nominees who are outside the mainstream. We have a duty to the Constitution and a duty to the American people not simply to rubberstamp the President's picks. Mark my words, we are going to fulfill those duties as long as we have to. That is our constitutional obligation.

But there is not a single Senator on our side of the aisle who wants these fights. There is not a single Senator on our side of the aisle who wants to oppose even one of the President's nominees. We would be a lot happier if we could all come together. We have done that on the district courts in New York. They are all filled. I consulted with the White House, with the Governor, and we came to agreements. We can do it. If the White House and I can come to an agreement, so can the Senate and the White House on who should be judges.

But there is an important point here. How did we solve the problems in New York? The President and the White House consulted with the Senators and with the Senate. As the compromise of 2005 sets out, President Bush must consult with the Senate in advance of nominating appellate judges to the bench. ''Advise and consent.'' To get the consent, you need the ''advise.''

So I again call on the President, once and for all, to tell him we can solve this problem by coming together, by him consulting. I really believe we can solve this problem. But we are not going to find common ground when we keep seeking nominees who will be activists on the Federal bench. We are not going to solve this problem if the President stands like Zeus on Mt. Olympus and hurtles judicial thunderbolts down to the Senate. He has to consult. He has to ask us, as President Clinton did.

Why did President Clinton's Supreme Court nominees have no trouble in the Senate? I would argue because the President proposed a number of names to ORRIN HATCH, hardly his ideological soulmate, and ORRIN HATCH said this one won't work and that one won't work, but this one will and this one will. President Clinton heeded Senator HATCH's advice. As a result, Justice Breyer and Justice Ginsburg didn't have much of a fight. Some people may have voted against them, but it didn't get to the temperature that importuned my colleagues to filibuster—which they did on some other judges, although unsuccessfully: Judge Paez, Judge Berson, et cetera.

Mr. President, this is a plea to you. Let us take an example from the group of 14. Please, consult with us. You don't have to do what we say, but at least seek our judgment. If we say this judge would be acceptable and that judge will not—take our views into consideration. What will happen is it will decrease the temperature on an awfully hot issue. But second, and more importantly, it will bring us together so we can choose someone if the Supreme Court should have a vacancy, and we can continue to choose people when the courts of appeal have vacancies, without a real fight.

It can work. It has worked in New York between this White House and this Senator. It has worked at the national level, at the Supreme Court level, when President Clinton consulted with Republicans in the Senate, who were in the majority. It can work now. The ball is in President Bush's court. If he continues to choose to make these judgments completely on his own, if he continues to stand like Zeus on Mt. Olympus and just throw thunderbolts at the Senate, we will not have the comity for which the 14 asked.

A very important part of their agreement was for the President to start paying attention to the advise, in the ''advise and consent.''

Again, the ball is in his court. If the President starts doing that, I am confident this rancor on judges will decline, the public will see us doing the people's business, and the generally low view that the public has had of this body because of the partisan rancor will be greatly ameliorated.

Mr. President, again, you can change the way we have done these things, but only you can. Please, consult the Senate. Bring down hot temperatures that now exist.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

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

The PRESIDING OFFICER. Under the previous order, the Senate will resume executive session to consider the following nomination, which the clerk will report.

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

Mr. REID. Mr. President, we are going to move forward with a vote on Priscilla Owen. It is well that the Senate is moving. There are other judges who are waiting and have waited a long time. We have three judges from Michigan. There is no reason we can't move those four very quickly. They were held up as a result of an intractable procedural matter. That is no longer. We can do those judges in a very short timeframe.

We also have a person Senator HATCH has been wanting to have for some time now, way into last year, a man by the name of Griffith. We are willing to move him. There were some problems. Some Senators will vote against him. There is no question about that. Senator LEAHY, the ranking member of the Judiciary Committee, has made a number of negative speeches about Griffith. We will agree to a very short timeframe on his nomination and move it on. That would be four appellate court judges very quickly. I hope we can do it in the immediate future. We could clear four judges today or tomorrow.

I suggest the absence of a quorum and ask unanimous consent that the time be charged equally against both Senators SPECTER and LEAHY.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CORZINE. 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. CORZINE. Mr. President, I come to the floor to speak briefly about the compromise agreement reached on judicial nominees and about the pending circuit court nominees.

Let me begin by saying that I am pleased that, through the agreement reached this week, we were able to protect the rights of the minority in this body to have our voices heard. That is consistent with the best traditions of the Senate. I certainly believe it is consistent with the constitutional principle that gave each State two Senators, regardless of their number of citizens. So, for example, California has 36 million people and Wyoming has a little more than 500,000 citizens. But our forefathers saw to it, in an effort to protect the rights of the minority, that each State would have two Senators to represent their interests.

I also believe that the agreement, at least at this time and place, preserves our constitutional system of checks and balances. So I compliment my 14 colleagues who reached this agreement and, in so doing, protected two of the most essential principles of American government—the rights of the minority and our system of checks and balances.

Let me also say that I am particularly proud of Senator REID's leadership in pushing towards this compromise.

That said, my enthusiasm for this compromise is tempered by the reality that I see before us. For while I am cautiously optimistic about the immediate outcome, I am aware that, like in so many things, the devil is in the details. Time will test the meaning of the term, ''extraordinary circumstances'',

that was included in the compromise agreement but has not been explicitly defined. And as we all know, compromises come with many challenges and I am certain that this compromise will be tested through the course of time.

Indeed, I have been deeply troubled by what has been said by some of my colleagues on the Senate floor, including comments made by the majority leader, that the so-called nuclear option is still on the table. I was also distressed by the suggestion made by some of my colleagues that judicial nominees in the future may only be blocked if they have personal or ethical problems. I look at the agreement and come to a very different conclusion about what the term ''extraordinary circumstances'' means. So I am deeply troubled when I hear that the nuclear option is still on the table, except under circumstances where the nominee has personal or ethical issues. I believe that interpretation is inconsistent with the spirit and intent of this delicate compromise. And, I note that the agreement specifically—and clearly—states that it is up to each individual Senator—using his or her own discretion—to decide when a filibuster is appropriate and what constitutes extraordinary circumstances. So I believe it requires a lot of vigilance and attention as we go forward with judicial nominations for appellate and Supreme Court vacancies, jobs that come with lifetime appointments. We must ensure that our courts retain the independence that has been, and should continue to be, the hallmark of our judiciary. The stakes could not be any higher.

Mr. President, let me now turn specifically to the nominees who are before the Senate. I believe many of these individuals are outside the mainstream of legal thought. That is why I have opposed them, and that is why I supported the filibuster. I believe these individuals—and I recognize that they may be very good individuals on a personal level—have demonstrated, through their judicial records and their public communications, that they are outside of the mainstream and that they have taken positions that may be fairly labeled, in my view, as extremist.

Likewise, these judicial nominees have shown a willingness to put their own political views before the rule of law as set forth in established precedent. We need judges who are fair and impartial and are absolutely committed to maintaining the credibility and independence of our judicial branch. What we do not need are judges who substitute their own political views for fact, law, and precedent. That would undermine the federal courts and remove the impartiality, independence, and fairness that American citizens have come to expect in our democracy.

It is essential that we look for these very qualities—impartiality, independence, and fairness—in our judges. We have not seen that, unfortunately, in many of the nominees currently before the Senate. I believe strongly that we need to oppose these nominations because of that—not because of their personal character—but because, in my view, they have operated outside of the mainstream and endeavored, through judicial activism, to inappropriately alter the law.

As to Priscilla Owen, I intend to vote against her because of her activist judicial opinions. She has consistently voted to throw out jury verdicts favoring consumers against corporate interests and she has also dismissed suits brought by workers for job-related injuries, discrimination, and unfair employment practices. Her record demonstrates that Judge Owen operates outside of the mainstream. She is outside of the mainstream, both in Texas and in the United States as a whole. I note that some of her colleagues on the Texas Supreme Court have taken issue with her attempts to disregard generally accepted legal precedents and to interfere with the authority of the state legislature.

In addition, I intend to vote against Janice Rogers Brown, William Pryor, and William Myers. I intend to vote against them not because of their character or their ability to think through problems but because of what I believe is their espousal of a legal theory that is far outside the mainstream—called the Constitution in Exile theory. This theory has been very eloquently argued by a number of jurists but, in my belief, falls far outside of the mainstream of legal thought in this country. Basically, it is an intent to roll back many of the socially progressive actions flowing out of the New Deal and to rescind Government protections that have been well established under the law.

And it is important, in my view, that we consider an individual's legal philosophy when we talk about extraordinary circumstances, and particularly when we are debating the nomination of someone who intends to use that philosophy as a vehicle to change the law. That is judicial activism and I believe that it is inappropriate. I also believe that this level of judicial activism in a nominee justifies the use of the filibuster as we go forward. Not everyone will agree, but I think it is absolutely essential that we take this into consideration as we debate these nominees.

I hope we can all move forward within the framework of the compromise, which I am very pleased we were able to reach. The compromise agreement encourages increased consultation between the White House and Republicans and Democrats in the Senate with regard to judges. I sincerely hope this will come about. In New Jersey, we have been fortunate to have had a good dialogue with the White House on judges and have been able to reach a consensus on both district and circuit court judges. We currently have additional vacancies—four on the district court and one on the circuit court—and I hope we will be able to have the same kind of dialogue so that we may reach a consensus on these nominees. I am hopeful that we can agree upon judges of whom we can all be proud. That is what advise and consent is all about.

If we follow that spirit, the compromise stands a much better chance of working. Again, we need to make sure—and I certainly will be making the case—that legal philosophy is taken into consideration when we discuss extraordinary circumstances in the future and that we are not limited to using the filibuster only when a nominees has personal or ethical problems.

Finally, I am pleased that my colleagues worked so hard—and I again compliment all 14 Senators who were a part of that process—to make certain that we can get back to working on the issues that the folks I know in New Jersey care about. They are getting a little hot under the collar about gas prices. They are very concerned as we see the number of men and women who have come home either injured or who have sacrificed their lives for our country.

We are about to go into Memorial Day to say thank you to all those who throughout the years have protected our country. We have hundreds of thousands of individuals now on the ground in Iraq and Afghanistan who are protecting us. People want us to be focused on what we are doing regarding national security, homeland security, making sure we are doing everything we can to keep those troops safe, and trying to ensure affordable health care. So I am pleased that we may now open up the floor for debate on those issues.

For a lot of reasons, I am very grateful about this compromise, but I do hope that, as we go forward, there is a true commitment to allowing for real debate on the meaning of extraordinary circumstances.

I appreciate very much the opportunity to speak on this and look forward to our continuing debates in the days and weeks ahead.

Mr. BYRD. Mr. President, yesterday I voted to invoke cloture on the nomination of Priscilla Owen to sit on the U.S. Court of Appeals for the Fifth Circuit. Today I shall vote to confirm her nomination by an up-or-down vote.

I voted to invoke cloture on this nominee and have committed to do so on a number of other pending nominees to preserve the right of extended debate in the Senate. For 200 years, Senators have enjoyed the right to speak at length on matters dear to them. This essential right has been rightfully employed for generations to protect minority rights—both in the Senate and nationwide.

It would have been a travesty to have permitted this cherished right of extended debate to be extinguished simply as the result of a political squabble

over a handful of judges. While passions over these seven judges have run high, it is necessary for the Senate to look at the bigger picture and stop this partisan bickering over these few judges. Now is the time for logic and reason. Now is the time for cooler heads to prevail to address the truly weighty matters that confront our nation—matters like the need of every American to obtain necessary health care, sufficient pension benefits, and affordable energy.

I voted four times previously not to invoke cloture on Priscilla Owen because I respected the right of the Senate to hear further debate concerning her qualifications, her philosophy, her temperament, and exactly what she would be like if she were confirmed to fill this lifetime position on the Federal bench. Having examined these aspects, as well as her prior record as a justice on the Texas Supreme Court, I shall vote in support of her nomination.

I know that some critics assail Justice Owen's belief that, in certain circumstances, minors should be required to notify their parents prior to obtaining an abortion. However, I cannot help but believe that in many, but perhaps not all, cases, young women would do well to seek guidance from their parents or legal guardians, who would have their best interests at heart when these young women are confronted with making such a difficult decision—a life-altering decision that carries with it extraordinary consequences. I have a long history of support for parental notification in these kinds of difficult circumstances. For example, in 1991, I supported legislation that would have required entities receiving grants under title X of the Public Health Service Act to provide parental notification in the case of minor patients who seek an abortion. Based on my examination of the totality of circumstances that surround this nomination, I have decided to support the nomination of Priscilla Owen to the Fifth Circuit Court of Appeals.

Mrs. CLINTON. Mr. President, while I commend my Senate colleagues for their success at averting an unnecessary showdown over the so-called nuclear option, the fact remains that Justice Priscilla Owen is still ill suited to serve a lifetime appointment on the Fifth Circuit Court of Appeals. While I voted to invoke cloture on her nomination, this was done in the spirit of compromise and comity. I remain steadfastly opposed to her appointment and note that nothing that has transpired in the last 24 hours has changed her record of judicial activism or extremism, nor has it changed the fact that she consistently and conveniently ignores justice and the rule of law in order to promote a conservative political agenda. For these stated reasons, I cannot vote in favor of her confirmation, and I urge my colleagues to do the same.

The American people deserve judges—be they conservative or liberal—who are dedicated to an even-handed application of our laws, free of political constraints and considerations. Justice Owen's record is littered with examples that demonstrate a lack of respect for these values. In case after case, Justice Owen shows her willingness to make law from the bench rather than follow the language and intent of the legislature.

Justice Owen consistently votes to throw out jury verdicts favoring workers and consumers against corporate interests and dismisses suits brought by workers for job-related injuries, discrimination and unfair employment practices.

For example, in Fitzgerald v. Advanced Spine Fixation Sys., the Texas Supreme Court responded to a certified question from the federal Fifth Circuit. Then Texas Supreme Court Justice and current Attorney General Alberto Gonzales wrote the majority decision holding that a Texas law required manufacturers of harmful products to indemnify sellers who defend themselves from litigation related to their sales of these and similar products. A dissent authored by Justice Owen would have effectively rewritten Texas law to preclude such third-party relief in some cases. Gonzales wrote that adopting the manufacturer's position, as Owen argued, would require the court to improperly ''judicially amend the statute.''

Justice Owen has also authored many opinions that severely restrict or even eliminate the rights of workers. For example, in Montgomery Independent School District v. Davis, the 6–3 majority affirmed the finding of the lower courts that the school district had to reinstate a teacher after finding there was insufficient basis not to renew the teacher's contract.

As she often does, Justice Owen dissented from the majority—a majority which included Gonzales and two other Bush nominees. Owen's dissent sets forth an interpretation of the statute that was contrary to the plain language of the law. The majority rightly points out that Owen's dissent, ''not only disregards the procedural limitations in the statute but takes a position even more extreme than that argued for by the board . . .''

In another case, Austin v. Healthtrust Inc., Justice Owen held that employees in Texas could be fired for whistle blowing or refusing to act illegally. She held that whistle blowers—heroes, as Time Magazine entitled them in the wake of the Enron debacle—have no protection in her courtroom.

In a time such as this, we rely on our nation's workers to report acts of illegality and provide much needed oversight of corporations. Our courts and judges should acknowledge the important role that these people play. But, again, Justice Owen does not believe that these brave women and men should have access to the courts or a remedy in the law.

I could go on and on. These cases make clear that Justice Owen is ready and willing to take extreme positions that run contrary to the facts and the law in order to favor businesses and government.

Apart from all of the above questionable opinions favoring business, Justice Owen has also expressed a particular hostility to women's constitutionally protected right to reproductive choice.

In Texas, there is a law that is constitutional under Supreme Court precedent. This law mandates that a minor woman who seeks an abortion must notify her parents. The law provides for three exceptions that allow a court to offer what's called a ''judicial bypass.'' The law is very clear about these three circumstances, yet Justice Owen routinely advocates adding additional obstacles to the process and making it much harder for a young pregnant woman to exercise her constitutionally protected freedom of choice.

In re Jane Doe I, Justice Owen advocated requiring a minor to show an awareness of the ''philosophic, moral, social and religious arguments that can be brought to bear'' before obtaining judicial approval for an abortion without parental consent, ignoring the explicit requirements of the statute.

This and other opinions prompted Justice Gonzales to criticize Owen for attempting to rewrite Texas' parental notification statute, calling her opinions In re Jane Doe ''an unconscionable act of judicial activism.''

As her record unequivocally demonstrates, Justice Owen lacks the impartiality and dedication to the rule of law to separate her conservative political agenda from her judicial opinions. Time after time, when presented with an opportunity to cite precedent, Justice Owen has instead chosen to interject her own political ideology, doing the litigants before her and the rule of law a tremendous injustice. Our federal courts and our constituents deserve better.

Finally, Mr. President, as has been noted by many of my colleagues over the last several weeks, the Constitution commands that the Senate provide meaningful Advice and Consent to the President on judicial nominations. I encourage the President to heed the call of our Senate colleagues who brokered the deal that spared this body from the nuclear option—consult with both Democratic and Republican Senators before submitting judicial nominations to the Senate for consideration. Only then can our Constitutional mandate of Advice and Consent be properly honored.

In the immediate case of Justice Priscilla Owen, after reviewing her judicial opinions and examining her qualifications for a lifetime appointment on the Fifth Circuit Court of Appeals, I feel it is my Constitutional duty to deny her nomination my consent, and I urge my Senate colleagues to join me in opposing her appointment.

Mr. LEAHY. Mr. President, 3 years ago I first considered the nomination of Priscilla Owen to be a judge on the United States Court of Appeals for the Fifth Circuit. After reviewing her record, hearing her testimony and evaluating her answers I voted against her confirmation and 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 since then.

Now that the Republican leadership's misguided bid for one-party rule, the nuclear option, has been deterred, we have arrived at a moment when every one of the 100 of us must examine Priscilla Owen's record and decide for him or herself whether it merits a lifetime appointment to the Fifth Circuit.

I believe Justice Owen 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, and not just in the context of the parental notification cases that have been discussed so often before, but 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 worker and consumers. This sort of judging ought not to be rewarded with such an important and permanent promotion.

In 2001, Justice Owen was nominated to fill a vacancy that had by that time existed for more than four years, since January 1997. In the intervening 5 years, President Clinton nominated Jorge Rangel, a distinguished Hispanic attorney from Corpus Christi, to fill that vacancy. Despite his qualifications, and his unanimous rating of Well Qualified by the ABA, Mr. Rangel never received a hearing from the Judiciary Committee, and his nomination was returned to the President without Senate action at the end of 1998, after a fruitless wait of 15 months.

On September 16, 1999, President Clinton nominated Enrique Moreno, another outstanding Hispanic attorney, to fill that same vacancy. Mr. Moreno did not receive a hearing on his nomination either—over a span of more than 17 months. President Bush withdrew the nomination of Enrique Moreno to the Fifth Circuit and later sent Justice Owen's name in its place. It was not until May of 2002, at a hearing presided over by Senator SCHUMER, which the Judiciary Committee heard from any of President Clinton's three unsuccessful nominees to the Fifth Circuit. At that time, Mr. Moreno and Mr. Rangel, joined by a number of other Clinton nominees, testified about their treatment by the Republican majority. Thus, Justice Owen's was the third nomination to this vacancy and the first to be accorded a hearing before the Committee.

In fact, when the Judiciary Committee held its hearing on the nomination of Judge Edith Clement to the Fifth Circuit in 2001, during the most recent period of Democratic control of the Senate, it was the first hearing on a Fifth Circuit nominee in 7 years. By contrast, Justice Owen was the third nomination to the Fifth Circuit on which the Judiciary Committee held a hearing in less than 1 year. In spite of the treatment by the former Republican majority of so many moderate judicial nominees of the previous President, we proceeded in July of 2001—as I said that we would—with a hearing on Justice Owen.

Justice Owen is one of among 20 Texas nominees who were considered by the Judiciary Committee while I was Chairman. That included nine District Court judges, four United States Attorneys, three United States Marshals, and three Executive Branch appointees from Texas who moved swiftly through the Judiciary Committee.

When Justice Owen was initially nominated, the President changed the confirmation process from that used by Republican and Democratic Presidents for more than 50 years. That resulted in her ABA peer review not being received until later that summer. As a result of a Republican objection to the Democratic leadership's request to retain all judicial nominations pending before the Senate through the August recess in 2001, the initial nomination of Justice Owen was required by Senate rules to be returned to the President without action. The committee nonetheless took the unprecedented action of proceeding during the August recess to hold two hearings involving judicial nominations, including a nominee to the Court of Appeals for the Federal Circuit.

In my efforts to accommodate a number of Republican Senators—including the Republican leader, the Judiciary Committee's ranking member, and at least four other Republican members of the committee—I scheduled hearings for nominees out of the order in which they were received that year, in accordance with longstanding practice of the committee.

As I consistently indicated, and as any chairman can explain, less controversial nominations are easier to consider and are, by and large, able to be scheduled sooner than more controversial nominations. This is especially important in the circumstances that existed at the time of the change in majority in 2001. At that time we faced what Republicans have now admitted had become a vacancy crisis in the federal courts. From January 1995, when the Republican majority assumed control of the confirmation process in the Senate, until the shift in majority, vacancies rose from 65 to 110 and vacancies on the Courts of Appeals more than doubled from 16 to 33. I thought it important to make as much progress as quickly as we could in the time available to us that year, and we did. In fact, through the end of President Bush's first term, we saw those 110 vacancies plummet to 27, the lowest vacancy rate since the Reagan administration.

The responsibility to advise and consent on the President's nominees is one that I take seriously and that the Judiciary Committee takes seriously. Justice Owen's nomination to the Court of Appeals has been given a fair hearing and a fair process before the Judiciary Committee. I thank all members of the committee for being fair. Those who had concerns had the opportunity to raise them and heard the nominee's response, in private meetings, at her public hearing and in written follow-up questions.

I would particularly like to commend Senator FEINSTEIN, who chaired the hearing for Justice Owen, for managing that hearing so fairly and evenhandedly. It was a long day, where nearly every Senator who is a member of the committee came to question Justice Owen, and Senator FEINSTEIN handled it with patience and equanimity.

After that hearing, I brought Justice Owen's nomination up for a vote, and following an open debate where her opponents discussed her record and their objections on the merits, the nomination was rejected. Her nomination was fully and openly debated, and it was rejected. That fair treatment stands in sharp contrast to the way Republicans had treated President Clinton's nominees, including several to the Fifth Circuit.

That should have ended things right there, but it did not. Priscilla Owen's nomination was the first judicial nomination ever to be resubmitted after already being debated, voted upon and rejected by the Senate Judiciary Committee.

When the Senate majority shifted, Republicans reconsidered this nomination and sent it to the Senate on a straight, party-line vote. Never before had a President resubmitted a circuit court nominee already rejected by the Senate Judiciary Committee, for the same vacancy. And until Senator HATCH gave Justice Owen a second hearing in 2003, never before had the Judiciary Committee rejected its own decision on such a nominee and granted a second hearing. And at that second hearing we did not learn much more than the obvious fact that, given some time, Justice Owen was able to enlist the help of the talented lawyers working at the White House and the Department of Justice to come up with some new justifications for her record of activism. We learned that given six months to reconsider the severe criticism directed at her by her Republican colleagues, she still admitted no error. Mostly, we learned that the objections expressed originally by the Democrats on the Judiciary Committee were sincerely held when they were made and no less valid after a second hearing. Nothing Justice Owen said about her

record—indeed, nothing anyone else tried to explain about her record—was able to actually change her record. That was true then, and that is true today.

Senators who opposed this nomination did so because Priscilla Owen's record shows her to be an ends-oriented activist judge. I have previously explained my conclusions about Justice Owen's record, but I will summarize my objections again today.

I am not alone in my concerns about Justice Owen. Her extremism has been evident even among a conservative Supreme Court of Texas. The conservative Republican majority of the Texas Supreme Court has gone out of its way to criticize Justice Owen and the dissents she joined in ways that are highly unusual, and in ways which highlight her ends-oriented activism. A number of Texas Supreme Court Justices have pointed out how far from the language of statute she strays in her attempts to push the law beyond what the legislature intended.

One example is the majority opinion in Weiner v. Wasson. In this case, Justice Owen wrote a dissent advocating a ruling against a medical malpractice plaintiff injured while he was still a teenager. The issue was the constitutionality of a State law requiring minors to file medical malpractice actions before reaching the age of majority, or risk being outside the statute of limitations. Of interest is the majority's discussion of the importance of abiding by a prior Texas Supreme Court decision unanimously striking down a previous version of the statute. In what reads as a lecture to the dissent, then-Justice JOHN CORNYN explains on behalf of the majority:

Generally, we adhere to our precedents for reasons of efficiency, fairness, and legitimacy. First, if we did not follow our own decisions, no issue could ever be considered resolved. The potential volume of speculative relitigation under such circumstances alone ought to persuade us that stare decisis is a sound policy. Secondly, we should give due consideration to the settled expectations of litigants like Emmanuel Wasson, who have justifiably relied on the principles articulated in [the previous case]. . . . Finally, under our form of government, the legitimacy of the judiciary rests in large part upon a stable and predictable decisionmaking process that differs dramatically from that properly employed by the political branches of government.

According to the conservative majority on the Texas Supreme Court, Justice Owen went out of her way to ignore precedent and would have ruled for the defendants. The conservative Republican majority, in contrast to Justice Owen, followed precedent and the doctrine of stare decisis. A clear example of Justice Owen's judicial activism.

In Montgomery Independent School District v. Davis, Justice Owen wrote another dissent which drew fire from a conservative Republican majority—this time for her disregard for legislative language. In a challenge by a teacher who did not receive reappointment to her position, the majority found that the school board had exceeded its authority when it disregarded the Texas Education Code and tried to overrule a hearing examiner's decision on the matter. Justice Owen's dissent advocated for an interpretation contrary to the language of the applicable statute. The majority, which included Alberto Gonzales and two other appointees of then-Governor Bush, was quite explicit about its view that Justice Owen's position disregarded the law:

The dissenting opinion misconceives the hearing examiner's role in the . . . process by stating that the hearing examiner 'refused' to make findings on the evidence the Board relies on to support its additional findings. As we explained above, nothing in the statute requires the hearing examiner to make findings on matters of which he is unpersuaded. . . .

The majority also noted that:

The dissenting opinion's misconception of the hearing examiner's role stems from its disregard of the procedural elements the Legislature established in subchapter F to ensure that the hearing-examiner process is fair and efficient for both teachers and school boards. The Legislature maintained local control by giving school boards alone the option to choose the hearing-examiner process in nonrenewal proceedings. . . . By resolving conflicts in disputed evidence, ignoring credibility issues, and essentially stepping into the shoes of the factfinder to reach a specific result, 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. . . .

This is another clear example of Justice Owen's judicial activism.

Collins v. Ison-Newsome, is yet another case where a dissent, joined by Justice Owen, was roundly criticized by the Republican majority of the Texas Supreme Court. The Court cogently stated the legal basis for its conclusion that it had no jurisdiction to decide the matter before it, and as in other opinions where Justice Owen was in dissent, took time to explicitly criticize the dissent's positions as contrary to the clear letter of the law.

At issue was whether the Supreme Court had the proper ''conflicts jurisdiction'' to hear the interlocutory appeal of school officials being sued for defamation. The majority explained that it did not because published lower court decisions do not create the necessary conflict between themselves. The arguments put forth by the dissent, in which Justice Owen joined, offended the majority, and they made their views known, writing:

The dissenting opinion agrees that ''because this is an interlocutory appeal . . . this 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. . . . The author of the dissenting opinion has written previously that we should take a broader approach to the conflicts-jurisdiction standard. But a majority of the Court continues to abide by the Legislature's clear limits on our interlocutory-appeal jurisdiction.

They continue:

[T]he dissenting opinion's reading of Government Code sec. 22.225(c) conflates conflicts jurisdiction with dissent jurisdiction, thereby erasing any distinction between these two separate bases for jurisdiction. The Legislature identified them as distinct bases for jurisdiction in sections 22.001(a)(1) and (a)(2), and section 22.225(c) refers specifically to the two separate provisions of section 22.001(a) providing for conflicts and dissent jurisdiction. . . . [W]e cannot simply ignore the legislative limits on our jurisdiction, and not even Petitioners argue that we should do so on this basis.

Again, Justice Owen joined a dissent that the Republican majority described as defiant of legislative intent and in disregard of legislatively drawn limits. This is yet another clear example of Justice Owen's judicial activism.

Some of the most striking examples of criticism of Justice Owen's writings, or the dissents and concurrences she joins, come in a series of parental notification cases heard in 2000. They include:

In In re Jane Doe 1, where the majority included an extremely unusual section explaining its view of the proper role of judges, admonishing the dissent, joined by Justice Owen, for going beyond its duty to interpret the law in an attempt to fashion policy.

Giving a pointed critique of the dissenters, the majority explained that, ''In reaching the decision to grant Jane Doe's application, we have put aside our personal viewpoints and endeavored to do our job as judges—that is, to interpret and apply the Legislature's will as it has been expressed in the statute.''

In a separate concurrence, Justice Alberto Gonzales wrote that to construe the law as the dissent did, ''would be an unconscionable act of judicial activism.'' A conservative Republican colleague of Justice Owen's points squarely to her judicial activism. I know that the Attorney General now says that when he wrote that he was not referring to her, and I don't blame him for taking that position. After all, he is the Attorney General charged with defending her nomination. But there is no way to read his concurring opinion as anything other than a criticism of the dissenters, Owen included. Listen to the words he wrote:

The dissenting opinions suggest that the exceptions to the general rule of notification should be very rare and require a high standard of proof. I respectfully submit that these are policy decisions for the Legislature. And I find nothing in this statute to directly show that the Legislature intended such a narrow construction. As the Court demonstrates, the Legislature certainly could have written [the law] to make it harder to by pass a parent's right to be involved. . . But it did not. . . . Thus, to construe Parental Notification Act so narrowly as to eliminate bypasses or to create hurdles that simply are not to be found in the words of the statute, would be an unconscionable act of judicial activism.

Owen is one of two justices who wrote a dissent, so she is naturally included in the ''dissenting opinions'' to which he refers. It doesn't get much clearer than this. But you don't have to take my word for it. Mr. Gonzales himself has acknowledged as much.

Twice before Justice Owen's first hearing in the Judiciary Committee, he and his spokesperson admitted that his comments referred to a disagreement between justices. The New York Times of April 7, 2002, reported that, ''a spokesman for Mr. Gonzales, minimized the significance of the disagreement, [saying] ''Judge Gonzales's opinion and Justice Owen's dissent reflect an honest and legitimate difference of how to interpret a difficult and vague statute.'' On July 22, 2003, the New York Times reported that in an interview he had with the then-White House Counsel, ''Mr. Gonzales sought to minimize the impact of his remarks. He acknowledged that calling someone a 'judicial activist' was a serious accusation, especially among Republicans who have used that term as an imprecation against liberals.''

Of course, Mr. Gonzales went on to tell the reporter that he still supported Justice Owen for the Fifth Circuit, and I expect he would. He works for the President and supports his efforts to fill the federal courts with ideologues and activists, and I appreciate his honesty. It was only years later, when he was before the Judiciary Committee for his own confirmation to be Attorney General that he told us his comments did not refer to Justice Owen, rather to himself, and what he would be doing if he expressed an opinion like that of the dissent. So, I will take the Attorney General at his word, but I will take his original writing and his earliest statements as the best evidence of his view of Justice Owen's opinion in Doe 1, and leave his later, more politically influenced statements, to others.

Jane Doe 1 was not the only one of the parental consent cases where Justice Owen's position was criticized by her Republican colleagues. In In re Jane Doe 3, 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 a 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 one case that is perhaps the exception that proves the rule, Justice Owen wrote a majority opinion that was bitterly criticized by the dissent for its activism. In In re City of Georgetown, Justice Owen wrote a majority opinion finding that the city did not have to give The Austin American-Statesman a report prepared by a consulting expert in connection with pending and anticipated litigation because such information was expressly made confidential under other law—namely, the Texas Rules of Civil Procedure.

The dissent is extremely critical of Justice Owen's opinion, citing the Texas law's strong preference for disclosure and liberal construction. Accusing her of activism, Justice Abbott, joined by Chief Justice Phillips and Justice Baker, notes that the legislature, ''expressly identified eighteen categories of information that are 'public information' and that must be disclosed upon request . . . [sec. (a)] The legislature attempted to safeguard its policy of open records by adding subsection (b), which limits courts' encroachment on its legislatively established policy decisions.'' Id. at 338. The dissent further protests:

[b]ut if this Court has the power to broaden by judicial rule the categories of information that are 'confidential under other law,' then subsection (b) is eviscerated from the statute. By determining what information falls outside subsection (a)'s scope, this Court may evade the mandates of subsection (b) and order information withheld whenever it sees fit. This not only contradicts the spirit and language of subsection (b), it guts it.

Finally, the opinion concluded by asserting that Justice Owen's interpretation, ''abandons strict construction and rewrites the statute to eliminate subsection (b)'s restrictions.''

Yet again, her colleagues on the Texas court, cite Justice Owen's judicial activism.

These examples, together with the unusually harsh language directed at Justice Owen's position by the majority in the Doe cases, 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 her activist views.

Justice Owen makes bad decisions even when she is not being criticized by her colleagues. Among these decisions are those where she skews her decisions to show bias against consumers, victims and just plain ordinary people in favor of big business and corporations. As one reads case after case, particularly those in which she was the sole dissenter or dissented with the extreme right wing of the Court, her pattern of activism becomes clear. 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, leading to the conclusion that she sets out to justify some pre-conceived idea of what the law ought to mean. This is not an appropriate way for a judge to make decisions. This is a judge whose record reflects that she is willing and sometimes eager to make law from the bench.

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. In fact, according to a study conducted last year by the Texas Watch Foundation, a non-profit consumer protection organization in Texas, in the last six years, 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.

One of the cases where this trend is evident in FM Properties v. City of Austin, I asked Justice Owen about this 1998 environmental case at her hearing. In her dissent from a 6–3 ruling, in which Justice Alberto Gonzales was among the majority, 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.

In this case, the Texas Supreme Court found that a section of the Texas Water Code allowing certain private owners of large tracts of land to create ''water quality zones,'' and write their own water quality regulations and plans, violated the Texas Constitution because it improperly delegated legislative power to private entities. The court found that the Water Code section gave the private landowners, ''legislative duties and powers, the exercise of which may adversely affect public interests, including the constitutionally-protected public interest in water quality.'' The court also found that certain aspects of the Code and the factors surrounding its implementation weighed against the delegation of power, including the lack of meaningful government review, the lack of adequate representation of citizens affected by the private owners' actions, the breadth of the delegation, and the big landowners' obvious interest in maximizing their own profits and minimizing their own costs.

The majority offered a strong opinion, detailing its legal reasoning and explaining the dangers of offering too much legislative power to private entities. By contrast, in her dissent, Justice Owen argued that, ''[w]hile the Constitution certainly permits the Legislature to enact laws that preserve and conserve the State's natural resources, there is nothing in the Constitution that requires the Legislature to exercise that power in any particular manner,'' ignoring entirely the possibility of an unconstitutional delegation of power. Her view strongly favored large business interests to the clear detriment of the public interest, and against the persuasive legal arguments of a majority of the court.

When I asked her about this case at her hearing, I found her answer perplexing. In a way that she did not argue in her written dissent, at her hearing Justice Owen attempted to cast the FM Properties case not as, ''a fight between and City of Austin and big business, but in all honesty, . . .

really a fight about . . . the State of Texas versus the City of Austin.'' In the written dissent however, she began by stating the, ''importance of this case to private property rights and the separation of powers between the judicial and legislative branches . . .'', and went on to decry the Court's decision as one that, ''will impair all manner of property rights.'' At the time she wrote her dissent, Justice Owen was certainly clear about the meaning of this case property rights for corporations.

Another case that concerned me is GTE Southwest, Inc. v. Bruce, where Justice Owen wrote in favor of GTE in a lawsuit by employees for intentional infliction of emotional distress. The rest of the court held that three employees subjected to what the majority characterized as ''constant humiliating and abusive behavior of their supervisor'' were entitled to the jury verdict in their favor. Despite the court'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 her difference of opinion on the key legal issue in the case whether the behavior in evidence met the legal standard for intentional infliction of emotional distress.

Justice Owen contended 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 an inexplicable point of view that ignores the facts in evidence in order to reach a predetermined outcome in the corporation's favor.

Justice Owen's recitation of facts in her concurrence significantly minimizes the evidence as presented by the majority. Among the kinds of behavior to which the employees were subjected—according to the majority opinion—are: Upon his arrival the supervisor, ''began regularly using the harshest vulgarity . . . continued to use the word ''f—'' and ''motherf—r'' frequently when speaking with the employees . . . repeatedly physically and verbally threatened and terrorized them . . . would frequently assault each of the employees by physically charging at them . . . come up fast . . . and get up over (the employee) . . . and yell and scream in her face . . . called (an employee) into his office every day and . . . have her stand in front of him, sometimes for as long as thirty minutes, while (the supervisor) simply stared at her . . . made (an employee) get on her hands and knees and clean the spots (on the carpet) while he stood over her yelling.'' Id. at 613–614. Justice Owen did not believe that such conduct was outrageous or outside the bounds of decency under state law.

At her hearing, in answer to Senator Edwards's questions about this case, Justice Owen again gave an explanation not to be found in her written views. She told him that she agreed with the majority's holding, and wrote separately only to make sure that future litigants would not be confused and think that out of context, any one of the outrages suffered by the plaintiffs would not support a judgment. Looking again at her dissent, I do not see why, if that was what she truly intended, she did not say so in language plain enough to be understood, or why she thought it necessary to write and say it in the first place. It is a somewhat curious distinction to make to advocate that in a tort case a judge should write a separate concurrence to explain which part of the plaintiff's case, standing alone, would not support a finding of liability. Neither her written concurrence, nor her answers in explanation after the fact, is satisfactory explanation of her position in this case.

In 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 being based on a desire to reach a particular outcome. The majority upheld a decision giving the newspaper access to a document outlining the reasons why the city's finance director was going to be fired. Justice Owen made two arguments: that because the document was considered a draft it was not subject to disclosure, and that the document was exempt from disclosure because it was part of policy making. Both of these exceptions were so large as to swallow the rule requiring disclosure. The majority rightly points out that if Justice Owen's views prevailed, almost any document could be labeled draft to shield it from public view. Moreover, to call a personnel decision a part of policy making is such an expansive interpretation it would leave little that would not be ''policy.''

Quantum Chemical v. Toennies is another troubling case where Justice Owen joined a dissent advocating an activist interpretation of a clearly written statute. In this age discrimination suit brought under the Texas civil rights statute, the relevant parts of which were modeled on Title VII of the federal Civil Rights Act—and its amendments—the appeal to the Texas Supreme Court centered on the standard of causation necessary for a finding for the plaintiff. The plaintiff argued, and the five justices in the majority agreed, that the plain meaning of the statute must be followed, and that the plaintiff could prove an unlawful employment practice by showing that discrimination was ''a motivating factor.'' The employer corporation argued, and Justices Hecht and Owen agreed, that the plain meaning could be discarded in favor of a more tortured and unnecessary reading of the statute, and that the plaintiff must show that discrimination was ''the motivating factor,'' in order to recover damages.

The portion of Title VII on which the majority relies for its interpretation was part of Congress's 1991 fix to the United States Supreme Court's opinion in the Price Waterhouse case, which held that an employer could avoid liability if the plaintiff could not show discrimination was ''the'' motivating factor. Congress's fix, in Section 107 of the Civil Rights Act of 1991, does not specify whether the motivating factor standard applies to both sorts of discrimination cases, the so-called ''mixed motive'' cases as well as the ''pretext'' cases.

The Texas 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. Justice Owen joined Justice Hecht in claiming that federal case law is clear—in favor of their view—and opted for a reading of the statute that would turn it into its polar opposite, forcing plaintiffs into just the situation legislators were trying to avoid. This example of Justice Owen's desire to change the law from the bench, instead of interpret it, fits President Bush's definition of activism to a ''T''.

Justice Owen has also demonstrated her tendency toward ends-oriented decision making quite clearly in a series of dissents and concurrences in cases involving a Texas law providing for a judicial bypass of parental notification requirements for minors seeking abortions.

The most striking example is Justice Owen's expression of disagreement with the majority's decision on key legal issues in Doe 1, which I discussed earlier in a different context. She strongly disagreed with the majority's holding on what a minor would have to show in order to establish that she was, as the statute requires, ''sufficiently well informed'' to make the decision on her own. While the conservative Republican majority laid out a well-reasoned test for this element of the law, based on the plain meaning of the statute and well-cited case law, Justice Owen inserted elements found in neither authority. Specifically, Justice Owen insisted that the majority's requirement that the minor be ''aware of the emotional and psychological aspects of undergoing an abortion'' was not sufficient and that among other requirements with no basis in the law, she, ''would require . . . [that the minor] should . . . indicate to the court that she is aware of and has considered that there are philosophic, social, moral, and religious arguments that can be brought to bear when considering abortion.''

In her written concurrence, Justice Owen indicated, through legal citation, that support for this proposition could be found in a particular page of the Supreme Court's opinion in Planned Parenthood v. Casey. However, when one looks at that portion of the Casey decision, one finds no mention of requiring a minor to acknowledge religious or moral arguments. The passage talks instead about the ability of a State to ''enact rules and regulations designed

to encourage her to know that there are philosophic and social arguments of great weight that can be brought to bear,'' Justice Owen's reliance on this portion of a United States Supreme Court opinion to rewrite Texas law was simply wrong.

As she did in answer to questions about a couple of other cases at her hearing, Justice Owen tried to explain away this problem with an after-the-fact justification. She told Senator CANTWELL that the reference to religion was not to be found in Casey after all, but in another U.S. Supreme Court case, H.L. v. Matheson. She explained that in ''Matheson they talk about that for some people it raises profound moral and religious concerns, and they're talking about the desirability or the State's interest in these kinds of considerations in making an informed decision.'' Transcript at 172. But again, on reading Matheson, one sees that the only mention of religion comes in a quotation meant to explain why the parents of the minor are due notification, not about the contours of what the government may require someone to prove to show she was fully well informed. Her reliance on Matheson for her proposed rewrite of the law is just as faulty as her reliance on Casey. Neither one supports her reading of the law. She simply tries a little bit of legal smoke and mirrors to make it appear as if they did. This is the sort of ends-oriented decision making that destroys the belief of a citizen in a fair legal system. And most troubling of all was her indication to Senator FEINSTEIN that she still views her dissents in the Doe cases as the proper reading and construction of the Texas statute. In these cases, Priscilla Owen tried to insert requirements into the law that the Texas legislature had not included in the law. Simply put, Justice Owen engaged in judicial activism. In fact, as I've said, it was in one of these cases that Attorney General Alberto Gonzales, referred to Owen's position in the case as ''an unconscionable act of judicial activism.''

Senators have criticized Justice Owen's activism in the parental notification cases. We have not criticized the laws themselves. In fact, some Democratic Senators have noted their support for these kinds of statutes. Republicans have strayed far from the issue. What is relevant here is that Priscilla Owen tried to insert requirements into the law that the Texas legislature had not included. A State legislature can enact constitutional parental notification laws. A judge is not supposed to rewrite the law but to apply it to the facts and to ensure its constitutionality.

If she wants to rewrite the law, she should leave the bench and run for a seat in the state legislature.

At her second, unprecedented hearing in 2003, Justice Owen and her defenders tried hard to recast her record and others' criticism of it. I went to that hearing, I listened to her testimony, and I read her written answers, many newly formulated, that attempt to explain away her very disturbing opinions in the Texas parental notification cases. But her record is still her record, and the record is clear. She did not satisfactorily explain why she infused the words of the Texas legislature with so much more meaning than she can be sure they intended. She adequately describes the precedents of the Supreme Court of the United States, to be sure, but she simply did not justify the leaps in logic and plain meaning she attempted in those decisions.

I read her responses to Senator HATCH's remarks at that second hearing, where he attempted to explain away cases about which I had expressed concern at her first hearing. For example, I heard him explain the opinion she wrote in F.M. Properties v. City of Austin. I read how he recharacterized the dispute in an effort to make it sound innocuous, just a struggle between two jurisdictions over some unimportant regulations. I know how, through a choreographed exchange of leading questions and short answers, they tried to respond to my question from the original hearing, which was never really answered, about why Justice Owen thought it was proper for the legislature to grant large corporate landowners the power to regulate themselves. I remained unconvinced. The majority in this case, which invalidated a state statute favoring corporations, did not describe the case or the issues as Senator HATCH and Justice Owen did. A fair reading of the case shows no evidence of a struggle between governments. This is all an attempt at after-the-fact, revisionist justification where there really is none to be found.

Justice Owen and Chairman HATCH's explanation of the case also lacked even the weakest effort at rebutting the criticism of her by the F.M. Properties majority. In its opinion, the six justice majority said, and I am quoting, that Justice Owen's dissent was ''nothing more than inflammatory rhetoric.'' They explained why her legal objections were mistaken, saying that no matter what the state legislature had the power to do on its own, it was simply unconstitutional to give the big landowners the power they were given. No talk of the City of Austin v. the State of Texas. Just the facts.

Likewise, the few explanations offered for the many other examples of the times her Republican colleagues criticized her were unavailing. The tortured reading of Justice Gonzales' remarks in the Doe case were unconvincing. He clearly said that to construe the law in the way that Justice Owen's dissent construed the law would be activism. Any other interpretation is just not credible.

And no reasons were offered for why her then-colleague, now ours, Justice CORNYN, thought it necessary to explain the principle of stare decisis to her in his opinion in Weiner v. Wasson. Or why in Montgomery Independent School District v. Davis, the majority criticized her for her disregard for legislative language, saying that, ''the dissenting opinion misconceives the hearing examiner's role in the . . . process,'' which it said stemmed from, ''its disregard of the procedural elements the Legislature established . . . to ensure that the hearing-examiner process is fair and efficient for both teachers and school boards.'' Or why, in Collins v. Ison-Newsome, a dissent joined by Justice Owen was so roundly criticized by the Republican majority, which said the dissent agrees with one proposition but then ''argues for the exact opposite proposition . . . [defying] the Legislature's clear and express limits on our jurisdiction.''

These examples, together with the unusually harsh language directed at Justice Owen's position by the majority in the Doe cases, 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 her activist views. No good explanation was offered for these critical statements last year, and no good explanation was offered two weeks ago. Politically motivated rationalizations do not negate the plain language used to describe her activism at the time.

I also briefly set the record straight about a number of mischaracterizations of the opposition to Justice Owen's nomination. Earlier in this debate, at least one Senator said that opposition Senators, are ''discriminating against people of faith.'' Sadly, these statements follow a pattern of despicable accusations, made often by the radical interest groups backing these nominations and made too frequently here by those repeated these slurs. The assertion that any Senator opposes someone because she is a Sunday school teacher is a new low, however. Even President Bush has disavowed that attack.

I oppose Priscilla Owen, not because of her faith, which I respect, but because she is an ends-oriented judicial activist who is so far outside of the mainstream that she has often been criticized harshly by the Texas Supreme Court's conservative majority. In case after case, Justice Owen's opinions make clear that she is a judge willing to make law from the bench rather than follow the language and intent of the legislature or judicial precedent. While some of the clearest examples of her judicial activism come in her dissents in cases involving the parental notification law, there are, as I have explained, many other examples in cases having nothing to do with abortion.

Justice Owen's position as a frequent dissenter on the Texas Supreme Court shows how extreme she can be and how far from the letter of the law she strays in her attempts to push her own political and ideological agenda. Not

only has the majority of that conservative court criticized her dissents on numerous occasions, but the majority's criticisms of her opinions are unusual for their harsh tone. Surely the Republican members of the Texas Supreme Court criticized Priscilla Owen not because she is a person of faith, but because she insists on impermissibly legislating from the bench. I concur.

Senators oppose Priscilla Owen's confirmation because she has attempted to substitute her own views for those of the legislature. What is relevant is that she is writing law, rather than interpreting law, as evidenced in the opinions in which she would have added requirements that the Texas legislature did not put into the law.

An evaluation of Priscilla Owen's decisions shows that it is she who is results-oriented; she crafts her decisions in order to promote business interests over individuals and to advance various social agendas, rather than simply following the law and evaluating the facts of a given case. Justice Owen has been broadly and repeatedly criticized by her fellow Republican Texas Supreme Court Justices for disregarding statutes and the intent of the legislature, instead, pursuing her own activist results. In many cases in which she has dissented and been criticized by the majority, her opinions were to benefit corporate interests including numerous companies that contributed to her campaign.

For instance, in FM Properties Operating Co. v. City of Austin, which I have already discussed, where she ruled to let a single developer dodge Austin's water quality rules, Justice Owen received $2,500 in campaign contributions from one of the FM Properties company's partners and over $45,000 from the company's lawyers.

It is worth noting that my Democratic colleagues and I do not stand alone in opposing Priscilla Owen's nominations. We are in the good company of a broad array of newspaper editorial boards, prominent organizations, and individuals throughout the country and in Justice Owen's home state of Texas.

The groups opposing Justice Owen range from the AFL–CIO and the Leadership Conference on Civil Rights to the Endangered Species Coalition and the National Partnership for Women and Families. Texas opposition to the Owen nomination has come from a wide variety of groups including the American Association of University Women of Texas, Texas Lawyers for a Fair Judiciary, and the Texas chapters of the National Organization for Women and the Mexican American Legal Defense and Education Fund, MALDEF, just to name a few. Among the many citizens who have written to oppose Justice Owen's nomination are dozens of attorneys from Texas and elsewhere, as well as C.L. Ray, a retired Justice of the Texas Supreme Court, who wrote, ''I have rarely seen a public servant show so much contempt for the laws of this State.''

Lawyers who appear in front of Justice Owen in Texas Supreme Court rate her poorly as well. The most recent results of the Houston Bar Association's Judicial Evaluation Poll shows that 45 percent of the respondents rated Justice Owen ''poor,'' more than gave that lowest rating to any other justice. She was in last place in the ''acceptable'' category, with only 15 percent, and in second-to-last place among her colleagues in receiving a rating of ''outstanding'', with only 39 percent giving her that review.

I have heard Senator CORNYN say that Justice Owen has been supported by major newspapers in Texas, but that support must have been for her election to the Texas Supreme Court because, to the contrary, a number of major newspaper editorial boards in Texas have expressed their opposition to Justice Owen's confirmation to the federal appellate bench.

The San Antonio Express News criticized Owen because ''[o]n the Texas Supreme Court, she always voted with a small court minority that consistently tries to bypass the law as written by the Legislature.''

The Houston Chronicle cited complaints about Owen ''run from a penchant for overturning jury verdicts on tortuous readings of the law to a distinct bias against consumers and in favor of large corporations,'' and the newspaper concluded that she ''has shown a clear preference for ruling to achieve a particular result rather than impartially interpreting the law. Anyone willing to look objectively at Owen's record would be hard-pressed to deny that.''

The Austin American-Statesman wrote that Owen is ''out of the broad mainstream of jurisprudence'' and ''seems all too willing to bend the law to fit her views, rather than the reverse.'' The newspaper continued, ''Owen also could usually be counted upon in any important case that pitted an individual or group of individuals against business interests to side with business.''

Editorial boards throughout the country echo the opinions of Owen's home state newspapers. Newspapers from the Palm Beach Post and the Charleston Gazette to the Los Angeles Times and the Detroit Free Press have spoken out against this extreme nomination. The Atlanta Journal-Constitution wrote that Owen ''has a lopsided record favoring large corporations,'' while the Minneapolis Star-Tribune wrote that ''[e]ven her court colleagues have commented on her habit of twisting law to fit her hyperconservative political views'' and that ''Owen's ethical compass is apparently broken.'' Educated observers who review Priscilla Owen's record recognize that she is an ends-oriented judicial activist who is not an appropriate nominee for a lifetime appointment to one of the most important courts in the land.

When he nominated Priscilla Owen, President Bush said that his standard for judging judicial nominees would be that they ''share a commitment to follow and apply the law, not to make law from the bench.'' He said he is against judicial activism. Yet he has appointed judicial activists like Priscilla Owen and Janice Rogers Brown.

Under President Bush's own standards, Justice Owen's record of ends-oriented judicial activism does not qualify her for a lifetime appointment to the federal bench.

The President has often spoken of judicial activism without acknowledging that ends-oriented decision-making can come easily to extreme ideological nominees. In the case of Priscilla Owen, we see a perfect example of such an approach to the law, and I cannot support it. The oath taken by federal judges affirms their commitment to ''administer justice without respect to persons, and do equal right to the poor and to the rich.'' No one who enters a federal courtroom should have to wonder whether he or she will be fairly heard by the judge.

Justice Priscilla Owen's record of judicial activism and ends-oriented decisionmaking leaves me with grave doubt about her ability to be a fair judge. The President says he opposes putting judicial activists on the Federal bench, yet Justice Priscilla Owen unquestionably is a judicial activist. I cannot vote to confirm her for this appointment to one of the highest courts in the land.

I have said time and time again that if somebody walks into a federal court, they should not have to wonder whether they will be treated fairly based on whether they are a Republican or a Democrat, a defendant or a plaintiff, rich or poor. They should know that they are going to be treated fairly no matter who they are and that their case will be determined on the merits. In Priscilla Owen's case, her record shows that litigants cannot be sure of that. The President may well get the votes to put Priscilla Owen on the Fifth Circuit today, but would it not have been better to have nominated someone with a record of fairness and impartial judging who could be confirmed by a united, not a divided Senate.

Mr. LAUTENBERG. Mr. President, I am pleased for our country and for this body that the Senate soundly rejected an abuse of power that would have done irreparable harm to Congress and to our Nation's system of checks and balances. I salute my Republican colleagues who were able to stand up to their leadership and my Democratic colleagues who labored long and hard to prevent the majority from launching the so-called nuclear option. I am especially thankful for our Democratic leader, HARRY REID, who showed a steady leadership hand through these troubling days.

As part of the agreement reached Monday night, Priscilla Owen, President Bush's nominee for the United States Court of Appeals for the Fifth Circuit, will get an up-or-down vote. It

appears that she will be confirmed, which I hoped would not take place.

Consistent with my voting record, while I respect my colleagues who worked hard to preserve the filibuster, I voted against invoking cloture on the Owen nomination yesterday and today I will vote against confirming her and urge my colleagues to do the same.

I want to make it clear that I have nothing against her personally. Too often, Members on the other side of the aisle have depicted opposition to their radical nominees as a personal animus or a bias based on the nominees' sex or race or religion. That could not be further from the truth, which is obvious if one looks at my voting record. I want to try to keep Priscilla Owen off the bench because she has a troubling record on civil rights, reproductive rights, employment discrimination, and the rights of consumers.

Our Federal courts touch the lives of every American and ensure that our individual rights are upheld. It is imperative that all nominees for the Federal bench are individuals of distinction with a record of fairness and impartiality. Unfortunately, Ms. Owen just has not demonstrated those qualities while on the Texas Supreme Court.

Ms. Owen has routinely dissented on rulings regarding the rights of employees, including the right to be free from invidious discrimination. She joined in dissenting opinions which effectively tried to rewrite a key Texas civil rights law. If she had prevailed, she would have made it much more difficult for workers to prove employment discrimination. Ms. Owen has sought to override jury verdicts, and to diminish and undermine their role in cases involving consumer protections. She has repeatedly and—in my estimation—unfairly ruled in favor of big business at the expense of workers and consumers. She has gone so far as to write and join in a number of opinions that severely limit the ability of working people to recover damages under lawsuits involving on-the-job injuries. In almost every reproductive rights case decided by the Texas Supreme Court during her time there, Ms. Owen has sought to restrict a woman's right to make her own personal decisions.

Ms. Owen's views are far outside of the judicial mainstream—even by the standards of the conservative Texas Supreme Court. President Bush's own White House Counsel, Alberto Gonzales, who was a fellow Justice on the Texas Supreme Court, referred to one of Ms. Owen's dissenting opinions as ''an unconscionable act of judicial activism.''

On September 5, 2002, the Judiciary Committee wisely rejected reporting Ms. Owen's nomination to the full Senate. I have seen no evidence in the intervening time that makes her more suitable now than she was in 2002 for a lifetime appointment to such an important position.

The Federal courts play a critical role in upholding the fundamental rights and protections of all Americans. It is imperative that nominees to the Federal courts have a clear understanding of the importance of constitutional rights and statutory protections, and of the role and responsibility of the Federal courts in upholding these rights and protections. She has not exhibited that understanding. Consequently, I do not believe she is an appropriate nominee for the Fifth Circuit. Accordingly, I will vote against her confirmation.

It would be relatively easy for President Bush to send judicial nominees to the Senate who would enjoy overwhelming or even unanimous support. I hope he will stop trying to pack the Federal courts with extremists such as Priscilla Owen. Until he does, I have no choice but to do my duty to uphold the Constitution and oppose them.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEAHY. 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. LEAHY. Mr. President, I understand the time on our side has expired. While we are waiting for the distinguished Republican leader to come to the floor, I ask to continue until he arrives. Of course, I will yield to him as soon as he seeks recognition.

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

Mr. LEAHY. That we have terminated the debate and are now voting on this controversial nomination demonstrates our good will in light of the agreement reached two days ago to avoid triggering the Republican leadership's bid for one-party rule. Fourteen of our colleagues came to us with a bipartisan plan to avoid the Majority leader's nuclear option, which was a short-sighted effort to change the more than 200 years of Senate tradition, precedent and rules by destroying minority rights.

While we may not all agree with every part of the agreement, by our votes yesterday and today Democrats are showing that we are prepared to move on. I urge the Republican leader not to be captive of the narrow special interest that have moved and pushed so much the effort toward the nuclear option. We have a great deal of work to do in this body, work that can be accomplished easily by Republicans and Democrats working together, not by those who want simply partisan rules.

I expect that in due course the Senate will consider each of the three controversial nominees mentioned in Part I. A. of that Memorandum of Understanding. I do not expect there to be any repeat by Democrats of the extraordinary obstruction by Republicans of President Clinton's judicial nominees. For example, I do not expect any of the tactics used by Republicans during the extensive delay in Senate consideration of the Richard Paez nomination. Judge Paez waited more than four years before we were able to get a vote on his confirmation longer than the Priscilla Owen nomination has been pending. I recall some Republicans mounting an extraordinary motion after the filibuster of his nomination was broken to indefinitely postpone the vote; a last-ditch, unprecedented effort that was ultimately unsuccessful. Of course, Judge Helene White never got a vote or even a hearing in more than four years. Republicans denied her a hearing for a period longer than the Owen nomination has been pending. Like more than 60 of President Clinton's moderate and qualified judicial nominations, she was subjected to the Republican pocket filibuster.

In this connection I should also note that last night the Senate, with Democratic cooperation, entered into unanimous consent agreement to govern the consideration and vote on three additional circuit court nominees, Tom Griffith, Richard Griffin, and David McKeague. Those are nominations that will be debated and voted upon when the Senate returns from Memorial Day. The Democratic Leader deserves great credit for forging significant progress on these matters.

I have seen reports that the vote today of the nomination of Priscilla Owen is the ''first'' of this President's controversial nominees. That is not true. This administration has sent divisive nominee after divisive nominee to the Senate. Several controversial judicial nominees have already been voted upon by the Senate. Among the 208 judges already confirmed are some who were confirmed with less than 60 votes, some with more than 40 negative votes. The President's court-packing efforts are not new but continuing. Moreover, his penchant for insisting on divisive nominations is not limited to the judiciary, as will be demonstrated, again, when the Senate turns to the nomination of John Bolton following the vote on the Owen nomination.

As for the nomination of Priscilla Owen, after reviewing her record, hearing her testimony and evaluating her answers I am voting against her confirmation. I believe Justice Owen 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 worker and consumers. This sort of judging ought not to be rewarded with such an important and permanent promotion. She skews her decisions to show bias against consumers, victims and just plain ordinary

people in favor of big business and corporations.

As one reads case after case, particularly those in which she was the sole dissenter or dissented with the extreme right wing of the Court, her pattern of activism becomes clear. 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, leading to the conclusion that she sets out to justify some pre-conceived idea of what the law ought to mean. This is not an appropriate way for a judge to make decisions. This is a judge whose record reflects that she is willing and sometimes eager to make law from the bench.

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 again, in seeming contradiction of the law as written. In fact, according to a study conducted last year by the Texas Watch Foundation, a non-profit consumer protection organization in Texas, in the last six years, 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.

It is worth noting that the opposition to Priscilla Owen's nomination includes a broad array of newspaper editorial boards, prominent organizations, and individuals throughout the country and in Justice Owen's home state of Texas. Groups opposing Justice Owen range from the AFL–CIO and the Leadership Conference on Civil Rights to the Endangered Species Coalition and the National Partnership for Women and Families. Opposition to the Owen nomination has come from a wide variety of groups in Texas including the American Association of University Women of Texas, Texas Lawyers for a Fair Judiciary, and the Texas chapters of the National Organization for Women and the Mexican American Legal Defense and Education Fund (MALDEF), just to name a few. Among the many citizens who have written to oppose Justice Owen's nomination are dozens of attorneys from Texas and elsewhere, as well as C.L. Ray, a retired Justice of the Texas Supreme Court, who wrote, ''I have rarely seen a public servant show so much contempt for the laws of this State.''

Lawyers who appear in front of Justice Owen in Texas Supreme Court rate her poorly as well. The most recent results of the Houston Bar Association's Judicial Evaluation Poll shows that 45 percent of the respondents rated Justice Owen ''poor,'' more than gave that lowest rating to any other justice. She was in last place in the ''acceptable'' category, with only 15 percent, and in second-to-last place among her colleagues in receiving a rating of ''outstanding,'' with only 39 percent giving her that review.

I have heard Senator CORNYN say that Justice Owen has been supported by major newspapers in Texas, but that support must have been for her election to the Texas Supreme Court because a number of major newspaper editorial boards in Texas have expressed their opposition to Justice Owen's confirmation to the federal appellate bench.

When he nominated Priscilla Owen, President Bush said that his standard for judging judicial nominees would be that they share a commitment to follow and apply the law, not to make law from the bench. He said he is against judicial activism. Yet he has nominated judicial activists like Priscilla Owen. Under President Bush's own standards, Justice Owen's record of ends-oriented judicial activism does not qualify her for a lifetime appointment to the federal bench.

I have said time and time again that if somebody walks into a federal court, they should not have to wonder whether they will be treated fairly based on whether they are a Republican or a Democrat, a defendant or a plaintiff, rich or poor. They should know that they are going to be treated fairly no matter who they are and that their case will be determined on the merits. In Priscilla Owen's case, her record shows that litigants cannot be sure of that. The President may well get the votes to put Priscilla Owen on the Fifth Circuit today, but would it not have been better to have nominated someone with a record of fairness and impartial judging who could be confirmed by a united, not a divided Senate?

Mr. President, I see the distinguished Republican leader now on the floor of the Senate. I will close—so that he may be recognized—by saying, again, when somebody walks into a Federal court, they should not have to ask themselves: Is this a Republican court or Democratic court? This is an independent judiciary.

I yield to the distinguished majority leader.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, in a few moments, the Senate will finally vote up or down on the nomination of Justice Priscilla Owen to the Fifth Circuit Court of Appeals. Four years—it has been a long road for Justice Owen, much longer than anyone would have or could have anticipated when she was nominated about 4 years and 2 weeks ago.

She has endured 4 years of delay, 9 hours of committee hearings, hundreds of questions, and more than 100 hours of debate on this Senate floor. In fact, it is interesting, the Senate has debated Justice Owen more days than all the sitting Supreme Court Justices combined. Today she will get the fair up-or-down vote she deserves.

Justice Owen has withstood an orchestrated partisan attack on her record as a judge and, indeed, at times on her character. Only a few days ago, opponents unfairly labeled her as too extreme to serve on the Federal bench, but those unfair attacks have not succeeded. Justice Owen, as we all know, is a distinguished mainstream jurist. She has exhibited extraordinary patience and courage in the face of continuous and sometimes vicious criticism. But today finally she will get that fair up-or-down vote, and I am confident she will be confirmed.

Today does mark a triumph of principle over politics, results over rhetoric. For far too long on judicial nominees, the filibuster was used to facilitate partisanship and to subvert principle. Through this debate, we have exposed the injustice of judicial obstruction in the last Congress and advanced those core constitutional principles that all judicial nominees deserve a fair up-or-down vote.

This vote should mark—will mark, I hope—a new beginning in the Senate, a step forward for principle, a step forward for fairness and the Constitution, but we cannot stop at this single step. I look forward to confirming other previously blocked nominees. I look forward to reading about partisan judicial obstruction only in the history books, and I hope the constitutional option does not become necessary.

I urge my colleagues to join me in support of the confirmation of Justice Owen.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit? The clerk will call the roll.

The assistant legislative clerk called the roll.

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

Mr. STEVENS (after having voted in the affirmative). Mr. President, on this vote, I voted ''yea.'' If the distinguished Senator from Hawaii (Mr. INOUYE) were present, he would vote ''nay.'' Therefore, I withdraw my vote.

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

The result was announced—yeas 55, nays 43, as follows:

[Rollcall Vote No. 128 Ex.]

YEAS—55

Alexander	Bunning	Cochran
Allard	Burns	Coleman
Allen	Burr	Collins
Bennett	Byrd	Cornyn
Bond	Chambliss	Craig
Brownback	Coburn	Crapo

DeMint	Inhofe	Shelby
DeWine	Isakson	Smith
Dole	Kyl	Snowe
Domenici	Landrieu	Specter
Ensign	Lott	Sununu
Enzi	Lugar	Talent
Frist	Martinez	Thomas
Graham	McCain	Thune
Grassley	McConnell	Vitter
Gregg	Murkowski	Voinovich
Hagel	Roberts	Warner
Hatch	Santorum	
Hutchison	Sessions	

NAYS—43

Akaka	Durbin	Murray
Baucus	Feingold	Nelson (FL)
Bayh	Feinstein	Nelson (NE)
Biden	Harkin	Obama
Bingaman	Jeffords	Pryor
Boxer	Johnson	Reed
Cantwell	Kennedy	Reid
Carper	Kerry	Rockefeller
Chafee	Kohl	Salazar
Clinton	Lautenberg	Sarbanes
Conrad	Leahy	Schumer
Corzine	Levin	Stabenow
Dayton	Lieberman	Wyden
Dodd	Lincoln	
Dorgan	Mikulski	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED

Mr. Stevens, for

NOT VOTING—1

Inouye

The nomination was confirmed.

The PRESIDING OFFICER. The President will be notified of the Senate's action.

Mr. FRIST. I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NOMINATION OF JOHN ROBERT BOLTON TO BE THE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS

Mr. FRIST. Madam President, I ask unanimous consent that the Senate now proceed to the consideration of Executive Calendar No. 103, the nomination of John Bolton, to be U.N. ambassador; provided further that the debate up to 6:30 this evening be equally divided between the chairman and ranking member; I further ask that if a cloture motion is filed on the nomination, notwithstanding the provisions of rule XXII, that vote occur at 6 p.m. on Thursday with a live quorum waived; provided further that when the Senate resumes debate on the nomination on Thursday, all time until 6 p.m. be equally divided as stated above; further, that if cloture is invoked on the nomination, the Senate then proceed to a vote on the confirmation of the nomination with no further intervening action or debate; provided further that following that vote, the President be immediately notified of the Senate's action and the Senate resume legislative Senate; finally, I ask consent during the debate on the nomination, Senator VOINOVICH be in control of 1 hour of debate.

Mr. REID. Reserving the right to object, could we have some assurance from the distinguished majority leader that we will have an early time in the morning to come to work and we do not spend all the morning on morning business.

Mr. FRIST. Madam President, calling upon my earlier cardiac surgical days, we will start as early in the morning as the Democratic leader would like.

In all seriousness, we will agree upon a time in the morning so that we will have plenty of time.

Mr. REID. I also say if, in fact, there is more time needed tonight, would the distinguished leader allow Members to move past 6:30 tonight on debate.

Mr. FRIST. Madam President, we would be happy to.

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

The clerk will report the nomination.

The assistant legislative clerk read the nomination of John Robert Bolton, of Maryland, to be the Representative of the United States of America to the United Nations, with the rank and status of Ambassador Extraordinary and Plenipotentiary, and the Representative of the United States of America in the Security Council of the United Nations.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Indiana.

Mr. LUGAR. Mr. President, the Senate meets today to debate the nomination of John Bolton to be U.S. Ambassador to the United Nations. In this capacity, he would play an important role in securing greater international support for the national security and foreign policy objectives of the United States. It is my judgment that Secretary Bolton should be confirmed as U.S. Ambassador to the United Nations.

In recent years, the Foreign Relations Committee has made a special effort to work in a bipartisan manner. For 3 straight years, we have reported out foreign affairs authorization bills by unanimous votes. During the last Congress, we met 247 times, which was 50 percent more frequently than any other committee in the Senate. In almost every case, the subject of the meeting and the selection of witnesses enjoyed bipartisan support.

We have undertaken the cooperative path, not because we always agree, but because we know the stakes are high for our country in the international arena. We face severe threats capable of undermining our national security and our economic well-being. We believe we should strive to approach these questions with as much unity as possible.

On the John Bolton nomination, our committee could not develop a consensus position. From the start, members had widely divergent views of Secretary Bolton and his suitability for the U.N. ambassadorship. Members formed different opinions about the nominee based on their assessment of the role of the United Nations, their interpretation of Secretary Bolton's statements, their judgments on the testimony of many witnesses, their perspectives on managerial conduct, their philosophy on how much latitude a President should have in nominating subordinates, and many other factors.

On top of these different perspectives, allegations were raised about Secretary Bolton that led to an expanded inquiry. Republicans and Democrats differed on some procedural aspects related to this inquiry, as well as on the relevance of some allegations and documents. Despite these substantive disagreements, we were able to work together in an effort that represents one of the most intense and most far-reaching examinations of a nominee in my experience.

The Foreign Relations Committee has interviewed 29 witnesses, producing approximately 1,000 pages of transcripts. We have received and reviewed more than 830 pages of documents from the State Department, from USAID, and the CIA regarding the Bolton nomination. We have questioned Secretary Bolton in person for 7 hours, and we have received responses to nearly 100 questions for the record, many containing numerous subparts. The depth and breadth of the 11-week inquiry is particularly notable, given that Secretary Bolton has been confirmed 4 times by the Senate already and that most of us have had personal experiences with him.

I thank both Democrat and Republican members of our Foreign Relations Committee for their patience and their perseverance throughout this process. Although we disagree in our conclusions, we share the view that the committee must work together even when we have different perspectives. We also agreed that the nomination has provided an opportunity for debate on larger issues related to the conduct of U.S. foreign policy.

At the core of any nomination process is the question of whether the nominee is qualified to undertake the task for which he or she is nominated. I have no doubt Secretary Bolton is extremely well qualified. He has just served 4 years in a key under secretary position that technically outranks the post for which he is being nominated. He has succeeded in several high-profile negotiation settings. He was the primary negotiator in the creation of the successful Proliferation Security Initiative and the landmark Moscow Treaty. He played a large role in the agreement with Libya on the surrender of that nation's weapons of mass destruction program and the ''10 Plus 10 Over 10'' agreement that resulted in $10 billion in pledges from other G–8 countries to secure former Soviet Union weapons of mass destruction arsenals. These are among the Bush administration's most important and indisputable foreign policy successes.

Opponents have argued that Secretary Bolton's personality will prevent him from being effective at the U.N., but his diplomatic successes over the last 4 years belie that expectation. Few in Government have thought more about U.N. reform than has John