Mr. THOMAS. 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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. THOMAS. Mr. President, I ask unanimous consent that I be allowed to speak for 10 minutes as in morning business.

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

ROLE OF THE FEDERAL GOVERNMENT

Mr. THOMAS. Mr. President, I know it has been a busy day and we are very much involved, of course, in moving forward with the judge arrangement, as we should be.

I spent a week in my home State. I guess we always come back with different ideas. I spent the whole time talking with people and having town meetings and those kinds of things, and in certainly a little different atmosphere.

People see a great deal in the news media about what is happening here, but, of course, what they get is what the media is intending for them to get, and somehow it is a little bit different. So frankly, people are a little impatient that we are not moving forward as much as we might. Certainly, we are working hard here, but the fact is, we have not moved to many different issues. I believe many of us want to do so.

I think we have spent an awful lot of time on internal kinds of issues that do not mean a lot to people out in the country. I understand that. I realize the way things are done here is important to us, such as changing procedures and all those things. But folks are talking about energy, folks are interested in a highway bill, people are interested in health and the cost of health care, such as what you do in rural areas with health care. There are a lot of these things that are so very important to people on the ground, and here we are continuing to talk about how we are going to vote on judges. So they get a little impatient. I understand that. So I hope we are in the process of doing something about that.

There is also a great deal of concern, of course, in Government spending and the deficit. I certainly share that concern. I have been more and more concerned about it as time has gone by. We have Social Security before us, about which we need to continue to do something.

Interestingly enough, the issue that came up most often when I was home in Wyoming is the idea of illegal aliens and illegal immigration and the great concern about that. I share that concern. Most people here do. Of course, we are seeking to do something. But perhaps we need to focus on some of those issues a little more.

I particularly will talk a little bit about spending and about the deficit. I think that is one of our most important issues. In relation to that, it seems to me we need to get some sort of an idea of what we think the role of the Federal Government is. We have kind of gotten in the position that for anything that is wanted by anyone, why, let's get the Federal Government to do it. Then we have somebody here on the Hill who will introduce a bill to do that, and perhaps it has very little relationship to what we normally think is the role of the Federal Government.

I think most people would agree with the notion we want to limit the size of the Federal Government, that we, in fact, want Government to be as close to the people as can be, and that the things that can be done at the State level and the county level, the city level, should be done there, the things that can be done in the private sector should be done there. I would hope we could come up with some kind of general idea, an evaluation, of what we think the role of the Federal Government specifically should be.

The other thing I will comment on a little bit is having some kind of a system for evaluating programs. We have programs we put into place when there is a need. Hopefully, there is a need for them. I think it is also apparent that over a period of time that need may change. But yet, once a program is in place and people are involved, they build a constituency around it. It stays in place without a good look at it to see whether it still belongs there.

These are some of the issues of concern. I think the first step toward reducing the $400 billion deficit is eliminating waste. Of course, what is waste to one person may not be waste to another. But there has to be, again, some definition as to how important things are relative to our goals and to assess programs that stay in place because they are there or that are not managed as well as they might be. I think we have some responsibility to try to ensure that we take a look at that issue.

There are serious problems facing our Nation today, of course. The President's budget that he put out proposes eliminating 150 inefficient and ineffective Government programs. You can imagine what that is going to mean to people who are involved. ''Something in my town? Something in my State? We are not going to mess around with that.''

There needs to be some kind of a relatively nonpolitical idea as to how you do that and what the purposes are. Of course, I see some of that right now in the military changes that obviously need to be made. They are difficult to make. So I hope the administration will pursue this idea of setting up some kind of a program—and I am here to support it—that evaluates those programs that are in place to see if, indeed, they are still as important as they were in the beginning.

We have to even go further than that, of course, to curb runaway spending. I think we can consolidate a number of the duplicative programs that are out there and save money and make it more efficient in their services. There are organizations that could manage a number of programs, each of which now has its own bureaucracy, and to put them together to make it efficient. I know you will always have people who say: Well, you are taking away jobs. That is not the purpose of programs. The purpose of programs is to deliver a service, and to do it in a way that is as efficient as it can be.

Of course, there are programs that should be eliminated. They have accomplished what they were there for. We need to have a system. I hope and I am interested in helping to put together a program that would do that. There is probably some merit in having a termination to a program so that after 5 or 10 years, it has to be reevaluated to be extended. That is one way of doing it. I don't know if it is the only way. That is something we are going to do, and I would like to do some of that.

The role of the Federal Government, again, if you talk in generalities, if you talk to people in terms of philosophy, most would say, we want to keep the Federal Government small. How many times do you hear people saying: Keep the Federal Government out of my life? Yet at the same time we have created this kind of culture where whenever anything is needed or wanted, mostly money, then let's get the Federal Government to do it.

If we step back and take a look at it and say: Wait a minute, is this the kind of thing the Federal Government should be involved in or is this something that could be done more efficiently by a government closer to the people, I believe we ought to do that.

Some lawmakers here believe the Government is the solution to all of society's ills. I don't agree with that. I don't believe that. Our role in the Federal Government is a limited role. Our role is to provide opportunities, not to provide programs for everything.

Ronald Reagan said: Government is not the solution to our problem. Government often is the problem. That is true. That doesn't mean there isn't a role. There is a role, an important role. But we need to help define that somehow. That vision of limited government has, to a large extent, been lost. We need to debate. We need to have some discussion, some idea as to what that role is.

Unfortunately, sometimes the politics of government are are you going to do everything for everybody because it is good politics. Politics is not our only goal here. Our goal is to limit government, to provide services, to provide them efficiently, and to evaluate them as time goes by.

Unfortunately, when a program gets put into place, it becomes institutionalized. It is there often without sufficient change. It is a real challenge. Something we need to do is to develop a plan, a consistent and organized plan to evaluate programs, to determine whether they are outdated, to determine whether they are still necessary, to determine if they could be done in a

little different way to be more efficient and more effective.

Clearly the Federal Government does have a role. It has a role in many matters. So our challenge is to determine what the roles are and then to set it up so that we are as efficient as can be. I know I am talking in generalities, but I believe these are some things that are basic to some of the ideas we ought to be talking about and evaluating. I sense that doesn't happen very much. We sort of are challenged to see how many programs we can get going. We seem to be challenged to see how much money we can spend.

I appreciate what the administration is seeking to do to try and reduce some of the spending. That is very difficult. You can see what kind of reaction you get cutting back on programs or changing them. Our budget group is working on doing some of that. We need to be more involved in that.

As I mentioned, evaluating programs is something we should do. We have a constitutional obligation to appropriate hard-earned tax dollars in the most efficient manner we possibly can. New government programs get institutionalized. They go on forever. So I think there are some things we could do that would be important, and that we should.

There will be some proposals coming from OMB. I intend to seek to help put them into place if we can and have a system that deals with efficiency, a system that deals with identifying what the proper role of the various levels of government is. We will hear the States saying: We need more money. That is probably true. But nevertheless, we ought to have some other definitions besides where the money will go.

I hope we have one where we can review some things. I know these are general ideas. I have not gotten into the specifics. But from time to time, I think we have to look at ourselves and say: How do we deal with some of these issues? Clearly, everyone would agree we have to do something about spending. We have to do something about the deficit. We have to look at the future as to how we are going to make this thing work.

You can take a look at Social Security. In about 10 years, we will have to take trillions of dollars out of the general fund to put them back where they belong in the Social Security fund. That is going to be very difficult. It is a tremendous amount of money. But that is what we have done, of course, and it is reasonable because that money has to be drawing interest and it is drawing interest. But those things are going to be more and more difficult.

We are seeking to try and review and renew the Tax Code so it can be simpler and more efficient and hopefully provide better opportunities for the economy to grow and have incentives for growing by being able to put that money into developing jobs as opposed to coming into the Federal Government.

These are real challenges, but they are worthwhile: the challenge of evaluating government programs to see if they are still important, to see if they are still being done the way they were designed to meet the needs they were designed to meet when they were first there, to do something about the idea of controlling spending and the size of the Federal Government so that doesn't continue to expand into every area that is open. We ought to take a look at all the programs that are in place, that we are talking about putting in place, all the bills that are brought in here, and see what a wide breadth of subjects we talk about. Some you could make a pretty good case are not within the area of normal recognition of Federal Government activity.

I hope the role of the Federal Government is something we could talk about. We ought to talk about it with the State leadership and get a little clearer idea of how we define these things and get some kind of a measurement against these roles.

There are lots of challenges. I will be happy when we can move on through this judicial debate. It is very important, but we should not be spending all this much time on it in terms of how we do these things and get on with the things that have an impact on what we are doing out in the country.

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

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

Mr. BROWNBACK. Mr. President, I want to take up the discussion of Justice Janice Rogers Brown and her qualifications for serving on the DC Circuit Court of Appeals and some of the accusations and charges that have been brought against her. There have been a number that have been put forth. I had a lengthy discussion earlier about what I think this is really about, that it is about her being a strict constructionist, wanting to stay within the confines of the Constitution and the law and her interpretation rather than an expansive reading of it. I think that is really what is at the root of this, but people bring forth all sorts of allegations and charges, and I want to address some of them.

One of them is on a particular case, the Lochner case. As it might be described, this is getting into the weeds and details of some items, but I think it is meritorious to raise. She has been charged by some of our colleagues that in the Santa Monica Beach v. Superior Court case that Justice Brown called the demise of the Lochner decision, which was overruled in 1937, the revolution of 1937, and ''she wants to undo'' this overruling. A couple of my colleagues on the other side of the aisle said that Justice Brown believes in Lochner and wants the New Deal undone. That is the charge against Janice Rogers Brown. I want to talk about that particular charge because the opposite is what is actually true. This is the opposite of what Justice Brown said, and I want to go through her words of what she said to refute that particular case.

They are accusing her of wanting to undo the New Deal and the legislation that has been in place surrounding and regarding the New Deal.

In the Santa Monica case, which is the case that is cited for her opinion that she wants to undo the New Deal legislation of Roosevelt—FDR—she clearly criticized Lochner as wrongly decided:

> [T]he Lochner court was justly criticized for using the due process clause as though it provided a blank check to alter the meaning of the Constitution as written.

It was in the very next sentence that Justice Brown mentioned ''revolution of 1937.'' In context, it is clear that Brown felt the end of Lochner was a good thing, that the end of Lochner was a good thing, and she says that. Moreover, the ranking member of the Senate Judiciary Committee flatly asked Justice Brown at the hearing—we are at her confirmation hearing—this issue has been put forward. This charge has been made that you want to undo the New Deal legislation, that you want to overturn FDR, and the legacy of FDR. That is what you want to do. The ranking member of the Senate Judiciary Committee flatly asked Justice Brown at her confirmation hearing:

> Do you agree with the holding in Lochner?

She answered just as directly, ''No.'' This evidence is out there for all to see.

Why pretend it is not there is what I would say. She says no, she does not want to undo the New Deal legislation. She said it in sworn testimony at the Senate Judiciary Committee. She says that in her opinion in the Santa Monica Beach case. She does not want to overrule the case.

Others have attacked Justice Brown's speech to the Federalist Society when she lamented the demise of the Lochner era, in which the Supreme Court violated property or other economic rights. That is the allegation.

Justice Brown's speeches illustrate her personal views. To suggest that her critique of the Holmes dissent in Lochner is evidence of how she would rule in a certain case belies the facts. Indeed, Justice Brown has taken issue with the Lochner decision, criticizing the Supreme Court's ''usurpation of power,'' stating the Lochner court was justly criticized for using the due process clause:

> . . . as though it were a blank check to alter the meaning of the Constitution as written.

That is what she actually said.

Discussing the history of the judiciary, which Hamilton stated was to be

the branch ''least dangerous to the political rights of the Constitution,'' Justice Brown has stated her personal views that judges too often have strayed from this framework and engaged in judicial activism.

That is something we have talked about a lot, about judicial activism. She believes that too often judges have strayed from this framework and engaged in judicial activism. It was in this context that Justice Brown stated the standards of scrutiny employed by the judiciary, which are not enumerated in the Constitution, often are used by judicial activists to reach the results they want.

Justice Brown's record shows she is committed to following precedent, even when she might personally disagree with it. Partisan attack groups, lacking evidence that Brown is unable to follow precedent, have indicated their opposition stems from Justice Brown's supposed incorporating her personal views into judicial decisionmaking. They assert she injected her personal views on property rights into judicial opinions, but nothing could be further from the truth.

The two cases cited by the attack groups in this context deal with the Takings clause. The groups fail to point out the Supreme Court itself expressed the view that Justice Brown herself is now accused of advocating, that property rights were intended to carry the same import as other rights in the Constitution.

In Dolan v. City of Tigard, the Supreme Court majority wrote:

> We see no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or Fourth Amendment, should be relegated to the status of a poor relation in these comparable circumstances.

That is a 1994 case.

The reason I point these out is I want people to know the factual setting here, that she does not support an opinion to overrule New Deal legislation.

She has been attacked on her judicial qualifications, which I covered in an earlier presentation, but I want to also state here clearly and for the record, the ABA recently found Justice Brown qualified and concluded—this is from the ABA, the American Bar Association—that Justice Brown:

> . . . meets the Committee's very high standards with respect to integrity, professional competence and judicial temperament and that the Committee believes that the nominee will be able to perform satisfactorily all of the duties and responsibilities required by the high office of a federal judge.

If we are going to consider outside evaluations of judges, I would think the ABA's assessment that she is fit to serve on the DC Circuit is far more relevant than any others that might come forward.

I mentioned these to address some of the attacks on her that I think are based on her more limited strict constructionist view than on what others are basing their attacks, by trying to piece things together. Justice Brown is enormously qualified by her set of personal experiences, public service, good legal mind, good legal temperament, sound training and abilities to serve on the DC Circuit Court of Appeals. She will make an outstanding judge on that court of appeals.

Mrs. CLINTON. Mr. President, while I commend my colleagues for the compromise that momentarily spared this body from the so-called nuclear option, their agreement did nothing to change the fact that several of President Bush's judicial nominees fall well outside the mainstream and the parameters of what is an acceptable jurist. This nominee in particular, Janice Rogers Brown, has shown a disdain for the rule of law and precedent and is undeserving of lifetime tenure on the Federal bench.

The administration's agenda has become evident throughout the course of the debate over judicial nominees. The President, the Republican leaders, and their supporters have turned our Federal judiciary into their own personal political battleground. To satisfy the demands of their most ardent right wing supporters, the Republicans have not chosen to appoint capable Federal jurists but rather the political activists willing to contort the law, precedent, and the Constitution in order to promote their own conservative political agenda.

Our Federal courts have drifted well to the right in the past two or three decades. Today's so-called moderates would have been called conservatives in the 1970s. And while I personally think that this drift is not in the best interest of our country, I understand and accept that the President is certainly entitled to nominate conservatives to the bench. In fact, I have voted for the vast majority of this President's judicial nominees despite the fact that they maintain a conservative philosophy and support positions on issues that I do not necessarily agree with. I have done so because these nominees have demonstrated a respect for justice and the rule of law.

But even accounting for this drift, some of his nominees, such as Janice Rogers Brown, are far outside of even today's conservative mainstream.

Justice Brown is an agenda driven judge who, usually as a lone dissenter, shows little respect for the considered policy judgments of legislatures, repeatedly misconstrues precedent and brazenly criticizes U.S. Supreme Court rulings. She has a record of routinely voting to strike down property regulations, invalidate worker and consumer protections and restrict civil rights laws.

What makes Justice Brown particularly ill suited for a lifetime appointment to District of Columbia Court of Appeals is her disdain for Government. Among other things, she has long advocated for the demise of the New Deal. She equates democratic Government with ''slavery,'' claims that the New Deal ''inoculated the federal Constitution with a kind of collectivist mentality,'' calls Supreme Court decisions upholding the New Deal ''the triumph of our own socialist revolution,'' accuses social security recipients of ''blithely cannibaliz[ing] their grandchildren because they have a right to get as much 'free' stuff as the political system permits them to extract,'' and advocates returning to the widely discredited, early 20th century Lochner era, where the Supreme Court regularly invalidated economic regulations, like workplace protections.

''Where government moves in,'' Justice Brown has stated, ''community retreats, civil society disintegrates, and our ability to control our own destiny atrophies. The result is: families under siege; war in the streets; unapologetic expropriation of property; the precipitous decline of the rule of law; the rapid rise of corruption; the loss of civility and the triumph of deceit. The result is a debased, debauched culture which finds moral depravity entertaining and virtue contemptible.'' Justice Brown's contempt for government runs so deep that she urges ''conservative'' judges to invalidate legislation that expands the role of government, saying that it ''inevitably transform[s] . . . democracy . . . into a kleptocracy.''

Furthermore, Justice Brown takes issue with one of the basic tenets of our entire judicial system—precedent. When she does not like the result established case law dictates, Justice Brown tries single-handedly to change it. In one dissent, she proclaimed, ''(w)e cannot simply cloak ourselves in the doctrine of stare decisis.''

These and other comments have prompted her colleagues on the California Supreme Court to criticize her for ''imposing . . . [a] personal theory of political economy on the people of a democratic state.'' Her fellow justices have taken her to task for asserting ''an activist role for the courts.'' They have noted that she ''quarrel[s] . . . not with our holding in this case, but with this court's previous decision . . . and, even more fundamentally, with the Legislature itself.'' And finally, they contend that Justice Brown's brand of judicial activism, if allowed, would ''permit a court . . . to reweigh the policy choices that underlay a legislative or quasi-legislative classification or to reevaluate the efficacy of the legislative measure.''

Justice Brown's nomination makes clear that we have entered an era in which conservative politicians are seeking to nominate and confirm judges who read the Constitution and the law to coincide with the Republican Party's platform. The expectation is that these judicial appointees will toe the party line. This politicization of the judiciary carries disastrous consequences. Because when our judges are viewed as politicians, it diminishes the influence and the respect afforded our courts, which is the lifeblood of their efficacy. Our independent judiciary is the most respected

in the world, and our courts' ability to reach unpopular but just decisions is made possible only because of the deep wells of legitimacy they have dug.

I urge my colleagues to take the longer view for the good of the American people. Think carefully about what the result to our judiciary will be if we continue to pack our courts with extremists who ignore justice and the law. I implore my colleagues to take seriously their constitutional charge of advice and consent and to reject the nomination of Janice Rogers Brown.

Mr. JOHNSON. Mr. President, I rise today in opposition to President Bush's nomination of Janice Rogers Brown to be United States Circuit Court Judge to the Court of Appeals for the DC. Circuit.

This morning, the Washington Post editorialized against the nomination of Justice Brown, writing that she ''is that rare nominee for whom one can draw a direct line between intellectual advocacy of aggressive judicial behavior and actual conduct as a judge,'' I agree with this respected newspaper's assessment and ask unanimous consent that this editorial be printed in the RECORD at the end of my statement.

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

(See exhibit 1.)

Mr. JOHNSON. I have several concerns about Justice Brown's ability to serve on this important court. On the California Supreme Court, Justice Brown has proven to be an activist judge when it suits her political agenda. Consistently, and despite precedent to the contrary, Justice Brown has ruled on the side of corporations. For example, in a cigarette sales case, she ignored relevant law and protected corporations in lieu of protecting minors. In other cases she has placed corporate interests above law that intended to shield consumers and women.

Justice Brown has also attempted to remove protections for teachers, and has been hostile to such New Deal era programs as Social Security. She has called government assistance programs ''[t]he drug of choice for . . . Midwestern farmers, and militant senior citizens.'' These views are out of touch with most Americans and South Dakotans.

During today's debate, colleagues argued that because Justice Brown has been reelected by California voters by a 76 percent margin, she should not be considered ''out of the mainstream.'' This argument is misplaced. First, many other judges get reelected at a higher rate. It should also be noted that her retention reelection took place only 1½ years into her tenure on the California Supreme Court, at a time before her extreme views and activist agenda could have been known by voters.

Both the American Bar Association and the California Judicial Commission have questioned Justice Brown qualifications to serve on the bench. The California Judicial Commission specifically noted questions about her deviation from precedent and her ''tendency to interject her political and philosophical views into her opinions.'' We should note their concerns and seriously consider them.

Justice Brown's views and history of judicial activism is especially dangerous in the DC Circuit. She is a nominee who is far outside of the mainstream. For these reasons, I stand in opposition of the confirmation and lifelong appointment of Janice Rogers Brown.

REJECT JUSTICE BROWN

[From the Washington Post, June 7, 2005]

The Senate filibuster agreement guaranteeing up-or-down votes for most judicial nominees creates a test for conservatives who rail against judicial activism. For decades, conservative politicians have objected to the use of the courts to bring about liberal policy results, arguing that judges should take a restrained view of their role. Now, with Republicans in control of the presidency and the Senate, President Bush has nominated a judge to the U.S. Court of Appeals for the D.C. Circuit who has been more open about her enthusiasm for judicial adventurism than any nominee of either party in a long time. But Janice Rogers Brown's activism comes from the right, not the left; the rights she would write into the Constitution are economic, not social. Suddenly, all but a few conservatives seem to have lost their qualms about judicial activism. Justice Brown, who serves on the California Supreme Court, will get her vote as early as tomorrow. No senator who votes for her will have standing any longer to complain about legislating from the bench.

Justice Brown, in speeches, has openly embraced the ''Lochner'' era of Supreme Court jurisprudence. During this period a century ago, the court struck down worker protection laws that, the justices held, violated a right to free contract they found in the Constitution's due process protections. There exist few areas of greater agreement in the study of constitutional law than the disrepute of the ''Lochner'' era, whose very name—taken from the 1905 case of Lochner v. New York—has become a code word for judicial overreaching. Justice Brown, however, has dismissed the famed dissent in Lochner by Justice Oliver Wendell Holmes, saying it ''annoyed her'' and was ''simply wrong.'' And she has celebrated the possibility of a revival of ''what might be called Lochnerism-lite'' using a different provision of the Constitution—the prohibition against governmental ''takings'' of private property without just compensation.

In the context of her nomination, Justice Brown has trivialized such statements as merely attempts to be provocative. But she has not just given provocative speeches; ''Lochnerism-lite'' is a fairly good shorthand for her work on the bench, where she has sought to use the takings doctrine aggressively. She began one dissent, in a case challenging regulation of a hotel, by noting that ''private property, already an endangered species in California, is now entirely extinct in San Francisco.'' Her colleagues on the California Supreme Court certainly got what she was up to. In response, they quoted Justice Holmes's Lochner dissent and noted that ''nothing in the law of takings would justify an appointed judiciary in imposing [any] personal theory of political economy on the people of a democratic state.''

Justice Brown is that rare nominee for whom one can draw a direct line between intellectual advocacy of aggressive judicial behavior and actual conduct as a judge. Time was when conservatives were wary of judges who openly yearned for courts, as Justice Brown puts it, ''audacious enough to invoke higher law''—instead of, say, the laws the people's elected representatives see fit to pass. That Justice Brown will now get a vote means that each senator must take a stand on whether some forms of judicial activism are more acceptable than others.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

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

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

PENSION SECURITY

Mr. REID. Mr. President, throughout this Congress, I have argued that the Senate ought to spend less time debating radical judges and more time focusing on issues that can improve the lives of working Americans. One such issue is the gradual erosion of retirement security. Instead of working to replace Social Security's guaranteed benefit with a risky privatization scheme, we should work to strengthen retirement by shoring up our pension system. In no industry is this looming pension crisis more acute than the airline industry. The Finance Committee held a hearing on pension problems facing the airline industry this morning, and I hope that the committee will move soon on legislation to fix those problems.

Last month we learned just how worrisome this issue is, as the Pension Benefit Guaranty Corporation and United Airlines agreed to terminate the four pension plans maintained by the airline as that company struggles to emerge from bankruptcy. At the same time, Northwest, Delta and American Airlines face similar pension liabilities and are requesting Congress' help so that they can avoid bankruptcy. To their credit they are fighting to preserve their workers' pensions but need some time to allow them to recover from the effects of the post-9/11 travel downturn.

While the pension funding problems facing the airline industry are substantial, the industry is not alone in inadequately funding their employee pension plans. Congress needs to carefully review the rules that apply to the broad spectrum of employers that offer pension plans to their employees. Congress needs to make sure that those rules are strengthened to require greater funding for the pension promises