

“where government moves in, community retreats, civil society disintegrates, and our ability to control our own destiny atrophies.”

How can someone who believes it is not the “job of government to take care of” the American people be entrusted to make fair and neutral decisions when faced with the responsibility of interpreting the powers of the Federal Government and the breadth of regulatory statutes? Justice Brown responded to this question at her hearing by calling on us to review her record as a judge to see that she does not “hate Government.” Well, I did review her record. And, what I found was disturbing: She has used her position on and off the bench to argue for the dismantling of government from the inside out.

It is no small irony that this President, who spoke of being a uniter but has used his position to send judicial nominations that divide the Senate and the country, and who spoke with disdain of “judicial activism,” has nominated several of the most consummate judicial activists ever chosen by any President. None of the President’s nominees is more in the mold of judicial activist than this nominee, Janice Rogers Brown.

I am voting against Justice Brown’s nomination today because the American people deserve judges who will interpret the law fairly and objectively. Janice Rogers Brown is a confirmed and committed judicial activist who has a consistent record of using her position as a member of the court to advocate for her personal belief. We must not enable her to bring her “jurisprudence of convenience” to one of the most important courts in the Nation.

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

The question is, Is it the sense of the Senate that debate on the nomination of Janice R. Brown, of California, to be United States Circuit Judge for the District of Columbia Circuit, shall be brought to a close?

The yeas and nays are mandatory under the rule. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Hawaii (Mr. INOUE), the Senator from Massachusetts (Mr. KERRY), and the Senator from Florida (Mr. NELSON) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote “nay.”

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

The yeas and nays resulted—yeas 53, nays 43, as follows:

[Rollcall Vote No. 452 Ex.]

YEAS—53

Alexander  
Allard  
Allen  
Bennett  
Bond  
Brownback  
Bunning  
Burns  
Campbell  
Chafee  
Chambliss  
Cochran  
Coleman  
Collins  
Cornyn  
Craig  
Crapo  
DeWine

Dole  
Domenici  
Ensign  
Enzi  
Fitzgerald  
Frist  
Graham (SC)  
Grassley  
Gregg  
Hagel  
Hatch  
Hutchison  
Inhofe  
Kyl  
Lott  
Lugar  
McCain  
McConnell

Miller  
Murkowski  
Nelson (NE)  
Nickles  
Roberts  
Santorum  
Sessions  
Shelby  
Smith  
Snowe  
Specter  
Stevens  
Sununu  
Talent  
Thomas  
Voinovich  
Warner

NAYS—43

Akaka  
Baucus  
Bayh  
Biden  
Bingaman  
Boxer  
Breaux  
Byrd  
Cantwell  
Carper  
Clinton  
Conrad  
Corzine  
Daschle  
Dayton

Dodd  
Dorgan  
Durbin  
Feingold  
Feinstein  
Graham (FL)  
Harkin  
Hollings  
Jeffords  
Johnson  
Kennedy  
Kohl  
Landrieu  
Lautenberg  
Leahy

Levin  
Lieberman  
Lincoln  
Mikulski  
Murray  
Pryor  
Reed  
Reid  
Rockefeller  
Sarbanes  
Schumer  
Stabenow  
Wyden

NOT VOTING—4

Edwards  
Inouye

Kerry  
Nelson (FL)

The motion was rejected.

The PRESIDING OFFICER. On this vote, the yeas are 53, the nays are 43. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. STEVENS. Mr. President, I move to reconsider the vote.

Mr. BOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### LEGISLATIVE SESSION

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate return to legislative session.

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

#### MORNING BUSINESS

Mr. STEVENS. Mr. President, I ask unanimous consent we proceed to a period for morning business with Senators permitted to speak therein for up to 10 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Washington.

#### THE UNEMPLOYMENT PROBLEM IN AMERICA

Ms. CANTWELL. Mr. President, we just completed 30 hours of debate on judicial nominees, an obviously important debate for all Members who participated. But it is time for us to address the unemployment problem in America, and the fact that this body

cannot adjourn for the year without passing an unemployment benefit extension.

Many of my colleagues will remember last year we were at this same point, when unemployment benefits were going to expire in December. We had a debate about whether that was necessary to do by the time we adjourned. I can tell you that not a lot has changed in Washington State. We still have 7.6-percent unemployment and a very high level at the national level, at 6 percent. Americans want to know whether they are going to have an extension of those benefits.

During the Bush and Clinton administrations we extended unemployment benefits for an extension of over 30 weeks during that time period because we thought it was important to make sure people were covered. During the economic downturn, unemployment benefits are a stimulus. For every dollar spent on unemployment benefits it generates \$2.15 as far as the economy—that is mortgage payments that can be made, health care benefits that can be extended.

While my colleagues think last year’s solution of coming back in January and fixing this unemployment benefit problem was a solution, I guarantee it was not. Adjourning from here without expanding unemployment benefits is like putting a lump of coal in the stockings of Americans at Christmas-time.

There were individuals in my State who, because of the failure of us acting, really did make economic choices about their future. I had a constituent who took a big chunk out of her pension program at a 30-percent penalty, basically trading her long-term economic future off for short-term returns because we hadn’t given her a commitment on unemployment benefits.

UNANIMOUS CONSENT REQUEST—S. 1853

I ask unanimous consent the Senate proceed to legislative session and the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment benefit insurance for displaced workers, and that the Senate proceed to its immediate consideration, that the bill be read a third time and passed, and the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection? The Senator from Nevada.

Mr. ENSIGN. Reserving the right to object, I ask unanimous consent that I may ask the Senator from Washington a question while reserving my right to object.

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

Mr. ENSIGN. Mr. President, in asking this question, is the Senator from Washington aware, back in 1993 when the Democrats controlled the House, the Senate, and the White House the rate of unemployment was higher than it is today and that every Democrat in the House and the Senate and the President signed a bill to terminate the program when the unemployment rate

was higher? Is the Senator from Washington aware of that fact?

Ms. CANTWELL. I am not aware to what the Senator from Nevada is referring. I know during the Bush and Clinton administrations, with a richer package of 20 weeks after a Federal program on extension, richer than the 13 weeks that we have now, we extended that over a 30-month period of time.

So far this administration has only done that over a 22-month period of time. While we all want the economy to recover, and we all want to put Americans back to work—I guarantee these individuals would rather have a paycheck than an unemployment check—we need to do a better job making sure that we are making a commitment to unemployment benefits before we adjourn for the session.

We just spent all this time debating judicial nominees. I think it was a hardy debate on both sides. But let's give the American people and those who are suffering from unemployment the benefit of knowing that they will get this benefit extension before we adjourn.

Mr. ENSIGN. Mr. President, the fact is, when the Democrats were in control of all three bodies, the Democrats terminated the program of extending unemployment benefits at the Federal level. They terminated the program.

More people were unemployed at that time when they terminated the program. It is good enough today. The economy is recovering. It is producing jobs. Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Pennsylvania.

#### JUDICIAL NOMINATIONS

Mr. SANTORUM. Mr. President, I just want to thank all of the Members, particularly on this side of the aisle, for the terrific level of debate we have seen over the past 40 hours. I was amazed, yesterday, sitting both here and in my office, and seeing Member after Member come to the Senate floor. I have never seen a debate where more of our Members came to the floor to let their views be known to the American public, of how important this issue is to the future of our country, the issue we just voted on, the issue of judicial nominations.

I was stunned. I thought we would have to scurry around and have sort of a core of people who were willing to come to the floor and fill up the time. But for 40 hours, 39-plus hours, we had no problem. In fact, at 5 o'clock in the morning, Senator CHAMBLISS and I were arguing over 5 minutes, who was going to get the extra 5 minutes because there was such enthusiasm for a cause that we felt was just. It was not a small group.

Some in the media suggested that there was some division over here as to whether to take on this strategy. I would say, just look at the response of

our membership. They came to the floor. They came with passion. They came with a conviction that what we were arguing for was the right thing for the country. Maybe it was not the right thing for us politically. We had that debate about having a higher standard for judges, higher than a simple majority, a three-fifths majority, which is now the rule. I think this debate and the votes today have cemented that.

Now the standard will be that you have to have 60 percent of the Senate in order to be a Federal judge. We have made that the rule. So the 214-year history is now gone.

We had a great debate about it. The rule has changed. I thank all who participated on both sides. I thank the staff, the pages, the staff here on the floor—the floor staff, which has been rotating, but even rotating these jobs were not made for three shifts. We don't have three-shift jobs. This is a one-shift operation and they had to work three shifts. They did a great job—the folks in the cloakroom, the Judiciary Committee, all the leadership staff. I particularly thank the staff of the Republican conference—Mark Rogers and Barbara Leeden and Elizabeth Keys, Robert Traynham, Melissa Seckora—all the staff who have worked so hard, holding press conferences in the middle of the night.

Gosh, we had press conferences, 1:30, 2:30, 3:30, 4:30, 5:30, 6:30 in the morning, every hour.

All the outside groups who were concerned about the future of our country and concerned about the future of the judiciary came to Washington. I remember walking in late in the evening on Wednesday evening, and in the rain, in the wind, people lined up outside the Capitol to get into the Capitol to be here on Wednesday night because they knew this was a debate that had real significance because they knew this was a debate that is going to have a place in history.

By affirming what has happened four times before today, now five, now six—that 168-to-4 chart, that 98 percent chart—that is now history; 168 to 6. That is not even accurate because there are 6 more they have said they will filibuster.

Obviously, when the minority leader says there is going to be a filibuster, you get the ducks in a row. They have been able to do that and do it successfully.

So it is now 168 to 12. Of course, we just started that this year. There have only been four, they say. This is the first time it has been done.

It is like a little ball, like dropping a pebble at the top of a large mountain. It shakes lose a couple of other pebbles. Pretty soon, over time this gets to be a boulder, an avalanche that is coming down and is going to hit the judicial branch of our Government.

I predict, if nothing is done to change the rule, the number will be in the hundreds within a couple of years, in the

thousands and the tens of thousands as this country goes forward. Why? Because we have changed the way we consider nominations.

I am going to repeat what I said at the close of the debate because I still hope there is a chance that some Members will reconsider. There are Members on our side who have smiles on their faces, Members who care deeply about issues that are before the court today who have smiles on their faces because they say: Now we have the tool to stop activist judges. Now we have the tools we didn't have before. Now they have to get 60 percent of the vote for the judges, the Richard Paezes of this world and the Marsha Berzons of this world, and those who could come on and replace the document I hold in my hand, the Constitution, with their own view of the world.

What an activist judge is, is a little James Madison, just someone who thinks they can write their own Constitution. Madison didn't have the privilege of having all the knowledge that we have today about what is right and wrong. He didn't have the understanding that so many of our learned jurists have in doing what is right for the American people. So this guy, Madison—it was a pretty good first draft. There are many activist judges who think they can write a better Constitution, and they do so on a regular basis. What Madison thought would change the Constitution is something that is actually in the Constitution, and that is a procedure for amending the Constitution. But a lot of Members on the other side of the aisle don't believe we should have to bother with that rather cumbersome process in this fast-changing world in which we live. It just takes too much time. It is far too much effort. It involves having to convince the American public. Why should we bother with such folly?

We, the enlightened, the intellectuals, those who have reached the pinnacles of our professional occupations, we in the judiciary, we are the ones who should be able to lay out for future generations what should have been done for them.

So this elitist, activist corps—elitist in the most pejorative sense of the word “elitist”—are activist judges who take this document, light a match to it, and throw it away and say: We are a country of people, we are a country of people, not of laws.

That is what we are going to get more of. So what my colleagues believe we can do now is apply the same standard they have applied to Janice Rogers Brown, elected by 76 percent of the vote in the State of California; Priscilla Owen, elected by 84 percent of the people of the State of Texas; Carolyn Kuhl, William Pryor, Charles Pickering, Miguel Estrada—the list goes on and will go on. It will go on.

This is a huge tragedy, what happened here today. The point is, as the Senator from Iowa, Mr. HARKIN, when we came in the Chamber just 40-some