

workers from overtime pay protection in order to make them work longer hours without compensation. I don't really expect the Labor Department to proactively go around and check on these employers. They don't do it now. What if a worker complains? How many workers are going to risk losing their jobs by complaining? As a person who worked for Wal-Mart said, "In a small town there are no other jobs. Therefore, when they want you to work overtime without any extra pay, that is what you do."

I close by saying that I also believe this proposed regulation is designed to give cover to employers that are already abusing standing overtime laws. Lawsuits by the hundreds—cases pending before the Labor Department that are now months and years backlogged—will be wiped off the books because now the employers that are denying overtime pay will be legal in doing so.

So why do we want to make it easier to deny American workers overtime pay? How does it help the economy to take money away from millions of low- and middle-income men and women?

Again, the administration's proposal will do nothing to put money in the pockets of working Americans. It will not create new jobs. It will keep people away from their families longer hours. It is a slap in the face to millions of hard-working Americans—men and women who are starting to make ends meet and yet spend some time with their families. It is bad policy. We have an opportunity to stop it with my amendment. I plan to offer that shortly. I urge my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

WITHDRAWAL OF ESTRADA NOMINATION

Mr. FRIST. Mr. President, a few moments ago we received a message from the White House. I will read the message and I have comments to make on that particular message, and it will explain the interruption of the debate on this very important bill that we are addressing.

The message from the White House reads:

To the Senate of the United States:

I withdraw the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit.

That message was signed by President George W. Bush.

It was 29 months ago that the President of the United States nominated Miguel Estrada. Today, we have received this message that Miguel Estrada's name has been withdrawn from further consideration by the Senate. I expect that many on the other side of the aisle will be glad of this. Indeed, we have seen our Democrat colleagues block the entire Senate from having a very simple, honest up-or-

down vote for 29 months—well over 2 years.

Today is a shameful moment in the history of this great institution. The Senate has been denied the right to confirm or reject a brilliant and a well-qualified nominee because of the obstruction of the few—a hard-working and honorable immigrant American who has excelled in the pursuit of the law and risen to the very top of his profession has been turned away because of the rankest political partisanship.

In rising today, I wish to take a moment to express my regret to Mr. Estrada and to his family and to express my regret to the American people who have been denied the service of this extraordinarily talented and accomplished man.

The record, however, is clear—it is crystal clear: Miguel Estrada was and is superbly qualified to serve on the bench. He was, in fact, unanimously well qualified, according to the rating by the American Bar Association, a rating Democrats once called the gold standard.

Miguel Estrada graduated with honors from Columbia University and then from Harvard Law School where he was editor of the Law Review. He went on to public service, including 2 years of service in the Clinton administration. No one—no one—can claim this man is not qualified to serve on the Federal judiciary, and I fully expect that some day he will stand for a vote by this Senate again.

Mr. President, as you know, earlier this year the Senate engaged in an unprecedented month-long debate on the Estrada nomination. This debate has continued for months thereafter and, indeed, before the August recess we took the seventh—the seventh—cloture vote to end debate and to allow the Senate—a very simple request—a simple up-or-down vote, as the Constitution requires. No nominee has ever had this many cloture votes.

As a result of the Estrada debate, the Senate has had the opportunity to consider the proper nature of the advise-and-consent role of the Senate and to question the propriety of the filibuster as applied to judicial nominees. That self-examination is far from over. The fact is that the use of unprecedented filibusters to deny the Senate the freedom to give advice and consent has, I believe, done great harm to the Senate and to, more generally, public discourse.

Mr. President, let me review the lengthy saga of Miguel Estrada's confirmation process.

Miguel Estrada was nominated by President Bush on May 9, 2001, 29 months ago. He was among the very first nominees to be sent to the Senate for consideration, as the Constitution requires, for this body, the Senate, to advise and consent.

It is worth noting since that time Miguel Estrada was nominated, our country has fought two wars and changed the regimes of two nations.

For the first 505 days of the Estrada nomination, the Democrat leadership refused even to hold a hearing. They defended this delay by arguing that they knew nothing about the candidate, as if a hearing were not the usual and customary way to resolve such a concern of hearing about the candidate. In truth, there was more in Mr. Estrada's record than in the records of many judicial nominees Democrats had comfortably confirmed in previous years.

Opponents also argued at the time that Estrada lacked judicial experience, despite the fact this was not an impediment to the Clinton nominees who had never served on the bench, nominees, it should be noted, who went on to serve on the very same court to which Estrada was nominated. In fact, Earl Warren, William Rehnquist, William Douglas, Lewis Powell, and Thurgood Marshall—none of these great jurists had any judicial experience when first nominated to a Federal court. But no matter, our Democrat colleagues continued to obstruct. They continued their obstructionist tactics. Then after finally giving Mr. Estrada a hearing a year ago, they announced it was too late in the year to give Mr. Estrada a vote in the Judiciary Committee.

After the Republicans won the majority in 2002 and Democrats no longer controlled the calendar or the committee, opponents moved to plan B, to level baseless charges.

First came the accusation that Mr. Estrada had "refused to answer a single question" at his hearing. At best, that is hyperbole. In fact, Mr. Estrada answered over 125 questions. The transcript from Mr. Estrada's 7-hour long hearing weighs nearly 3 pounds. Admittedly, the transcript is heavy with questions my colleagues knew full well Mr. Estrada could not answer. They knew he could not answer and also maintain his respect for the independent judiciary and abide by the code of judicial ethics.

We learned through the course of a lengthy debate that, in truth, some nominees of President Clinton answered fewer than 20 questions. One nominee answered only three questions, and he was smoothly confirmed by a Republican-led Senate.

In truth, Mr. Estrada answered more than twice as many questions as all three of President Clinton's appointees to the same circuit court were asked at their hearings—all three combined.

Such facts as these naturally raise the serious question as to why our Democrat colleagues imposed a double standard on this particular nominee with his particular background. In fact, the only questions Mr. Estrada declined to answer, as previous nominees had similarly declined to answer, involved how he would rule on cases that might come before him. During his hearing, Mr. Estrada explained why. He told the committee members that he prizes the independence of the

judiciary; that he believes a judge must put aside his personal views and maintain impartiality. In my mind, rather than being a reason or a cause for opposing his nomination, his integrity only strengthened the case for supporting him.

Since that hearing, Democrats had almost 12 months to ask further questions of him—any at all. Repeatedly, the White House offered Mr. Estrada to answer any written question posed to him. To my knowledge, only one Democrat Senator took up that extraordinary offer. Additionally, the White House offered Mr. Estrada to meet with any Senator. To my knowledge, only two Democrat Senators took up that particular offer. But unlimited availability in writing and in person was simply not enough.

Mr. Estrada's opponents continued that partisan drumbeat and continued to obstruct a simple up-or-down vote by their colleagues so we would have that opportunity to express advice and consent.

At the end, when all the false arguments were exposed, our Democrat colleagues fell back on one last carbuncle. They denied Mr. Estrada a vote, they said, because the Justice Department refused to hand over to them Mr. Estrada's workpapers from the years while he was in the Office of the Solicitor General in the Clinton administration.

This was their asking price, despite the fact that every—every—single living Solicitor General, both Democrat and Republican, told the Senate that such a release of documents would create a harmful new precedent against the interest of the American people.

All of this now has passed. What the American people now deserve is an explanation of why. I suspect many know the answer. The saga of Miguel Estrada is a tale of great and unbridled Democratic partisanship, and the American people, sadly, are the losers.

In the course of the Estrada debate, I observed and I listened and I have reached my own conclusion. I do not believe anyone in the Senate would block a nominee based solely on ethnicity. I do not believe any of my colleagues harbor this kind of rank bigotry. I do believe, however, that what happened to Mr. Estrada was due to base politics.

To date, the President has nominated a greater percentage of Hispanic nominees to the Federal bench than any President before him. The President has made clear that he shares the aspiration of the American people to see a Latino serve on the Supreme Court. I believe Miguel Estrada's incredible abilities and special talents would have eventually led him down this path. I believe, as many do, that given his strong credentials, he would be a superb candidate should there be an opening on that Court.

Many Democrats and hard-left Washington special interests fear that possibility. They do not want this President

to have a Hispanic nominee of Miguel Estrada's extraordinary abilities named to the Supreme Court should a vacancy arise. I believe when all is said and done, the American people, who are sensible and fair, will reach a similar conclusion about this sorry chapter.

The fight is not over. We will continue to press for an up-or-down vote for the President's nominees. We will continue to press for fairness. We will continue our fight to put qualified women, men, and minorities on our courts.

We will fight the obstructionist tactics of the Democrats and the liberal special interest ideologues that drive them.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the distinguished majority leader for those comments and express my own personal regret on the withdrawal of the nomination of Miguel Estrada. It is not too long ago that I was in college, in law school, and to hear the academic record of Miguel Estrada is enormously impressive. One does not go to Columbia and rank cum laude and one does not go to Harvard and serve as editor of the Law Review there without very substantial academic achievements.

Miguel Estrada is a man with a superb record beyond his academic achievements. When the issue was raised about not disclosing the contents of memoranda which he had written when he was an assistant in the Solicitor General's Office is absolutely specious. It is just a red herring. There is no reason for that at all. If one is going to ask to have a lawyer's work product made available, there would be an enormous chilling effect on lawyers who are working day in and day out expressing their views, giving their opinions in an honest and candid way so their superiors can make an evaluation and a judgment as to what to do.

Having gone to college and law school, and having been a lawyer writing memoranda, which I wrote plenty of, I know the indispensable quality of being able to say what you believe without having somebody look over your shoulder years later in an attempt to deny some appointment. If you are going to have to play defense all the time, you cannot have the kind of ingenuity, assertiveness, independence, and intelligence which is what has made our country strong.

I believe the country is much weaker for the withdrawal of Miguel Estrada as a potential Federal judge. There have been a lot of objections raised to a lot of nominees, but the situation with Estrada was uniquely unmeritorious in what his detractors had to say.

He is a young man, and I agree with the majority leader that he will be back.

I yield the floor.

Mr. ALLEN. Mr. President, will the Senator from Pennsylvania yield?

Mr. SPECTER. I do.

Mr. ALLEN. I say to my good colleague from the Commonwealth of Pennsylvania that I know he is on the Judiciary Committee. Since Miguel Estrada lives in Virginia, my colleague, JOHN WARNER, and I presented Miguel Estrada to the Judiciary Committee. The Democrat leader was then in charge.

Was the Senator from Pennsylvania present at that committee meeting?

Mr. SPECTER. I was.

Mr. ALLEN. I remember him being there. I remember the joy of that committee meeting. Miguel Estrada was there. His wife was there. His mother Clara and his sister Maria were all there. They were so proud of this young man, who came to this country from Honduras as a teenager. He was unable to speak English. He applied himself, worked hard, and went on to an Ivy League school for undergraduate studies. He then went to Harvard Law School, where he graduated magna cum laude. He later worked in the Solicitor General's Office under President Clinton, where he argued 15 cases before the Supreme Court of the United States, winning most of them. He also clerked for Supreme Court Justices. The American Bar Association unanimously recommended him with their highest qualifications. It was really a day of joy. It was uplifting.

There were four vacancies on the court. I remember saying "adelante", come, "Miguel Estrada." So people were charged up about this country seeing that a Horatio Alger story still was possible. Seeing that if someone worked hard in this country and applied themselves, that if someone recognizes them, like President Bush, and allows them to serve their country on the second most important court in this country, which is the D.C. Court of Appeals, that everyone would say, this is what America is all about; there is opportunity for all people, regardless of their background, so long as they have that record of performance.

Then we saw obstruction month after month. It took everything the Senator could do on the Judiciary Committee to even get him out of committee. When the Senator from South Dakota, Mr. DASCHLE, was Leader, we could not even get it out of committee. So this hold continued, these personal fouls.

Now we come to this day, 28 months after President Bush nominated Miguel Estrada. I have not served as long as the Senator from Pennsylvania, Mr. SPECTER, or our great leader, Senator FRIST of Tennessee, but I know my colleagues all look at history. Today I think is a very sad, dark day in the history of the Senate. An injustice has been perpetrated, an injustice to this gentleman with impeccable credentials, who is an inspiration to all Americans.

In particular, this was an opportunity for a Hispanic American for the

first time ever to serve on the D.C. Court of Appeals. The real motive of this obstructionism is not his qualifications, not his judicial philosophy, not claims that Miguel Estrada would be an activist or does not understand the proper role of a judge, but the reality is they want to deny him that added aspect on his record of performance that he served on the Court of Appeals. They fear that, should a vacancy arise on the Supreme Court of the United States, President Bush would like to make history and appoint someone who has the proper judicial philosophy and is also a Hispanic American to the Supreme Court.

This is a sad day for America. As the Senator from Pennsylvania says, he is a young man. He is willing to serve in the future and we are going to still champion Miguel Estrada. I know Senator SPECTER, Senator MCCONNELL, Senator FRIST, and those on this side of the aisle, and a few on the other side of the aisle, such as Senator MILLER of Georgia, Senator NELSON of Florida, Senator NELSON of Nebraska, and Senator BREAU of Louisiana, we are going to keep fighting for well-qualified judges such as Miguel Estrada.

I hope and pray some day in the future we will have another opportunity to vote on Miguel Estrada to serve this country, because we are going to stand for people of quality, of character, of performance, and of competence. This sort of obstruction needs to stop. Senators do not have to vote in favor of judges if they so desire, but they should vote one way or the other—not delay, not hold, not obstruct. It is wrong to treat people in such an unjust, unfair, and inequitable way.

I thank the Senator from Pennsylvania, Mr. SPECTER, for his great leadership in getting Miguel Estrada out of the Judiciary Committee. It is a shame and I think a disgraceful day that Miguel Estrada has been forced to withdraw his name so he can focus, with his family, on his future.

He has a bright future. I know Senators share my view that he has a great future for service in this country someday when the Senate stops its obstruction.

Mr. SPECTER. I have been on the Judiciary Committee for 23 years, and very few nominees have come with Miguel Estrada's record. When a man comes to Washington to serve with that record, we ought to welcome him, not send him packing.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, on the day of the withdrawal of Miguel Estrada, it is important to keep in mind we have approved 145 of the President's judicial nominees. We have worked with the President to do so in a swift and unprecedented pace. Despite the anti-Hispanic rhetoric surrounding Mr. Estrada's nomination generated by some on the other side of the aisle, a Democratic President appointed the vast majority of Latino Americans serving now in our Federal courts.

Mr. Estrada's withdrawal presents a positive opportunity for the President.

I have worked with the Presiding Officer. The President should look at what we have done in Nevada as a model for selecting nominees. Senator ENSIGN and I have worked closely on recommending nominees to the White House. I have worked with the junior Senator from Nevada, who is a representative of the President's party, in selecting four judges.

Larry Hicks, who has waited 10 years to become a judge, was selected previously by the first President Bush. He patiently waited. He was nominated again by the Senator from Nevada and confirmed and is now sitting as a judge.

Jim Meehan, I practiced law in the same community as Judge Meehan. He was a fine lawyer. He has made a fine judge.

In the Ninth Circuit, Jay Bybee. Jay Bybee was criticized by some as being too idealistic, but his background is superb, an academic, someone who worked not only in academia but worked in various administrations of at least two Presidents. He was approved very quickly and swiftly.

Yesterday, we completed a hearing on Robert Clive Jones to be a district court judge.

We do not need the furor surrounding judicial nominations. We have approved 145 judges. We should work to have bipartisan support of these judges. There are lots of judges who have more conservative ideology who do not draw a lot of attention. One hundred forty-five judges have been approved and three have not been approved.

The victim in this has been Miguel Estrada. Miguel Estrada has stated publicly that he would answer the questions, but we were told by the President's counsel that he was not going to answer the questions. We were told by the President's counsel, Mr. Gonzales, that Mr. Estrada would not be allowed to come forward with the memorandums he had written while in the Solicitor's Office. He was taking directions from the President's lawyer, Mr. Gonzales.

If there is a victim in all this, it is Miguel Estrada—I acknowledge that with the majority—but it is caused by the President and the people surrounding him, not caused by us. All we wanted was to have him answer questions and supply the memo while in the Solicitor's Office.

I heard a statement as I walked in the room saying we have to stop this kind of obstructionism. One hundred forty-five judges are now serving, and we have approved those judges—we have turned down three—but 145 to 3 is not bad. It is overwhelmingly positive.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I hope our colleagues listen carefully to the statement of my friend and colleague from Nevada in outlining the factual

situation regarding the consideration of Mr. Estrada. He states it quite accurately as a member of the Judiciary Committee.

The real issue is whether the Senate is going to perform as our Founding Fathers expected us to perform. Any fair reading of the Constitutional Convention indicates quite clearly until the final few weeks of the Constitutional Convention that appointed power of all United States judges was in the Senate. Only in the last few weeks was the decision made to make it a shared power. It was never understood that we were to be a rubber stamp for anything that the Executive posed in terms of judicial nominees.

The members of the Judiciary Committee in the Senate take that responsibility very carefully and closely. Part of fulfilling the responsibility after the President makes a nomination is for us to make a balanced and informed judgment. In order to make a balanced and informed judgment, we ought to know, the people ought to know, the Senate ought to know the information the White House knows; that the President knows when he is going to make a nomination to the district court, in this case.

When the nominee comes before the Judiciary Committee and says, look, I am quite prepared to share that information, and where Members of the other side of the aisle implore the White House to make that information available so that there could be a complete understanding of the positions taken by Mr. Estrada, and then a movement toward the completion of the nominee, the White House indicated they were not going to comply with that particular request. They are the ones who made the judgment that it was more important for them not to have that information shared than the consideration for the Senate of the United States to make a balanced and informed judgment about the complete positions, understanding, and awareness of this nominee and how they view the Constitution of the United States.

I am very hopeful, as the Senator from Nevada pointed out, since there has been sufficient and overwhelming acceptance of so many of the White House nominees, that in the future we will be able to work out the process so we can have someone who is qualified, someone who can command the kind of strong support in the Senate as so many other nominees have. And, in particular, this is an enormously important court, as the Senator from Nevada knows, the DC Circuit Court. It has very special jurisdiction. The considerations of the rights to workers, those appeals from the NLRB go to the DC Circuit Court. The interpretations of the environmental laws go to the DC Circuit Court. Protections and matters regarding the Patriot Act go directly to the DC Circuit Court.

It has an extremely important role in terms of our whole judicial system which increases the responsibility we

have in ensuring this information about the nominee is going to be available to the American people.

I wish the best to Mr. Estrada. I agree with the characterization of the Senator from Nevada that he has been the victim of the decision made by the White House to refuse to cooperate with the Senate.

DEPARTMENTS OF LABOR,
HEALTH AND HUMAN SERVICES,
AND EDUCATION, AND RELATED
AGENCIES APPROPRIATIONS
ACT, 2004—Continued

Mr. KENNEDY. It is a privilege to join Senator HARKIN on this urgently needed proposal to protect the 40-hour workweek and the right to overtime pay for millions of working men and women. The Bush administration's new regulations are an unfair scheme to prop up business profits by allowing firms across America to reduce their costs by denying overtime protections to more than 8 million hard-working men and women, including 200,000 in my own State of Massachusetts. Police officers, nurses, cooks, clerks, physical therapists, reporters, and many others would be required to work longer hours for less pay.

Our amendment is very clear. It says that no worker now eligible for overtime protections can be denied overtime pay as a result of the new regulation.

With a failing economy, with more than 9 million Americans out of work, with so many other families struggling to make ends meet, cutbacks in overtime pay are a nightmare that no worker should have to bear. Overtime pay now makes up a quarter of their total pay, and the administration's proposal will mean an average pay cut of \$161 a week for them.

Hard-working Americans do not deserve this pay cut, and it is wrong for the administration to force it on them. Overtime protections of the Fair Labor Standards Act have been a fundamental right of this Nation's workers for more than half a century. This basic law was enacted in the 1930s to create a 40-hour workweek. It requires workers to be paid fairly for any extra hours. Especially in times such as these, it is an incentive for job creation because it encourages employers to hire more workers instead of forcing current employees to work longer hours.

The economy has lost more than 3 million private sector jobs since President Bush took office. The Bush administration is wrong to propose regulations that will enable businesses to require their employees to work longer hours and reduce the need to hire additional workers.

According to the congressional General Accounting Office, employees without overtime protection are more than twice as likely to work overtime as those covered by that protection. Americans are working longer hours

today than ever before, longer than in any other industrial nation. At least one in five employees now has a workweek that exceeds 50 hours, let alone 40 hours a week.

We know that employees across America are already struggling hard to balance their family needs with their work responsibilities. Requiring them to work longer hours for less pay will impose an even greater burden to this daily struggle. Protecting the 40-hour workweek is vital to protecting the work/family balance for millions of Americans in communities all across the Nation. The last thing Congress should do is to allow this antiworker administration to make the balance worse than it already is.

Sixty-five years ago the Fair Labor Standards Act was signed into law by President Franklin Roosevelt and established minimum wage and maximum work hours. It was in the midst of the Great Depression, and as President Roosevelt told the country:

... if the hours of labor for the individual could be shortened ... more people could be employed. If minimum wages could be established, each worker could get a living wage.

Those words are as true in 2003 as they were in 1938. Our modern economy has lost more private sector jobs during this economic decline than in any recession since the Great Depression.

What can the administration be thinking when it comes up with such a shameful proposal to deny overtime protections on which millions of workers rely? Congress cannot sit idly by when more and more Americans lose their jobs, their homes, their livelihoods, and their dignity. We will continue to battle to restore jobs, provide fair unemployment benefits, raise the minimum wage, and we will do all we can to preserve the overtime protections of which so many American families depend.

I urge my colleagues to support this essential proposal to keep faith with the Nation's working families.

I wish to take a few moments of the time of the Senate to review what is happening to American workers in relation to other countries around the world. It is reflected in this chart. The red columns indicate the number of hours workers are working and comparing it with other industrialized nations of the world.

As you can see from this chart, American workers are working longer and harder than those in any other industrial nation of the world. That has been a phenomenon that has really developed in the recent times.

This chart shows that U.S. work hours have increased while those in other industrial nations actually decreased. The United States—we see over here the increases; and the decline in other industrial nations. So here we have a workforce that is prepared to work and prepared to work long and hard. Yet we find the administration is attempting to penalize these workers for being willing to work and for working long and hard.

This chart here is "Workers Without Overtime Protections Are More Than Twice As Likely To Work Longer Hours."

What does this chart say? That if the workers do not have the overtime protections, the employers work them more than twice what they would work if they did have the overtime protection. Why is that important? Because this particular proposal is taking away this kind of protection. The result will be that the workforce, which is working longer and harder than that in any other industrial nation in the world, is going to find they are going to have to work even longer and harder to make ends meet. This is true, even if they are working 50 hours a week. Then they are three times as likely to be required to work longer than if they had the overtime protections.

So we have a situation where we see Americans working longer and harder. We have a situation that, if they do not have the overtime protections, they are required by their employers to work twice as hard as those with the overtime protections. In the instances of those who work 50 hours a week, they are required to work three times as hard.

These are the facts. Nearly 3 in 10 employees already work more than 40 hours a week and one in five Americans work more than 50 hours a week. One in five Americans are working more than 50 hours a week. These working Americans don't have the time they need to meet their family responsibilities.

Parents today define that biggest daily challenge as balancing work and family responsibilities and instilling values in their children. When parents have more time to spend with their children, they achieve more academically, improve behavior, and demonstrate lower dropout rates.

This proposal by the administration is an antifamily proposal because it is going to deny essential resources for families to be able to meet their particular needs. The result will be all the additional social problems that impact families that do not have a chance to be together, to stay together, to work together, to pray together, to enjoy each other.

The Fair Labor Standards Act overtime protection works. Workers are compensated time and a half their regular pay for hours worked in excess of the 40 hours per week. That is what the law is. Employers have a financial disincentive to work employees excessive hours. Employers have an incentive to hire more workers instead.

As we see, that is the current law. This is the current employment situation where we see the loss of jobs for more than 3 million American workers over this period of time. So we are finding at the present time our workers are working longer and they are working harder in order to provide for their families. We have the greatest loss of jobs that we have had since the time of the Great Depression.