nominee, that nominee should not be filibustered. They never have been. I have been here 37 years. We used to treat each other, as well as such nominees willing to serve on the bench, with respect. I hope that today the Senate will return to that tradition. I trust that Senate Republicans will not go down the dark path on which they are headed.

Senator REED spoke yesterday of the precipice on which the Senate is poised. Senator WHITEHOUSE, Senator FEINSTEIN, and Senator SCHUMER have spoken eloquently on this issue as well. I urge all Senators, Senators on both sides of the aisle, to do the right thing to honor our constitutional role and traditions, and to vote in favor of ending this filibuster so that the nomination of Jack McConnell can then be considered on the merits and voted up or down.

I reserve the balance of my time and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Maine.

SBIR/STTR

Ms. SNOWE. Madam President, I rise today regrettably, as ranking member of the Small Business Committee, to announce that I will be opposing cloture on the pending legislation regarding small business. I have reached this decision after much deliberation, because I support the underlying legislation. In fact, I have championed the Small Business Innovation Research Program since its inception in 1982, when I was serving in the House of Representatives.

But regrettably there has been a disturbing trend in this body over the past several years of disregarding the minority rights and flat out disallowing votes on our amendments. We were informed early this year that we would have an open amendment process on legislation in this Congress. We were told, let's let the Senate be the Senate again. I could not agree more. Let's allow Senators to offer amendments and have votes on them. That is the Senate that I know, and the one that has served our country so well since it first convened in 1789.

As we all well know, the Senate has traditionally been a place where the rights of the minority were protected, and where constructive debate is the rule, not the exception. It is supposed to be the institutional check that ensures all voices are heard and considered. Because while our constitutional democracy is premised on majority role, it is also grounded in a commitment to minority rights.

The fact of the matter is, we have been considering the small business innovation research legislation since March 14, a month and a half ago. Over the course of that time, when excluding weekends and recesses, the Senate was in session 15 days. And in those 15 days, we had merely 3 days in which the Senate has held votes related to this legislation—3 days.

Furthermore, we have voted on 11 amendments out of 137 amendments filed prior to the Easter recess, which hardly represents an open amendment process. So we have 137 amendments filed. What do we do? We do not hold votes or debate these issues, allowing those amendments to be offered, we go on a 2-week recess, a fact that was not lost on the American people. What they saw was business as usual in Washington, acting as if there is nothing wrong in America today.

So it is disappointing to hear the statements that the Republicans are not allowing this bill to move forward. We are more than ready to move forward with votes on amendments, then onward to final passage. That is how the process works in the Senate.

We could have already been at that point if we had been given the time, instead of having recesses and days off and morning business. Indeed the majority has squandered the time of the past several months not on this legislation but in quorum calls and in morning business. There was nothing else commanding our attention.

There were several days we voted for the continuing resolution. I understand not having votes on those days. But just 3 days for votes out of 15 is unfortunate, not to mention underachieving. We could have held votes on any other day.

Indeed, on April 19, USA Today ran an article titled, ''Two chambers work at different paces.'' It noted that the House of Representatives has held 277 roll call votes as of April 18, the most in that period of time since 1995 following the Republican Revolution. The article then shifted its focus to the Senate, where it noted that our body has held a mere 68 record votes ''the fewest roll-call votes since 1997''! One of our colleagues in the House joked last month that the Senate has two paces—''slow and glacial.'' It would be humorous if it didn't mean that the American people are getting shortchanged by their elected representatives, who were sent here to vote on the critical issues facing our country.

Voting is our primary responsibility, as are amendments to flesh out the legislative process. We should have had a vote on the legislation I was offering as an amendment, in conjunction with Senator COBURN and six other cosponsors on regulatory reform, to reduce the burden on our Nation's small businesses.

This would have had a direct impact, here and now, on the ability of small businesses to create jobs. I am mystified as to why I cannot have a vote on this regulatory reform amendment as the ranking member of the Small Business Committee.

In November, the Senate Small Business Committee held a hearing on regulatory reform. It was noted in that hearing that a 30-percent reduction in regulatory costs in an average 10-person firm would save nearly $32,000, enough to hire one additional individual. After enduring 26 straight months with unemployment at or above 8 percent, it is more imperative than ever that we finally liberate American small businesses from the regulatory burden that diminishes our ability to compete globally and create jobs at home.

The regulatory reform amendment I am proposing with Senator COBURN is strongly supported by a variety of small business community organizations: the NFIB, the Chamber of Commerce, and 28 other groups.

I ask unanimous consent to have that letter printed in the RECORD.

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

MAY 2, 2011.

Hon. OLYMPIA SNOWE,
U.S. Senate,
Washington, DC.
Hon. TOM COBURN,
U.S. Senate,
Washington, DC.

DEAR SENATORS SNOWE AND COBURN: As representatives of small businesses, we are pleased to support Senate Amendment 299, the Small Business Regulatory Freedom Act of 2011. This amendment to S. 493, the SBIR/STTR Reauthorization Act, puts into place strong protections for small business to help ensure that the federal government fully considers the impact of proposed regulation on small businesses.

In an economy with high unemployment, and where almost 2/3 of all net new jobs come from the small business sector, we appreciate that your legislation would require regulators to further analyze the impact of certain proposals on job creation. The annual cost of federal regulation per employee is significantly higher for smaller firms than larger firms. Federal regulations—not to mention state and local regulations—add up and increase the cost of labor. If the cost of labor continues to increase, then job creation will be stifled because small businesses will not be able to afford to hire new employees.

The Small Business Regulatory Freedom Act expands the scope of the Regulatory Flexibility Act (RFA) by forcing government regulators to include the indirect impact of their regulations in their assessments of a regulation's impact on small businesses. The bill also provides small business with expanded judicial review protections, which would help to ensure that small businesses have their views heard during the proposed rule stage of federal rulemaking.

The legislation strengthens several other aspects of the RFA—such as clarifying the standard for periodic review of rules by federal agencies; requiring federal agencies to conduct small business economic analyses before publishing informal guidance documents; and requiring federal agencies to review existing penalty structures for their impact on small businesses within a set timeframe after enactment of new legislation. These important protections are needed to prevent duplicative and outdated regulatory burdens as well as to address penalty structures that may be too high for the small business sector.

The legislation also expands over time the small business advocacy review panel process. Currently, the panels only apply to the Environmental Protection Agency, the Occupational Safety and Health Administration, and the Consumer Financial Protection Bureau. These panels have proven to be an extremely effective mechanism in helping

agencies to understand how their rules will affect small businesses, and help agencies identify less costly alternatives to regulations before proposing new rules.

We applaud your efforts to ensure the federal government recognizes the important contributions of job creation by small business, and look forward to working with you on this important legislation.

Sincerely,

Air Conditioning Contractors of America, American Bakers Association, American Chemistry Council, American Farm Bureau Federation, Associated Builders and Contractors, Food Marketing Institute, Hearth, Patio & Barbecue Association, Hispanic Leadership Fund, Independent Electrical Contractors, Institute for Liberty, International Franchise Association, National Association for the Self-Employed, National Association of Home Builders, National Association of REALTORS, National Association of the Remodeling Industry (NARI).

National Automobile Dealers Association (NADA), National Black Chamber of Commerce, National Federation of Independent Business, National Funeral Directors Association, National Lumber and Building Material Dealers Association, National Restaurant Association, National Retail Federation, National Roofing Contractors Association, Plumbing-Heating-Cooling Contractors—National Association, Printing Industries of America, Small Business & Entrepreneurship Council, Snack Food Association, Society of American Florists, U.S. Chamber of Commerce, Window and Door Manufacturers Association.

Ms. SNOWE. We have taken great strides to address the concerns of those from across the aisle. But they keep moving the goalposts. For instance, some did not like our definition of indirect effect and costs with respect to evaluating the impact of regulations on small businesses. So we agreed to take the language that was initially proposed by Dr. Sargeant with the Office of Advocacy at the Small Business Administration. He is the President's top small business regulatory appointee.

It was expressed that the Office of Advocacy would require more funding to carry out these additional responsibilities. I agreed. We proposed increased authorization for the funding for this office. Moreover, we offset that spending with cuts in the SBA, already proposed in the President's 2012 budget.

There were concerns with language that would require that rules sunset if agencies failed to review them as required by law, by the way. So we developed a compromise. Instead there would be a ''stick'' of reducing an agency's budget for salaries by 1 percent if it failed to comply with its review requirements under law. Moreover, it includes several safeguards to allow the agency to have multiple bites out of the apple to satisfy their legal requirements. We heard that some Democrats might oppose adding regulatory review panels at every agency, immediately, saying that doing so would be too much, too soon and that a phase-in would be more responsible so we proposed a modest phase-in approach of three additional agencies per year over 3 years. After all, what is wrong with having small business review panels established at agencies, when they are proposing rules? Let's determine whether those rules are going to affect small businesses before they are implemented in the rulemaking process, not after.

You know, I hear in the Senate, well, we will see. We will let the rules take effect, and then see what happens to small businesses afterwards. Does anybody understand what that means for a small business on Main Street in America to have to implement a regulation that is handed down from the Federal Government—the cost of compliance, the added number of employees it requires just to deal with the regulatory burden? They can't afford it. After all, we are in an age of high unemployment. It is persistent.

So we could deal with this issue here and now. We have had a number of hearings over time on regulatory reform. The Homeland Security and Government Affairs Committee has had hearings on regulatory reform. The time is now to address it.

Furthermore, what is the problem with allowing a vote on this amendment? That is what I don't understand. Why can't we have a vote on the amendment on regulatory reform? If those on the other side do not want to support it, they can vote against it. But let's have a vote. Let's have a debate. What else are we doing?

We just came off of a 2-week recess. I cannot imagine anybody that went home and talked to small businesses on Main Street or to the average person who is desperately searching for a job not understanding that we need to do something about these key issues.

We should focus more on issues like this and less on concerns about lunches, or recess. It is about doing our work in the Senate however long and however hard it is, but to do it. That is what this issue is all about. It is about doing things that are going to matter on Main Street, and regulatory reform matters on Main Street. We can talk about it endlessly. The time is now to act. That is what this is all about. Let the Senate work in the traditions of the Senate: an open, deliberative process.

When we had the continuing resolution, we had 700 amendments in the House of Representatives. What amendments did we have? The same is true now. They are shutting down the process. I am told that we had 137 amendments, and what did the Senate do? Go on recess for 2 weeks.

The point is, we have a serious problem in America. It is persistently high unemployment. It is subpar growth. The economic conditions are deeply troubling. We have to get the show on the road, and that means regulatory reform.

It is one of the chief, foremost concerns among small businesses. Among the plethora of concerns they have about what we are doing or not doing, one of the foremost issues is regulatory reform, and we are dithering. I can't even get a vote on the amendment. Vote yes or vote no. Let's debate it.

Is there anything else we are doing in the Senate? Can somebody tell me? We just came off of a 2-week recess, and I am mystified why we are just driving this to a cloture vote and I am denied a vote on an amendment that is so relevant to the well-being, to the survival of small businesses—regulations.

There was a $26 billion increase in regulation costs last year. That is on new regulations. The total cost is $1.7 trillion overall. Some have debated that cost saying that is not a true cost. They say: No, it is this cost. It is a lesser cost. Some say: Well, it is less than $1 trillion. Why? Because they do not count the IRS. Well, ask the small businesses if IRS regulations are hampering their well-being and suffocating the entrepreneurial spirit in America, or the FCC or all the myriad of other independent agencies that are not included. I suggest everybody take Main Street tours and see what is happening.

If we are wondering why we can't create the jobs that are necessary for America, then just look right here. We are shutting down the process with cloture votes. For what? Because we can't have a debate. We can't have votes. We are doing nothing.

The PRESIDING OFFICER (Mr. BLUMENTHAL). The Senator's time has expired.

Ms. SNOWE. Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I urge my colleagues to vote for cloture on this important bill. It is the Federal Government's largest research program for new technologies and innovation. It is a job creator. It is widely supported by many business organizations in this country. It is a bill that should have passed 6 years ago. It is a bill, a statute, that will expire in less than 30 days from now. If we don't vote favorably on this bill today, there will be virtually no chance of this program being extended under law, and we will either have to eliminate the program entirely or we will revert back to no way to do business, which is a 3-month or 6-month rolling extension.

I wish to answer a few of the charges made by my colleague. First of all, I have the greatest respect for my ranking member, and I can understand her frustration as being the ranking member of the Small Business Committee and not getting her amendment on the Senate floor. I would respectfully remind her that we could have had a vote on her amendment in committee except that her side demanded—and I wish to submit a letter to the effect—that the bill come out of our committee clean; that the SBIR bill not be attached to anything else so we could have an open debate on it because it has been going on for 6 years.

No. 2, an open amendment process, which the majority leader has been more than gracious with, considering

the fact that 150 amendments have been filed on a bill that is only 116 pages long, and 95 percent of these amendments have nothing to do with this bill—the majority leader has been more than patient. But an open debate does not—on the Senate floor, an open and free debate does not mean eliminating the committee process in the Senate that has existed, to my knowledge, as long as this body has existed, and it never will.

We cannot trample on the rights of our committees, whether it be Homeland Security, which has primary jurisdiction over this issue, or the Small Business Committee, which has some jurisdiction over this issue. But because this regulatory reform bill is so far reaching and a necessary debate to have—not here, not now, not on this Senate floor but in the relevant committees. In fact, there are four other bills besides that of my ranking member. Senator VITTER has one bill, and I will submit for the RECORD other bills that have been filed, in fact, on this exact subject.

The chairman of the Homeland Security Committee, who sits right here at this desk, has already agreed to have a hearing on all of these bills because Senator SNOWE, with all due respect, is not the only Member who has an interest in regulatory reform. My committee, which I chair, does not have complete jurisdiction over this issue. Commerce is interested in it. Homeland Security is interested in it.

I can't pull a bill—I don't believe it is right to pull a bill from the floor to have a vote that has not had a hearing in any committee of the Senate. That is not an open process. That is an ask that is impossible to agree to.

No. 3 in my argument: If we vote no on cloture, I wish to remind Senators the amendments of Senator CARPER and Senator VITTER will see no light of day. They have good amendments they have been working on for 3 years that have had committee review to help expedite the sale of Federal buildings that could save taxpayers millions of dollars. That amendment will go down.

The Cornyn amendment, which establishes a commission to cut spending which will also save taxpayer money and reduce the burden on taxpayers, that amendment will go down.

Senator PAUL's amendment to reduce spending by $200 billion, he will not get the majority of our votes, but there will be an interesting debate on whether we can cut $200 billion out of the Federal Government. We lose that amendment.

Senator HUTCHISON has an amendment for us to debate all of the regulations in the entire universe on health care. People are complaining about regulations for health care. We are giving a vote on that. That amendment will not be voted on.

Senator CARDIN has an amendment to fix surety bonds. We are going to lose that.

Senator SNOWE, herself, has an amendment to prevent fraud in contracting. We are going to lose that.

So, evidently, 95 percent of the loaf is not enough. So we either get 60 votes on this bill or we don't.

Mr. President, I wish to give my last minute to Senator SHAHEEN, and I wish to ask her a question. What actually did the Senator hear in the Armed Services Committee that is relevant to this bill? If I have 2 seconds, go ahead and tell me.

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

Mrs. SHAHEEN. I took the opportunity yesterday in an Armed Services Committee subcommittee to ask Department of Defense officials who have been responsible for maintaining our military technological edge what the impact would be on DOD's research if Congress does not reauthorize the SBIR Program. Assistant Secretary Zachary Lemnios said the SBIR is ''something we absolutely need.'' He spoke of what it is like talking to small innovative companies he works with through SBIR, and he told me:

> There are small companies willing to take some risk in areas where larger companies just, for whatever reason, just don't. You spend a day with a small business like that, and your mind explodes with new ideas.

That is the kind of innovative spirit we need to stay competitive. We need this for America's national security, and as the Senator from Louisiana points out, this is a program that creates jobs.

We need to get this reauthorization done. We need to talk about regulatory reform, but we need to do this first.

In a few minutes we will be voting on whether to move forward with a bill reauthorizing a program that is critically important to my home State of New Hampshire and the entire country—the Small Business Innovation Research program, or SBIR.

As Chair LANDRIEU has pointed out, the Senate has been debating this bill for 5 weeks now. My colleagues and I from the Small Business Committee have come to the floor several times to talk about the importance of this program for the future of our economy. The bottom line is that SBIR promotes innovation among the entrepreneurs that will keep the American economy competitive in the 21st century.

But as we decide whether to move forward with this bill—which has broad bipartisan support—I wanted to talk about the importance of SBIR—not just for our small businesses, but also for our national defense.

Many agencies have come to rely on small, innovative companies to help them think outside the box and solve important problems. This is especially true for agencies that are charged with protecting our national security. Agencies like the Department of Defense rely on small companies to perform R&D that often leads to technologies that help our troops in the battlefield and help secure our country.

I took the opportunity yesterday at an Armed Services Committee hearing to ask the Department of Defense officials responsible for maintaining our military's technological edge what the impact would be on DOD's research if Congress did not reauthorize SBIR. Assistant Secretary Zachary Lemnios said the SBIR is ''something we absolutely need.'' He discussed what it is like talking to the small, innovative entrepreneurs that he works with through the SBIR program. He told me, ''there are small companies willing to take some risk in areas where larger companies just, for whatever reason, just don't. You spend a day with a small business like that, and your mind explodes with new ideas.''

That is the kind of innovative spirit that we need to stay competitive. And it is the same spirit that agencies like the Department of Defense need to keep America secure. In 2010, the Department of Defense issued nearly 3,000 awards through the SBIR program.

Let me give just one example of a company in my State that has benefitted from the SBIR program and has helped the Department of Defense develop a product that is currently helping our troops carry out their missions.

Earlier this year, I visited a firm called Active Shock in Manchester, NH. Active Shock showed me the suspension technologies that it developed with funding from a competitive SBIR award. These technologies are now used by the Department of Defense to help our troops in the field. They help stabilize our war vehicles in rough terrain.

This is exactly the kind of high-tech product that is developed as a result of SBIR. And SBIR awards are absolutely critical for these small companies. Bill Larkins, the CEO of Active Shock, told me that Active Shock would simply not be here today were it not for the SBIR program. The products that Active Shock developed also have commercial applications, so the SBIR awards have helped them grow and create jobs. Active Shock started with only a few employees; now, it has grown to over 30 employees.

Active Shock is just one of many small firms in New Hampshire that have successfully competed for funding through SBIR in the 28 years it has been in existence. All across New Hampshire, small businesses that otherwise would not be able to compete for federal R&D funding have won competitive SBIR grants that advance technology and science and create good jobs. In just the last 2 years, New Hampshire firms have won 80 SBIR awards.

And many of these companies are helping the Department of Defense meet its R&D needs—in fact, despite its small size, New Hampshire is ranked 22nd in the Nation for total grants awarded from the Department of Defense since SBIR began.

We need to focus on smart ways to create jobs and stay competitive. This

program is critical for meeting that goal. But we also need to remember that SBIR also enhances our national security.

I encourage my colleagues to join me in supporting this important program.

Ms. LANDRIEU. Mr. President, I thank the Senator for answering my question.

I would like to submit many more things for the RECORD. But, again, I wish to close, because we are 10 minutes extended from the vote, by asking the Senate to please consider voting for the SBIR Program. If we don't it will expire on May 31 this year.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

The PRESIDING OFFICER. The Republican leader.

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

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

NOMINATION OF JOHN MCCONNELL

Mr. MCCONNELL. Mr. President, the Senate will shortly vote on the cloture motion on the Jack McConnell nomination. We have been working in good faith with our Democratic colleagues to confirm consensus judicial nominees in general and to fill judicial emergencies in particular. So it is disappointing that our Democratic friends have chosen to depart from this bipartisan practice and to press the McConnell nomination which would not fill a judicial emergency and is about as far from a consensus nomination as one could imagine.

Mr. McConnell has described his judicial philosophy in this way:

> There are wrongs that need to be righted, and that's how I see the law.

In Mr. McConnell's eyes, the wrongdoers in America are invariably its job creators.

His legal career has been marked by a pervasive and persistent hostility to American job creators. This bias against one part of American society is fundamentally antithetical to the rule of law, and it has led him to take a series of troubling actions that show his unfitness for a lifetime position as a fair and impartial judicial officer.

For example, he has filed what his hometown newspaper described as a ''ludicrous'' lawsuit against businesses. This case ended up costing not just the companies but Rhode Island taxpayers as well. After the State's supreme court unanimously rejected his frivolous legal theory, his clients—the taxpayers—had to pay a quarter of a million dollars in lawyers' fees.

Rather than be contrite about the damage he had done, he lashed out at his State's supreme court, saying it let ''wrongdoers off the hook.'' He has made other intemperate statements as well that underscore his bias, such as when he insisted that one American industry only does ''the right thing'' when it is ''sued and forced to by a jury.''

After such a long record of hostility toward one segment of American society, it is difficult to believe Mr. McConnell can now turn on a dime and ''administer justice without respect to persons,'' as the judicial oath requires. The business community does not think so, and it is easy to see why.

In fact, the U.S. Chamber of Commerce has never before opposed a district court nominee in its 100-year history—not once. Yet it is so troubled by Mr. McConnell's clear disdain for the business community that it has taken the extraordinary step of opposing this nomination.

Senator CORNYN pointed out yesterday that there are also serious ethical issues with Mr. McConnell's nomination. He pioneered the practice of ''pay to play'' lawsuits, where he solicited lucrative no-bid, contingency fee contracts from public officials.

He has given statements to the Judiciary Committee that are misleading at best and untrue at worst about his familiarity with a case involving stolen litigation documents. There is the outstanding matter of the stolen litigation documents themselves, over which his law firm and several unnamed ''John Doe'' defendants are being sued.

In light of all the problems with the McConnell nomination, I have listened with interest to the admonishments by the chairman of the Judiciary Committee and other Democratic colleagues against opposing cloture on his nomination. I know my record of supporting up-and-down votes for controversial judicial nominees during the administration of President Clinton, and I am equally aware of the determined efforts by my Democratic colleagues ''to change the ground rules'' in the Senate confirmation process once there was a Republican President.

My Democratic colleagues ultimately succeeded in their efforts by repeatedly filibustering President Bush's judicial nominees. I wish our friends had not succeeded and not set up that precedent. But they did. And the precedent is the precedent, and their buyer's remorse now that there is again a Democrat in the Oval Office will not change it.

Over the years, there have been bipartisan concerns with judicial nominees, and cloture has been needed to end debate. Abe Fortas is a famous case. He was opposed by Senators from both sides of the aisle because of ethical issues, and his nomination did not even have majority support, let alone the votes needed to invoke cloture.

But the partisan filibuster is a more recent development, and our Democratic colleagues have been the proud pioneers in this area. In 1986, they mounted the first partisan filibuster against a judicial nominee. That nominee, by the way, was a district court nominee, Sidney Fitzwater.

Also in 1986, they mounted the first partisan filibuster against a nominee to be Chief Justice. That was Chief Justice Rehnquist's nomination.

In 1999, they mounted the first successful partisan filibuster of a judicial nominee. That too involved a district court nominee, Brian Stewart. Both the chairman of the Judiciary Committee and the senior Senator from Rhode Island voted to filibuster Mr. Stewart. I, and all Republicans, voted actually against filibustering him.

Our friends' successful filibuster of this nominee is now inconvenient to their narrative about filibuster norms and propriety. They claim that filibuster does not count. I guess they are saying they only filibustered him to leverage floor votes on other judicial nominees, and once they got what they wanted, he was confirmed. I gather this is the ''coercion exception'' to the body of filibuster precedent they have created.

In 2003, our friends mounted the first successful filibuster of a circuit court nomination. That would be Miguel Estrada's nomination. He was filibustered seven times, in fact. Our Democratic colleagues added to this record by filibustering nine other circuit court nominees, a total of 21 times. That is a record, too. The chairman of the Judiciary Committee and the senior Senator from Rhode Island participated in all of those filibusters as well.

In 2006, led by President Obama himself, our Democratic colleagues mounted the first partisan filibuster of a nominee to be an Associate Justice of the U.S. Supreme Court. That would be the Justice Alito nomination. Our Democratic friends from Vermont and Rhode Island joined in that filibuster, too.

I agree that filibusters of judicial nominees should be used sparingly. Unfortunately, our friends on the other side of the aisle have filibustered judicial nominees whenever it suited their purposes to do so, whether it was to defeat nominees such as Miguel Estrada or to leverage other nominees as with the Stewart nomination. Given their persistent enthusiasm for the judicial filibuster, I do not view our Democratic friends as the arbiters of filibuster propriety.

In this case, I believe the McConnell nomination is an extraordinary one. He should not be confirmed to a lifetime position on the bench. I will oppose cloture, and I urge my colleagues to do the same.

I yield the floor.

Mr. MCCAIN. Mr. President, during my 24 years in the U.S. Senate I have not once voted against cloture for a nominee to the district court, and I will not do so today. As a member of the ''Gang of 14'' in 2005, I agreed that ''Nominees should be filibustered only under extraordinary circumstances.'' The nomination of Mr. McConnell does not rise to a level of ''extraordinary circumstances.''

However, I am deeply troubled by Mr. McConnell's less than candid responses