's promise. America owes a debt of gratitude to the 14 Senators who allowed us to be here today.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I begin by thanking the distinguished Democratic leader for his comments and noting with particularity his statement that the use of the filibuster will be occasional and very infrequent. I think that characterization is very important for the future of the Senate in the consideration of judicial nominations.

The term ''extraordinary circumstances'' does not lend itself to any easy interpretation. But when the Democratic leader asserts that this term means occasional and very infrequent, it is very reassuring.

The Senator from Nevada went on to say this wipes away 8 years of Clinton and 4 years of the second President Bush. That puts the whole controversy, in my judgment, into context, because what we have been talking about in the course of these filibusters has been the pattern of payback which began in the last 2 years of President Reagan's administration when Democrats won control of the Senate and the Judiciary Committee, where the nominating process was slowed down, and 4 years of President George H. W. Bush. Then it was exacerbated during the administration of President Clinton when we Republicans won the Senate in the 1994 election. And for the last 6 years of President Clinton's tenure, we had a situation where some 60 judges were bottled up in committee, which was about the same as a filibuster.

I think it is worth noting that both Senator FRIST, our Republican leader, and Senator REID, the Democratic leader, are entitled to plaudits, because a week ago today, late in the afternoon in a room off the first floor, a few steps from where we are at the present time, the leaders met with so-called Republican moderates and Democratic moderates.

While not quite the imprimatur of propriety, their presence signified they knew what was going on, that they were prepared to participate in it, and that, again, while it was not quite the Good Housekeeping stamp of approval, they were interested to see what occurred.

In a series of floor statements on this issue, as the CONGRESSIONAL RECORD will show, I had urged the leaders to remove the party loyalty straitjacket from Senators so the Senators could vote their consciences because of the consistent comments I heard in the corridors and in the cloakrooms by both Republicans and Democrats that they did not like where we were headed; that Democrats were not pleased with this pattern of filibusters, and Republicans were not pleased with the prospect of the so-called constitutional or nuclear option.

And finally, in effect, that did happen when a group of moderate Senators got together, totaling 14 in number, as the parties signatory to the memorandum of understanding of last night, to forge an arrangement where the very important constitutional checks and balances, the very important constitutional separation of powers, would be maintained.

When we talk about the delicate balance of separation of powers, the constitutional scholars traditionally talk about it as so-called play in the joints. Had there been a formal determination of a rule change so that 51 Senators could cut off debate, that would have materially affected the delicate separation of powers where the President would have had much greater authority, be he a Republican President or a Democratic President.

Similarly, had the so-called constitutional or nuclear option been defeated, then I think it is fair to say the minority party—Democrats in this situation—would have been emboldened to go further in the use of the filibuster.

The nominees who have been subjected to the filibuster, in my judgment, have been held hostage, pawns in this escalating spiral of exacerbation by both sides.

In my 25 years in the Senate, during all of which I have served on the Judiciary Committee, I have seen our committee and this body routinely confirm judicial nominees who were the equivalents of those who have been filibustered here. These nominees have every bit the qualification of circuit judges who have been confirmed in the past.

Priscilla Owen, who is the specific nominee in question, would have been confirmed as a matter of routine had she not been caught up in this partisan battle. She has an extraordinary academic record. She was cum laude from Baylor both for an undergraduate degree and a law degree, scored the highest on the Texas bar exam, worked 17 years with a very prestigious law firm in Texas, served 11 years on the Texas State Supreme Court, earned well-qualified ratings from the American Bar Association, and is personally known to President Bush, who speaks of her in the most complimentary terms.

The senior Senator from Texas, KAY BAILEY HUTCHISON, has been a personal friend for years and knows her intimately. She speaks of her glowingly. She shepherded her to many private meetings with Senators. I spoke with Justice Owen at some length and was very much impressed with her on the academic level, on the professional level, and on the personal level.

Our colleague on the Judiciary Committee, Senator JOHN CORNYN, served with her on the Texas Supreme Court and, again, spoke of her in outstanding terms.

I have spoken at length about Justice Owen in the past, and I would simply incorporate by reference the comments which I made which appear in the CONGRESSIONAL RECORD for May 18 of this year, where I cited a selection of cases showing her judicial balance and showing her excellent record on the Texas Supreme Court.

Mr. President, we have been joined by, as I turn around, two distinguished Senators—one a current Member of this body, Senator BILL FRIST, the other a former Member of this body, Senator Alfonse D'Amato. I did not recognize him at first because he was not in his pink suit.

One day, in the back row, Alfonse D'Amato appeared and sang E-I-E-I-O in a pink suit. There was some comment in the Chamber about how much it improved his appearance. I did not agree with this.

I have a very short story. I had a brother who was 10 years older than I. One day he came down from the drugstore to the junkyard where I worked. He said: Arlen, I was just at Russell Drug. Down there they were saying you weren't fit to eat with the pigs. But my brother said: I stuck up for you, Arlen. I said you were. So when I see Alfonse D'Amato on the Senate floor, I remember those good times.

Now I yield to the distinguished majority leader, whose time I hope I have not unduly encroached upon. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, in a few moments, we will vote to conclude debate on the nomination of Judge Priscilla Owen to the Fifth Circuit Court of Appeals. It has been over 4 years since the Senate began consideration of Justice Owen for this position, and the Senate over that time has thoroughly and exhaustively investigated, looked at, examined, and debated Judge Owen's nomination.

She has endured 9 hours of committee hearings, more than 500 questions, and 22 days—it is interesting, 22 days. That is more than all sitting Supreme Court Justices combined have had on the floor of the Senate—all sitting Supreme Court Justices combined. We have had Priscilla Owen's nomination debated on this floor for more days. There has been more than 100 hours of floor debate. Now finally, after more than 4 years of waiting, Judge Owen will receive a fair up-or-down vote on the floor of the Senate.

As her critics now appear to be concede, Judge Owen is a mainstream candidate, who is thoughtful, who is dignified, and imminently qualified. Her academic and professional qualifications are outstanding. The American Bar Association unanimously—unanimously—rated her as well qualified, its highest possible rating. She was reelected to the Texas Supreme Court with 84 percent of the vote. She is supported by Republicans and Democrats on the Texas Supreme Court. She has been endorsed by every major newspaper in her State of Texas.

Moreover, in the face of continuous, sometimes vicious, attacks and distortions of her record in the nominations process, Judge Owen has shown extraordinary patience with this body. Despite 4 years of attacks on her integrity, Priscilla Owen has quietly, has patiently, has gracefully waited for an up-or-down vote.

Priscilla Owen has worked hard, played by the rules, faithfully interpreted the law and gained the respect of her colleagues and constituents. We cannot ask for more from a judicial nominee. It is time to close our debate. It is time to give Justice Owen an up-or-down vote on the floor of the Senate.

Today's vote will allow that up-or-down vote. It will affirm each Senator's right to weigh the facts and vote his or her conscience up or down, yes or no, confirmed or rejected. It is as simple as that. It is about principle. It is about fairness. It is about our constitutional duty to give advice and consent.

Mr. President, I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the hour of 12 o'clock having arrived, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The 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 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 Inhofe, Mel Martinez, Jim DeMint, George Allen, Kay Bailey Hutchison, John Cornyn.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit Court of Appeals, shall be brought to a close? Under the rule, the yeas and nays are mandatory. The clerk will call the roll.

Mr. LEVIN. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Under the rules and precedents of the Senate, how many votes are required to invoke cloture and end debate on the pending nomination?

The PRESIDING OFFICER. Three-fifths of the Senators duly chosen and sworn.

The clerk will call the roll.

Mr. LEVIN. Is there an answer to my parliamentary inquiry?

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURKIN. I announce that the Senator from Hawaii (Mr. INOUYE) is necessarily absent.

The PRESIDING OFFICER (Mr. BURR). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 81, nays 18, as follows:

[Rollcall Vote No. 127 Ex.]

YEAS—81

Akaka	Burns	Conrad
Alexander	Burr	Cornyn
Allard	Byrd	Craig
Allen	Carper	Crapo
Baucus	Chafee	DeMint
Bayh	Chambliss	DeWine
Bennett	Clinton	Dole
Bingaman	Coburn	Domenici
Bond	Cochran	Durbin
Brownback	Coleman	Ensign
Bunning	Collins	Enzi
Feinstein	Lieberman	Santorum
Frist	Lott	Schumer
Graham	Lugar	Sessions
Grassley	Martinez	Shelby
Gregg	McCain	Smith (OR)
Hagel	McConnell	Snowe
Harkin	Mikulski	Specter
Hatch	Murkowski	Stevens
Hutchison	Nelson (FL)	Sununu
Inhofe	Nelson (NE)	Talent
Isakson	Obama	Thomas
Johnson	Pryor	Thune
Kohl	Reid	Vitter
Kyl	Roberts	Voinovich
Landrieu	Rockefeller	Warner
Leahy	Salazar	Wyden

NAYS—18

Biden	Dorgan	Levin
Boxer	Feingold	Lincoln
Cantwell	Jeffords	Murray
Corzine	Kennedy	Reed
Dayton	Kerry	Sarbanes
Dodd	Lautenberg	Stabenow

NOT VOTING—1

Inouye

The PRESIDING OFFICER. On this vote, the yeas are 81, the nays are 18. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:30 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

The PRESIDING OFFICER. The Senator from Colorado.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I read from the King James version of the Holy Bible, from the 22nd chapter of Proverbs, the 28th verse:

> Remove not the ancient landmark, which thy fathers have set.

Mr. President, in his second inaugural address, Abraham Lincoln observed that:

> With malice toward none; with charity for all; with firmness in the right, as God give us to see the right, let us strive on to finish the work we are in; to bind up the nation's wounds. . . .

Mr. President, I have always believed that the Senate, by its nature, attracts and probably also creates men and

women of the quality and character who are able to step up when faced with crises that threaten the ship of state, to calm the dangerous seas which, from time to time, threaten to dash our Republic against rocky shoals and jagged shores.

The Senate proved it to be true again yesterday, when 14 Members—from both sides of the aisle, Republicans and Democrats; 14 Members—of this revered institution came together to avert the disaster referred to as the ''nuclear option'' or the ''constitutional option''—these men and women of great courage.

As William Gladstone said, in referring to the Senate of the United States, the Senate is

that remarkable body, the most remarkable of all the inventions of modern politics.

I thank all of those Republicans and Democrats who worked together to keep faith with the Framers and the Founding Fathers. We have kept the faith with those whose collective vision gave us this marvelous piece of work, the Constitution of the United States. Thank God—thank God—that this work has been done and that it has been preserved, that a catastrophe has been averted.

Article II, section 2, of the Constitution gives to the President the power to nominate, and ''by and with the Advice and Consent of the Senate,'' to ''appoint . . . Judges of the supreme Court, and all other Officers of the United States. . . .''

There are two parts to that phrase: the ''advice'' on the one hand, and the ''consent'' on the other, and both must be present before any President can appoint any nominee to the Supreme Court or any other Federal court. It is, therefore, a shared responsibility between the U.S. Senate and the President of the United States.

By its agreement yesterday, the Senate is keeping that construct alive, this shared responsibility between the President of the United States, on the one hand, and the Senate of the United States, on the other.

The agreement that was obtained yesterday by the cooperation between and among the 14 Members of the Senate—representing Republicans and Democrats—it was that agreement that reminds us of the words of our Constitution, by encouraging the President of the United States, on the one hand, to consult with the Senate of the United States, on the other. In other words, the Senate will be in on the takeoff, meaning prior to sending up his nominees for our consideration. In recent times—and by that I mean under Presidents of both parties—there has not been all that much consultation by the President with the Senate.

So here we are, in the Senate, offering the hand of partnership to the Chief Executive and saying: Consult with us. That is what the Framers intended, that the President of the United States should consult with the Senate. You don't have to take our advice, but here it is. And by considering that advice, it only stands to reason that any President will be more assured that his nominees will enjoy a kinder reception in the Senate.

The agreement, which references the need for ''advice and consent,'' as contained in the Constitution, proves once again, as has been true for over 200 years, that our revered Constitution is not simply a dry piece of parchment. It is a living document.

Yesterday's agreement was a real-life illustration of how this historical document continues to be vital in our daily lives. It inspires, it teaches, and yesterday it helped the country and the Senate avoid a serious catastrophe.

Mr. President, for this reason and others, I ask that at the end of my remarks the agreement reached by the 14 Senators be printed in the RECORD.

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

(See exhibit 1.)

Mr. BYRD. Mr. President, I do this so that we in the Senate and the President may all have a way of easily revisiting the text of that agreement for future reference.

On the heels of this agreement, I believe that we should now move forward, propelled by its positive energy, in a new direction. We should make every effort to restore reason to the politically partisan fervor that has overtaken our Senate, this city, and our country. We must stop arguing and start legislating.

Divisive political agendas are not America's goals. The right course lies someplace in the middle. It is our job to work as elected representatives of a reasonable people to do what is right, regardless of threats from any of the angry groups that seem dedicated to intimidation. The skeptics, the cynics, the doubters, the Pharisees, those who are intoxicated by the juice of sour grapes did not prevail and must not prevail. The 14 Republican and Democratic Senators rose above those who do not wish to see accord but prefer discord.

Chaucer's ''Canterbury Tales''—we have all read Chaucer's ''Canterbury Tales'' in high school—contains ''The Pardoner's Tale.''

The story tells about the journey by the pilgrims to Canterbury, to the shrine of Canterbury. The scene took place in Flanders, where once there sat drinking in a tavern three young men who were much given to folly. As they sat, they heard a small bell clink before a corpse that was being carried to the grave. Whereupon, one of the three called to his knave and ordered him to go and find out the name of the corpse that was passing by.

The boy answered that he already knew and that it was an old comrade of the roisterers who had been slain, while drunk, by an unseen thief called ''Death,'' who had slain others in recent days.

And so out into the road the three young ruffians went in search of this monster called Death. They came upon an old man and seized him, and with rough language they demanded that he tell them where they could find this cowardly adversary who was taking the lives of their good friends around the countryside.

The old man pointed to a great oak tree on a nearby knoll, saying, ''There, under that tree you will find Death,'' that monster. In a drunken rage, the three roisterers set off in a run until they came to the tree, and there they found a pile of gold—eight basketfuls of florins, newly minted, round, gold coins. Forgotten was the monster called Death, as the three pondered their good fortune. And they decided that they should remain with the gold until nightfall, when they would divide it among themselves and take it to their respective homes. It would be unsafe, they reasoned, to attempt to do so in broad daylight, as they might be fallen upon by thieves who would take their treasure from them.

It was proposed that the three draw straws, and the person who drew the shortest straw would go into the nearby village and purchase some bread and wine and cheese, which they could then enjoy as they whiled away the daylight hours. So off toward the village the young man who drew the shortest straw went. When he was out of sight, the remaining two decided that there was no good reason why this fortune, this pile of gold, should be divided among three individuals. So one of them said to the other, ''When he returns, you throw your arm around him as if in good sport, as in jest, and I will rive him with my dagger, and with your dagger, you can do the same. Then all of this gold will be divided not among three of us but just between two of us—you and me.''

Meanwhile, while the two were planning the demise of the third, the youngest rogue, as he made his way into the town, thought to himself what a shame it would be that the gold would be divided among three, when it just as well could be so easily belong only to the ownership of one, himself. Therefore, in town the young man went directly to an apothecary and asked to be sold some poison for the large rats and a polecat that had been killing his chickens. The apothecary—the pharmacist—quickly provided some poison, saying that as much as equaled only a tiny grain of wheat would result immediately in sudden death for the creature that drank the mixture.

Having purchased the poison, the young villain crossed the street to a winery, where he purchased three bottles—two for his friends, one for himself. After he left the village, he sat down, opened two bottles of wine and deposited an equal portion in each, and then returned to the oak tree, where the two older villains did as they had planned. One threw his arm, as if in jest, around the shoulders of the third, and both buried their daggers in him. He fell dead on the pile of gold. The

other two villains then sat down, broke the bread, cut the cheese, and opened the two bottles of wine. Each took a good, deep swallow, and then, suffering a most excruciating pain, both fell dead upon the pile of gold and upon the body of the third. So there they were across the pile of gold, all three of them dead.

Their avarice, their greed for gain, their love of material things had destroyed them. There is a lesson here in Chaucer's Tales, as given to us by ''The Pardoner.'' The strong temptation for political partisanship that has prevailed in the Senate can tear this Senate apart and can tear the Nation apart and confront all of us with destruction, so that in the end we three—the President, the Senate, and the people—will all be destroyed, as it were.

So we almost saw that happen here on the Senate floor—until yesterday, when that catastrophe, looming as it was before the Senate, was averted. I applaud the fact that the center, the anchor, held, and we stood together for the good of the country against mean-spirited, shallow, political ends.

Mr. President, I implore all of us to endeavor to lift our eyes to the higher things. We can perform some much needed healing on the body politic. If we can come together in a dignified way to orderly and expeditiously move forward on these nominations, perhaps we can yet salvage a bit of respect and trust from the American people for all of us, for the Senate, and for our institutions of free government.

We have a duty, at this critical time, to rise above politics as usual, in which we savage one another, and in so doing, destroy ourselves, like the three villains in ''The Pardoner's Tale.''

Let us put the Nation first. The American people want us to do that. In the long run, that is how we will be judged and, more importantly, it is how the Senate will be judged.

It is easy to tear down; it is difficult to build.

I saw them tearing a building down,
A group of men in a busy town.
With a ''Ho, Heave, Ho and a lusty yell,
They swung a beam and the sidewall fell.

I said to the foreman, ''Are these men skilled?
The type you would hire if you had to build.''
He laughed, and then he said, ''No indeed,
Just common labor is all I need;
I can easily erect in a day or two,
That which takes builders years to do.''

I said to myself as I walked away,
''Which of these roles am I trying to play?
Am I a builder who works with care,
Building my life by the rule and square?
Am I shaping my deeds by well-laid plan,
Patiently building the best I can?
Or am I a wrecker who walks the town
Content with the labor of tearing down.''

Mr. President, it is easy to tear down, but it takes a long time to build. We have been 217 years in building this Senate, making it what it was intended to be by the Framers who wrote it 219 years ago, who established three equal coordinate branches of Government, who established a separation of powers, who established checks and balances in this Constitution of the United States.

The work of those Framers and the work of the larger group of Founders took 219 years. It was about to be destroyed in a single day, this day. But thank God 14 Senators from both sides of the aisle met and rose above partisan politics and kept the faith with the Framers and with the Founders so that our posterity might enjoy the blessings of liberty, the blessings of freedom of speech, the roots of which go all the way back to the reign of Henry IV, who reigned from 1399 to 1413 and who in 1407 proclaimed that the members of Parliament—the House of Lords and the House of Commons—could speak freely and without fear.

And those words were written into the Declaration of Rights, which declaration was submitted to William III of Orange and Mary, a Declaration of Rights which included freedom of speech in Parliament. That declaration was presented on February 13, 1689, to William III and Mary. They both accepted it and were then proclaimed by the House of Commons joint sovereigns of the nation.

Then, on December 18, 1689, those words were included in a statute, the English Bill of Rights—freedom of speech, the roots going back a long way. That freedom of speech then was provided to those of us in the Senate, provided by the Constitution, and since 1806, when the provision for the previous question was discarded upon the recommendation of Vice President Aaron Burr, since 1806 that provision for the previous question or the sudden cutting off debate was discarded. Since 1806, until the year 1917, the year in which I was born during the administration of Woodrow Wilson, that freedom of speech has prevailed in the Senate, and it has lived since then except for unanimous consent agreements and the cloture provision which was first agreed to in 1917, the cloture provision shutting off debate under the rules of the Senate.

Freedom of speech has reigned in this body, and it still lives, thanks again to the 14 Republicans and Democrats who rose above politics yesterday and came forward with this accord.

So, Mr. President, let us be true to the faith of our fathers and to the expectation of those who founded this Republic. The coming days will test us again and again, but let us go forward together hoping that in the end, the Senate will be perceived as having stood the test, and may we, both Republicans and Democrats and Independents, when our work is done, be judged by the American people and by the pages of history as having done our duty and as having done it well.

Our supreme duty is not to any particular person, not to any particular President, not to any political party, but to the Constitution, to the people of the Nation, and to the future of this Republic. It is in that spirit that we may do well to remember the words of Benjamin Hill, a great Senator, a great orator from the State of Georgia, his words being inscribed on a statue in Atlanta, GA, as they are and as they appear today upon that monument:

> Who saves his country saves himself, saves all things, and all things saved do bless him. Who let's his country die dies himself ignobly, and all things dying curse him.

Remember that ancient proverb: Remove not the ancient landmark, which thy fathers have set.

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

EXHIBIT 1

MEMORANDUM OF UNDERSTANDING ON JUDICIAL NOMINATIONS

We respect the diligent, conscientious efforts, to date, rendered to the Senate by Majority Leader Frist and Democratic Leader Reid. This memorandum confirms an understanding among the signatories, based upon mutual trust and confidence, related to pending and future judicial nominations in the 109th Congress.

This memorandum is in two parts. Part I relates to the currently pending judicial nominations; Part II relates to subsequent individual nominations to be made by the President and to be acted upon by the Senate's Judiciary Committee.

We have agreed to the following:

PART I: COMMITMENTS ON PENDING JUDICIAL NOMINATIONS

A. Votes for Certain Nominees. We will vote to invoke cloture on the following judicial nominees: Janice Rogers Brown (D.C. Circuit), William Pryor (11th Circuit), and Priscilla Owen (5th Circuit).

B. Status of Other Nominees. Signatories make no commitment to vote for or against cloture on the following judicial nominees: William Myers (9th Circuit) and Henry Saad (6th Circuit).

PART II: COMMITMENTS FOR FUTURE NOMINATIONS

A. Future Nominations. Signatories will exercise their responsibilities under the Advice and Consent Clause of the United States Constitution in good faith. Nominees should only be filibustered under extraordinary circumstances, and each signatory must use his or her own discretion and judgment in determining whether such circumstances exist.

B. Rules Changes. In light of the spirit and continuing commitments made in this agreement, we commit to oppose the rules changes in the 109th Congress, which we understand to be any amendment to or interpretation of the Rules of the Senate that would force a vote on a judicial nomination by means other than unanimous consent or Rule XXII.

We believe that, under Article II, Section 2, of the United States Constitution, the word ''*Advice*'' speaks to consultation between the Senate and the President with regard to the use of the President's power to make nominations. We encourage the Executive branch of government to consult with members of the Senate, both Democratic and Republican, prior to submitting a judicial nomination to the Senate for consideration.

Such a return to the early practices of our government may well serve to reduce the rancor that unfortunately accompanies the advice and consent process in the Senate.

We firmly believe this agreement is consistent with the traditions of the United States Senate that we as Senators seek to uphold.

E. Benjamin Nelson, Mike DeWine, Joe Lieberman, Susan Collins, Mark Pryor, Lindsey Graham, Lincoln Chafee, John

McCain, John Warner, Robert C. Byrd, Mary Landrieu, Olympia Snowe, Ken Salazar, and Daniel Inouye.

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

The bill clerk proceeded to call the roll.

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

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

Mr. REED. Mr. President, I ask unanimous consent to speak as in morning business.

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

Mr. REED. Mr. President, I also ask unanimous consent that the time I consume come out of my time postcloture.

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

RETIREMENT OF COLONEL RUSS HOWARD, UNITED STATES ARMY

Mr. REED. Mr. President, I rise today to recognize the accomplishments of Colonel Russ Howard, head of the department of social sciences and director of the Combating Terrorism Center at West Point. Colonel Howard is retiring June 3, 2005, after 37 years of Active and Reserve military service.

In his previous position, he was the deputy department head of the department of social sciences. Prior to that, Colonel Howard was an Army chief of staff fellow at the Center for International Affairs at Harvard University. Formerly, Colonel Howard was the commander of the 1st Special Forces Group (Airborne) at Fort Lewis, WA. Other recent assignments include assistant to the Special Representative to the Secretary General during UNOSOM II in Somalia, deputy chief of staff for I Corps, and chief of staff and deputy commander for the Combined Joint Task force, Haiti/Haitian Advisory Group. He also served as the administrative assistant to ADM Stansfield Turner and as a special assistant to the commander of SOUTHCOM.

When Colonel Howard was commander of 3rd Battalion, 1st Special Warfare Training Group (Airborne) at Fort Bragg, NC, he developed the curriculum for the first ever graduate degree program for the Civil Affairs and Psychological Operations officers.

Prior to Operation Desert Shield/Desert Storm, Colonel Howard took a mobile training team to Kuwait and Saudi Arabia to train the ''lost boys,'' newly appointed Civil Affairs and Psychological Operations officers already deployed to the Persian Gulf.

The newly trained officers performed superbly during operations and 3rd Battalion won the Army Superior Unit Award, largely due to the efforts and foresight of Colonel Howard.

As a newly commissioned officer, a much younger officer, Colonel Howard served as ''A'' team commander in the 7th Special Forces Group from 1970 to 1972.

He left the Active component and served in the U.S. Army Reserve from 1972 to 1980. During this period, he served as an overseas manager, American International Underwriters Melbourne, Australia, and China tour manager and Canadian Pacific Airlines.

He was recalled to active duty in 1980 and served initially in Korea as an infantry company commander. Subsequent assignments included classified project officer, U.S. Army 1st Special Operations Command at Fort Bragg, and operations officer and company commander 1st Battalion, 1st Special Forces Group in Okinawa, Japan.

Colonel Howard earned a bachelor of science degree in industrial management from San Jose State University, bachelor of arts degree in Asian studies from the University of Maryland, a master of arts degree in international management from the Monterey Institute of International Studies, and a masters of public administration degree from Harvard University.

Colonel Howard was an assistant professor of social sciences at the U.S. Military Academy and a senior service college fellow at the Fletcher School of Law and Diplomacy, Tufts University.

During his extraordinary career of public service, Colonel Russ Howard was a dedicated leader, enlightened visionary, effective operator, and exemplary role model for cadets, soldiers, and civilians.

For the past 7 years, he made enormous contributions to the U.S. Military Academy, its graduates, and to the Nation through his relentless pursuits of excellence in the department of social sciences and his advancement of education, research, and policy development in the global war on terror.

He was the right person at the right time in exactly the right job as the Academy and the Nation responded to the events of 9/11 and the global war on terror. Building on his extraordinary skills as a researcher and educator, he knew the intellectual response to the war on terror would have to be as significant as the operational response and set a course for the department and the Academy to lead this response.

Building on an exceptional experience as a Special Forces officer who commanded at every level from team leader to Special Forces Group, he was able to integrate the intellectual issues of understanding terrorism with the practical issues of countering terrorism and include them in the curriculum, and eventually led to the establishment of the Combating Terrorism Center at West Point.

He inspired support from the academy leadership, from General-retired Wayne Downing, Mr. Vinnie Viola, Mr. Ross Perot, and many others, so that the U.S. Military Academy has become the international leader in undergraduate terrorism education and research.

Simultaneously, Colonel Howard enhanced all aspects of the academy and the Department of Social Sciences by supporting a robust teaching program. He taught more than 15 different courses, created 4 new ones, published 3 books and 15 articles, and encouraged and cultivated resources for other faculty to follow his example.

His support for faculty and cadet development through the scholarship, debate, model U.N., domestic affairs forum, finance forum, sports, and a myriad of other activities was exceptional. Most importantly, he is a trusted, caring, concerned, and dedicated leader who evokes the best from everybody with whom he comes in contact.

It has been my privilege to know Colonel Howard for many years, to respect him as a soldier and a scholar, and to at this moment congratulate him on a career of exceptional service to the Army and to the Nation. As he parts for other venues and other responsibilities, I wish him well.

I yield back my time, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

EMBRYONIC STEM CELL RESEARCH

Mr. BROWNBACK. Mr. President, I rise to speak about an issue that has been worked on in the country for some period of time. Soon, a House vote will take place on embryonic stem cell research. The issue that will soon be voted on in the House—and may come before this body—is whether to allow the taxpayer funding of destruction of young human life.

This legislation being considered in the House of Representatives would take young human embryos, would provide taxpayer dollars to destroy these embryos and conduct research on the stem cells derived from them. I believe we all have a duty to protect innocent life. We have a duty and a responsibility to look out for the downtrodden, those who do not have a voice. These are the youngest of human lives; they should be protected, and they should not be researched on.

We have at times in the past in the United States researched on other human beings. Whenever we have done so, at the moment in time when it was done, people did it on the basis that we need to know, or we need to be able to conduct this research, or this research will provide a cure for something. Yet in every instance—either in this country or others—when it has been done and the society at large has allowed it, we have always, always regretted it later. It has always been wrong for one group of humans who are in a more powerful position to research on somebody in a lesser position. That has always been true, and it remains true today. We should not use taxpayer dollars to fund research on the youngest of human lives. It is wrong, it is not necessary, and it should be stopped.

I am pleased that the President has promised to veto this legislation. However, I also intend to not let this piece of legislation make it forward, to move to the President's desk. If others choose to bring this destruction of human life—taxpayer-funded destruction of human life—in front of this body, I intend that we are going to talk about it for a long time and address a whole series of issues, whether it be human cloning, which is associated with this human destructive legislation, or the creation of human-animal crosses for research purposes. We are going to spend a lot of time discussing this because young human lives are at stake. I will not sit idly by and acquiesce in their tragic destruction.

If this human destructive legislation, or a Senate counterpart, comes before this body, I will use all means available to impede its progress. At the very least, we should have a lengthy debate on this issue before taking any action. The reason is that young human lives are at stake. I believe the very nature of our culture—whether we will have a culture of life or not is at stake. Will we honor human life because it is sacred per se, or are we going to use it for a research apparatus for the benefit of others? We have always regretted that when we have done it before. Today is a similar type of discussion.

Some are saying this doesn't really look like a human life; it is so small, so microscopic in some cases, that some say it really cannot be human life. Yet, according to the biological and scientific definition, this is young human life. If allowed to be nurtured, it becomes you, me, or anybody watching. Life has to be nurtured at all stages. It is no different biologically at that stage versus at a later stage. It has the same biological components, or ''software,'' if you will, or DNA structure. It needs to be nurtured, and it matures into an adult human. If we are going to proceed on this, I think we are really hurting ourselves as a society.

I also point out that some people are saying we need to do this to find cures. I want to find cures, also—cures for people with cancer, Alzheimer's disease, Parkinson's disease, spinal cord injuries, or juvenile diabetes—and I have been working on that. The thing is, we have a route to find these cures that is ethical and moral.

The House is also considering a cord blood bill from Congressman SMITH today, and there are also adult stem cells. We have had this discussion before, but I think people hear ''stem cells,'' and they say: I am for it. We need to be clear that there are different types of stem cells: There are cord blood stem cells in the umbilical cord, there are embryonic stem cells, where you have to destroy the embryo itself to get the stem cells, and there are adult stem cells in my body and yours and anybody watching. These adult stem cells are a kind of repair cell that goes around the body fixing different parts of the body. We have been able to take adult stem cells out and grow them outside the body to the point that, today, over 58 different human diseases are being treated in human patients. There are published clinical studies using adult stem cells—the stem cells from one's own body.

A Parkinson's disease patient, treated with his own adult stem cells, continues to exhibit relief of 80 percent of his symptoms more than 6 years after the surgery. I had the man come in himself, who was treated with his own adult stem cells taken from the base of his nose, grown outside the body, put in the left-hand side of his brain, with a substantial improvement on the right-hand side of his body. That is purely ethical research. It is working and getting the job done.

Spinal cord injuries. Dr. Carlos Limas treated 34 patients in Portugal with their own adult stem cells. I had two of them in to testify at a hearing last year—one is a paraplegic and one is a quadriplegic—and they are walking with the assistance of braces and their own adult stem cells.

Also, umbilical cord blood cells were used to treat a South Korean woman who had been paralyzed for 19 years. She had not walked for 19 years, and she can now walk with braces.

What about juvenile diabetes? This disease affects a lot of people. This is one that has vexed a lot of people. We all want to find a cure for juvenile diabetes.

Dr. Denise Faustman at Harvard is a leading diabetes researcher. She has completely reversed end-stage juvenile diabetes in mice and has FDA approval to begin human clinical trials using adult stem cell therapy.

My point in mentioning these 3 of the 58 different areas is that we have an ethical answer. We have an answer that does not involve the destruction of human life, and it is right before us. We can do it. We can fund it, and we can move forward with it. We do not have to destroy young human life to do this, and it is wrong if we do.

There is going to be a big discussion. We are going to have a lot of debate about this issue on the floor or in committee or other places if people decide to move this legislation forward. This is not about banning human embryonic stem cell research. This is about taxpayer funding of human embryonic stem cell research. Embryonic stem cell research is legal. It is being conducted in this country. It is being funded by the Government of the United States on a limited set of lines. The President had the discussion and put forward the guidelines—a limited set of lines that were identified, on which a life-and-death decision had already been made prior to funding. That research continues and goes on today.

The House bill would expand that and say we can kill young human life today for research on embryonic stem cells, and we want to do it with taxpayer funding. That is what I am saying I am opposed to is the taxpayer funding where a life-and-death decision has not been made, and we involve the destruction of young human lives. The House bill should not move forward.

Mr. President, there are two statements that the President has put forward saying that he would veto such legislation if it comes forward. I ask unanimous consent to print these statements in the RECORD.

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

STATEMENT OF ADMINISTRATION POLICY—MAY 24, 2005

H.R. 2520—STEM CELL THERAPEUTIC AND RESEARCH ACT OF 2005

(Rep. Smith (R) NJ and 78 cosponsors)

The Administration strongly supports House passage of H.R. 2520, which would facilitate the use of umbilical-cord-blood stem cells in biomedical research and in the treatment of disease. Cord-blood stem cells, collected from the placenta and umbilical cord after birth without doing harm to mother or child, have been used in the treatment of thousands of patients suffering from more than 60 different diseases, including leukemia, Fanconi anemia, sickle cell disease, and thalassemia. Researchers also believe cord-blood stem cells may have the capacity to be differentiated into other cell types, making them useful in the exploration of ethical stem cell therapies for regenerative medicine.

H.R. 2520 would increase the publicly available inventory of cord-blood stem cells by enabling the Department of Health and Human Services (HHS) to contract with cord-blood banks to assist them in the collection and maintenance of 150,000 cord-blood stem cell units. This would make matched cells available to treat more than 90 percent of patients in need. The bill would also link all participating cord-blood banks to a search network operated under contract with HHS, allowing physicians to search for matches for their patients quickly and effectively in one place. The bill also would reauthorize a similar program already in place for aiding the use of adult bone marrow in medical care. There is now $19 million available to implement the Cord Blood Cell Bank program; the Administration will work with the Congress to evaluate future spending requirements for these activities. The bill is also consistent with the recommendation from the National Academy of Science to create a National Cord Blood Stem Cell Bank program.

The Administration also applauds the bill's effort to facilitate research into the potential of cord-blood stem cells to advance regenerative medicine in an ethical way. Some research indicates that cord blood cells may have the ability to be differentiated into other cell types, in ways similar to embryonic stem cells, and so present similar potential uses but without raising the ethical problems involved in the intentional destruction of human embryos. The Administration encourages efforts to seek ethical ways to pursue stem cell research, and believes that—with the appropriate combination of responsible policies and innovative scientific techniques—this field of research can advance without violating important ethical boundaries. HR 2520 is an important step in that direction.

STATEMENT OF ADMINISTRATION POLICY—May 24, 2005

H.R. 810—STEM CELL RESEARCH ENHANCEMENT ACT OF 2005

(Rep. Castle (R) DE and 200 cosponsors)

The Administration strongly opposes House passage of H.R 810, which would require Federal taxpayer dollars to be used to encourage the ongoing destruction of nascent human life. The bill would compel all American taxpayers to pay for research that relies on the intentional destruction of human embryos for the derivation of stem cells, overturning the President's policy that supports research without promoting such ongoing destruction. If H.R 810 were presented to the President, he would veto the bill.

The President strongly supports medical research, and worked with Congress to dramatically increase resources for the National Institutes of Health. However, this bill would support and encourage a line of research that requires the intentional destruction of living human embryos for the derivation of their cells. Destroying nascent human life for research raises serious ethical problems, and many millions of Americans consider the practice immoral.

The Administration believes that government has a duty to use the people's money responsibly, both supporting important public purposes and respecting moral boundaries. Every year since 1995, Congress has on a bipartisan basis upheld this balance by prohibiting Federal funds for research in which an embryo is destroyed. Consistent with this provision, the President's policy permits the funding of research using embryonic cell lines created prior to August 9, 2001, along with stem cell research using other kinds of cell lines. Scientists can therefore explore the potential application of such cells, but the Federal government does not offer incentives or encouragement for the destruction of nascent human life.

H.R 810 seeks to replace that policy with one that offers very little additional practical support to the research, while using Federal dollars to offer a prospective incentive for the destruction of human embryos. Moreover, H.R 810 relies on unsupported scientific assertions to promote morally troubling and socially controversial research. Embryonic stem cell research is at an early stage of basic science, and has never yielded a therapeutic application in humans. It is too early to say if a treatment or a cure will develop from embryonic stem cell research.

The Administration believes that the availability of alternative sources of stem cells further counters the case for compelling the American taxpayer to encourage the ongoing destruction of human embryos for research. Researchers are continually exploring alternative ways to derive pluripotent stem cells. And alternative types of human stem cells—drawn from adults, children, and umbilical-cord blood without doing harm to the donors—have already achieved therapeutic results in thousands of patients with dozens of different diseases.

Moreover, private sector support and public funding by several States for this line of research, which will add up to several billion dollars in the coming few years, argues against any urgent need for an additional infusion of Federal funds which, even if completely unrestricted, would not approach such figures. Whatever one's view of the ethical issues or the state of the research, the future of this field does not require a policy of Federal subsidies offensive to the moral principles of millions of Americans.

H.R. 810 advances the proposition that the Nation must choose between science and ethics. The Administration, however, believes it is possible to advance scientific research without violating ethical principles: both by enacting the appropriate policy safeguards and by pursuing the appropriate scientific techniques. HR 810 is seriously flawed legislation that would undo those safeguards and provide a disincentive to pursuing those techniques.

Mr. BROWNBACK. Mr. President, we will have much discussion of this issue if it comes before this body. I am going to be working aggressively with a number of individuals to see that we continue this stem cell work in an ethical manner, but not where it involves the destruction of human life.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. FEINGOLD. Mr. President, I voted no on cloture, and I will vote no on the nomination of Priscilla Owen to be a judge on the U.S. Circuit Court of Appeals for the Fifth Circuit Court. I would like to take a few minutes today to explain my votes. I also would like to make a few comments on the events that led up to these votes.

I strongly oppose the threat of the nuclear option. I believe this was an illegitimate tactic, a partisan abuse of power that was a threat to the Senate as an institution and to the country. Attempting to blackmail the minority into giving up their rights that have been part of the Senate's traditions and practices for centuries was a new low for a majority that has repeatedly been willing to put party over principle. Unfortunately, the blackmail was partially successful. While I do applaud the efforts of the Senators who worked hard to broker an agreement, the end result is that three nominees who do not deserve lifetime appointments to the judiciary will now be confirmed.

The agreement reached by our colleagues states that filibusters should be reserved for extraordinary circumstances. For me, that has always been the test. I think Democrats have stuck to that standard in blocking just 10—just 10—out of the 218 nominations of President Bush that have been brought to the floor. A number of very conservative and very controversial nominees have been confirmed by the Senate. Jeffrey Sutton, now a judge on the Sixth Circuit, was confirmed by a vote of 52 to 41. No filibuster was used there. Jay Bybee, the author of the infamous torture memo, now sits on the Ninth Circuit. He was not filibustered. Michael McConnell, a very conservative and anti-choice law professor, often mentioned as a possible Supreme Court nominee, was confirmed for the Tenth Circuit. He was not filibustered. Dennis Shedd was confirmed to the Fourth Circuit by a vote of 55 to 44. He could have been filibustered, but he was not filibustered.

The idea that the filibuster has been used over the past several years as a tool to block all the nominees that the minority opposed is ludicrous. There were, and there continue to be, very good reasons to block a certain small number of nominees. Nothing that occurred last night changed that one iota. I will continue to vote against cloture only in extraordinary circumstances. I did that when we voted on cloture on the Owen nomination in 2003 and each subsequent time, and I have done that again today. For the majority to have created this constitutional crisis over what came down to five nominees was wrong, was an abuse of power. The American people did not support it, and I do not think they will support it in the future.

With respect to the Owen nomination, there are a number of factors that I believe require us to give this nomination very careful consideration. First, we should consider that judges on our courts of appeal have an enormous influence on the law. Whereas, decisions of the district courts are always subject to appellate review, the decisions of the courts of appeals are only subject to discretionary review by the Supreme Court. The decisions of the courts of appeal are, in almost all cases, final, as the Supreme Court agrees to hear only a very small percentage of the cases on which its views are sought. That means that the scrutiny we give to circuit court nominees must be greater than that we give to district court nominees. And then, of course, the scrutiny we give to Supreme Court nominees will even be greater.

Another important consideration is the ideological balance of the Fifth Circuit. The Fifth Circuit is comprised of Texas, Louisiana, and Mississippi. The Fifth Circuit contains the highest percentage of minority residents, over 40 percent of any circuit other than the DC Circuit. It is a court that, during the civil rights era, issued some of the most significant decisions supporting the rights of African-American citizens to participate as full members of our society.

As someone who believes strongly in freedom, liberty, and equal justice under law and the important role of the Federal courts to defend these fundamental American principles, I am especially concerned about the makeup of our circuit courts and their approaches to civil rights issues.

Even after 8 years of a Democratic President, the Fifth Circuit had twice as many Republican appointees as Democratic appointees. That is because during the last 6 years of the Clinton administration, the Judiciary Committee did not report out a single judge to the Fifth Circuit Court of Appeals. As we all know, that was not for a lack of nominees to consider. President Clinton nominated three well-qualified lawyers to the Fifth Circuit—Jorge

Rangel, Enrique Moreno, and Alston Johnson. None of these nominees even received a hearing before the committee.

Then-Chairman LEAHY held a hearing in July 2001 on the nomination of Judge Edith Brown Clement for a seat on the Fifth Circuit only a few months after she was nominated and less than 2 months after Democrats took control of the Senate. It was the first hearing in the Judiciary Committee for a Fifth Circuit nominee since September 1994. And Judge Clement, of course, was confirmed later in the year.

The fact is, there is a history here and a special burden on President Bush to consult with our side on nominees for this circuit; otherwise, we will be simply rewarding the obstructionism that the President's party engaged in over the last 6 years of the Clinton administration by allowing him to fill, with his choices, seats that his party held open for years, even when qualified nominees were advanced by President Clinton.

I say, once again, my colleagues on the Republican side bear some responsibility for this situation. There was a time when I thought they might help resolve it by urging the administration to address the Senate's failure to take up Clinton nominees. This entire controversy over judges that has come to a head over the last several weeks could have been avoided if our Republican colleagues had convinced the President to renominate even a few of those Clinton nominees who never received a hearing or vote in the committee, including nominees to the Fifth Circuit. But, of course, that did not happen. There was no effort to reach a real compromise to take into account the concerns of all parties.

A compromise at the point of a gun is not a compromise. That, I'm afraid, is what we had last night.

With that background, let me outline the concerns that have caused me to reach the conclusion that Justice Owen should not be confirmed.

Justice Owen has had a successful legal career. She graduated at the top of her class from Baylor University Law School, worked as an associate and partner at the law firm of Andrews and Kurth in Houston, and has served on the Texas Supreme Court since January 1995. These are great accomplishments.

But Justice Owen's record as a member of the Texas Supreme Court leads me to conclude that she is not the right person for a position on the Fifth Circuit. I am not convinced that Justice Owen will put aside her personal views and ensure that all litigants before her on the Fifth Circuit received a fair hearing. Her decisions in cases involving consumers' rights, worker's rights, and reproductive rights suggest that she would be unable to maintain an open mind and provide all litigants a fair and impartial hearing.

Justice Owen has a disturbing record of consistently siding against consumers or victims of personal injury and in favor of business and insurance companies. When the Texas Supreme Court, which is a very conservative and pro- business court, rules in favor of consumers or victims of personal injury, Justice Owen frequently dissents. According to Texas Watch, during the period 1999 to 2002, Justice Owen dissented almost 40 percent of the time in cases in which a consumer prevailed. But in cases where the consumer position did not succeed, Justice Owen never dissented.

At her first hearing, Senator KENNEDY and then-Senator Edwards asked Justice Owen to cite cases in which she dissented from the majority and sided in favor of consumers. Justice Owen could cite only one case, Saenz v. Fidelity Guaranty Insurance Underwriters. But Justice Owen's opinion in this case hardly took a pro-consumer position since it still would have deprived the plaintiff of the entire jury verdict. She did not join Justice Spector's dissent, which would have upheld the jury verdict in favor of Ms. Saenz.

Also during that first hearing, Senators FEINSTEIN and DURBIN questioned Justice Owen about Provident American Ins. Co. v. Castaneda. In that case, the plaintiff sought damages against a health insurer for denying health care benefits, after the insurer had already provided pre-operative approval for the surgery. Justice Owen, writing for the majority, reversed the jury's verdict in favor of the plaintiff and rejected the plaintiff's claim that the health insurer violated the Texas Insurance Code and the Deceptive Trade Practices Act. At the hearing, Justice Owen defended her opinion by saying that she believed that the plaintiff was seeking extra-contractual damages and that the plaintiff had already received full coverage under the policy and statutory penalties. But, in the words of her colleague, Justice Raul Gonzalez, who wrote a dissent, Justice Owen's opinion ''may very well eviscerate the bad-faith tort as a viable case of action in Texas.'' The cause of action for bad faith is designed to deter insurers from engaging in bad faith practices like denying coverage in the first place.

In addition, with respect to several decisions involving interpretation and application of the Texas parental notification law, I am deeply troubled by Justice Owen's apparently ignoring the plain meaning of the statute and injecting her personal beliefs concerning abortion that have no basis in Texas or U.S. Supreme Court law. In 2000, the Texas legislature enacted a parental notification law that allows a minor to obtain an abortion without notification of her parents if she demonstrates to a court that she has complied with one of three ''judicial bypass'' provisions: (1) that she is ''mature and sufficiently well informed'' to make the decision without notification to either of her parents; (2) that notification would not be in her best interest; or (3) that notification may lead to her physical, sexual, or emotional abuse.

During Justice Owen's first confirmation hearing, Senator CANTWELL questioned Justice Owen about her positions in cases interpreting this law, focusing on Justice Owen's insistence in In re Jane Doe. In that case, a teenager is required to consider ''philosophic, social, moral, and religious'' arguments before seeking an abortion. In her opinion, Justice Owen cited the Supreme Court's decision in Planned Parenthood of Southeastern Pennsylvania v. Casey to support her contention that States can require minors to consider religious views in their decision to have an abortion. But, as Senator CANTWELL noted, Casey in no way authorizes States to require minors to consider religious arguments in their decision on whether to have an abortion. Upon this further questioning, Justice Owen then said that she was referring to another Supreme Court case, H.L. v. Matheson, even though her opinion only cited Casey for this proposition. And even Matheson does not say that minors can be required by State law to consider religious arguments. It is my view that Justice Owen was going beyond not only a plain reading of the Texas statute, but Supreme Court case law, and inappropriately injecting her own personal views to make it more difficult for a minor to comply with the statute and obtain an abortion.

I was also not satisfied with Justice Owen's responses to my questions about bonuses to Texas Supreme Court law clerks. I asked her at the hearing whether she saw any ethical concerns with allowing law clerks to receive bonuses from their prospective employers during their clerkships. I also explored the topic further with her in followup written questions. Justice Owen stated repeatedly in her written responses to my questions that she is not aware of law clerks actually receiving bonuses while they were employed by the court. She reaffirmed that testimony in her second hearing. This seems implausble given the great amount of publicity given to Ian investigation pursued by the Travis County attorney of exactly that practice and the well publicized modifications to the Texas Supreme Court's rules that resulted from that investigation and the accompanying controversy.

Even more disturbing, Justice Owen took the position, both at the first hearing and in her responses to written questions, that because the Texas Supreme Court Code of Conduct requires law clerks to recuse themselves from matters involving their prospective employers, there really is no ethical concern raised by law clerks accepting bonuses while employed with the court. I disagree. It is not sufficient for law clerks to recuse themselves from matters involving their prospective employers if they have received thousands of dollars in bonuses while they are working for the court. The appearance

of impropriety and unfairness that such a situation creates is untenable. As I understand it, the Federal courts have long prohibited Federal law clerks both from receiving bonuses during their clerkships and from working on cases involving their prospective employers. I am pleased that the Texas Supreme Court finally recognized this ethical problem and changed its code of conduct for clerks. Justice Owen, in contrast, seems intent on defending the prior, indefensible, practice.

Finally, I want to note the unusual nature of this particular nomination. Unlike so many nominees during the Clinton years, Justice Owen was considered in the Judiciary Committee under Senator LEAHY's leadership in 2002. She had a hearing, and she had a vote. Her nomination was rejected. This has been the first time in history that a circuit nominee who was formally rejected by the committee, or the full Senate for that matter, has been renominated by the same President to the same position. I do not believe that defeated judicial nominations should be reconsidered like legislation that is not enacted. After all, legislation can be revisited after it is enacted. If Congress makes a mistake when it passes a law, it can fix that mistake in subsequent legislation. Let us all remember that judicial appointments are for life. Confirmations cannot be taken back or fixed. A vote to confirm a nominee is final. A vote to reject that nominee should be final as well. For the President to renominate a defeated nominee and the Senate to reconsider her simply because of the change of a few seats in an election cheapens the nomination process and the Senate's constitutional role in that process.

I believe Justice Owen is bright and accomplished, but I sincerely believe that based on her judicial record, Justice Owen is not the right choice for this position.

Ms. CANTWELL. Mr. President, I discuss the nomination of Priscilla Owen to the Fifth Circuit Court of Appeals, and to briefly discuss the compromise before us on the so-called nuclear option.

I continue to oppose all three of the nominees that will proceed to up-or-down votes as the result of this compromise, and I will be voting against cloture on Priscilla Owen as a result. But I do acknowledge the importance of preserving the process of debating judicial nominees. I do not feel that the filibuster has been misused with regard to President Bush's nominees, as I'll explain shortly, but I am impressed at the efforts of my colleagues on both sides of the aisle to avoid the all-or-nothing nuclear option vote that threatened to cause us to break down as an institution.

I also express my hope that the term ''extraordinary circumstances'' that is in this compromise is interpreted sensibly. When extreme nominees threaten the balance of our federal courts, I view those as extraordinary circumstances. I will continue to vote to block any nominee who is not suitable for the bench, and it will continue to be an unusual exception for me not to support a nominee. My standard has been extraordinary circumstances all along.

As a former member of the Judiciary Committee, I attended a hearing on Priscilla Owen that lasted a full day. During that hearing, Owen's record showed a particular disregard for precedent and the plain rule of law.

Anyone who walks into a courtroom as a plaintiff or a defendant in this country should do so having the full confidence that there is impartiality on the part of the judge on the bench. They should have total confidence that the rule of law will be followed, and believe the issues will be judged on their merits rather than viewed through the prism of an individual judge's personal values or beliefs.

There is reason to be concerned about the record of Priscilla Owen. Time after time, even her own Republican colleagues, on a predominantly Republican Texas Supreme Court bench, criticized her for failing to follow precedent or interpreting statutes in ways that ignore the clear intent of the law.

What some of Owen's colleagues on the bench have said about her opinions I think is important. In a case dealing with a developer seeking to evade Austin's clean water laws, her dissent was called ''nothing more than inflammatory rhetoric.''

In another case, her statutory interpretation was called ''unworkable.'' In yet another case, the dissent she joined was called ''an unconscionable act of judicial activism.''

There is another reason this nomination is so important. This is critical to all the nominees we are considering for appointment to the Federal bench, and especially important for you here this morning. That is, what is the judicial philosophy and commitment to upholding current law as it relates to a citizen's right to privacy. I asked Justice Owen at her hearing about her beliefs on the right to privacy. I asked her if she believed there was constitutional right to privacy and where she found that right in the Constitution.

She declined at the time to answer that question without the relevant case information and precedents before her. When Senator FEINSTEIN followed up with a similar question, Owen against would not answer whether she believes a right to privacy does exist within the Constitution.

The question of whether a nominee believes that the right to privacy exists with regard to the ability to make decisions about one's own body is only the tip of the privacy iceberg. I believe that we are in an information age that poses new challenges in protecting the right to privacy. We are facing difficult issues including whether U.S. citizens have been treated as enemy combatants in a prison without access to counselor trial by jury, whether businesses have access to some of your most personal information, whether the Government has established a process for eavesdropping or tracking U.S. citizens without probable cause, and whether the Government has the ability to develop new software that might track the use of your own computer and places where you might go on the Internet without your consent or knowledge. There are a variety of issues that are before us on an individual's right to privacy and how that right to privacy is going to be interpreted. A clear understanding of a nominee's willingness to follow precedent on protecting privacy is a very important criterion for me, and it should be a concern for all Members.

Of course, some of my concern and skepticism about Justice Owen's views on privacy results from the opinions she wrote in a series of cases interpreting the Texas law on parental notification. In 2000 the State of Texas passed a law requiring parental notification. But they also included a bypass system for extreme cases.

Eleven out of 12 times Owen analyzed whether a minor should be entitled to bypass the notice requirement, she voted either to deny the bypass or to create greater obstacles to the bypass.

Owen wrote in dissent that she would require a minor to demonstrate that she had considered religious issues surrounding the decision and that she had received specific counseling from someone other than a physician, her friend, or her family. Requirements, I believe, that go far beyond what the statute requires.

In interpreting the ''best interest'' arm of the statute, Owen held that a minor should be required to demonstrate that the abortion itself—not avoiding notification—was in the individual's best interests. In this particular case, I think she went far beyond what the statue required.

Where does that put us? Women in this country rely on the right to choose. It is an issue on which we have had 30 years of settled law and case precedent. In the Fifth Circuit, there are three States that continue to have unconstitutional laws on the books, and legislatures that are hostile to that right to choose. The Federal courts are the sole protector of women's right to privacy in these states. I do not believe that the rights of the women of the Fifth Circuit can be trusted to Justice Priscilla Owen.

The Senate provides each of us with the procedural privilege to thoroughly discuss my concerns about this nominee—the filibuster. The filibuster has been used against me on issues I care deeply about, just as I have used this procedure when it was necessary to protect the people of my state. This body, in which I am so privileged to serve, is more important than any one of us, precisely because even one Senator can stand up for her state in the face of a powerful majority.

This agreement, whatever else I might think of it, preserves the rights in this body that make it unique and that give it the most credibility. Each of us has to respect the views of the rest. When 40 of us stand together, the other 60 must negotiate. That is healthy and that is what happened here. The rules of the Senate, and the existence of the Federal judiciary itself, pose proper checks on majority and Presidential power. That is the way it should stay.

Mr. KYL. Mr. President, I want to respond to a statement that the Senior Senator from West Virginia made yesterday. In his remarks, the Senator conceded the legitimacy of the constitutional option, what he called the ''nuclear option,'' as a way for the Senate to determine its practices and procedures. The option is, of course, the leader's right to obtain a ruling from the presiding officer that certain actions of Senators are dilatory and cannot preclude the Senate from voting on a judicial nomination.

Here is what he said: ''The so-called nuclear option has been around for a long time. It doesn't take a genius to figure that out.'' He went on to explain that this constitutional option had been available since at least 1917, and he repeatedly emphasized that this tool has been around ''for a long time.''

I appreciate this acknowledgment from the Senator from West Virginia, because I know he has studied the history of the Senate, and I know he has intimate familiarity with the workings of the Constitutional Option. There is nothing new about the constitutional option, as I discussed in my May 19 floor speech outlining the legal and constitutional rationale for its exercise. The constitutional option is simply the Senate's exercise of its power to define its own procedures—a power that comes directly from the Constitution and has been affirmed by the Supreme Court. (U.S. v. Ballin, 144 U.S. 1 (1892)) I appreciate that the Senator has acknowledged its legitimacy.

The Senator from West Virginia also argued, however, that past majority leaders have never used the constitutional option to ''tamper'' with extended debate. As my May 19 statement established, as did yesterday's statements by Senators MCCONNELL, HATCH, and BENNETT, that is not actually the case.

The fact is that the Senator himself used the constitutional option four times when serving as majority leader—in one case to outright eliminate the filibuster for motions to proceed to Executive Calendar nominations. Moreover, in February 1979, he forced the minority to agree to a formal rules change after credibly threatening that he would exercise the constitutional option. At that time, the Senator said on this floor, ''if I have to be forced into a corner to try for a majority vote, I will do it because I am going to do my duty as I see my duty, whether I win or lose.''

The Senate was nearly forced into a similar ''corner'' this week. Had Democrats not supported cloture on Priscilla Owen today, then all Senators would have had to make a conclusive decision as to whether it should take 60 or 51 votes to confirm a judge. Instead, we are putting off that decision until another day.

That may still come. And if it does come, I hope that we hear no more talk of the ''illegitimacy'' of the constitutional option. There is plenty to discuss as to whether exercising the option is prudential in a particular case. Some of the debate these past few days has addressed that prudential question, including some of the discussion from the Senator from West Virginia. But there has also been talk about the constitutional option being a case of ''lawlessness'' or ''breaking the rules to change the rules.'' The constitutional option is a part of Senate history. In Senator BYRD's words, it ''has been around for a long time.''

And it will always be with us. The constitutional option is not, as the minority leader has repeatedly insisted, ''off the table.'' It is simply unnecessary at present. If it becomes necessary again, we may be called on to live up to our responsibilities to the Constitution and to the Senate to ensure that we restore our traditions and guarantee up-or-down votes to all judicial nominees who reach the Senate floor.

Mr. CORNYN. Mr. President, at various times during the course of debate in recent days over the nomination of Justice Priscilla Owen, a number of her previous rulings have been badly mischaracterized. Last Thursday, May 19, I rose to speak about a number of those cases and to correct the record. And just this morning, I published an op-ed in National Review Online to further rebut these baseless criticisms. I ask unanimous consent that an excerpt of that op-ed be printed in the RECORD.

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

It is now conceded that Justice Owen, Justice Brown, and Judge Pryor all deserve up-or-down votes. I happen to know personally that the case against Justice Owen was especially weak, because I know Priscilla personally from our service together on the Texas supreme court. Just consider the following litany of supposedly ''out of the mainstream'' rulings for which she was criticized:

A number of senators criticized Justice Owen's opinion in *Montgomery Independent School District* v. *Davis*. One senator specifically attacked her for failing to protect a teacher who was ''wrongly dismissed.'' The case involved the authority of a local school board to dismiss a poorly performing and abusive teacher. The teacher had admitted that she had referred to her students as ''little s***s.'' When confronted, the teacher justified the use of the expletive on the bizarre ground that she used exactly the same language when talking to her own children. The teacher regularly insulted parents as well. The opinion joined by Justice Owen concluded that the school board was authorized to dismiss this teacher. It noted that the majority's ruling ''allows a state hearing examiner to make policy decisions that the Legislature intended local school boards to make,'' and that the majority had ''misinterpreted the Education Code.''

One senator attacked Justice Owen for her opinion in *Texas Farmers Insurance Co.* v. *Murphy*. In this case, Justice Owen simply joined an opinion holding that neither an arsonist nor his spouse should benefit from his crime by recovering insurance proceeds. The opinion followed two unanimous decisions of the Fifth Circuit, the very court to which Justice Owen has been nominated.

Justice Owen was also criticized for a ruling she and I both joined in *Peeler v. Hughes & Luce and Darrell C. Jordan*—in which we simply held that an admitted criminal could not benefit from criminal activity by suing the criminal-defense attorney for malpractice.

A number of senators focused on Justice Owen's opinion in *FM Properties Operating Co. v. City of Austin*. One senator specifically criticized her for refusing to rule that a Texas water law ''was an unconstitutional delegation of legislative authority.'' Yet liberal attorneys regularly criticize the nondelegation doctrine and claim that conservatives wrongly use it to invalidate laws duly enacted by the legislature. In fact, just last month one senator criticized another nominee, Bill Pryor, for championing the nondelegation doctrine. So Justice Owen's critics seem to argue that if you support the nondelegation doctrine, you are out of the mainstream, and that if you oppose the nondelegation doctrine, you are out of the mainstream. It reminds me of a country-western song: ''Darned If I Don't, Danged If I Do.''

One senator claimed that, in *Read v. Scott Fetzer Co.*, Justice Owen ruled that a woman raped by a vacuum-cleaner salesman could not sue the company that had employed him after failing to undertake a standard background check—an allegation recently articulated in an op-ed in *Roll Call*. Yet as my letter to the editor noted, that allegation is plainly false. As the opinion joined by Justice Owen noted, ''[n]o one questions that [the company that had hired the rapist] is liable.'' The justices simply disagreed on whether another company—one that had not hired the rapist and had no relationship with the rapist—should also have been held liable.

Justice Owen was also criticized for her ruling in *Hyundai Motor Co. v. Alvarado*. In that case, an automobile alleged to be defective had in fact fully satisfied the federal standard then in effect. The plaintiff chose to sue anyway, despite federal law. Justice Owen simply held that Congress had forbidden such lawsuits once the federal standard had been met—a technical legal doctrine known as federal preemption. For this, she was sharply criticized. Yet her opinion simply followed the ''solid majority of the courts to consider this issue''—including precedents authored by judges appointed by President Jimmy Carter. Moreover, the U.S. Supreme Court later adopted Justice Owen's approach (*Geier v. American Honda Motor Co., Inc.*), in an opinion authored by Clinton appointee, and former Democrat chief counsel of the Senate Judiciary Committee, Justice Stephen Breyer.

Justice Owen was likewise criticized for her rulings in *Quantum Chemical Corp. v. Toennies*, a case involving a Texas civil-rights law expressly modeled after Title VII of the federal Civil Rights Act of 1964, and *City of Garland v. Dallas Morning News*, a Texas open-government law modeled after the federal Freedom of Information Act. Once again, all she did was follow precedents adopted by appointees of Presidents Carter and Clinton.

Justice Owen and I happened to disagree in *Weiner v. Wasson*, a case involving a technical matter of applying a statute of limitations to a medical malpractice suit. One senator argued that my opinion was ''a lecture

to the dissent'' about the importance of *stare decisis* and following precedent. The argument is baseless. In fact, Justice Owen didn't try to overturn precedent in that case; only the defendant did. Moreover, Justice Owen's ruling contained an equally emphatic ''lecture'' to the defendant about the importance of following precedent.

And of course, there were the now-famous cases involving the popular Texas parental-notification law—a parental-rights law that generally requires minors to notify one parent before obtaining an abortion. Readers should ask themselves one simple question: Who would you trust to analyze and determine the quality of Justice Owen's legal analysis in those cases? The author of the Texas law—who supports Owen? Her former colleagues on the court, including former Justices Alberto Gonzales and Greg Abbott, who support her? Now-Attorney General Alberto Gonzales, who has testified—under oath—that he supports Justice Owen and that, contrary to false reports, he never accused her of ''judicial activism''? The pro-choice Democrat law professor appointed by the Texas supreme court to set up procedures under the statute—who supports Owen, and who has written: ''If this is activism, then any judicial interpretation of a statute's terms is judicial activism''? Or do you trust the liberal special-interest groups who sharply opposed the Texas law, and never wanted that law to be enacted in the first place? Or the groups who literally make a living destroying the reputation of this president's nominees?

The attacks on these rulings by Justice Owen reminded me of what Mark Twain once said: ''A lie can travel halfway around the world while the truth is still putting on its shoes.'' But let's keep our eye on the ball. The American people know a controversial ruling when they see one—whether it's the redefinition of marriage, or the expulsion of the Pledge of Allegiance and other expressions of faith from the public square—whether it's the elimination of the three-strikes-and-you're out law and other penalties against convicted criminals, or the forced removal of military recruiters from college campuses. Justice Owen's rulings fall nowhere near this category of cases. There is a world of difference between struggling to interpret the ambiguous expressions of a legislature, and refusing to obey a legislature's directives altogether.

Thankfully, the Senate has now effectively acknowledged this important distinction, by guaranteeing Justice Owen an up-or-down vote after four long years.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. INHOFE. What is the regular order?

The PRESIDING OFFICER. The Senate business is the nomination of Priscilla Owen to be United States Circuit Court Judge.

Mr. INHOFE. I ask unanimous consent I be allowed to speak as in morning business for such time as I consume.

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

GLOBAL WARMING

Mr. INHOFE. Mr. President, over the past few weeks, I have debunked the notion of scientific consensus about global warming. The claim there is consensus rests on four fundamental pillars. My previous talks made clear that the first three pillars are made of sand.

It is not true, for example, that the National Academy of Sciences believes the science of climate change is settled. In fact, the report is replete with caveats, warning the reader of the many uncertainties associated with claims of global warming. Yet advocates continue to recite small excerpts while ignoring the caution about uncertainties contained within the same paragraph or even the same science.

It is also not true that the second pillar, the U.N. science report known as the IPCC, proves a consensus. The flagship study on which the IPCC report relies, known as the hockey stick, which shows an unprecedented rise in 20th century temperatures, has been thoroughly discredited by scientists on both sides of the debate. In fact, recently, and since 1999, there hasn't been anyone who has agreed there is authenticity to the issue. In addition, the U.N. report relies on an explosive increase in emissions from poor countries over the next century based on the political decision by the report's author that countries such as Algeria will be as wealthy or wealthier than the United States.

The third pillar, supposedly proving that the science is settled that the Arctic is melting, is based on political science. Arctic temperatures are no warmer than they were in the 1930s. Similarly, the thickness of the Arctic glaciers and the sea ice appears to vary naturally by as much as 16 percent annually.

These and other factors which the alarmists find inconvenient would seem to indicate that projections of an Arctic climate catastrophe are speculative, at best.

Today I conclude the series on the four pillars of climate alarmists by discussing the problems associated with global climate models.

Let me begin by briefly explaining the climate models and how they function. Climate models help scientists describe changes in the climate system. They are not models in the conventional sense; that is, they are not physical replicas. Rather, they are mathematical representations of the physical laws and processes that govern the Earth's climate. According to Dr. David Legates of the University of Delaware, climate models ''are designed to be descriptions of the full three-dimensional destruction of the earth's climate.'' Dr. Legates claims models are used ''in a variety of applications, including the investigation of the possible role of various climate forcing mechanisms and the simulation of past and future climates.''

Thousands of climate changes studied rely on computer models. The Arctic Council, whose work I addressed last week, stated that arctic warming and the impact stemming from that warming are firmly established by computer models.

Quoting from him:

> While the models differ in their projections of some of the features of climate change, they are all in agreement that the world will warm significantly as a result of human activities, and that the Arctic is likely to experience noticeable warming, particularly early and intensely.

Similarly, the IPCC, which I also discussed in the earlier talks, relied on such earlier models to project a long-term temperature increase ranging from 2.5 to 10.4 degrees Celsius and assorted and potentially dangerous climate changes over the next century.

According to Dr. Kenneth Green, Dr. Tim Ball, and Dr. Steven Schroeder, the politicians clearly do not realize that the major conclusions of the IPCC's reports are not based on hard evidence and observation but, rather, largely upon the output of assumption-driven climate models.

The alarmists cite the results of climate models as proof of the catastrophic warming hypotheses. Consider one alarmist's description, who wrote recently:

> Drawing on highly sophisticated computer models, climate scientists can project, not predict, how much temperatures may rise by say 2100 if we carry on with business as usual.

He continues:

> Although scenarios vary, some get pretty severe, and so do the projected impacts of climate change, rising sea levels, species extensions, glacier melting and so forth.

It sounds pretty scary, but the statement is completely false. It sheds no light on the likelihood or reliability of such projections. If, for example, a model shows a significant temperature increase over the next 50 years, how much confidence do we have in that projection? Attaching probabilities to model results is extremely difficult and rife with uncertainties.

In the 2000 edition of ''Nature,'' four climate modelers noted that:

> A basic problem with all such predictions to date has been the difficulty of providing any systematic estimate of uncertainty.

This problem stems from the fact that:

> These [climate] models do not necessarily span the full range of known climate system behavior.

According to the National Academy of Sciences:

> . . . without an understanding of the sources and degree of uncertainty, decision-makers could fail to define the best ways to deal with the serious issue of global warming.

This fact should temper the enthusiasm of those who support Kyoto-style regulations that will harm the American economy.

Previously, we have talked about the harm to the economy and have referred to the Wharton Econometric Survey which was conducted by the Wharton School of Economics. It gets into a lot of detail as to what is going to happen.

For example, to comply with Kyoto, it would cost the average family of four some $2,700 a year. So it is a very significant thing.

Now note, too, the distinction between ''project'' and ''predict.'' The alarmist writer noted earlier creates the misimpression that a projection is more solid than a prediction. But a projection is the output of a model calculation. Put another way, it is only as good as the model's equations and inputs. As we will see later in this presentation, such inputs or assumptions about the future can be extremely flawed, if not totally divorced from reality. And this, to be sure, is only one of the many technical shortcomings that limit the scientific validity of climate modeling.

Unfortunately, rarely does any scrutiny accompany model simulations. But based on what we know about the physics of climate models, as well as the questionable assumptions built into the models themselves, we should be very skeptical of their results. This is exactly the view of the National Academy of Sciences. According to the NAS:

Climate models are imperfect. Their simulation skill is limited by uncertainties in their formulation, the limited size of their calculations, and the difficulty of interpreting their answers that exhibit as much complexity as in nature.

At this point, climate modeling is still a very rudimentary science. As Richard Kerr wrote in Science magazine:

Climate forecasting, after all, is still in its infancy.

Models, while helpful for scientists in understanding the climate system, are far from perfect. According to climatologist Gerald North of Texas A&M University:

It's extremely hard to tell whether the models have improved; the uncertainties are large.

Or as climate modeler Peter Stone of the Massachusetts Institute of Technology put it:

The major [climate prediction] uncertainties have not been reduced at all.

Based on these uncertainties, cloud physicist Robert Charlson, professor emeritus at the University of Washington-Seattle, has concluded:

To make it sound like we understand climate is not right.

This is not to deny that climate modeling has improved over the last three decades. Indeed, scientists have constructed models that more accurately reflect the real world. In the 1970s, models were capable only of describing the atmosphere, while over the last few years models can describe, albeit inadequately, the atmosphere, land surface, oceans, sea ice, and other variables.

But greater complexity does not mean more accurate results. In fact, the more variables scientists incorporate, the more uncertainties arise. Dr. Syukuro Manabe, who helped create the first climate model that coupled the atmosphere and oceans, has observed:

Models that incorporate everything from dust to vegetation may look like the real world, but the error range associated with the addition of each new variable could result in near total uncertainty. This would represent a paradox: The more complex the models, the less we know.

We are often reminded that the IPCC used sophisticated modeling techniques in projecting temperature increases for the coming century. But as William O'Keefe and Jeff Kueter of the George C. Marshall Institute pointed out in a recent paper:

The complex models envisioned by the IPCC have many more than twenty inputs, and many of those inputs will be known with much less than 90 percent confidence.

Also, tinkering with climate variables is a delicate business—getting one variable wrong can greatly skew model results. Dr. David Legates has noted that:

Anything you do wrong in a climate model will adversely affect the simulation of every other variable.

Take precipitation, for example. As Dr. Legates noted:

Precipitation requires moisture in the atmosphere and a mechanism to cause it to condense (causing the air to rise over mountains, by surface heating, as a result of weather fronts, or by cyclonic rotation). Any errors in representing the atmospheric moisture content or precipitation-causing mechanisms will result in errors in the simulation of precipitation.

Dr. Legates concluded:

Clearly, the interrelationships among the various components that comprise the climate system make climate modeling difficult.

The IPCC, in its Third Assessment Report, noted this problem, and many others, with climate modeling, including—this is a quote from their report; the very basis that many of the alarmists are basing their decisions on:

Discrepancies between the vertical profile of temperature change in the troposphere seen in observations and models.

Large uncertainties in estimates of internal climate variability (also referred to as natural climate variability) from models and observations.

Considerable uncertainty in the reconstructions of solar and volcanic forcing which are based on limited observational data for all but the last two decades.

Large uncertainties in anthropogenic forcings associated with the effects of aerosols.

Large differences in the response of different models to the same forcing.

I want to delve a little deeper into the first point concerning the discrepancies between temperature observations in the troposphere and the surface. This discrepancy is very important because it tends to undermine a key assumption supporting the warming hypothesis—that more rapid warming should occur in the troposphere than at the surface, creating the so-called greenhouse ''fingerprint.'' But the National Research Council believes real-world temperature observations tell a different story.

In January of 2000, the NRC panel examined the output from several climate models to assess how well they mimicked the observed surface and lower atmospheric temperature trends. They found that:

Although climate models indicate that changes in greenhouse gases and aerosols play a significant role in defining the vertical structure of the observed atmosphere, model-observation discrepancies indicate that the definitive model experiments have not been done.

John Wallace, the panel chairman and professor of atmospheric sciences at the University of Washington, put it more bluntly. He said:

There really is a difference between temperatures at the two levels that we don't fully understand.

More recently, researchers at the University of Colorado, Colorado State University, and the University of Arizona, examined the differences between real-world temperature observations with the results of four widely used climate models. They probed the following question: Do the differences stem from uncertainties in how greenhouse gases and other variables affect the climate system or by chance model fluctuations; that is, the variability caused by the model's flawed representation of the climate system?

As it turned out, neither of these factors was to blame. According to the researchers:

Significant errors in the simulation of globally averaged tropospheric temperature structure indicate likely errors in tropospheric water-vapor content and therefore total greenhouse-gas forcing, precipitable water, and convectively forced large-scale circulation.

Moreover, based on the ''significant errors of simulation,'' the researchers called for ''extreme caution in applying simulation results to future climate-change assessment activities and to attributions studies.

They also questioned ''the predictive ability of recent generation model simulations, the most rigorous test of any hypothesis.''

There does not seem to be much wiggle room here: Climate models are useful tools, but unable, in important respects, to simulate the climate system, undermining their ''predictive ability.''

Based on this hard fact, let me bring you back to the alarmist writer I referenced earlier. As he wrote recently:

Drawing on highly sophisticated computer models, climate scientists can project—not predict—how much temperature may rise by, say, 2100, if we carry on with business as usual.

Again, based on what I have just recounted, this is disingenuous at best. I think a fairminded person would find it horribly misleading and inaccurate.

Another serious model limitation concerns the interaction of clouds and water vapor with the climate system.

Dr. Richard S. Lindzen, professor of meteorology at MIT, reports of ''terrible errors about clouds in all the

models.'' He noted that these errors ''make it impossible to predict the climate sensitivity because the sensitivity of the models depends primarily on water vapor and clouds. Moreover, if clouds are wrong,'' Dr. Lindzen said, ''there's no way you can get water vapor right. They're both intimately tied to each other.''

In fact, water vapor and clouds are the main absorbers of infrared radiation in the atmosphere. Even if all other greenhouse gases, including carbon dioxide, were to disappear, we would still be left with over 98 percent of the current greenhouse effect. But according to Dr. Lindzen, ''the way current models handle factors such as clouds and water vapor is disturbingly arbitrary. In many instances the underlying physics is simply not known.''

Dr. Lindzen notes that this is a significant flaw, because ''a small change in cloud cover can strongly affect the response to carbon dioxide.'' He further notes, ''Current models all predict that warmer climates will be accompanied by increasing humidity at all levels.'' Such behavior ''is an artifact of the models since they have neither the physics nor the numerical accuracy to deal with water vapor.''

I think sometimes you have to look at the science and the contradictions, and even if we don't thoroughly understand what these people are saying, the fact is, they contradict each other. Sometimes you have to go back and look at reality. If they say the increase in the use of carbon dioxide and the presence of it is the major thing causing anthropogenic gases and global warming temperatures, look at what happened right after the war. After the war, they increased the use of CO_2 by 85 percent. You would think that would precipitate a warmer period, but it didn't. It precipitated a cooling period. When you get back to the arguments and discrepancies, they agree there are problems.

Along with water vapor and clouds, aerosols, or particles from processes such as dust storms, forest fires, the use of fossil fuels, and volcanic eruptions, represent another major uncertainty in climate modeling. To be sure, there is limited knowledge of how aerosols influence the climate system. This, said the National Academy of Sciences, represents ''a large source of uncertainty about future climate change.''

Further, the Strategic Plan of the U.S. Climate Change Science Program, CCSP, which was reviewed and endorsed by the National Research Council, concluded that the ''poorly understood impact of aerosols on the formation of both water droplets and ice crystals in clouds also results in large uncertainties in the ability to project climate changes.''

Climate researcher and IPCC reviewer Dr. Vincent Gray reached an even stronger conclusion, stating that ''the effects of aerosols, and their uncertainties, are such as to nullify completely the reliability of any climate models.''

Another issue affecting model reliability is the relative lack of available climate data, something the National Research Council addressed in 2001. According to the NRC, ''[a] major limitation of these model forecasts for use around the world is the paucity of data available to evaluate the ability of coupled models to simulate important aspects of past climate.''

There is plenty of evidence to support this conclusion. Consider, for example, that most of the surface temperature record covers less than 50 years and only a few stations are as much as 100 years old. The only reliable data come from earth-orbiting satellites that survey the entire atmosphere. Notably, while these temperature measurements agree with those taken by weather balloons, they disagree considerably with the surface record.

There is also concern of an upward bias in the surface temperature record, caused by the ''urban heat island effect.'' Most meteorological stations in Western Europe and eastern North America are located at airports on the edge of cities, which have been enveloped by urban expansion. In the May 30, 2003, issue of Remote Sensing of Environment, David Streutker, a Rice University researcher, found an increase in the Houston urban heat island effect of nearly a full degree Celsius between 1987 and 1999. This study confirmed research published in the March 2001 issue of Australian Meteorological Magazine, which documented a significant heat island effect even in small towns.

Although climate modelers have made adjustments to compensate for the urban heat island effect, other researchers have shown such adjustments are inadequate. University of Maryland researchers Eugenia Kalnay and Ming Cai, in Nature magazine, concluded that the effect of urbanization and land-use changes on U.S. average temperatures is at least twice as large as previously estimated.

Finally, to expand on a point I raised earlier, climate models are helpful in creating so-called ''climate scenarios.'' These scenarios help scientists describe how the climate system might evolve. To arrive at a particular scenario, scientists rely on model-driven assumptions about future levels of economic growth, population growth, greenhouse gas emissions, and other factors. However, as with the IPCC, these assumptions can create wildly exaggerated scenarios that, to put it mildly, have little scientific merit. In 2003, scientists with the Federal Climate Change Science Program agreed that potential environmental, economic, and technological developments ''are unpredictable over the long time-scales relevant for climate research.''

William O'Keefe and Jeff Keuter of the George C. Marshall Institute reiterated this point recently. As they wrote, ''The inputs needed to project climate for the next 100 years, as is typically attempted, are unknowable. Human emissions of greenhouse gases and aerosols will be determined by the rates of population and economic growth and technological change. Neither of these is predictable for more than a short period into the future.''

Put simply, computer model simulations cannot prove that greenhouse gas emissions will cause catastrophic global warming. Again, here's the National Academy of Sciences: ''The fact that the magnitude of the observed warming is large in comparison to natural variability as simulated in climate models is suggestive of such a linkage, but it does not constitute proof of one because—and this is a point I want to emphasize—the model simulations could be deficient in natural variability on the decadal to century time scale.''

It's clear that climate models, even with increasing levels of sophistication, still contain a number of critical shortcomings. With that in mind, policymakers should reject ridiculous statements that essentially equate climate model runs with scientific truth.

As I discussed today, climate modeling is in its infancy. It cannot predict future temperatures with reasonable certainty that these predictions are accurate. The physical world is exceedingly complex, and the more complex the models, the more potential errors are introduced into the models. We understand little about how to accurately model the troposphere and about the role of aerosols, clouds and water vapor. Moreover, there are enormous data gaps in the very short temperature records that we have. And surface data often conflict with more accurate balloon and satellite data.

Models can enhance scientists' understanding of the climate system, but, at least at this point, cannot possibly serve as a rational basis for policymaking. It seems foolish in the extreme to undermine America's economic competitiveness with policies based on computer projections about what the world will look like in 100 years. In short, we have no idea what the world will look like in 20 years, or even 10 years.

So this concludes the fourth of the pillars of climate alarmists, hopefully just to show the science is flawed.

I think it is clear, as I mentioned a minute ago, that the science is not there. Since 1999, the old argument of Michael Mann, the guy who invented the hockey-stick theory, where he was measuring the Earth's temperatures, we come into the 20th century—and that is the blade on the hockey stick—he intentionally left out the fact that between the years 700 A.D. and 1100 A.D., there is another blade on the hockey stick that went up the other way and temperatures were warmer than they are today.

If you read the Wharton Econometrics Survey, you will realize what will happen to America if we were to

sign on to this, the economic damage we would have to sustain, the fact it would double the cost of energy, double the cost of gasoline to run our cars, and it would cost the average American family $2,700, and you have to ask the question: If the science is not real and it would inflict that much danger, what is the reason we are doing it?

I think we can find the answer in quoting from Margot Wallstrom. Margot Wallstrom is the European Union's Environment Commissioner. She states that Kyoto is not about climate change, it is "about leveling the playing field for big businesses worldwide."

One of your favorite people, I am sure, French President Jacques Chirac, in a speech during The Hague in 2000, said that Kyoto represents "the first component of an authentic global governance."

I think we have had an opportunity to discuss this over and over, and it is somewhat warming to me to realize that things are not getting that much warmer, and if that is happening, the science is not showing it is due to anthropogenic gases.

Consequently, we as policymakers, have to look at this and be sure before we make any rash decisions that the science is there. Clearly, the science is not there.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

STEM CELL RESEARCH

Mr. HARKIN. Mr. President, the House of Representatives just minutes ago took a historic stand on behalf of the millions of Americans who can benefit from the enormous promise of stem cell research. By a vote of 238 yeas to 194 nays, the House passed H.R. 810. I congratulate both Congressman CASTLE, a Republican from Delaware, and Congresswoman DEGETTE, a Democrat from Colorado, who led a bipartisan effort in this regard to have this very historic vote in the House of Representatives.

Indeed, a bipartisan majority rejected the restrictive policies of this administration and voted to expand the number of stem cell lines that are eligible for federally funded research. In doing so, they have brought new hope to Americans who suffer from diseases such as Parkinson's and juvenile diabetes, ALS, as well as spinal cord injuries.

Now it is up to us in the Senate to pass the same bill without amendments so we can send it to the President's desk as soon as possible. The American people cannot afford to wait any longer for our top scientists to realize the full potential of stem cell research.

Regrettably, research has been stymied and slowed under the President's stem cell policy. When President Bush announced his policy, the administration said that 78 stem cells lines were eligible for federally funded research, meaning they had to be derived before the totally arbitrary date and time of August 9, 2001, at 9 p.m. Why it was permissible to use stem cell lines derived before 9 p.m. but not at 9:01 or 9:05 p.m. has always eluded me. Again, it is just an arbitrary time and date.

The administration said there were 78 stem cell lines, but now we know today that only 22 of those are available for research, not nearly enough to reflect the genetic diversity that scientists need. But more importantly, all 22 stem cell lines—all 22—that are available under the President's policy are contaminated with mouse feeder cells, making them useless for humans.

So the President's policy is not a way forward; it is, indeed, a dead-end street. It offers only false hope to the millions of people across this country who are suffering from diseases that could be potentially cured or treated through stem cell research.

We need a policy that offers true, meaningful hope to these patients and their loved ones. That is why Senator SPECTER and I, along with Senators HATCH, FEINSTEIN, SMITH, and KENNEDY, introduced a companion bill to the Castle-DeGette legislation that just passed the House. Our bill expands the number of stem cell lines that federally funded scientists can study by lifting the arbitrary eligibility date of August 9, 2001.

Under our legislation, all stem cell lines would be eligible for Federal research regardless of the date they were derived, as long as they met strict ethical requirements.

Since August of 2001, scientists have made great strides and great advances in deriving stem cell lines. Many of the new lines were grown without mouse feeder cells. So I ask, should not our top scientists be studying those lines that have great potential and which could be used to alleviate human suffering, instead of being limited to the 22 cell lines contaminated with mouse cells that will never be used in humans?

We do not require our astronomers to explore the heavens with 19th century telescopes. We do not require our geologists to study the Earth with a tape measure. If we are serious about realizing the promise of stem cell research, our biomedical researchers need access to the best stem cell lines available.

I also emphasize that none of the additional lines would require the creation of any new embryos. Instead, these lines could be derived from any of the more than 400,000 embryos that remain from fertility treatments and will otherwise be discarded. We are talking about embryos that are going to be thrown away, legally. Should we not use them instead to ease human suffering?

Think about this: We have 400,000 frozen embryos left over from in vitro fertilization. When a woman who has been a donor of these eggs notifies that they are no longer wanted, that she is not going to use them—maybe she has already had a child or two and does not need these embryos—that person can give permission to discard them. Why should that person not be able to give permission to allow them to be used by our top scientists for stem cell research that could then save other lives? That is what some people are asking us to do—just throw them away, do not let them be used for research that could save human suffering and save human lives. To this Senator, that simply does not make any sense.

So as I said, we have strict ethical guidelines that are set up so that they cannot be used for cloning, they cannot be used for other things; only to derive the stem cells. That is all. If there is a person who can give the authority right now to the in vitro fertilization clinic to discard them, why should that person not have the right to say, No, use those frozen embryos to derive stem cells so that someone with a spinal cord injury might walk again, so that someone with ALS can escape the death sentence, so that someone with Parkinson's can be returned to normal functioning?

The House performed a great public service today. I thank both sides of the aisle, Republicans and Democrats, who stepped up and voted for this bill. By passing the Castle-DeGette bill, they have given hope to millions of suffering humans that we will indeed proceed with stem cell research that will alleviate their suffering. It is now time for the Senate to act.

So together with Senator SPECTER, we are going to urge the majority leader to bring up the bill as soon as possible and let us have a vote in the Senate and get this bill to the President so we can move ahead with embryonic stem cell research in this country.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. FRIST. I ask unanimous consent that when the Senate resumes consideration of the Owen nomination tomorrow morning, the time until 12 noon be equally divided between the two leaders or their designees; provided further that at noon, all time be expired under rule XXII and the Senate proceed to the vote on the confirmation of the nomination with no intervening action or debate; and provided further, following that vote, the President be immediately notified of the Senate's action.

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