

Mr. LEAHY. Mr. President, if the Senator will yield further for a question, the Senator has stated he realizes Mr. Griffith practiced law illegally, first in one jurisdiction for 3 or 4 years, then in a second jurisdiction for 3 or 4 years, but that he is the President's choice for going on the DC Circuit.

I am sure the Senator is aware that during the last administration, several nominees for that same seat were blocked by pocket filibusters by the Republicans—one was Elana Kagan, who is now the dean of the Harvard Law School. Another was Allen Snyder, a former Supreme Court law clerk to Chief Justice Rehnquist.

I voted against Mr. Griffith because I felt on the second highest court of the land it is not a good example to have a person, whatever his other qualifications might be, who was so cavalier as to practice law illegally in two different jurisdictions.

I ask the Senator, is the Senator aware I did work with the distinguished Chairman of the committee, Senator SPECTER, to allow the hearing to go forward with Mr. Griffith and to allow a vote to go forward without delay in the committee? While I voted against Mr. Griffith because of the practice of law, primarily, and while, I felt concern that Chief Justice Rehnquist's former law clerk and Dean Kagan were blocked by the Republican pocket filibuster, I ask the leader if he understands that I will certainly have no objection nor do I know of any Democrat who would object to moving forward and having a real debate and the up-or-down vote that was denied to a Democratic President's nominees? Does the Senator understand that not withstanding the fact that I would vote against that nominee, I would support him bringing this nomination forward? I suspect he would get a majority of the votes in the Senate.

Mr. REID. Let me say to my friend through the Chair, there is no question that Elana Kagan is qualified—she is the dean of the No. 1 rated law school in the country, No. 1. Yale and Stanford come close, but Harvard is the No. 1 law school in the country. She is the dean of that school. But the Republicans controlled the Judiciary Committee, and they would not allow this woman to come to this floor.

I would love to have had her on the floor so somebody could have filed a cloture motion. I would have loved to vote on that, but they would not even bring that nomination to the floor for a vote. They would not let it come to a vote in the committee, because this woman was eminently qualified, not only by her legal experience and her education, but by her demeanor and personal attitude toward the law. So she would have been really good for the second highest court in the land.

And I say about the other person—

Mr. LEAHY. Allen Snyder.

Mr. REID. Allen Snyder, this man clerked for Chief Justice Rehnquist. Again, there was not even the courtesy

of having a vote in the committee. They come to the floor and cry crocodile tears about up-or-down votes. We would have taken a cloture vote on either one of these people. But they were unwilling to bring this person before the committee or the floor.

So I say to my friend, you are absolutely right, there is a different standard now than there was. We are bringing people to the court. They say there has not been an up-or-down vote. There has been a vote. Every one of President Bush's nominees has come before the Senate for a vote. And I think it is on 69 different occasions that President Clinton had a nominee turned down on even a hearing in the Judiciary Committee, even a vote in the Judiciary Committee, let alone coming to the floor.

So my distinguished friend is absolutely right.

Mr. LEAHY. Mr. President, I ask the distinguished leader through the Chair—

The ACTING PRESIDENT pro tempore. If the Senator from Vermont would suspend for a second. The Chair would remind both the Senators that Senators may yield time for the purposes of a question only.

Mr. LEAHY. I am posing a question.

Mr. REID. I am happy to yield to my friend for a question.

Mr. LEAHY. I would ask if the Senator would yield for the purpose of a question. When we talk about votes, 40 is the threshold on filibusters. Of course, the Senate sets the rules. The Senate could say: You require 95 votes. Or it could say: You require 2 votes. There is nothing magic about 50, 40, 60, or anything else. But be that as it may, I would ask, through the Chair, whether the Senator from Nevada is aware of numerous instances in which Democrats have proceeded to debate and vote on the President's nominees against which there were more than 40 negative votes—I can think of three significant judicial nominations where there were 41 Democratic votes against allowing them to go forward: Timothy Tymkovich was confirmed to the Eighth Circuit although 41 Senators voted against him; Jeffrey Sutton was confirmed to the Sixth Circuit although 41 Senators voted against him; J. Leon Holmes was confirmed to the district court in Arkansas although 46 Senators from both parties voted against him. In addition, Senate Democrats proceeded to debate and vote on the controversial nomination of former Attorney General Ashcroft, who was confirmed although 42 Senators voted against his confirmation; Ted Olson, who was confirmed to be Solicitor General although 47 Senators voted against his confirmation; Victor Wolski, who was confirmed to the Court of Claims although 43 Senators voted against his confirmation.

Most recently, a number of us voted for cloture on the nomination of Stephen Johnson to head the EPA. He was confirmed with only 61 votes in sup-

port. I was one of those who voted for cloture so we could go forward with the President's nomination.

Was the Senator from Nevada aware of all those?

Mr. REID. Mr. President, the answer is yes. As I said earlier, we know the difference between opposing nominees and blocking nominees. I believe this is the time to put all of this behind us. Eight years of President Clinton, four years of President Bush, let's move forward. That is what this proposal is all about. Let's move forward. After we finish that, let's see where we are and see what else we can do. I think it is time to move forward. Again, I have no problem distinguishing between what happened to the 69 Clinton would-be judges who never showed up, never saw the light of day, and all those we have dealt with in the normal process in the 4 years President Bush has been President.

We have been very selective in those we have opposed. We think we are right on every one of them. Hindsight will tell.

This whole dispute is over 5 judges, 5 out of 218. It seems that people of goodwill can agree, as my distinguished friend from Nebraska Senator HAGEL indicated this weekend on television, when he said: We should be able to work this out. We should. The world is watching us. We should not be changing the rules by breaking the rules. We should not do that. I hope the distinguished Senator from Tennessee, the majority leader, my friend, will accept the gesture of goodwill we have made. It is a step in the right direction. I hope we can let bygones be bygones and move forward.

TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 3, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3) to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

Pending:

Inhofe amendment No. 567, to provide a complete substitute.

Salazar amendment No. 581 (to amendment No. 567), to modify the percentage of apportioned funds that may be used to address needs relating to off-system bridges.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. CORNYN. Mr. President, I ask unanimous consent to speak as in morning business.

Mr. LEAHY. Reserving the right to object—I will not object—I ask unanimous consent to follow the Senator from Texas as in morning business.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. REID. Reserving the right to object, would the distinguished Senator from Texas give us a general outline of how long he is going to speak.

Mr. CORNYN. Mr. President, I think maybe 15 minutes.

Mr. REID. Just so we have a general idea. I ask unanimous consent then that the normal 10-minute rule be waived for the distinguished Senator from Texas and that he have up to 15 minutes to speak as in morning business.

Mr. LEAHY. And that I then be recognized for the same amount of time.

The ACTING PRESIDENT pro tempore. The minority leader is reminded there is no 10-minute rule.

Mr. REID. There is no 10-minute rule unless it is ordered.

The ACTING PRESIDENT pro tempore. That is correct.

Mr. REID. We have no morning business today?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. REID. I amend my request to ask unanimous consent that the Senator from Texas be recognized for 15 minutes and the Senator from Vermont be recognized for 15 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Texas.

NOMINATION OF PRISCILLA OWEN

Mr. CORNYN. Mr. President, 4 years ago, the President nominated Texas Supreme Court Justice Priscilla Owen to serve on the United States Court of Appeals for the Fifth Circuit. Justice Owen is an exceptional jurist, a devoted public servant, and an extraordinary Texan. Yet after 4 years, she still awaits an up-or-down vote on the floor of the Senate. Four years today and we are still waiting for a vote.

Although a bipartisan majority of the Senate stands ready to confirm this outstanding nominee, a partisan minority obstructs the process and refuses to allow that vote on her nomination. What is more, the partisan minority now insists, for the first time in history, that she must be supported by a supermajority of 60 Senators rather than the constitutional standard and the Senate tradition of majority vote.

I know Justice Owen personally, having served with her on the Texas Supreme Court for 3 years. She is a distinguished jurist and public servant who has excelled at virtually everything she has set out to do. She was a top graduate of Baylor Law School at the remarkable age of 23 and scored the top score on the Texas bar exam. She entered the legal profession at a time when relatively few women did. After a distinguished record in private practice, she reached the pinnacle of the Texas bar, the Texas Supreme Court. In doing so, she was supported by a larger percentage of Texans than any of her colleagues during her last election, receiving around 84 percent of the vote, after enjoying the endorsement of virtually every newspaper in Texas. She has been honored as the Baylor Young Lawyer of the Year and the Baylor University Outstanding Alumna.

Priscilla Owen enjoys significant bipartisan support. Three Democratic judges on the Texas Supreme Court and a bipartisan group of 15 presidents of the State Bar of Texas support her nomination.

The Houston Chronicle, in September of 2000, called Owen “[c]learly academically gifted,” stating that she “has the proper balance of judicial experience, solid legal scholarship and real-world know-how to continue to be an asset on the high court.”

The Dallas Morning News wrote in support of Owen on September 24, 2002:

She has the brainpower, the experience and temperament to serve ably on an appellate court.

The Washington Post wrote on July 24, 2002:

She should be confirmed. Justice Owen is indisputably well qualified.

Lori Ploeger, Justice Owen’s former law clerk, wrote in a letter to Senator LEAHY on June 27, 2002:

During my time with her, I developed a deep and abiding respect for her abilities, her work ethic, and, most importantly, her character. Justice Owen is a woman of integrity who has profound respect for the rule of law and our legal system. She takes her responsibilities seriously and carries them out diligently and earnestly.

Ms. Ploeger continued:

Justice Owen is a role model for me and for other women attorneys in Texas.

Mary O’Reilly, a lifetime member of the NAACP and a Democrat, in a letter to Senator DIANNE FEINSTEIN, dated August 14, 2002, wrote:

I met Justice Owen in January of 1995, while working with her on the Texas Supreme Court Gender Neutral Task Force . . . I worked with Justice Owen on Family Law 2000, an important state-wide effort initiated in part by Justice Owen . . . In the almost eight years I have known Justice Owen, she has always been refined, approachable, even-tempered and intellectually honest.

Priscilla Owen is not just intellectually capable and legally talented; she is also a fine human being with a big heart. The depth of her humanity and compassion is revealed through her significant free legal work and community activity.

Priscilla has spent much of her life devoting time and energy in service of her community. She has worked to ensure that all citizens are provided access to justice as the court’s representative on the Texas Supreme Court Mediation Task Force and to statewide committees, as well as in her successful efforts to prompt the Texas legislature to provide millions of dollars per year in legal services for the poor. She was instrumental in organizing a group Ms. O’Reilly spoke of known as Family Law 2000 which seeks to find ways to educate parents about the effect divorce can have on children and seeks to lessen the negative impacts it has on them. She also teaches Sunday school at St. Barnabas Episcopal Mission in Austin, TX, where she is an active member.

It is plain from these and so many other examples that Justice Owen is a

fine person and a distinguished leader in the legal community. One would think that after 4 long years, she would be afforded the simple justice of an up-or-down vote. I remain optimistic. While I know the Democratic leader has offered a UC to consider the nomination of one of the justices currently being filibustered, I don’t see why that same principle would not apply to all of the justices, and we would just say that any nominee of any President, whether they be Republican or Democrat, where a bipartisan majority stands ready to confirm them, should receive that up-or-down vote on the Senate floor. I remain hopeful the current 4-year violation of long-term Senate tradition, the imposition of this new supermajority requirement, will be laid aside in the interest of proceeding with the people’s business, a job my colleagues and I were elected to faithfully execute.

For more than 200 years, it was a job that we did indeed execute. Senators from both sides exercised mutual restraint and did not abuse the privilege of debate out of respect for two coequal branches of government—the executive that has the constitutional right to choose his or her nominees and an independent judiciary. Indeed, until 4 years ago, colleagues on both sides of the aisle have consistently opposed the use of the filibuster to prevent nominees from receiving an up-or-down vote where they clearly had bipartisan majority support.

Senator KENNEDY, the distinguished senior Senator from Massachusetts, said in 1998:

Nominees deserve a vote. If our . . . colleagues don’t like them, vote against them. But don’t just sit on them—that is obstruction of justice.

And Senator LEAHY, the distinguished ranking member of the Judiciary Committee, who was just on the floor, said in 1998:

I have stated over and over again on the floor that I would refuse to put an anonymous hold on any judge; that I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported; that I felt the Senate should just do its duty.

I could not agree more with these comments made by Senator LEAHY and Senator KENNEDY. But today we are doing a disservice to this fine nominee in our failure to afford her that up-or-down vote that they advocated a few short years ago. The new requirement this partisan minority is now imposing, that nominees won’t be confirmed without support of 60 Senators, is, by their own admission, wholly unprecedented in Senate history.

The reason for this is simple: The case for opposing this fine nominee is so weak that using a double standard and changing the rules is the only way they can defeat her nomination. What is more, they know it, too.

Before her nomination got caught up in this partisan fight, the ranking Democrat on the Judiciary Committee

predicted that Justice Owen would be swiftly confirmed. On the day of the announcement of the first group of nominees, 4 years ago, including Owen, he said he was "encouraged" and that "I know them well enough that I would assume they would all go right through."

Notwithstanding the change of attitude by the partisan minority, this gridlock is not really about Priscilla Owen, certainly not about Priscilla Owen the person. Indeed, just a few weeks ago, the Democratic leader announced that Senate Democrats would give Justice Owen an up-or-down vote, albeit only if other nominees were defeated or withdrawn or simply thrown overboard.

Obviously, this debate is not about principle. It is all about politics. It is shameful. Any fair examination of Justice Owen's record demonstrates how unconvincing the critics' arguments are.

For example, Justice Owen is accused of ruling against injured workers, against those seeking relief from employment discrimination, and other sympathetic parties on some occasions. Never mind, however, that good judges such as Judge Owen do their best to follow the law regardless of which party will win and which party will lose. Never mind that many of her criticized rulings were unanimous or near unanimous decisions of a nine-member Texas Supreme Court. Never mind that many of these rulings simply followed Federal precedent authored and agreed to by appointees of Presidents Carter and Clinton or by other Federal judges unanimously confirmed by the Senate. Never mind that judges often disagree, especially when the law is ambiguous and requires careful and difficult interpretation.

The Democratic leader raised the frequent objection and that is criticized Justice Owen for attempting to interpret and enforce a popular Texas law requiring parental notification before a minor can obtain an abortion. Her opponents allege that in one parental notification case, then-Justice Alberto Gonzales accused her of judicial activism. That charge is untrue. I read myself the opinions again this weekend and the charge is simply untrue. Gonzales did not accuse Owen of judicial activism. Not once did he say Justice Owen was guilty of judicial activism. To the contrary, he never mentioned her name or her opinion in the opinion the critics cite.

Furthermore, our current Attorney General has since testified under oath that he never accused Owen of any such thing. What is more, the author of the parental notification law in question supports Justice Owen, as does the pro-choice Democratic law professor who was appointed to the Texas Supreme Court's advisory committee to implement that law. In other words, Owen simply did "what good appellate judges do every day. If this is activism, then any judicial interpretation of a statute's terms is judicial activism."

Mr. President, I ask unanimous consent this letter be printed in the RECORD at the close of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1).

Mr. CORNYN. The American people know a controversial ruling when they see one, be it the redefinition of a traditional institution such as marriage, the expulsion of the Pledge of Allegiance, and other expressions of faith from the public square, the elimination of the "three strikes and you're out" law, and other penalties for convicted criminals, or the forced removal of military recruiters from college campuses. Justice Owen's rulings fall nowhere near this standard or category. There is a whole world of difference between struggling to interpret the ambiguous expressions of a legislature and refusing to obey a legislature's directives altogether.

It is clear Justice Owen deserves the broad bipartisan and enthusiastic support she obviously enjoys across the political spectrum. It is equally clear her opposition comes only from a narrow band on the far left fringes of that political spectrum. If the Senate were merely to observe 200 years of consistent Senate and constitutional tradition dating back to our Founders, there would be no question about her ability to be confirmed. She would be sitting on the Fifth Circuit Court of Appeals.

Legal scholars across the political spectrum have long concluded what we in this body know instinctively, and that is to change the rules of confirmation as a partisan minority has done badly politicizes the judiciary and hands over control of the judiciary to special interest groups. One Professor Michael Gerhardt, who advises Senate Democrats on judicial confirmation, has written that a supermajority requirement for confirming judges would be "problematic, because it creates a presumption against confirmation, shifts the balance of power to the Senate, and enhances the power of special interests."

DC Circuit Judge Harry Edwards, a respected Carter appointee, has written that the Constitution forbids the Senate from imposing a supermajority rule for confirmation. After all, otherwise, "the Senate, acting unilaterally, could thereby increase its own power at the expense of the President" and "essentially take over the appointment process from the President." Judge Edwards thus concluded that "the framers never intended for the Congress to have such unchecked authority to impose supermajority voting requirements that fundamentally change the nature of our democratic process."

Mr. President, I think I have about 5 more minutes of my remarks. I ask unanimous consent that I be given an additional 5 minutes and the Senator from Vermont be given the same.

Mr. LEAHY. I have no objection.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CORNYN. I thank the Chair. I thank the Senator from Vermont.

Georgetown Law Professor Mark Tushnet has written that "the Democrats' filibuster is a repudiation of a settled preconstitutional understanding." He has also written, "There's a difference between the use of the filibuster to derail a nomination and the use of other Senate rules—on scheduling, on not having a floor vote without prior committee action, etc.—to do so. All those other rules can be overridden by a majority of the Senate whereas the filibuster cannot be overridden in that way. A majority of the Senate could ride herd on a rogue Judiciary Committee chair who refused to hold a hearing on some nominee; it can't do that with respect to a filibuster."

Georgetown Law Professor Susan Bloch has condemned supermajority voting requirements for confirmation, arguing that they would allow the Senate to "upset the carefully crafted rules concerning appointment of both executive officials and judges and to unilaterally limit the power the Constitution gives the President in the appointment process. This, I believe, would allow the Senate to aggrandize its own rules and would unconstitutionally distort the balance of powers established by the Constitution."

In summary, the record is clear. The Senate tradition has always been majority vote, at least up until the last 4 years. The desire by some to alter that Senate tradition has been roundly condemned by legal experts across the political spectrum. And now the 100 Members of this body have a decision to make. Do we accept this dramatic and dangerous departure from 200 years of Senate precedent or do we work to restore the tried and true Senate tradition and practice?

I know the majority leader and, indeed, the Democratic leader have been working trying to find a way. I prefer, though, a way that would allow our nominees, all nominees, whether they be Republican or Democrat, to receive an up-or-down vote where a majority of the Senate stands ready to confirm them. I believe we should choose collaboration over contention any day of the week, if possible. But bipartisanship is a two-way street. Both sides must agree to certain fundamental principles and the most fundamental principle is fairness. Fairness means the same rules apply, the same standards, whether the President is a Republican or Democrat. But bipartisanship is difficult when long-held understandings and the willingness to abide by basic agreements and principles have unraveled so badly. When fairness falters, bipartisanship, too, will fail.

So I ask my colleagues what are we to do when these basic principles, commitments, and understandings have been so badly trampled upon? What are

we to do when nominees are attacked for doing their jobs, when they are attacked for following precedents adopted and agreed to by Presidents Carter and Clinton, and when they are singled out for rulings agreed to by a unanimous, or near unanimous court? What are we to do when these nominees are demonized and caricatured beyond recognition, when they are condemned as unqualified while at the same time they are deemed unanimously well qualified by organizations Democrats used to revere? What are we to do when Senate and constitutional traditions are abandoned for the first time in more than two centuries, when both sides once agreed nominees should never be blocked by filibuster and then one side denies the existence of that very agreement, when their interpretation of Senate tradition changes based on who is in the Oval Office?

It is time to fix the broken judicial confirmation process. It is time to end the blame game and fix the problem and move on. And it is time to end the wasteful and unnecessary delay in the process of selecting judges that hurts our justice system and harms all Americans.

Mr. President, I thank the Chair. I thank my colleague from Vermont and yield the floor.

EXHIBIT 1

SOUTHERN METHODIST UNIVERSITY,
Dallas, TX, May 3, 2005.

Re Priscilla Owen

Senator JOHN CORNYN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR CORNYN: I write in support of the nomination of Priscilla Owen to the United States Court of Appeals for the Fifth Circuit. I write as a law professor who specializes in constitutional law. I write as a pro-choice Texan, who is a political independent and has supported many Democratic candidates. And I write as a citizen who does not want the abortion issue to so dominate the political debate that good and worthy judicial candidates are caught in its cross hairs, no matter where they stand on the issue.

Justice Owen deserves to be appointed to the Fifth Circuit. She is a very able jurist in every way that should matter. She is intelligent, measured, and approaches her work with integrity and energy. She is not a judicial activist. She does not legislate from the bench. She does not invent the law. Nothing in her opinions while on the Texas Supreme Court could possibly lead to a contrary conclusion, including her parental notification opinions. I suspect that Priscilla Owen's nomination is being blocked because she is perceived as being anti-choice on the abortion issue.

This perception stems, I believe, from a series of opinions issued by the Texas Supreme Court in the summer of 2000 interpreting the Texas statute that requires parental notification prior to a minor having an abortion. The statute also provides for what is called a "judicial bypass" to parental notification. Justice Owen wrote several concurring and dissenting opinions during this time. She has been criticized for displaying judicial activism and pursuing an anti-choice agenda in these opinions. This criticism is unfair for two reasons.

First, the Texas statute at issue in these cases contains many undefined terms. Fur-

ther, the statutory text is not artfully drafted. I was a member of the Texas Supreme Court's Advisory Committee that drafted rules in order to help judges when issuing decisions under this parental notification statute. My involvement in this process made it clear to me that in drafting the parental notification statute, the Texas Legislature ducked the hard work of defining essential terms and placed on the Texas courts a real burden to explicate these terms through case law.

Moreover, the statute's legislative history is not useful because it provides help to all sides of the debate on parental notification. Several members of the Texas Legislature wanted a very strict parental notification law that would permit only infrequent judicial bypass of this notification requirement. But several members of the Texas Legislature were on the other side of the political debate. These members wanted no parental notification requirement, and if one were imposed, they wanted courts to have the power to bypass the notification requirement easily. The resulting legislation was a product of compromise with a confusing legislative history.

In her decisions in these cases, Justice Owen asserts that the Texas Legislature wanted to make a strong statement supporting parental rights. She is not wrong in making these assertions. There is legislative history to support her. Personally, I agree with the majority in these cases. But I understand Justice Owen's position and legal reasoning. It is based on sound and clear principles of statutory construction. Her decisions do not demonstrate judicial activism. She did what good appellate judges do every day. She looked at the language of the statute, the legislative history, and then decided how to interpret the statute to obtain what she believed to be the legislative intent.

If this is activism, then any judicial interpretation of a statute's terms is judicial activism. Justice Owen did not invent the legislative history she used to reach her conclusion, just as the majority did not invent their legislative history. We ask our judges to make hard decisions when we give them statutes to interpret that are not well drafted. We cannot fault any of these judges who take on this task so long as they do this work with rigor and integrity. Justice Owen did exactly this.

Second, we must be mindful that the decisions for which she is being criticized had to do with abortion law. I do not know if Justice Owen is pro-choice or not, but it does not matter to me. I am pro-choice as I stated before, but I would not want anyone placed on the bench who would look at abortion law decisions only through the lens of being pro-choice. Few categories of judicial decisions are more difficult than those dealing with abortion. A judge has to consider the fact that the fetus is a potential human, and this potential will be ended by an abortion. All judges, including those who are pro-choice, must honor the spiritual beauty that is potential human life and should grieve its loss. But a judge has other important human values to consider in abortion cases. A judge also has to consider whether a woman's independence and rights may well be unconstitutionally compromised by the arbitrary application of the law. All this is further compounded when a minor is involved who is contemplating an abortion. I want judges who will make decisions in the abortion area with a heavy heart and who, therefore, will make sure of the legal reasoning that supports such decisions.

I think the members—all the members—of the Texas Supreme Court did exactly this when they reached their decisions in the parental notification cases. I was particularly

struck by the eloquence of Justice Owen when she discussed the harm that may come to a minor from having an abortion. She recognized that the abortion decision may haunt a minor for all her life, and her parents should be her primary guides in making this decision. Surely, those of us who are pro-choice have not come to a point where we would punish a judge who considers such harm as an important part of making a decision on parental notification, especially when legislative history supports the fact that members of the Texas Legislature wanted to protect the minor from this harm. As a pro-choice woman, I applaud the seriousness with which Justice Owen looked at this issue.

If I thought Justice Owen was an agenda-driven jurist I would not support her nomination. Our founders gave us a great gift in our system of checks and balances. The judicial branch is part of that system, and it is imperative that it be respected and seen as acting without bias or predilection, especially since it is not elected. Any agenda-driven jurist—no matter the issue—threatens the honor accorded the courts by the American people. This is not Priscilla Owen. So even though I suspect Justice Owen is more conservative than I am and even though I disagree with some of her rulings, this does not change the reality that she is an extremely well-qualified nominee who should be confirmed.

It would be unfair to place Priscilla Owen in the same category with other nominees who, in my opinion, are judicial activists and who I do not support. Some of these other nominees appear to want to dismantle programs and policies based on a political or economic agenda not supported by legal analysis or constitutional history. They appear to want to push their views on the country while sitting on the bench. Priscilla Owen should not be grouped with them. Justice Owen possesses exceptional qualities that have made and will make her a great judge. I strongly urge her confirmation.

Sincerely,

LINDA S. EADS,
Associate Professor of Law.

Mr. WYDEN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Vermont is recognized under unanimous consent.

Mr. LEAHY. Mr. President, I understand the Senator from Oregon wishes to make a unanimous consent request.

Mr. WYDEN. Mr. President, I ask unanimous consent to speak in morning business after the distinguished Senator from Vermont has completed his remarks.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. CORNYN. Reserving the right to object, I would ask the Senator through the Chair whether he would agree Senator LOTT be recognized to speak after the Senator from Oregon on the same basis. He also apparently wishes to come to the floor and speak.

The ACTING PRESIDENT pro tempore. Would the Senator so modify his request.

Mr. WYDEN. I would modify my request, Mr. President, that after the distinguished Senator from Vermont has completed his remarks, I would be next for 20 minutes, and the Senator from Mississippi, Mr. LOTT, would come after me.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from Vermont.

Mr. LEAHY. Mr. President, could the Senate always be so agreeable in moving things along, we in the country would be better off.

I listened to this discussion of nuclear option and judges and all that. It may seem arcane. There is nothing in the Constitution that says 50 votes or 40 votes or 60 votes or 80 votes. It is up to the rules of the Senate. It is when the rules are either reviewed or ignored that you have a problem. As I mentioned earlier today, when President Clinton was in office, the Republicans used the rules to say if one Republican, one objected, then you would not have a vote on the nominee. 61 of President Clinton's nominees for judgeships were not allowed to move because one Republican objected. Actually a couple hundred of his executive nominations, by the same token, because one Republican objected. So there they are requiring 100 votes to confirm somebody.

So you wonder when you are talking about a tiny handful of judges—and no President in history, from George Washington on, has ever gotten all judges through the Senate—why there is so much attention on this. I was thinking about it and I thought, you know, this all began about 4 years ago when we started talking about this. Four years ago things were a lot different in this country. Let's look at the differences.

In the last 4 years—and maybe this is why they would rather talk about judges instead of talking about what's going on—in the last 4 years under President Bush, unemployment has gone up 26 percent. During this same time, this last 4 years, the price of gas has gone up 57 percent. You can hold hands with all the Saudi princes you want, but it has still gone up. The number of uninsured in this country has gone up 10 percent. The budget deficit has gone up \$50 billion. Actually, President Bush inherited the largest budget surplus of any President in the history of the United States. President Clinton had followed the Reagan and Bush administrations, which tripled the national debt and created huge deficits. President Clinton's administration not only balanced the budget, but created a surplus, and started paying down the debt. President Bush inherited the largest surplus of any President in our whole history and he has turned it into the largest deficit.

Then there is the trade deficit. That has gone up 69 percent. I mention these things that have gone up under the Bush Presidency. Obviously they don't want to talk about it. It means the Saudis and the Chinese, Japanese, Koreans, and others who are holding our debt thus influence our foreign policy.

We will not just be holding hands with Saudi princes, we will probably be holding hands with everybody from all these other countries, too, so they do not call our IOUs.

During those 4 years, unemployment has gone up by 26 percent, the price of gas has gone up by 57 percent, the num-

ber of uninsured Americans has gone up by 10 percent, the budget deficit has increased by \$350 billion, and the trade deficit has gone up by 69 percent. But there is one indicator that has shown improvement: the number of judicial vacancies has dropped 48 percent.

So why are they complaining they are not getting enough judges? During those 4 years of President Bush's Presidency, the number of judicial vacancies has gone way down because we confirmed so many judges. In fact, 4 years ago, the vacancy rate in our Federal courts was nearly 10 percent, and now it is around 5 percent. Mr. President, 95 percent of the Federal judiciary is filled. Most people would consider 95 percent a pretty good record.

I remember talking with President Bush 4 years ago. I said: You might get 90, 95 percent of your judges through. He thought that was pretty good. He wished he had a record like that when he owned a baseball team.

Four years ago today, I went to the White House in a gesture of cooperation to hear the President announce his first judicial nominations. Some criticized me for going, but I said I wanted to help. The President, during his campaign, said he wanted to be a uniter, not a divider, and now was the time to do so, and I said I would help.

Unfortunately, that is not what President Bush had in mind. The nominations he announced that spring day 4 years ago were largely controversial, confrontational choices. Typically, when a President—Republican or Democrat—selects nominations to the circuit courts, he consults at length with home State Senators and the Senate leadership to be sure those selected will be considered favorably by the Senate. This President has not done that. In fact, President Clinton, his predecessor, and his White House Counsel and staff were in regular contact with the Republican leadership. Senator HATCH talked in his book about how much President Clinton consulted with the Republicans.

Instead, here my Republican colleagues say: No, we do not want the checks and balances of the Senate; we do not want an independent, non-partisan judiciary; we are going to put a Republican stamp on the judiciary.

Remember, the Federal judiciary should not be Democratic or Republican, it should be independent and free of political pressure.

They say: No, we cannot do that. We will break all the rules possible and make sure that we get rid of checks and balances.

This effort by the Republicans also, of course, belies what has happened. Back 4 years ago in June, with the change in the Senate, I became chairman of the Senate Judiciary Committee. Even though it was already June and the Republicans had been in charge since the beginning of the year, there had not been a single judicial nomination hearing held on President Bush's nominations. I inherited what

seemed to be an impossibly large number of 110 vacancies. There were so many because, of course, there had been pocket filibusters of over 60 of President Clinton's nominations. But we worked hard, and in 17 months we were able to whittle that number down to 60 vacancies.

Incidentally, it is interesting that with the Republican majority, look how the vacancies skyrocketed in the judiciary. The Democrats came in and they shot down. Now, of course, they are heading back up under Republican leadership.

It takes a lot of work to lower the number of vacancies. I held hearings during recess periods and confirmed President Bush's nominees. Senator Daschle and I received a deadly anthrax attack, so deadly that people who touched the outside of the envelopes of letters addressed to us that we were supposed to open were killed. They were murdered, and we still held the hearings. We held hearings in the aftermath of the 9/11 attacks when the airlines were shut down. We had a nominee volunteer to drive from Mississippi to Washington to be included in a hearing I was holding. We had the anthrax attacks, the PATRIOT Act, and all the rest, and we kept on going, and in 17 months we confirmed 100 of President Bush's judges.

The Republicans took nearly twice as long when they were in control to confirm the same number of judges for President Bush. They say we are the ones holding things up? They ought to be ashamed of themselves. Maybe they ought to work as hard as we did to get them through. In fact, when Congress adjourned last December, there were only 27 vacancies out of 875 Federal judgeships, the lowest number in over a generation. In President Bush's first term, 204 judges were confirmed—more than confirmed in either of President Clinton's two terms, more than during the term of the President's father, more than in Ronald Reagan's first term when he had a Republican Senate. We confirmed a couple more nominees before we broke a week ago, and the distinguished Democratic leader has suggested we bring up another one of President Bush's nominees for a vote.

We have seen the talking points that have come out from the Republicans. They say we are holding up Thomas Griffith. The record is clear that I have—we have objected to him. After all, he did practice law illegally for 4 years in one jurisdiction and practiced law illegally in another jurisdiction, and the President wants to put him on the second highest court in the land. We said that should be an impediment. In any other administration, it would be an impediment. They want to go forward with him. The record is equally clear that I do not intend to support a filibuster of this nomination.

The distinguished Democratic leader said: Fine, bring him up. We will give you a time agreement and vote on it. He will either be confirmed or will not

be confirmed. If he is confirmed, it shows what the standards are of this administration.

We can look at all the people turned down on the other side, but we never heard this complaint. We are prepared to move forward on Mr. Griffith's nomination despite the fact that the Republicans pocket filibustered 61 of President Clinton's nominees, even though those nominees included the current dean of Harvard Law School, a former attorney general from Iowa, a former clerk to Chief Justice Rehnquist, women, men, Hispanics, African Americans, and many others.

We heard talks about Judge Owen this afternoon. One of her opinions was criticized by Alberto Gonzales when he served on the Texas Supreme Court. However, we held a hearing for her, a very fair hearing. The Senator from California, Mrs. FEINSTEIN, conducted it. It was acknowledged by both Republicans and Democrats as being totally fair. She was voted down in the committee, and for the first time in history, a nominee voted down in committee was resubmitted by the President.

This is not a time to be breaking the rules of the Senate. The rules are there because we want a check and balance. That is all we are saying. For example, a home State newspaper of one of the nominees referred to a speech she gave recently that sounded as if it came from an Islamic jihadist, a very activist judge, who believes that child labor laws, minimum wage laws, even Social Security represent something wrong in this country. I am not really sure that is the sort of person we want on the bench making decisions about child labor laws, Social Security, and minimum wage.

Let's forget this end justifies the means. Let the Senate be what it always has been: A check and balance, whether it is a Democratic President or Republican President, a real check and balance but an honest one.

Do away with anonymous holds. I said that before. Do away with the secret one-person filibuster. I know the distinguished Senator from Oregon has spoken consistently that way, I believe from the very first day he entered this great body. Do away with the anonymous holds. Do away with those things, but follow the Senate rules. Do not violate the rules. Do not let us, those who are supposed to judge the judges, break our own laws and our own rules.

As I have noted, 4 years ago today, on May 9, 2001, I went to the White House in a gesture of cooperation to hear the President announce his first judicial nominations. Some criticized me for going, but I wanted to indicate my willingness to work with the new President. After all, during the campaign he had told the American people he wanted to be a uniter, not a divider. He had lost the popular vote in a much-disputed 2000 election, and the country was deeply divided. I hoped that he would be a President who would under-

stand the need to work across the aisle and to bring people together and to consult with both Democratic and Republican Senators. I thought that judicial nominations, particularly those to the important circuit courts where Republicans had prevented almost two dozen of President Clinton's qualified and moderate nominees from being considered, would be a good place to start.

Unfortunately, that was not what President Bush had in mind. The nominations that President Bush announced that spring day, years ago, were largely controversial, confrontational choices. Although I was then the Ranking Democratic Member of the Senate Judiciary Committee, and was soon to become the Committee's Chair, the White House had not reached out to discuss any of these controversial nominees beforehand. By and large, home-state Senators had not been consulted about the nominees, nor had any sort of bipartisan, independent group of attorneys or legal scholars. That was the President's choice and has, unfortunately, remained his way of identifying and selecting nominees to be lifetime judicial appointments to the federal bench. This White House appears to rely on a tight circle of Federalist Society members, Republican Party activists and law professors steeped in ideology. This President has nominated what may be the most ideological-driven group of nominees ever presented to the Senate at one time.

Typically, when a President selects nominations to the circuit courts, he consults at length with home-state Senators and the Senate leadership to ensure that those selected will be considered favorably by the Senate and confirmed. That has not been the true with this Administration. By way of example, I cannot recall a single occasion during which this President picked up the phone to discuss these judicial nominations during the entire four and a half years that he has been President—not at the beginning of his Administration, not during the 17 months that I chaired the Senate Judiciary Committee, and not since.

That stands in sharp contrast to traditional practice dating back to George Washington and, in particular, to the manner in which President Clinton had worked with Senator HATCH when he was the Ranking Minority Member of the Senate Judiciary Committee or its Chair. Not only were President Clinton, his White House Counsel and his staff in regular contact with Senator HATCH and his staff; with respect to the most important nominations, the President and he had direct, meaningful consultation. In his book, "Square Peg," for example, Senator HATCH wrote that he "had several opportunities to talk privately with President Clinton about a variety of issues, especially judicial nominations."

He described how, when the first Supreme Court vacancy arose during the Clinton presidency in 1993, "it was not

a surprise when the President called to talk about the appointment and what he was thinking of doing." Senator HATCH went on to describe that the President was thinking of nominating someone who would require a "tough, political battle" but that he advised President Clinton to consider other candidates.

According to his book, Senator HATCH suggested then-D.C. Circuit Judge Ruth Bader Ginsburg, as well as then-First Circuit Judge Stephen Breyer. They were nominated to fill the vacancies that arose on the Supreme Court in 1993 and 1994. Both were approved by the Senate with strong, bipartisan support. Justice Ginsburg was confirmed by a vote on 96-3. Justice Breyer was confirmed by a vote of 87-9.

That sort of consultation did not occur before this President's initial nominations were made 4 years ago, and I am sorry it did not.

Sadly, this lack of consultation was not just the situation for these first nominations, it has continued to this day. Senate Democrats have not stopped trying to offer the advice called for by the Constitution and have never stopped being available to help in the selection process. Just a few weeks ago, on April 11, the Democratic Leader and I wrote to the President offering to help with the more than two dozen current judicial vacancies for which the President has not yet sent a nomination to the Senate. We urged him to disavow the "nuclear option" in favor of working with us to identify consensus judicial candidates who could be confirmed easily and who would be fair, impartial judges that would preserve the independence of the judiciary. The number of current judicial vacancies without a nominee has since risen to 29. It is now May, we are more than a third of the way through the year, and the President has still sent only one new judicial nomination to the Senate all year. Meanwhile almost a month has passed and Senator REID and I have yet to receive the courtesy of a reply to our offer to help and to work together. Unilateralism has become their standard operating practice, and abuse of power has become increasingly common. Indeed, to this day I have yet to meet, talk to or even receive a telephone call from the President's new White House Counsel. The go-it-alone conduct of this Administration makes clear that this President has little use of the Senate's role in the constitutional process of selecting federal judges.

Under pressure from the White House, over the last 2 years, the former Republican chairman of the Judiciary Committee led Senate Republicans in breaking with longstanding precedent and Senate tradition. With the Senate and the White House under control of the same political party we have witnessed Committee rule after Committee rule broken or misinterpreted away. The Framers of the Constitution

warned against the dangers of such factionalism, undermining the structural separation of powers. Republicans in the Senate have utterly failed to defend this institution's role as a check on the President in the area of nominations. It surely weakens our constitutional design of checks and balances.

As I have detailed elsewhere, the list of broken rules and precedents is long—from the way that home-state Senators were treated, to the way hearings were scheduled, to the way the Committee questionnaire was unilaterally altered, to the way the Judiciary Committee's historic protection of the minority by Committee Rule IV was repeatedly violated. In the last Congress, the Republican majority of the Judiciary Committee destroyed virtually every custom and courtesy that had been used throughout Senate history to help create and enforce cooperation and civility in the confirmation process.

We suffered through 3 years during which Republican staff stole Democratic files off the Judiciary computers during what has been a "by any means necessary" approach. Their approach to our rules and precedents follows their own partisan version of the Golden Rule, which is that "he with the gold, rules." That has not been helpful to the process, the Senate or the country. It is as if those currently in power believe that that they are above our constitutional checks and balances and that they can reinterpret any treaty, law, rule, custom or practice they do not like or they find inconvenient.

Some of these interpretations are so contrary to well-established understandings that it is like we have fallen down the rabbit hole in "Alice in Wonderland." I am reminded that the imperious Queen of Hearts rebuked Alice for having insufficient imagination to believe contradictory things, saying that some days she had believed six impossible things before breakfast. I have seen things I thought impossible on the Judiciary Committee during the last few years, things impossible to square with the past practices of Committee and the history of the Senate. Our Committee is entrusted by the Senate to help determine whether judicial nominees will follow the law. It is unfortunate that the Committee that judges the judges has not followed its own rules but has bent or broken them to achieve a predetermined result.

Under our Constitution, the Senate has an important role in the selection of our judiciary. The brilliant design of our Founders established that the first two branches of government would work together to equip the third branch to serve as an independent arbiter of justice. As columnist George Will once wrote:

A proper constitution distributes power among legislative, executive and judicial institutions so that the will of the majority can be measured, expressed in policy and, for the protection of minorities, somewhat limited.

The structure of our Constitution and our own Senate rules of self-governance are designed to protect minority rights and to encourage consensus. Despite the razor-thin margin of recent elections, the majority party is not acting in a measured way but in complete disregard for the traditions of bipartisanship that are the hallmark of the Senate. It has acted to ignore precedents and reinterpret longstanding rules to its advantage. This practice of might makes right is wrong.

Now the White House's hand-picked majority leader seems intent on removing the one Senate protection left for the minority, the protection of debate in accordance with the longstanding tradition of the Senate and its Standing Rules. In order to remove the last remaining vestige of protection for the minority, the Republican majority is poised to break the Senate Rules and end the filibuster with the votes of the barest of majorities. They seem intent on doing this to force through the Senate this President's most controversial and divisive judicial nominees.

As the Reverend Martin Luther King wrote in his famous Letter from a Birmingham Jail: "Let us consider a more concrete example of just and unjust laws. An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not make binding on itself. This is difference made legal. By the same token, a just law is a code that a majority compels a minority to follow and that it is willing to follow itself. This is sameness made legal." Fair process is a fundamental component of the American system of law. If we cannot have a fair process in these halls or in our courts, how will the resulting decisions be viewed? If the rule of law is to mean anything it must mean that it applies to all equally.

In the last Congress, I am sorry to report that the rule of law was broken, spindled and mutilated to serve the interests of President George W. Bush and his party. No man and no party should be above the law. That has been one of the strengths of our democracy. Our country was born in reaction to the autocracy and corruption of King George, and we must not forget our roots as a nation of both law and liberty. The best guarantee of liberty is the rule of law, meaning that the decisions of government are not arbitrary and that rules are not discretionary or enforced to help one side and then ignored to aid another. James Madison, one of the Framers of our Constitution, warned in Federalist Number 47 of the very danger that is threatening our great nation, a threat to our freedoms from within:

[The] accumulation of all powers legislative, executive and judiciary in the same hands . . . may justly be pronounced the very definition of tyranny.

Our freedoms as Americans are the fruit of too much sacrifice to have the

rules broken in the United States Senate by a party colluding with the White House to try to appoint loyalists to courts who have been chosen with the hope that they will re-interpret precedents and overturn the very laws that have protected our most fundamental rights as Americans. The American people deserve better than we have seen with the destruction of rule after rule by a majority willing to sacrifice the role of the Senate as a check and balance in order to aid a President determined to pack the federal courts.

How does the record of judicial confirmations for President George W. Bush compare to administrations before his? Very well. In President Bush's first term, the 204 judges confirmed were more than were confirmed in either of President Clinton two terms, more than during the term of this President's father, and more than in Ronald Reagan's first term when he was being assisted by a Republican majority in the Senate. With the four judges confirmed so far this year, the total number of confirmations of this President's judicial nominees has risen to 208. It would rise further and faster yet, if the White House would only work with us to identify qualified, consensus nominees for the 29 current vacancies without a nominee. The President has sent only one new nominee to the Senate so far this year, and it is already May. If the President wanted to pick judges instead of fights, he could work with us rather than divide us.

And what happened to those 11 nominees the President started us off with 4 years ago? Considering the strong ideological bent of this group, the President has been quite successful. One has been withdrawn from consideration and 8 of the remaining 10 have been confirmed, 80 percent. The confirmations of Clinton circuit court nominees during his second term, from 1997-2000, while a Republican Senate majority was in control, were nowhere near as successful. Over those 4 years 35 of 51 Circuit Court nominees were confirmed, 69 percent.

If we looked at 1999 and 2000, the 106th Congress, the numbers are even worse. Fewer than half of the President's circuit court nominees were confirmed, 15 of 34. Outstanding and qualified nominees were never allowed a hearing, a committee vote or Senate consideration of any kind. These nominees include the current dean of the Harvard Law School, a former attorney general from Iowa, a former clerk to Chief Justice Rehnquist and many others—women, men, Hispanics, African Americans, a wide variety of qualified nominees.

So on this anniversary, let us understand that 8 of the 10 nominees we will hear complaints about have been confirmed.

With respect to the remaining two, I should note that in the years that Republicans held the Senate majority and Senator HATCH was the committee chair, Judge Terry Boyle was one of

the very few nominees he chose not to consider. Thus, Judge Boyle is still before the Judiciary Committee. Senator SPECTER held a hearing on that controversial nomination and the committee is still receiving copies of Judge Boyle's unpublished opinions for its review.

The remaining nominee is one whose opinions were criticized by Alberto Gonzales when he served on the Texas Supreme Court with her. Indeed, many of her positions were too conservative and activist for her conservative Republican colleagues on the Texas Supreme Court. When I chaired the committee in 2002, in another gesture of good will, I proceeded on a number of controversial nominations in spite of the recent mistreatment of President Clinton's nominees. One of those hearings was for Priscilla Owen.

I was not required to schedule that hearing. I could have followed the example of my immediate predecessor and denied her consideration before the committee. It would have been a much easier path than the alternative I chose. Instead, I proceeded. Senator FEINSTEIN conducted the hearing in a fair manner. After the hearing, I then did something else that my predecessor as Chair so often did not: I proceeded to have the committee consider the nomination on its merits even though I knew I would not support it. The committee debated the nomination fairly and openly. Objections to her confirmation, based on her record as a Justice on the Texas Supreme Court, were aired and honestly debated. A vote was taken and instead of hiding behind anonymous holds or hidden blue slips, Senators put themselves on the record. The result was that the Owen nomination was rejected by a majority of the committee and not recommended to the Senate.

Since that time much of what has happened has been unprecedented. Despite the rejection of the nomination by the committee, the President resubmitted the nomination the next year. I do not believe that had ever been done before in our history. Then, on a party-line vote, Republicans forced the nomination to the floor. It was debated extensively and the Senate withheld its consent. After a series of cloture votes, cloture was not agreed upon in accordance with the rules of the Senate. Nonetheless, the President took further unprecedented action in, again, resubmitting the nomination to the Senate. That nomination is now pending, again, on the Senate Executive Calendar.

By any measure the President's first nominees were treated fairly. Judge Parker, Judge Shedd, Judge Clement, Judge Cook, Judge Sutton, Judge McConnell, Judge Gregory and Judge Roberts are each serving lifetime appointments on important circuit courts. The first slate of nominees has now all been accorded hearings. All but Judge Boyle have been considered by the Judiciary Committee. All but one of those has been confirmed.

This is no basis on which to break the rules of the Senate. This is not justification to end the Senate's role as a check and balance on the Executive. This is not reason for the majority to take the drastic and irreversible step of ending protection of the minority through the tradition of extended debate in the Senate.

The White House and the Senate Republican leadership's campaign for "nuclear option" seeks to end the role of the Senate serving as a check on the Executive. But that is precisely what the Constitution intends the Senate to provide. Supporters of an all-powerful Executive have gone so far as to seek to inject an unconstitutional religious test into the debate and to characterize those who oppose the most extreme of the President's nominees as "against people of faith" and to call for mass impeachments of judges and other measures to intimidate the judiciary. Our independent judiciary is an essential check on the political branches.

Pat Robertson says that he believes that federal judges are "a more serious threat to America than Al Qaeda and the September 11 terrorists" and "more serious than a few bearded terrorists who fly into buildings" and "the worst threat America has faced in 400 years—worse than Nazi Germany, Japan and the Civil War." This is the sort of incendiary rhetoric that is paving the way to the "nuclear option." It is wrong, it is destructive and it is short-sighted.

Chief Justice Rehnquist is right to refer to the federal judiciary as the crown jewel of our system of government. It is an essential check and balance, a critical source of protection of the rights of all Americans, including our religious freedoms. In "A Man For All Seasons" Sir Thomas More speaks about the rule of law and the need for its protections. When his family confronts him and demands that he break the law to get at the Devil, he replies:

What would you do? Cut a great road through the law to get after the Devil? . . . And when the last law was down, and the Devil turned 'round on you, where would you hide, Roper, the laws all being flat?

This country is planted thick with laws, from coast to coast, Man's laws, not God's! And if you cut them down . . . do you really think you could stand upright in the winds that would blow then?

Yes, I'd give the Devil benefit of law, for my own safety's sake!

Our Federal judges are not the Devil and are not in the service of the Devil. Democratic Senators are not the Devil and are seeking to uphold the Senate as a check on the most extreme actions of the Executive. I pray that Republican Senators will think about that and reflect on the protections that our constitutional checks and balances provide. I trust that they will honor the protections of the minority that make this institution what it is. I hope that they will show the courage to protect the Senate and the minority that the senior Senator from Pennsylvania spoke about in his important statement a few weeks ago.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Oregon.

Mr. WYDEN. Mr. President, as the Senate resumes debating the nuclear option for resolving the debate about judges, I would like to ask that the Senate pursue a conventional option, the disappearing art of bipartisanship. Rather than calling for breaking out the nuclear weapons, I believe the Senate should call for breaking out some bipartisanship, and I want to give an example this afternoon of what the possibilities could be for real bipartisanship in this area of judicial nominations.

When President Clinton was elected, even though I was a Member of the House, I was the senior Democrat in my State. So I was faced with the challenge then as a Member of the other body of working with two Senators with close to 60 years of experience in the Senate—Mark Hatfield and Bob Packwood. Both of them were extremely gracious in their efforts to work with me.

I created a formal judicial selection committee. I gave Senators Hatfield and Packwood representation on that committee. We worked together in a bipartisan way and my first selection was confirmed without controversy.

I continued that bipartisan selection committee when I was elected to serve in the Senate. Three of my recommendations are now serving on the Federal bench thanks, in great measure, to the bipartisan cooperation of my friend and colleague Senator GORDON SMITH.

After President Bush was elected in 2000, Senator SMITH retained a similar bipartisan judicial selection process, and I was pleased to be able to assist him and the Bush administration in moving their nominee through the process.

Now our bipartisanship has been put to the test. In fact, twice, both with respect to myself and with respect to Senator SMITH, we had nominees who proved to be controversial to some Senators. In each case, the Senator in the minority party upheld his commitments and shepherded these individuals through the Senate. Doing tough bipartisan work at the front end of the judicial selection process, neither Senator SMITH nor I were pulled into a partisan squabble later on as the process went forward.

This is precisely the sort of bipartisan cooperation that is now missing between the White House and the Senate, and what is needed is more bipartisan conventional options for resolving this judicial debate and fewer nuclear threats.

It seems to me, going nuclear will change the Senate in a very dramatic way. I think it will make it harder, for example, to have breakthroughs in health care such as Senator HATCH helped me achieve when we passed the Health Care That Works for All Americans law. I think it is going to make it

harder to have a bipartisan breakthrough to producing a new energy policy. If ever there was a red, white and blue issue for our country, it is getting a new bipartisan energy policy that would shake us free of our dependence on foreign oil.

As I held open community meetings last week at home in Pendleton, Irrigon, Monroe, Fossil, Tillamook, and throughout my home State, there were no rallies and citizens calling for the use of a nuclear option. There were an awful lot of people asking: What are you going to do about health care costs that are going through the stratosphere? And I talked to them about the efforts that I and Senator HATCH have put in place.

They wanted to know about what is going to be done to deal with crumbling roads. I see our friend from Oklahoma who would like to pull together a bipartisan bill to deal with our country's infrastructure.

So folks were talking about health care, creating jobs and a fresh energy policy. They know the only way the Senate is going to achieve any of that is through bipartisanship.

I also see the distinguished chairman of the Judiciary Committee, my friend Senator SPECTER. Today the Senate has a choice. Tomorrow or the next day there may not be a choice. I hope my colleagues will choose the conventional option we have been using in Oregon that Senator Hatfield and Senator Packwood assisted me with and that Senator GORDON SMITH has assisted me with. I hope we will choose what I call the Oregon conventional option and seek a renewed bipartisan commitment to resolving this matter.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Mississippi is to be recognized.

Mr. LOTT. Mr. President, parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state his inquiry.

Mr. LOTT. I have been in the cloakroom waiting for the opportunity to speak on the highway bill and to speak on behalf of the commerce safety portion of that highway bill. Are we now going to turn to the highway legislation?

The ACTING PRESIDENT pro tempore. We are on the highway legislation. We were under a unanimous consent request, with the Senator recognized to speak next.

Mr. LOTT. Mr. President, I am pleased this afternoon to talk about title VII of this very important Surface Transportation Improvement Act of 2005. I remind my colleagues that the highway and transportation legislation, TEA-21, that we passed back in 1998, effectively expired September of 2003—not 2004 but 2003. We are now on the sixth extension of this very important legislation. This week we need to complete action on this very important bill.

It is about building decent highways and bridges and transit authorities, but it is about more than that. If we do not have decent infrastructure, if we do not have decent highways and bridges, if we do not have transit capability, if we do not have border roads, we are not going to have economic development. Most importantly, and that is why I am here as the chairman of the Surface Transportation and Merchant Maritime Subcommittee, safety provisions are not improved and extended. We should care an awful lot about this.

The safety portion of the legislation was reported out of the Commerce Committee, with the support of Chairman TED STEVENS and the ranking Democrat, who is referred to in our committee as cochairman, Senator INOUE. It is bipartisan, and I believe it is very strong legislation.

I care about the safety portion of it, and maybe I care about the safety provisions more than some people because I have had a family tragedy myself that has affected my thinking on this. My father was killed in an automobile accident, without a seatbelt, involving alcohol, on a narrow, two-lane, hilly road. This section of this legislation would affect all of that. It would give additional incentives for States to do more to stop driving while under the influence of alcohol. It would give incentives for people to use seatbelts. It would improve our roads and bridges and widen our roads. So this is personal with me, and I care an awful lot about it.

Before I get to that section of the legislation, I want to talk about the broader perspective. When we look at history and at infrastructure and the ancient Roman Empire, many would say it was their advanced infrastructure and efficient highways that allowed them to build the empire that they had. That highway system was critical to the expansion and protection of their empire. It allowed rapid troop movement. It facilitated trade. It enabled ease of movement for diplomats and couriers. It provided rapid expansion of the Roman sphere of influence. It afforded military protection from invaders and facilitated communication between distant parts of the empire.

We do not want to replicate everything we saw in the Roman Empire, but it also is interesting to note that that empire eventually went away, and some people say it was partially attributable to the fact that they quit building the infrastructure; they let the country start decaying and the infrastructure go into disrepair. I think that is what we are beginning to experience in America.

One of the reasons why we have been able to continue to grow, do well, and move around this country is because of our infrastructure: highways, bridges, railroads and ports and harbors. The whole package is critical. It is what enables America to have our great system. Whether people are from Maine,

Mississippi, California, Virginia, Florida or Washington, we have access to virtually all the same products, and it is because of our infrastructure.

On September 11 and in the days immediately following, we saw that our highways were absolutely critical to movement of goods and our people and that we need to have a balanced and complete infrastructure package. So it is time that we act. Our interstate system in America is 50 years old. States have been doing their part, but a lot of the States are struggling with their budgets and a lot of the highway departments have been living on these extensions. So we have lost an opportunity. We have lost ground.

Thirty-two percent of our major roads are in poor or mediocre condition, almost a third. Almost 30 percent of our Nation's bridges are structurally deficient and obsolete. Quite frankly, I am afraid where we are headed. If we do not do something about this, there will be a loss of the jobs that would have been generated, and it would contribute to the slowing down of our economy.

TEA-21 did an awful lot for our country, but it is time that we move to the next step. The U.S. Department of Transportation has said that for every \$1 billion in Federal transportation infrastructure investment, 47,500 jobs would be created. So just think about that when looking at what is involved in this bill. We are talking about many thousands of jobs being created. We need to have this 5-year extension. In the general sense, I urge my colleagues to work together in a bipartisan way and work with the administration to get this legislation completed before this next extension expires.

The portion of the bill that I am directly responsible for is from the Commerce Committee, and it is the safety provisions that would be in the reauthorization. I will describe what is in this Safety Improvement Act of 2005. It is a comprehensive reauthorization of many of the Department of Transportation safety programs that we passed in 1998. It includes trucking and bus safety, highway and vehicle safety and hazardous material safety. The bill also includes provisions to protect consumers from fraud in the moving industry and to reauthorize the boat safety and sport fishing programs. It is designed to improve the safety of all of our constituents and its enactment will save lives and reduce injuries.

Just last month, the Department of Transportation released preliminary traffic fatality data for 2004. The good news is the fatality rate on our highways is down slightly, but that data still shows there is much to be done. The programs authorized in this bill are authorized to do that.

Through the leadership of Chairman STEVENS, we have met with all of the interested parties in business, labor, safety advocates, as well as State representatives. We made sure everybody had some input in the drafting of this legislation.

We still have to make note of the almost 18,000, or 56 percent, of the people who died last year in highway accidents were not wearing a seatbelt. The quickest and most effective way of increasing safety is to get people to wear their seatbelts. So we have included a program to give States incentive grants to pass primary seatbelt enforcement laws. Some people would like to turn this around and say if States do not pass the seatbelt acts, we are going to take money away from them. That sort of approach has been tried in the past. It did not work, and it will not work now.

I believe in States such as mine, with an incentive to pass these primary seatbelt laws, there is a good chance we would comply. But if we are told we are going to be punished if we do not, the odds are we will not. So we have drafted this in a way that I believe every State will strive to have significant increases in their safety numbers and a decline in the fatalities on their highways. So we will be supporting this provision in our part of the highway bill.

The data also shows that alcohol is a factor in almost 40 percent of all crashes. Funds are included for States to enforce drunk driving laws and include incentives to toughen their laws. These safety programs should have been authorized almost 2 years ago, but due to disputes we have not been able to improve our safety provisions, improve our safety incentives, and therefore some of the culpability for the amount and severity of accidents and the deaths should be placed at our doorsteps. We need to work with the States to ensure these programs make sense and they are carried out effectively. We should have funding levels that reflect the commitment that we are making to highways and to safety on our highways.

I hope the Senate will pass this legislation this week and that Congress will pass the final conference report this month so the States do not miss the summer's construction season.

I again thank my colleagues on both sides of the aisle for working with us to develop the safety provisions that will be included in the substitute package I believe the chairman will offer.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, we are overdue getting on the highway bill. We are preparing right now to offer a substitute amendment. We are prepared to do that, but Senator SPECTER had said he wanted to speak for a period of time as in morning business. He has been planning to do that, and I will yield 15 minutes to him for that purpose.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BOND. Mr. President, will the chairman yield? Mr. Chairman, we are ready. We are open to do business. There have been a great many discus-

sions about the highway title. We have people ready to take those amendments who are ready to discuss those with our colleagues on the other side of the aisle to see which ones we can accept. Is it my understanding that we only have 3½ days to complete work on this very complex bill that covers not only the EPW section but commerce, finance, and the other sections? Is that correct?

Mr. INHOFE. That is my understanding. You remained here with me all last week inviting Members to bring their amendments down. We said we would be getting close. Who knows, we may even get a cloture vote, and then at the last minute hysteria will set in. Now is the time to bring them down and consider them.

Let me comment on the great work the chairman of the transportation subcommittee, Senator BOND, has done. We need to get to it now. This is probably very likely the most important single bill of this session.

Mr. BOND. I thank the chairman. I hope we can get on with it while our colleague is speaking. I hope other Members and staff will come to the floor and share their amendments and begin the discussion that is going to have to move very quickly if we are to finish this bill this week and stay on schedule to try to avoid another extension.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Pennsylvania is recognized for 15 minutes.

Mr. SPECTER. Mr. President, I thank the Chair for the recognition, but 15 minutes—if I could have the attention of the chairman of the committee, my colleague, Senator INHOFE? Fifteen minutes is insufficient. I had been seeking time since last week and had been assured by the floor staff that I could have 45 minutes starting at 3:10.

I understand the importance of the highway bill. I am here to talk about the constitutional or nuclear option in my capacity as chairman of the Judiciary Committee. I know the highway bill is important, and I have been pressing to bring it up, but the matter I wanted to speak on is perhaps of greater importance.

I had asked for 45 minutes and thought I might do it in 25, but it was reduced in a negotiating session with Senator INHOFE to 15, and I cannot do it in 15. So I will be back another time.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, in a few minutes it is our intention to bring up the substitute amendment, to have the pending amendment withdrawn and bring up the substitute amendment. We are not quite ready for that. We are waiting for a few things to be done in a few minutes. I think it will be worked out, but the managers' amendment is going to do a lot of things to offset some of the problems people had with the bill. When that time comes,

we want a chance to go over it in detail and make this a reality.

The amendment is going to bring the total size of the bill up to \$251 billion. This includes \$199 billion for highways, \$5.8 billion for highway safety, and \$46.6 billion for mass transit. This amendment would add \$6.8 billion in additional receipts to the highway account of the highway trust fund, all of which are offset in the amendment—also, thanks to the good work of Senator GRASSLEY and Senator BAUCUS of the Finance Committee. They have made a yeoman effort and have been able to have us increase this highway funding and have it paid for.

Highway funding would increase by \$8.9 billion over the EPW-reported bill. That is the bill that came out of our committee. It includes a 5.1-percent increase in both apportioned and allocated programs. It also increases the minimum rate of return to donor States to 91 percent immediately. Right now, as you know, it is 90.5 percent. It would raise it to 91 percent in 2006 through 2008. This increases the growth ceilings so more States get to 92 percent more quickly.

In other words, we are to go to 91 percent immediately, and in 2006, and then eventually all States will be at 92 percent in this period of time.

The donee States, the ones that are actually getting back an amount that is in excess of the amount that is paid in, they would have a guaranteed minimum growth rate being increased from 10 percent to 15 percent every year. The average growth rate increases from just under 25 percent to almost 31 percent.

The amendment also includes firewalls to ensure the highway trust fund dollars are spent on this Nation's transportation needs. There has been a problem over a long period of time. People have been very offended by the fact that these trust funds have been raided and somehow these moneys are diverted to other causes. Senator BOND and I, and I think the vast majority, and certainly 76 percent of this Senate, agree that we should have firewalls; we should protect that money and make sure it goes to highway spending.

Finally, the mass transit funding increased by \$2.3 billion to \$46.6 billion. This represents a dramatic increase in the transit share of the bill from 18.18 percent under TEA-21—that is what it was when we passed it 7 years ago—to 18.48 percent. The safety programs have increased, which Senator LOTT has talked about in the purview of his committee. They have increased their funding over levels in S. 1072, last year's bill, which was funded at \$318 billion.

Last year, during consideration of the \$318 billion Transportation bill, the Senate voted 76 to 21 in favor of funding the highway bill at \$255 billion, in mass transit at \$56 billion. This vote should be even more of a resounding victory for adequate funding levels for transportation, especially considering this bill is funded at a lower level.

I remind my colleagues of the vote on the Talent amendment to this budget resolution which received over 80 votes from Senators who voted to support it.

This amendment gave flexibility to increase the funding for the bill as long as it was offset, which is exactly what Senators GRASSLEY and BAUCUS have done in their portion of this amendment.

This is the amendment we do want to bring up. We are not quite ready to seek unanimous consent to bring it up.

I ask Senator BOND, the subcommittee chairman, if he seeks recognition now. Let me have him recognized. If he wants to yield to Senator INOUE, he can do that.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Mr. President, I was going to do what the chairman of the full committee said, but I see our friend from Hawaii is here. We have already had a discussion of the commerce title. I am happy to defer to my colleague from Hawaii.

The ACTING PRESIDENT pro tempore. The Senator from Hawaii.

Mr. INOUE. Mr. President, let me begin by thanking Surface Transportation and Merchant Marine Subcommittee Chairman TRENT LOTT and Commerce Committee Chairman TED STEVENS for their efforts to develop a consensus, bipartisan bill to reauthorize highway safety and boating safety programs under the Commerce Committee's jurisdiction.

Together, with the help of other members of our committee, including Senators MARK PRYOR, JAY ROCKEFELLER, CONRAD BURNS, BYRON DORGAN, FRANK LAUTENBERG, and BARBARA BOXER, we have crafted legislation that advances the safety of all motorists on our Nation's highways.

Our committee considered the Surface Transportation Safety Improvement Act of 2005 on April 14 and reported this measure without amendment.

Our national highway transportation network is a tremendous national asset and a first-class system. It allows us the freedom to travel and fosters economic growth. The benefits of mobility that our highways provide, however, come with a staggering cost of injury, property destruction, and death.

Recent safety trends indicate that the dangers of operating a vehicle on this network are still disturbingly high. According to the National Highway Traffic Safety Administration, highway fatalities and injuries increased from 42,643 in 2003 to 42,800 in 2004. Large truck crash fatalities increased by 3.7 percent from 4,986 in 2003 to 5,169 in 2004.

To put these numbers in context, the United States suffered more than 58,000 casualties during the entire Vietnam War. We are now losing nearly 43,000 Americans on our highways every year.

As we consider ways to improve the infrastructure and operation of our highways, we must do more to increase

the safety of cars and trucks, and their drivers.

The Commerce Committee's section of H.R. 3 incorporates many of the administration's recommendations, and those of safety advocates, regarding auto and truck safety, as well as the safety of hazardous materials transportation. The bill also strengthens consumer protections for those who entrust their belongings to a moving company, and provides more robust, predictable funding for boating safety and sport fish restoration programs.

We have been at loggerheads with the administration over the funding levels needed to improve our transportation system for more than a year. I am hopeful that these disagreements can be resolved so that we may finalize this important safety bill this session. I support more resources for all of our surface transportation programs and believe that we should seek funding closer to the levels that a majority of this chamber supported last year.

If we do provide additional funding, a pro-rata share should be allocated to our Nation's transportation safety programs.

The Commerce Committee's titles of the highway bill have received broad support by incorporating many initiatives proposed by the administration, industry, and safety advocates. However, we are always searching for ways to improve the bill and to reduce the risk of death and injuries on our Nation's highways.

I encourage those who might have amendments to offer to the Commerce Committee's titles to come forward so that we may work to incorporate these requests, to the extent possible.

I urge my fellow Senators to support the significant safety provisions contained within our section. The safety of the traveling public depends on it.

Mr. President, I request unanimous consent to have printed in the RECORD a document which summarizes each of the bill's key provisions.

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

SUMMARY OF COMMERCE COMMITTEE TITLES

TITLE I—MOTOR CARRIER SAFETY

Title I of our bill focuses on truck and bus safety. The Federal Motor Carrier Safety Administration (FMCSA) is the federal agency responsible for truck safety through strong enforcement of safety regulations, targeting high-risk motor carriers and commercial motor vehicle drivers. While much progress has been made in motor carrier safety, accidents involving large trucks remain a significant safety and economic concern. To improve truck safety, our bill:

Reauthorizes the Motor Carrier Safety Assistance Program (MCSAP) for the years 2006 through 2009 at an average annual funding level of \$200 million, more than double the Transportation Equity Act (TEA 21) level, and consistent with the Administration's proposal. Grants from this program are distributed via formula to states to enforce motor carrier safety rules and regulations.

Provides \$20 million to modernize the Commercial Driver's License Information System (CDLIS). This system is the primary

method for tracking the safety and qualification of truck and bus drivers. The funding will be used to modernize an outdated computer system and will help efforts to prevent truckers from holding multiple driver's licenses.

Updates the medical program for commercial drivers in the wake of several high-profile truck accidents that raised concerns about the current process. The bill establishes a Medical Review Board to recommend standards for the physical examinations of commercial drivers and a registry for qualified medical examiners. Medical examiners who perform the exams are required to receive training to be listed on the registry.

Replaces the current Single State Registration System (SSRS) with a new system that requires truckers to register in only one state, while preserving state revenues collected through the current system.

Improves the maintenance and safety of intermodal chassis. For many years, there has been a dispute about who should be responsible for the safety of truck trailers, known as intermodal chassis, that are owned by railroad and steamship companies, but are hauled by truckers. The bill contains provisions, agreed to by the trucking, railroad, and steamship companies, that delineates responsibility for safety among the various parties.

Requires the FMCSA to provide outreach and training to ensure that states are properly enforcing operating authority requirements for foreign commercial vehicles. It also requires a study of whether current or future Canadian and Mexican truck fleets that operate or are expected to operate in the United States meet U.S. truck safety standards.

TITLE II—HIGHWAY AND VEHICULAR SAFETY

This title reauthorizes highway safety programs designed to reduce deaths and injuries resulting from motor vehicle crashes. These programs are administered by the National Highway Traffic Safety Administration (NHTSA), which was established by the Highway Safety Act of 1970. To improve highway safety, our bill:

Provides \$700 million a year in grants to states to increase seat belt use and reduce drunk driving. Grants are awarded to states that enact primary seat belt laws and enact specific strategies to combat drunk driving.

Provides \$24 million a year for national advertising campaigns to increase seat belt use known as the "Click-It-Or-Ticket" campaign, and to reduce drunk driving. These advertising campaigns purchased at the national level are complimented by states coordinating police enforcement at the local level.

Provides substantial funding for NHTSA to conduct research on reducing traffic deaths and injuries. States rely on this research to target safety strategies in the most cost-effective way.

Requires NHTSA to issue a rule by 2009 that requires automobiles sold in the United States to have new stability control technologies that reduce the likelihood of rollover crashes, better door locks to reduce the likelihood of passenger ejection in a rollover crash, and stronger roofs to protect occupants in a rollover crash.

Requires NHTSA to issue a rule by 2008 that sets new safety standards for automobiles sold in the United States to better protect occupants in a side-impact crash.

Requires window stickers on new cars to display safety "star" ratings in a similar manner that gas mileage is displayed on window stickers.

TITLE III—HAZARDOUS MATERIALS TRANSPORTATION SAFETY

Title III of our bill is designed to improve the safety and security of the transportation

of hazardous materials. The hazardous materials (HAZMAT) transportation safety programs, now administered by the Pipeline and Hazardous Materials Safety Administration (PHMSA), have gone unauthorized since 1998. In 2004, there were 14,515 HAZMAT incidents, resulting in 8 deaths and 206 injuries and in the aftermath of recent HAZMAT accidents in South Carolina and heightened security concerns in this new era of global terrorism, reauthorization of these programs is a Committee priority. Title III:

Reauthorizes the Department of Transportation's (DOT) HAZMAT safety programs at \$25 million in FY 2005, \$29 million in FY 2006, and \$30 million for each fiscal year from FY 2007–2009.

Provides \$21,800,000 annually for community HAZMAT planning and training grants and allows states flexibility to use some of their planning money for training programs as needed. Additionally, the bill provides \$4 million annually for HAZMAT “train the trainer” grants, and allows these funds to be used to train HAZMAT employees directly.

Requires Mexican and Canadian commercial motor vehicle operators transporting HAZMAT in the U.S. to undergo a background check similar to those for U.S. HAZMAT drivers. Additionally, the bill improves current HAZMAT background check procedures and requires a study on background check capacity.

Increases civil penalties to up to \$100,000 for HAZMAT violations that result in severe injury or death and raises the minimum penalties for violations related to training.

Authorizes \$5 million for FY 2005–2009 for the Operation Respond Emergency Information System to improve the real time delivery of information about HAZMAT in transportation to first responders.

Authorizes the Secretary of Transportation to establish a program of random inspections to determine the extent to which undeclared HAZMAT is transported in commerce through U.S. points of entry. It also creates a HAZMAT research cooperative through the National Academy of Sciences' Transportation Research Board.

Streamlines federal responsibilities for ensuring the safety of food shipments. Primary responsibility is transferred from DOT to the Department of Health and Human Services (HHS) which would set practices to be followed by shippers, carriers, and others engaged in food transport. Highway and railroad safety inspectors would be trained to spot threats to food safety and to report possible contamination.

TITLE IV—HOUSEHOLD GOODS

The purpose of Title IV is to provide greater protection to consumers entrusting their belongings to a moving company. While most of movers operate reputable businesses, a small number of “rogue” movers continue to defraud thousands of consumers annually. The oversight of the interstate household goods moving industry is the responsibility of the Federal Motor Carrier Safety Administration (FMCSA). FMCSA is tasked with issuing regulations, conducting oversight activities, and taking enforcement actions on consumer complaints that have averaged about 3,000 per year since 2001. Title IV:

Allows a state authority that enforces state consumer protection laws and State Attorneys General to enforce federal laws and regulations governing the transportation of household goods in interstate commerce.

Authorizes a penalty, of not less than \$10,000, for a broker who provides an estimate to a shipper before entering into an agreement with a carrier to move the shipper's goods. A \$10,000 penalty and up to a 24-month suspension of registration are author-

ized also for failure to give up possession of a shipper's household goods, and if convicted, that person shall be fined or imprisoned for up to five years.

Authorizes the Secretary of Transportation to register a person to provide transportation of household goods only after that person meets certain requirements. In addition, the bill authorizes a penalty, of not less than \$25,000, for carriers and brokers who transport household goods but do not register with DOT.

Codifies existing regulations that require a carrier to give up possession of the household goods provided the shipper pays the mover 100% of a binding estimate of the charges or 110% of a non-binding estimate of the charges. The bill permits a carrier to charge only a prorated amount for the partial delivery of a shipment in the case of a lost or damaged shipment, and limits the amount of impracticable charges that must be paid upon delivery.

Establishes that a carrier is liable for the pre-determined total value of goods shipped unless otherwise authorized by the shipper. The current standard liability is at a rate of 60 cents per pound of a consumer's goods.

Directs the Secretary of Transportation to modify existing regulations to require a carrier's or broker's website to provide certain information. In addition, the Secretary would be required to establish a system and database for complaints and solicitation of State information regarding the number and type of complaints about a carrier. The bill directs the carrier to provide the shipper information about their rights.

TITLE V—AQUATIC RESOURCES TRUST FUND REAUTHORIZATION

Title V reauthorizes activities funded by two of the Nation's most effective “user-pay, user-benefit” programs—the Sport Fish Restoration Fund, administered by the Fish and Wildlife Service, and the Recreational Boating Safety Fund, administered by the U.S. Coast Guard. These programs constitute the “Wallop-Breaux” program, which is funded through the Aquatic Resources Trust Fund. This reauthorization will allow continued funding of programs that benefit boating safety, coastal wetland protection and restoration and sportfish restoration, as well as Clean Vessel Act grants that help to keep our waterways clean. The title is supported by a large coalition of recreational and boating groups, who are members of the American League of Anglers and Boaters.

As our nation's coastal population and tourism industry grows, these coastal programs are more popular than ever. But boating safety is also vitally important. State programs are nearly 100% funded through the Boating Safety fund, which allows state law enforcement to perform boating safety patrols, as well as train recreational boaters. The presence of these law enforcement boats on the water not only benefits recreational boaters, but also helps meet Coast Guard needs and enforce port security. Title V:

Renames the Trust Fund the Sport Fish Restoration and Boating Trust Fund, and eliminates the separate Boating Safety Account.

Reauthorizes the Marine Sanitary Devices pump-out program, the Boating Infrastructure Grant Program, and Outreach programs.

Increases the Boating Safety Grants to a three-to-one match, the same match as the Sport Fish Restoration grants.

Funds most of the programs on a percentage basis, which provides both simplicity and fairness. Conforming changes to the Internal Revenue Code will be included in the sections offered by the Finance Committee.

Annual revenues to the Fund total approximately \$500 million, but the amounts

vary from year to year. Under the new agreement, all programs will share in the rise and fall of these revenues, less the \$9 million set aside for administration, and the \$3 million set aside for multi-state grants. Title V establishes the following funding shares for the Trust Fund programs:

Sport Fish Restoration, 57% (including 15% for Boating Access); Boating Safety Grants, 18.5%; Coastal Wetlands Act, 18.5%; Boating Infrastructure, 2.0%; Outreach, 2.0%; Clean Vessel Act, 2.0%.

The growing popularity of recreational boating and fishing has created safety, environmental, and access needs that have been addressed successfully by the Recreational Boating Safety and Sport Fish Restoration programs. The Trust Fund program reauthorizations and funding adjustments contained in Title V are important for the safety of boaters, the continued enjoyment of fishermen, and improvement of our coastal areas and waterways.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Mr. President, I thank my colleague from Hawaii. I am hoping we can get started on this bill as quickly as possible because this time during this week has been set aside for the bill with all of the titles—EPW, commerce, finance—and we have a very complex bill. We need to work on these amendments right away.

There is discussion about holds on both sides. I hope if anybody has a problem with the bill they will come down and work with us and not hold up the bill because we cannot do our job and get this measure passed if we are blocked from bringing it up by people phoning in their holds.

I would like to have any Member who has a problem to talk to our staffs, realize there are lots of things that many people want to change, but that is what this whole process is about. We are trying to craft a bill that has been reported out of several different committees. Our highway title has been out there for 10 days, and everyone has had a chance to work on it. We have cleared numerous amendments on both sides of the aisle to take care of needs that various Members have. We cannot get this bill completed if people phone in holds and say: No, we are not going to let you go to the floor. It is very important that Members come down. This is going to be a very difficult bill.

Mr. LOTT. Will the Senator yield?

Mr. BOND. I am happy to yield.

Mr. LOTT. What is the present situation that would block the Senate from moving forward with this legislation and amendments being offered? Can't you just ask consent to go to the legislation?

Mr. BOND. My understanding from the cloakrooms is there are Members who have phoned in their concerns about moving to it.

Mr. LOTT. Mr. President, if the Senator will further yield, who is the cloakroom—is he a Senator? This is highway legislation that has been held up for 2½ years that is causing people to get killed, that is keeping us from creating jobs.

The Senator from Missouri and the Senator from Oklahoma and all other

Senators trying to manage this legislation have been very effective, very helpful of everyone, very considerate, but it is time we get this legislation going. The very idea that a Senator on Monday afternoon is calling in here or hiding out in his office or calling from some airport saying they object to us going to this legislation—I would like for them to explain that to their constituents. The Senate has been playing around long enough this year delaying everything, slow-walking everything.

By the way, this is not partisan; it is on both sides. This legislation is critical. It is time the Senate starts acting as a Senate instead of a kindergarten. I hope the Senators will give the consent this Senator from Missouri needs to get on this legislation and get it out of here. If we do not, our constituents are going to know who is the problem and why we are not getting this job done. It is time we get some Senators by the nape of the neck and tell them to put up or shut up because this legislation is critical. It is time to get it done. We ought to be having votes on amendments this afternoon. The very idea of Senators hiding in their offices saying, I am not ready, or I don't want to come, or I object—get over here and legislate and start acting like adults.

I thank the Senator from Missouri for yielding to me for that calm expression of concern.

Mr. BOND. I certainly hope the Senator from Mississippi feels better. I feel better because he has expressed my sentiments very clearly. We have been waiting 2½ years to have this bill in the Senate, and we have plenty to work on. I hope we are ready to move forward.

I will add to what the chairman of the EPW committee, my colleague from Oklahoma, has said. Recognize that last year during the consideration of the Transportation bill, the Senate voted 76 to 21 in favor of funding the highway bill at \$255 billion, mass transit at \$56 billion. This vote was a strong signal that the Members of the Senate believe we need to spend more dollars for safety, for our economy, for jobs, for our long-term growth and future on highways.

We did adopt in this budget resolution the provision presented by my colleague, Senator TALENT, and the Senator from Michigan, to give the Finance Committee the opportunity to increase funding for the bill as long as it was properly offset, and 80 Senators voted in support of it. That is exactly what the chairman and the ranking member, Senators GRASSLEY and BAUCUS, have done in their amendment.

I urge we support this amendment because we are still going to be short of where we were last time. No one is going to be able to get, for their particular areas of interest, their particular priorities, the same amount of money that would have been available under \$318 billion. This measure does increase the funding somewhat over the figure written into the budget, but

it is in pursuant to the provision included in the transportation section of the highway bill that there could be an add-on.

I hope people will see this is a critical time to move forward on this measure. If there are people who have amendments, I hope they will be ready to come forward.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. DURBIN. Will the Senator yield?

Mr. INHOFE. Yes, I yield for a question.

Mr. DURBIN. Just for a question.

I came to the Senate and heard Senator LOTT. He was exasperated and frustrated. He said Members were not offering amendments, so I came to the Senate quickly to find out the extent of it.

Would the Senator from Oklahoma clarify, is it not true that we now have, in effect, a new bill—about 1,000 pages, the substitute—that is being copied now and being shared for the first time? Members who seek to amend the bill should at least be given a chance to review this new version of the bill so their amendments are in order.

Mr. INHOFE. I respond to the Senator from Illinois. I am not sure what was shared with all the Democrats. I do know that Senator JEFFORDS and Senator BAUCUS—we have been working together. They are the ranking members of the subcommittee and whole committee. We have done this jointly. This has been done all together. Whether that was shared with all the Members, I have no way of knowing.

Mr. DURBIN. If the Senator will yield, I share the sentiment and understand his frustration 3 years into this process still trying to come up with a bill. I want to see this done as quickly as possible. I will urge the staff that is now reviewing this new substitute amendment—some are just seeing it for the first time—to move quickly and to urge all colleagues on both sides, Democrats and Republicans, to bring their amendments to the floor and let's get on with it.

I say to the Senator, I understand his feelings, and if it is in the form of a question, does the Senator believe he is deserving of my empathy?

Mr. INHOFE. I thank the Senator from Illinois.

I remind the Senator, as chairman of this committee I went first to Illinois before going anywhere else to have a field hearing, which we had in Chicago and went over some of the needs. They made it very clear to me that there are needs in Illinois, and the Senators from Illinois are very anxious to get this bill under consideration.

Again, the only frustration I have on amendments is that for 4 days last week we talked about this, begging people to bring down amendments.

The Senator from Illinois knows as well as I know what could very well happen: we could get into a cloture situation where then we would be out of time.

It seems as if it is the nature of the Senate that you just do not do anything until you have to do it. Now you have to do it. So we want them to come down. It is our hope now to get to the managers' substitute. We are not in a position to quite do that yet; however, we can certainly entertain amendments and have amendments discussed and lined up. Then we can talk about the necessity of having this bill. That is essentially what we are doing right now.

I can assure the Senator from Mississippi, his frustration is no greater than mine because I will have people stop and talk to me about amendments—fine, bring them down; let's discuss them—and they do not show up. That is what we want to make sure happens.

I think the Senator from Illinois is right. We are on our sixth extension now. We worked on this bill for 2 years prior to the time we brought it to the floor last year. So this has been a 3-year process. My concern is if we end up just getting another extension, we are not going to get anything done that really needs to be done. If we are concerned about doing something for donor States, we are not going to do it with an extension because it is going to be the same thing as we have been having under TEA-21 as of 7 years ago.

If our concern is about the Safety Corps, the Senator from Mississippi is right. It is his committee that deals with the Safety Corps programs. Certainly the State of Oklahoma is high on the list of deaths on the highways. We have to get this done.

I suggest it is a matter of life and death that we get a bill because if we operate off of extensions, we are not going to do anything to improve safety on the highways. The Senator from Mississippi made that very clear. We are not going to have any real streamlining of environmental reviews. We have some good elements in this bill that are going to be able to help us build roads faster with less money than we could on an extension. If we are operating on an extension and do not have a bill, we are not going to have any increase in our ability to have innovative financing thereby giving the States more tools.

What we have tried to do in this bill is to give a lot more of the power back to the States. It has been my belief, and I think shared by most members of my committee, that the closer you get to home, the more people are aware of their specific needs. There are a lot of people who have some excellent ideas on innovative financing that the States are going to be able to do. This is in the bill.

The Safe Routes to School Program—the Senator from Vermont is very much interested in that. It is one that is handled in this bill. However, if we go on an extension, extension No. 7, we are not going to have the Safe Routes to School Program.

The States are considered to have uncertainty. We have come back from

about a 7-day recess. I talked to our people, our highway people, our department of transportation in Oklahoma, and they cannot have any kind of planning for any kind of certainty as to knowing what is going to happen in the next year and the year after that and for the next five years unless we pass this bill. They are begging, pleading: Why can't you get this done because it has to be done in order for us to plan for the future.

I am particularly concerned about this because as to bridges, for example, in my State of Oklahoma, we are dead last in the Nation in terms of the condition of our bridges. And we cannot get anything done and plan for the future unless we get a bill.

There are a lot of people in a lot of States who are concerned about the borders program. It is critical to the border States that are dealing with the NAFTA traffic. This bill deals with that. With an extension, it is not going to happen. If we do not do this bill, we will have a delay in the establishment of this national commission to explain new ways to fund transportation.

I can tell you we have not done it any differently than when Dwight D. Eisenhower was President of the United States. He came along and recognized a problem in our transportation system as a result of the problem he had during World War II in moving troops and equipment around. Looking at our transportation system, the first thing he did when he became President of United States was to set up a National Highway Program and get it started. We have been funding our roads and our highways and our improvements and our bridges and infrastructure the same as we did during the Eisenhower administration. The bill sets up a national commission to go over some creative types of changes in funding where we can do a better job.

Right now, we are looking at the consideration, shortly, of the managers' amendment. If we do, it has been reported that even that amount, which is higher than the amount that was reported out of my committee, is going to do nothing more than just maintain what we have today. It is not really going to provide anything new. So we need to recognize that.

I have to say this, too. There are a lot of different philosophies that are represented in this Chamber. I am one of the most conservative Members. Yet there are some areas where conservatives do spend more money, and one is in infrastructure, which is what we are supposed to be doing here. We do not want to delay this national commission we set up in this legislation. I believe it is time to make a change for the better.

With the bill, we have increased the opportunity to address the chokepoints for intermodal transportation. This is kind of interesting. People do not realize this is not just a roads bill. This is an intermodal bill that considers

chokepoints between channels and railroads and roads. We deal with that. It is an intermodal bill. A lot of people are not aware of the fact that in my State of Oklahoma, we are actually navigable. We have a navigation channel. This bill deals with the chokepoints between rail, road, water, and other air transportation.

And there is the firewall. If there is one thing that has bothered me over the years I have been on this committee—I have been on this committee for 11 years; and before that, in the other body, I was on the Transportation Committee for 8 years, so that is 19 years. During that time, when I have gone back to my State, the thing people are offended by is that there are always raids on the highway trust fund.

People have their own programs, they may be good programs, but they try to go in and get money out of the highway trust fund to support those programs. We have seen this happen over and over again in establishing policies in the Senate, that they highway fund it. How should we fund it? Let's fund it with transportation funds.

I believe that is a moral issue. When the American people go to the pump, they do not mind paying a tax, but when they find out that tax is not going to highway construction and highway improvements and highway maintenance and intermodal transportation, they are understandably very nervous and very offended.

We have the firewall protection of the highway trust fund to make sure that these trust funds are not going to be vulnerable to raids in order to pay for other programs. I know there are a lot of people who feel they are not as excited about the way the formula was put together. I would like to say something about that. This is significant.

There are two ways to do a highway bill. I know one of the ways that was a little more prevalent in the other body was to come up with projects. You have 435 Members who have projects of significance. Instead, we believe that decisions on the priority of expenditure of transportation dollars should be made at the local level. In other words, it is easy to come up here and pass something and go home and say: Look what I got for you; I am bringing this home.

What we prefer is to have an equitable distribution of moneys that come into the highway trust fund to go back to the States and then let the States make these decisions. If there are States that don't want to do this, that is fine. But in the State of Oklahoma, I can assure you the closer to the people at home, the better the decisions. The people in the eight transportation districts in my State of Oklahoma are far better informed on the needs and priorities of where money should be spent on transportation than they are here in Washington. There are a lot of people who think that no decision is a good decision that is made in Washington. I don't agree with that.

We have a different way of doing it than the other body. We have a for-

mula. Our formula takes everything into consideration. We are talking about interstate lane miles; vehicle miles traveled on the interstate; the contributions to the highway trust fund; the lane miles and principal arteries, excluding the interstate VMT on principal arteries; surface transportation programs; total lane miles—all these things are considered—the Bridge Replacement and Rehabilitation Program; we have rankings to see what is really nationwide that should be attributed to this. Certainly, I am a little bit prejudiced, being from Oklahoma where our bridges are in the worst shape of any of the 50 States. We are going to correct that, and we can correct that with this bill.

We have congestion mitigation, air quality improvement programs, and these are very significant. These are the things that come in under the formula that goes out to the States. We have the Recreational Trails Program. We know all about that. We take into consideration low-income States. There are some States that are lower income States, and the people are not really able to pay for quite as much as some other States. We have low-population States, but they still have to have roads. Consequently, that has to be a part of the formula. We have low population density States. Some States have much higher fatalities than other States. That tells you they need to do something. The SAFETEA core program is in this base bill and will be continued. If we get around to the managers' amendment, then we will have something in there. Guaranteed minimum growth, you have to have some consideration in there because there are States that are growing very rapidly. Some States are on the other side.

We have donor States, donee States. These are things that are considered. A lot of people realize we have many States, including my State of Oklahoma, that are donor States. In other words, we don't get back as much money as we send to Washington to go into the highway trust fund. In TEA-21, we put in a minimum figure of 90.5 percent. In the bill we had last year, it would bring all these donee States all the way up to 95. That was good, but it took \$318 billion over 6 years to do that. We were not able to get it out of conference.

By the way, as the Senator from Missouri said, that bill passed the Senate by 76 to 21. That gives you an idea. If we get the bill up here, all we have to do is get by all these procedures, and we will pass a bill. It will take into consideration all the things I mentioned. This is not just a political table. In fact, politics didn't enter into it. We don't have projects in this Senate bill. The House bill does. When we go to conference, we are going to iron those things out, and we are going to come out with a good bill. But you can't do that until you get all the amendments in and get a vote.

I encourage Members to offer their amendments and to discuss the highway bill. I know there are some Members who were requesting time for that purpose.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I see the floor manager of the highway bill.

Mr. INHOFE. Will the Senator yield for a question?

Mr. KENNEDY. I will.

Mr. INHOFE. It is my understanding you want to speak as in morning business.

Mr. KENNEDY. Yes.

Mr. INHOFE. Can you hold it to, say, 25 minutes?

Mr. KENNEDY. Yes.

Mr. INHOFE. I further ask unanimous consent that the time you take be the time, following you, given to Senator SPECTER, who is wanting to have about that amount of time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. INHOFE. It is my understanding then that the Senator from Massachusetts will go for 25 minutes. Then the Senator from Pennsylvania will go for 25 minutes.

The ACTING PRESIDENT pro tempore. That was the Chair's understanding.

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank the floor manager. This is very important legislation, enormously important to my State as other States. We need the kinds of investments in our roads and bridges to ensure their safety and security and that they will continue to be the vital avenues for an expanding and growing economy. I look forward to working with the committee.

IRAQ SUPPLEMENTAL

I appreciate having the opportunity to address the Senate on what I anticipate will be the matter that will be before the Senate later this evening and through tomorrow, and that is the Iraq supplemental conference report. As I mentioned, I expect that it will be laid down in the next few hours, and I expect there will be a final resolution of this sometime tomorrow.

I welcome the opportunity to address some of the important provisions that are included in the conference report and bring them to the attention of our colleagues and to the American people.

I intend to support the Iraq spending bill. Although I disagree strongly with some of the bill's provisions, these funds are clearly needed for our troops. All of us support our troops. We obviously

want to do all we can to see that they have proper equipment, vehicles, and everything else they need to protect their lives as they carry out their missions. It is scandalous that the administration has kept sending them into battle in Iraq without proper equipment. No soldier should be sent into battle unprotected. No parent should have to go in desperation to the local Wal-Mart to buy armor plates and mail them to their sons and daughters serving in Iraq.

Our military is performing brilliantly under enormously difficult circumstances, and we need to give them our support—not just from our words but from our pockets, too. One aspect of this bill that I am particularly proud of is the increased funding for humvees for our troops on patrol in Iraq. The Bayh-Kennedy amendment adds additional funds to keep production at increased levels. Some opponents claim that the Army already had enough armed humvees and objected to any further increase. But a front-page article in the New York Times, on April 25, told us the troop side of the real need for more armor and the difference it can make.

Company E, a Marine Corps unit based at Camp Pendleton, returned from 6 months in Ramadi last year, and its members were so frustrated with this problem that they decided to tell their story. They did not have enough armored vehicles. Thirteen of the twenty-one marines from Company E who were killed in Iraq had been riding in humvees that failed to protect them from bullets or bombs. They saw problems up close.

A year ago, eight of them were killed when their humvees were ambushed on the way to aid another unit under fire. The cargo section of the humvee where the troops were riding did not even have hillbilly armor to protect them from the blast. They were totally unprotected. As one marine described the attack: All I saw was sandbags, blood, and dead bodies. There was no protection in the back.

Captain Kelly Royer, Company E's unit commander, asked his superiors when he would be getting more armored humvees. He was told that additional armor had not been requested and that there were production constraints.

Another marine says they complained about the shortages every day to anybody we could. They told us they were listening, but we did not see it.

These marines on the front line knew the armor meant the difference between life and death, the difference between an essential mission and a suicide mission. They were desperate to get more armor. Day after day they saw the brutal consequences of the Pentagon's incompetence and delay.

The lessons learned from the war in Iraq are said to help us in future conflicts, but for all forces facing death every day, the future was yesterday. In fact, the Marines are requesting funds

for the coming fiscal year to develop and produce new armored vehicles to avoid these deadly threats.

The need is so clear that the request was submitted under the Marine Corps Urgent Universal Needs Statement which was created to streamline the acquisition process and get equipment to the field faster. They have a plan to meet the future need, but what about the urgent need today?

We do not have the luxury of time to wait for these new vehicles to roll off a future assembly line. The need for armored humvees is now. The hillbilly armor they scavenge for and add to their unprotected humvees does not provide adequate protection.

The Army says of the new requirement approved this month, none of it is designated for the Marine Corps. The Pentagon refuses to make this a top priority. They continue to drag their feet.

In a report to Congress this month, the Government Accounting Office describes month after month of mismanagement by the Pentagon in supplying the armored humvees our troops urgently need to carry out their missions and stay alive.

The GAO report found the Army still had no long-term plan to increase the number of armored humvees. The war in Iraq has been going on for 2 full years. Our troops are under fire every day, and the Pentagon still does not have a plan to protect them.

I have in my hand an April 2005 GAO report, "Defense Logistics Agency, Actions Needed to Improve Availability of Critical Items during Current and Future Operations." On page 123, it states that there two primary causes for the shortages of uparmored vehicles and add-on armor kits. First, a decision was made to pace production rather than use the maximum available capacity.

This is the General Accounting Office in their report of April of this year.

Second, the funding allocations did not keep up with rapidly increasing requirements.

That is the General Accounting Office about whether we need to have more uparmored humvees and whether we have to give it a higher priority and whether there is a need in Iraq today. Our troops are under fire every day, and the Pentagon still does not have a plan to protect them.

In a briefing prepared by marines for Congress, they specifically state, in their vehicle hardening strategy, that "funding assistance is required to achieve optimum levels of armor protection."

The GAO report clearly points out that the Pentagon's bureaucratic mentality infected its decisions. They tried to solve the problem in a slow and gradual manner instead of solving it quickly. As the GAO report states, there were two primary causes for the shortages: "First, a decision was made to pace production." Translated into layman's language, that means there

was not a sense of urgency by the Pentagon. That is what "pace production" means. And then "rather than use the maximum available capacity" means they didn't get off their tail and increase production. And "Second, funding allocations did not keep up with rapidly increasing requirements."

I am going to come to the statements by the responsible DOD officials before the Armed Services Committee on which I serve.

It is equally obvious that in addition to the bureaucratic mentality of the Pentagon, their cakewalk mentality is also a major part of the problem. Week after week, month after month they refuse to believe that the insurgency will continue. They want to believe it will soon be over. They do not feel they need to waste dollars on armored humvees that soon will not be needed in Iraq. So month after month, our troops keep paying with their lives. The light the Pentagon sees at the end of the tunnel turns out to be the blinding flash of another roadside bomb exploding under another unprotected humvee in Iraq.

They cannot even get their story right. Armor Holdings, the company that makes the armored humvee, told my office recently that its current contract with the Army will actually mean sharp cutbacks in production. Right now, they produce 550 armored humvees a month. Their contract reduces that number to 239 in June, zero in July and then back to 40 in August and 71 in September. The company is now negotiating for slightly higher levels of production in June, July, and August, but it still expects to decrease production to 71 by September.

What possible justification can there be for the Pentagon to slow down current production so drastically in the months ahead when armored humvees are so urgently needed? The Pentagon keeps saying: We will work it out. On nine different occasions, we have asked the Pentagon for their requirements for humvees, and nine times they have been wrong. Nine times they have made their presentation before the Armed Services Committee, and nine times they have been wrong in underestimating the importance of needs, and American service men and women have been paying with their lives.

This bill tells the Department of Defense that we will not let them get it wrong for a tenth time. For the sake of our troops, Congress acted and the Pentagon should not ignore it. The contract should be amended immediately to obtain the maximum possible production of armored humvees for the months ahead. Our troops are waiting for an answer, and their lives depend on it.

Another important part of this bill will be the periodic report it requires on the progress our forces are making in Iraq. Our military is performing brilliantly under enormously difficult circumstances, but they do not want, and the American people do not want,

an open-ended commitment. After all the blunders that took us into war, we need to be certain that the President has a strategy for success.

The \$5.7 billion in this bill for training Iraqi security forces is a key element of a successful strategy to stabilize Iraq and withdraw American forces. The report will provide the straight answer that we have not had before about how many Iraqi security forces are adequately trained and equipped.

We are obviously making progress, but it is far from clear how much. The American people deserve an honest assessment that provides the basic facts, but that is not what we have been given so far.

According to a GAO report in March, U.S. Government agencies do not report reliable data on the extent to which Iraqi security forces are trained and equipped. There it is, March: The General Accounting Office says U.S. Government agencies do not report reliable data on the extent to which the Iraqi security forces are trained and equipped.

The American people do not know the answer. When they do not know, it means pretty clearly that they are not getting the kind of training and priority they should, and the longer it takes to train them the longer American servicemen are going to be over there risking their lives.

The report goes on to say that the Departments of State and Defense no longer report on the extent to which Iraqi security forces are equipped with their required weapons, vehicles, communications, equipment, and body armor. Imagine that. According to the General Accounting Office, the Departments of State and Defense no longer report on the extent to which the Iraqi security forces are equipped with their required weapons, vehicles, communications, equipment, and body armor.

It is clear from the administration's own statements that they are using the notorious fuzzy math tactic to avoid an honest appraisal.

On February 4, 2004, Secretary Rumsfeld said:

We have accelerated the training of Iraqi security forces, now more than 200,000 strong.

A year later, on January 19, 2005, Secretary of State Condoleezza Rice said:

We think the number right now is somewhere over 120,000.

On February 3, 2005, in response to questions from Senator LEVIN at a Senate Armed Services Committee hearing, GEN Richard Myers, Chairman of the Joint Chiefs of Staff, conceded that only 40,000 Iraqi security forces are actually capable. He said:

48 deployable (battalions) around the country, equals about 40,000, which is a number that can go anywhere and do anything.

Obviously, we need a better accounting of how much progress is being made to train and equip effective Iraqi security forces.

The President's commitment to keep American troops in Iraq as long as it

takes and not a day longer is not enough for our soldiers and their loved ones. They deserve a clearer indication of what lies ahead, and so do the American people. I am encouraged that the administration is finally being required by this bill to tell Congress how many U.S. troops will be necessary in Iraq through the end of 2006. The American people, and especially our men and women in uniform, and their families, deserve to know how much real progress is being made in training Iraqi troops and how long our forces will be in Iraq. Hopefully, the administration will submit these reports in good faith and not attempt to classify this vital information.

Those are two of the major provisions that I think require support for this legislation. There was an additional provision that I support that I will mention briefly, and then I will conclude in mentioning a provision which I find very unacceptable, troublesome, and unworkable.

The provision that was added by Senator MIKULSKI, the H-2B visas for seasonal workers, which I had the opportunity to join with her, remains in this legislation, and it will make a great deal of difference. It will be a lifeline for small family businesses in my State on Cape Cod and many other firms that rely overwhelmingly on seasonal workers to meet their heavy summer needs. Many use the programs year after year because it is the only way to legally fill temporary and seasonal positions when no American workers are available. Without this amendment, they would be out of luck this summer, and many will be out of business.

This is a short-term solution to the current visa crisis. The bill is a 2-year fix, and without it many businesses will be forced to shut their doors. I appreciate the support of our colleagues on this issue. It will help many hard-working small businesses and industries across the country.

Unfortunately, not all the immigration provisions included in the bill have this kind of broad support. Included in the conference agreement are the so-called REAL ID immigration provisions that are highly controversial, harmful, and unnecessary. The Intelligence Reform Act we approved overwhelmingly last year provides real border security solutions. The so-called REAL ID bill added by the House to this spending bill contains controversial provisions we rejected last year and likely would have rejected again if we had had a chance to debate them on the Senate floor. They are a false solution on border security, and they serve no purpose except to push an anti-immigrant agenda. More than ever we need to take the time to get border security reform right as opposed to pushing through legislation to meet the demands of anti-immigrant extremists. The stakes are simply too great.

In addition to the numerous substantive problems with the REAL ID, the process through which they have

been forced into this conference report is flawed and unacceptable. The Republican leadership in the House and Senate shut Democrats out of the conference negotiations. Why? Because the House bill has controversial provisions that have questionable support in the Senate and with the American people. Strongarm tactics are offensive and do a great deal of disservice to the important issues of our time. The White House too, once rejected these provisions, yet, they now support them. What important issues will the White House flip-flop on next?

Those who pushed through these REAL ID provisions continue to say that loopholes exist in our immigration and asylum laws that are being exploited by terrorists. They claim these provisions will close them. In fact, they do nothing to improve national security and leave other big issues unresolved.

They want us to believe that its changes will keep terrorists from being granted asylum. But current immigration laws already bar persons engaged in terrorist activity from asylum. Before they receive asylum, all applicants must also undergo extensive security checks, covering all terrorist and criminal databases at the Department of Homeland Security, the FBI, and the CIA.

Asylum seekers will find no refuge. Battered women and victims of stalking will be forced to divulge their addresses in order to get driver's licenses, potentially endangering their lives. Many Americans will have other problems with their driver's license. All legal requirements, including labor laws, can now be waived to build a wall. For the first time since the Civil War, habeas corpus will be prohibited. The REAL ID provisions contain other broad and sweeping changes to laws that go to the core of our national identity.

Each year, countless refugees are forced to leave their countries, fleeing persecution. America has always been a haven for those desperate for such protection. At the very beginning of our history, the refugee Pilgrims seeking religious freedom landed on Plymouth Rock. Ever since, we have welcomed refugees, and it has made us a better Nation. Refugees represent the best of American values. They have stood alone, at great personal cost, against hostile governments for fundamental principles like freedom of speech and religion. We have a responsibility to examine our asylum policies carefully, to see that they are fair and just.

But, the REAL ID bill tramples this noble tradition and will be devastating for legitimate asylum-seekers fleeing persecution. It will make it more difficult for victims fleeing serious human rights abuses to obtain asylum and safety, and could easily lead to their return to their persecutors.

Another section of conference report contains a provision that would com-

plete the U.S.-Mexico border fence in San Diego. But it goes much farther than that. It gives the Department of Homeland security unprecedented and unchecked authority to waive all legal requirements necessary to build such fences, not only in San Diego, but anywhere else along our 2,000 mile border with Mexico and our 4,000 mile border with Canada. Building such fences will cost hundreds of millions of dollars, and they still will not stop illegal immigration. What we need are safe and legal avenues for immigrants to come here and work, not more walls.

A major additional problem in the REAL ID provisions is that it could result in the deportation even of long-time legal permanent residents, for lawful speech or associations that occurred 20 years ago or more. It raises the burden of proof to nearly impossible levels in numerous cases.

A person who made a donation to a humanitarian organization involved in tsunami relief could be deported if the organization or any of its affiliates was ever involved in violence. The burden would be on the donor to prove by clear and convincing evidence that he knew nothing about any of these activities. The spouse and children of a legal permanent resident could also be deported too based on such an accusation, because of their relationship to the donor.

The provision could be applied retroactively, so that a permanent resident who had once supported the lawful, nonviolent work of the African National Congress in South Africa, Sinn Fein in Northern Ireland, the Northern Alliance in Afghanistan, or the Contras in Nicaragua would be deportable. It would be no defense to show that the only support was for lawful nonviolent activity. It would be no defense to show that the United States itself supported some of these groups.

The driver's license provisions do not make us safer either. Let me explain what these provisions really do. They repeal a section of the Intelligence Reform Act which sets up a process for States and the Federal Government to work together to establish Federal standards for driver's licenses and identification cards. Progress is already being made to implement these important measures, but this bill replaces them with highly problematic and burdensome requirements. The National Conference of State Legislatures says that these provisions are "unworkable, unproven, costly mandates that compel States to enforce Federal immigration policy rather than advance the paramount objective of making State-issued identity documents more secure and verifiable."

Indeed, it is a costly unfunded mandate on the States. The CBO estimate on the implementation of the driver's license provisions is \$20 million over a 5-year period to reimburse States for complying with the legislation. But, that is not all; the provisions require States to participate in an interstate

database that would share information at a cost of \$80 million over 3 years.

The driver's license provisions do nothing to address the threat of terrorists or to address legitimate security concerns. It would not have prevented a single 9/11 hijacker from obtaining a driver's license, or a single terrorist from boarding a plane. All 13 hijackers could have obtained licenses or IDs under this proposal, and foreign terrorists can always use their passports to travel.

The result of these restrictive driver's license provisions will be raised insurance rates, higher numbers of fatalities on America's roadways, and an increased black market for false and fraudulent documents. The REAL ID actually undercuts the original purpose of traffic safety. It is better to have licensed, insured, and trained drivers on our roads.

Preventing immigrants from obtaining driver's licenses undermines national security by pushing people into the shadows and fueling the black market for fraudulent identification documents.

The REAL ID provisions do nothing to combat the threat of terrorists or to deal with legitimate security concerns. They have taken away precious time that could have been used to address genuine pressing issues.

Hundreds of organizations across the political spectrum continue to oppose this legislation. A broad coalition of religious, immigrant, human rights, civil liberties and state groups have expressed their own strong opposition.

In these difficult times for our country, we know that the threat of terrorism has not ended, and we must do all we can to enact genuine measures to stop terrorists before they act, and to see that law enforcement officials have the full support they need. The provisions of the REAL ID bill in the conference report today will not improve these efforts. They will not make us safer or prevent terrorism. They are an invitation to gross abuses, and a false solution to national and border security.

The REAL ID bill with its controversial provisions should have been considered by the Senate through debate and discussion, not attached to a critical piece of legislation needed by our troops.

I urge the Senate to get serious about immigration reform that will make genuine improvements where they are needed, and not in the piecemeal fashion that is contained in this report.

This bill also provides nearly \$12 million to remedy a crisis in off-site judicial security for our Federal judges. With this bill, we have taken a small, but necessary step toward increasing security for the distinguished men and women of our country who have been appointed to the courts. In the wake of the recent murders of the husband and mother of Federal Judge Joan Lefkow at her home in Chicago, and the courtroom killings in Atlanta, it is clear we

must do more to enhance judicial security. This is a matter of the highest urgency.

The tragic deaths of Judge Lefkow's family demonstrate that judges may be safe inside the walls of our well-guarded courthouses, but they are vulnerable to disgruntled litigants in other places, even in their own homes. In fact, security in the homes of judges has long been a concern for the Judicial Conference, the principal decision-making group for the Federal courts. Sadly, three judges had previously been killed in their homes: Judge John Wood of Texas, in 1979; Judge Richard Daronco of New York, in 1988; and Judge Robert Vance, of Alabama, in 1989.

The vast majority of threats are received from people who are angry with the outcome of a case in court. In the 10 years since the first world trade center bombing, the Federal judiciary has handled an increasing number of "high threat" matters.

Judge Lefkow was the victim of an act of domestic terrorism stemming from what should have been a routine civil matter. Matthew Hale, the leader of a White Supremacist group known as the World Church of the Creator, was convicted in April 2004 of soliciting an undercover FBI informant to murder Judge Lefkow in retaliation for her ruling against him in a trademark dispute. This example highlights the environment in which our Federal judges toil every day.

The Marshals Service, underfunded and understaffed as it is, struggles to keep up with security needs in the new high-risk age, but there is no reason why our judges should continue to remain so vulnerable 16 years after Judge Vance was killed in his home. We need to stand up for an independent judiciary. We can do so by providing the funds to make their homes safe.

There were provisions in this legislation to do that. It says something about the nature of our dialog here when we have to provide the kind of extraordinary additional security to judges because of the nature of the political dialog. Words have consequences. Words have results. Words have meanings. The idea that individuals in responsible positions continue to threaten members of the judiciary too often can result in serious consequences to those judicial members. We have attempted to provide some additional security to protect those individuals. The best protection would be for more restraint on the part of those who talk about an independent judiciary.

Mr. President, I ask unanimous consent that an article dated April 25, 2005, from the New York Times be printed in the RECORD.

There being no objection, it was so ordered.

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

[From the New York Times, Apr. 25, 2005]
BLOODED MARINES SOUND OFF ABOUT WANT OF ARMOR AND MEN
(By Michael Moss)

On May 29, 2004, a station wagon that Iraqi insurgents had packed with C-4 explosives blew up on a highway in Ramadi, killing four American marines who died for lack of a few inches of steel.

The four were returning to camp in an unarmored Humvee that their unit had rigged with scrap metal, but the makeshift shields rose only as high as their shoulders, photographs of the Humvee show, and the shrapnel from the bomb shot over the top. "The steel was not high enough," said Staff Sgt. Jose S. Valerio, their motor transport chief, who along with the unit's commanding officers said the men would have lived had their vehicle been properly armored. "Most of the shrapnel wounds were to their heads."

Among those killed were Rafael Reynosa, a 28-year-old lance corporal from Santa Ana, Calif., whose wife was expecting twins, and Cody S. Calavan, a 19-year-old private first class from Lake Stevens, Wash., who had the Marine Corps motto, *Semper Fidelis*, tattooed across his back.

They were not the only losses for Company E during its six-month stint last year in Ramadi. In all, more than one-third of the unit's 185 troops were killed or wounded, the highest casualty rate of any company in the war, Marine Corps officials say.

In returning home, the leaders and Marine infantrymen have chosen to break an institutional code of silence and tell their story, one they say was punctuated not only by a lack of armor, but also by a shortage of men and planning that further hampered their efforts in battle, destroyed morale and ruined the careers of some of their fiercest warriors.

The saga of Company E, part of a lionized battalion nicknamed the Magnificent Bastards, is also one of fortitude and ingenuity. The marines, based at Camp Pendleton in southern California, had been asked to rid the provincial capital of one of the most persistent insurgencies, and in enduring 26 firefights, 90 mortar attacks and more than 90 homemade bombs, they shipped their dead home and powered on. Their tour has become legendary among other Marine units now serving in Iraq and facing some of the same problems.

"As marines, we are always taught that we do more with less," said Sgt. James S. King, a platoon sergeant who lost his left leg when he was blown out of the Humvee that Saturday afternoon last May. "And get the job done no matter what it takes." The experiences of Company E's marines, pieced together through interviews at Camp Pendleton and by phone, company records and dozens of photographs taken by the marines, show they often did just that. The unit had less than half the troops who are now doing its job in Ramadi, and resorted to making dummy marines from cardboard cutouts and camouflage shirts to place in observation posts on the highway when it ran out of men. During one of its deadliest firefights, it came up short on both vehicles and troops. Marines who were stranded at their camp tried in vain to hot-wire a dump truck to help rescue their falling brothers. That day, 10 men in the unit died. Sergeant Valerio and others had to scrounge for metal scraps to strengthen the Humvees they inherited from the National Guard, which occupied Ramadi before the marines arrived. Among other problems, the armor the marines slapped together included heavier doors that could not be latched, so they "chicken winged it" by holding them shut with their arms as they traveled.

"We were sitting out in the open, an easy target for everybody," Cpl. Toby G. Winn of

Centerville, Tex., said of the shortages. "We complained about it every day, to anybody we could. They told us they were listening, but we didn't see it." The company leaders say it is impossible to know how many lives may have been saved through better protection, since the insurgents became adept at overcoming improved defenses with more powerful weapons. Likewise, Pentagon officials say they do not know how many of the more than 1,500 American troops who have died in the war had insufficient protective gear. But while most of Company E's work in fighting insurgents was on foot, the biggest danger the men faced came in traveling to and from camp: 13 of the 21 men who were killed had been riding in Humvees that failed to deflect bullets or bombs. Toward the end of their tour when half of their fleet had become factory-armored, the armor's worth became starkly clear. A car bomb that the unit's commander, Capt. Kelly D. Royer, said was at least as powerful as the one on May 29 showered a fully armored Humvee with shrapnel, photographs show. The marines inside were left nearly unscathed.

Captain Royer, from Orangevale, Calif., would not accompany his troops home. He was removed from his post six days before they began leaving Ramadi, accused by his superiors of being dictatorial, records show. His defenders counter that his commanding style was a necessary response to the extreme circumstances of his unit's deployment.

Company E's experiences still resonate today both in Iraq, where two more marines were killed last week in Ramadi by the continuing insurgency, and in Washington, where Congress is still struggling to solve the Humvee problem. Just on Thursday, the Senate voted to spend an extra \$213 million to buy more fully armored Humvees. The Army's procurement system, which also supplies the Marines, has come under fierce criticism for underperforming in the war, and to this day it has only one small contractor in Ohio armoring new Humvees.

Marine Corps officials disclosed last month in Congressional hearings that they were now going their own way and had undertaken a crash program to equip all of their more than 2,800 Humvees in Iraq with stronger armor. The effort went into production in November and is to be completed at the end of this year.

Defense Department officials acknowledged that Company E lacked enough equipment and men, but said that those were problems experienced by many troops when the insurgency intensified last year, and that vigorous efforts had been made to improve their circumstances.

Lt. Gen. James N. Mattis of Richland, Wash., who commanded the First Marine Division to which Company E belongs, said he had taken every possible step to support Company E. He added that they had received more factory-armored Humvees than any other unit in Iraq.

"We could not encase men in sufficiently strong armor to deny any enemy success," General Mattis said. "The tragic loss of our men does not necessarily indicate failure—it is war."

TROUBLE FROM THE START

Company E's troubles began at Camp Pendleton when, just seven days before the unit left for Iraq, it lost its first commander. The captain who led them through training was relieved for reasons his supervisor declined to discuss. "That was like losing your quarterback on game day," said First Sgt. Curtis E. Winfree.

In Kuwait, where the unit stopped over, an 18-year-old private committed suicide in a chapel. Then en route to Ramadi, they lost

the few armored plates they had earmarked for their vehicles when the steel was borrowed by another unit that failed to return it. Company E tracked the steel down and took it back.

Even at that, the armor was mostly just scrap and thin, and they needed more for the unarmored Humvees they inherited from the Florida National Guard.

"It was pitiful," said Capt. Chae J. Han, a member of a Pentagon team that surveyed the Marine camps in Iraq last year to document their condition. "Everything was just slapped on armor, just homemade, not armor that was given to us through the normal logistical system."

The report they produced was classified, but Captain Royer, who took over command of the unit, and other Company E marines say they had to build barriers at the camp—a former junkyard—to block suicide drivers, improve the fencing and move the toilets under a thick roof to avoid the insurgent shelling. Even some maps they were given to plan raids were several years old, showing farmland where in fact there were homes, said a company intelligence expert, Cpl. Charles V. Lauersdorf, who later went to work for the Defense Intelligence Agency. There, he discovered up-to-date imagery that had not found its way to the front lines.

Ramadi had been quiet under the National Guard, but the Marines had orders to root out an insurgency that was using the provincial capital as a way station to Falluja and Baghdad, said Lt. Col. Paul J. Kennedy, who oversaw Company E as the commander of its Second Battalion, Fourth Marine Regiment. Before the company's first month was up, Lance Cpl. William J. Wiscowiche of Victorville, Calif., lay dead on the main highway as its first casualty. The Marine Corps issued a statement saying only that he had died in action. But for Company E, it was the first reality check on the constraints that would mark their tour.

SWEEPING FOR BOMBS

A British officer had taught them to sweep the roads for bombs by boxing off sections and fanning out troops into adjoining neighborhoods in hopes of scaring away insurgents poised to set off the bombs. "We didn't have the time to do that," said Sgt. Charles R. Sheldon of Solana Beach, Calif. "We had to clear this long section of highway, and it usually took us all day." Now and then a Humvee would speed through equipped with an electronic device intended to block detonation of makeshift bombs. The battalion, which had five companies in its fold, had only a handful of the devices, Colonel Kennedy said. Company E had none, even though sweeping roads for bombs was one of its main duties. So many of the marines, like Corporal Wiscowiche, had to rely on their eyes. On duty on March 30, 2004, the 20-year-old lance corporal did not spot the telltale three-inch wires sticking out of the dust until he was a few feet away, the company's leaders say. He died when the bomb was set off.

"We had just left the base," Corporal Winn said. "He was walking in the middle of the road, and all I remember is hearing a big explosion and seeing a big cloud of smoke."

The endless task of walking the highways for newly hidden I.E.D.'s, or improvised explosive devices, "was nerve wracking," Corporal Winn said, and the company began using binoculars and the scopes on their rifles to spot the bombs after Corporal Wiscowiche was killed.

"Halfway through the deployment marines began getting good at spotting little things," Sergeant Sheldon added. "We had marines riding down the road at 60 miles an hour, and they would spot a copper filament sticking out of a block of cement." General Mattis

said troops in the area now have hundreds of the electronic devices to foil the I.E.D.'s.

In parceling out Ramadi, the Marine Corps leadership gave Company E more than 10 square miles to control, far more than the battalion's other companies. Captain Royer said he had informally asked for an extra platoon, or 44 marines, and had been told the battalion was seeking an extra company. The battalion's operations officer, Maj. John D. Harrill, said the battalion had received sporadic assistance from the Army and had given Company E extra help. General Mattis says he could not pull marines from another part of Iraq because "there were tough fights going on everywhere."

Colonel Kennedy said Company E's area was less dense, but the pressure it put on the marines came to a boil on April 6, 2004, when the company had to empty its camp—leaving the cooks to guard the gates—to deal with three firefights.

Ten of its troops were killed that day, including eight who died when the Humvee they were riding in was ambushed en route to assist other marines under fire. That Humvee lacked even the improvised steel on the back where most of the marines sat, Company E leaders say.

"All I saw was sandbags, blood and dead bodies," Sergeant Valerio said. "There was no protection in the back." Captain Royer said more armor would not have even helped. The insurgents had a .50-caliber machine gun that punched huge holes through its windshield. Only a heavier combat vehicle could have withstood the barrage, he said, but the unit had none. Defense Department officials have said they favored Humvees over tanks in Iraq because they were less imposing to civilians. The Humvee that trailed behind that day, which did have improvised armor, was hit with less powerful munitions, and the marines riding in it survived by hunkering down. "The rounds were pinging," Sergeant Sheldon said. "Then in a lull they returned fire and got out."

Captain Royer said that he photographed the Humvees in which his men died to show to any official who asked about the condition of their armor, but that no one ever did. Sergeant Valerio redoubled his effort to fortify the Humvees by begging other branches of the military for scraps. "How am I going to leave those kids out there in those Humvees," he recalled asking himself.

The company of 185 marines had only two Humvees and three trucks when it arrived, so just getting them into his shop was a logistical chore, Sergeant Valerio said. He also worried that the steel could come loose in a blast and become deadly shrapnel. For the gunners who rode atop, Sergeant Valerio stitched together bulletproof shoulder pads into chaps to protect their legs.

"That guy was amazing," First Sgt. Bernard Coleman said. "He was under a vehicle when a mortar landed, and he caught some in the leg. When the mortar fire stopped, he went right back to work."

A CAPTAIN'S FATE

Lt. Sean J. Schickel remembers Captain Royer asking a high-ranking Marine Corps visitor whether the company would be getting more factory-armored Humvees. The official said they had not been requested and that there were production constraints, Lieutenant Schickel said.

Recalls Captain Royer: "I'm thinking we have our most precious resource engaged in combat, and certainly the wealth of our nation can provide young, selfless men with what they need to accomplish their mission. That's an erudite way of putting it. I have a much more guttural response that I won't give you." Captain Royer was later relieved of command. General Mattis and Colonel

Kennedy declined to discuss the matter. His first fitness report, issued on May 31, 2004, after the company's deadliest firefights, concluded, "He has single-handedly reshaped a company in sore need of a leader; succeeded in forming a cohesive fighting force that is battle-tested and worthy." The second, on Sept. 1, 2004, gave him opposite marks for leadership. "He has been described on numerous occasions as 'dictatorial,'" it said. "There is no morale or motivation in his marines." His defenders say he drove his troops as hard as he drove himself, but was wrongly blamed for problems like armor. "Captain Royer was a decent man that was used for a dirty job and thrown away by his chain of command," Sergeant Sheldon said.

Today, Captain Royer is at Camp Pendleton contesting his fitness report, which could force him to retire. Company E is awaiting deployment to Okinawa, Japan. Some members have moved to other units, or are leaving the Marines altogether. "I'm checking out," Corporal Winn said. "When I started, I wanted to make it my career. I've had enough."

Mr. KENNEDY. Mr. President, I yield the remainder of my time.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I ask unanimous consent that I may proceed as in morning business for as much time as I may consume.

Mr. INHOFE. Reserving the right to object.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, a few minutes ago we had an agreement that we would allow the Senator from Massachusetts to speak up to 25 minutes as in morning business and that the Senator would follow him with the same amount of time. That is what we would intend to do. We thought that would be satisfactory to the Senator from Pennsylvania.

Mr. SPECTER. Mr. President, may I proceed then?

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. INHOFE. I object, yes.

The ACTING PRESIDENT pro tempore. Objection is heard. The Senator is recognized under the previous order to speak for 25 minutes.

Mr. INHOFE. That is correct.

The ACTING PRESIDENT pro tempore. As in morning business.

JUDICIAL NOMINATIONS

Mr. SPECTER. Mr. President, I have sought recognition to urge my colleagues to explore ways to avoid a Senate vote on the nuclear, or constitutional, option. It is anticipated that we may vote this week or this month to reduce from 60 to 51 the number of

votes to invoke cloture or cut off debate on judicial nominations. If the Senate roll is called on that vote, it will be one of the most important in the history of this institution.

The fact is that all or almost all Senators want to avoid the crisis. I have repeatedly heard colleagues on both sides of the aisle say it is a matter of saving face. But as yet we have not found the formula to do so.

I suggest the way to work through the current impasse is to proceed to bring to the floor circuit nominees, one by one, for up-or-down votes. There are at least five and perhaps as many as seven pending circuit nominees who could be confirmed or at least voted up or down. If the straitjacket of party loyalty were removed by the Democrats, even more might be confirmed.

As a starting point, it is important to acknowledge that both sides, Democrats and Republicans, have been at fault. Both sides claim they are victims and that their party's nominees have been treated worse than the other's. Both sides cite endless statistics. I have heard so many numbers spun in so many different ways that even my head is spinning. I think even Benjamin Disraeli, the man who coined the phrase, "there are lies, damned lies, and statistics," would be amazed at the creativity employed by both sides in contriving the numbers in this debate.

The history of Senate practices has demonstrated that in the last 2 years of President Reagan's administration and through 4 years of the administration of President George Herbert Walker Bush, the Democrats slowed down the nomination process. When we Republicans won the 1994 elections and gained the Senate majority, we exacerbated the pattern of delay and blocking nominees. Over the course of President Clinton's presidency, the average number of days for the Senate to confirm judicial nominees increased for district nominees as well as for circuit nominees. That was followed by the filibuster of many qualified judicial nominees by the Democrats following the 2002 elections. In an unprecedented move, President Bush responded by making, for the first time in the Nation's history, two recess appointments of nominees who had been successfully filibustered by the Democrats. That impasse was then broken when President Bush agreed to refrain from further recess appointments.

Against this background of bitter and angry recriminations, with each party serially trumping the other to get even, or to dominate, the Senate now faces dual threats—one called the filibuster and the other the constitutional or nuclear option, which rivals the United States-Union of Soviet Socialist Republic confrontation of mutually assured destruction. Both situations are accurately described by the acronym MAD.

We Republicans are threatening to employ the option to require only a majority vote to end filibusters. The

Democrats are threatening to retaliate by stopping the Senate agenda on all matters except national security and homeland defense. Each ascribes to the other the responsibility for blowing the place up. This gridlock occurs at a time when we expect a U.S. Supreme Court vacancy within the next few months. If the filibuster would leave an eight-person Court, we could expect many 4-to-4 votes, since the Court now often decides cases with a 5-to-4 vote. A Supreme Court tie vote would render the Court dysfunctional, leaving in effect circuit court decisions with many splits among the circuits. So the rule of law would be suspended on many major issues.

In moving in the Judiciary Committee to select nominees for floor action, in my capacity as Chairman I have first selected William Myers because two Democrats had voted in the 108th Congress not to filibuster him, and one candidate for the Senate in 2004, since elected, made a campaign statement that he would vote to end the Myers filibuster and to confirm him. Adding those three votes to 55 Republicans, we were within striking distance to reach 60 or more.

I carefully examined Myers' record. Noting that he had opposition from some groups such as the Friends of the Earth and the Sierra Club, it was nonetheless my conclusion that his environmental record was satisfactory, or at least not a disqualifier, as detailed in my statement at the Judiciary Committee executive session on March 17 of this year. To be sure, critics could pick at the Myers record as they could at any Senator's record, but overall Myers was, in my opinion, worthy of confirmation.

I then set out to solicit others' views on Myers, including ranchers, loggers, miners, and farmers. In those quarters I found a significant enthusiasm for Myers' confirmation, so I urged those groups to have their members contact Senators who might be swing votes. I then followed up with personal talks to many of those Senators and found several prospects to vote for cloture. Then the screws of party loyalty were applied and tightened and the prospects for obtaining the additional few votes to secure cloture vanished.

I am confident if the party pressure had not been applied, the Myers filibuster would have ended and he would have been confirmed. That result could still be obtained if the straitjacket of party loyalty were removed on the Myers nomination.

Informally, but authoritatively, I have been told the Democrats will not filibuster Thomas Griffith or Judge Terrence Boyle. Griffith is on the calendar now awaiting floor action, and Boyle is on the next agenda for committee action. Both could be confirmed by the end of this month.

There are no objections to three nominees from the State of Michigan for the Sixth Circuit—Richard Griffin, David McKeague, and Susan Bakke

Neilson—but their confirmations are being held up because of objections to a fourth nominee. I urge my Democratic colleagues to confirm the three uncontested Michigan Sixth Circuit nominees and fight out the remaining fourth vacancy and Michigan District Court vacancies on another day. The Michigan Senators do make a valid point on the need for consultation on the other Michigan vacancies, and that can be accommodated.

In the exchange of offers and counteroffers between Senator FRIST, the majority leader, and Senator HARRY REID, the Democratic leader, Democrats have made an offer to avoid a vote on the nuclear or constitutional option by confirming one of the four filibustered judges—Priscilla Owen, Janice Rogers Brown, William Pryor, or William Myers—with a choice to be selected by Republicans. An offer to confirm any one of those four nominees is in reality an explicit concession that each is qualified for the court, and they are being held hostage as pawns in a convoluted chess game which has spiraled out of control.

If the Democrats believe each is qualified, a deal for confirmation for any one of them is repugnant to the basic democratic principle of individual fair and equitable treatment and further violates Senators' oath on the constitutional confirmation process. Such dealmaking would further confirm public cynicism about what goes on in Washington behind closed doors.

Instead, let the Senators consider each of the four without the constraints of party line voting. Let us revert to the tried and tested method of evaluating each nominee individually.

By memorandum dated April 7, I circulated an analysis of Texas Supreme Court Justice Priscilla Owen's records demonstrating she was not hostile to *Roe v. Wade* and that her decisions were based on solid judicial precedence. No one has challenged that legal analysis.

Similarly, I distributed a memorandum containing an analysis of Judge William Pryor's record since he has been sitting on the Eleventh Circuit. It shows a pattern by Judge Pryor of concern to protect the rights of those often overlooked in the legal system. Similarly, no one has refuted that analysis.

California Supreme Court Justice Janice Rogers Brown has been pilloried for her speeches. If political or judicial officials were rejected for provocative or extreme ideas and speeches, none of us would hold public office. The fact is, the harm to the Republic, at worst, by confirmation of all pending circuit court nominees, is infinitesimal compared to the harm to the Senate, whichever way the vote would turn out, on the nuclear or constitutional option.

None of these circuit judges could make new law because all are bound and each one has agreed on the record to follow U.S. Supreme Court decisions. While it is frequently argued

that Supreme Court decisions are in many cases final because the Supreme Court grants certiorari in so few cases, the circuit courts sit in panels of three so that no one of these nominees could unilaterally render an unjust decision since at least one other circuit judge on the panel must concur.

While it would be naive to deny that "quid pro quo" and "logrolling" are not frequent congressional practices, those approaches are not the best way to formulate public policy or make governmental decisions. The Senate has a roadmap to avoid "nuclear winter" in a principled way. Five of the controversial judges can be brought up for up-or-down votes on this state of the record. The others are entitled to individualized treatment on the filibuster issue. It may be that the opponents of one or more of these judges may persuade a majority of Senators that confirmation should be rejected. A group of Republican moderates has, with some frequency, joined Democrats to defeat a party-line vote. The President has been explicit in seeking up-or-down votes as opposed to commitments on confirmations.

The Senate has arrived at this confrontation by exacerbation as each side has ratcheted up the ante in delaying and denying confirmation to the other party's Presidential nominees. A policy of consultation/conciliation could diffuse the situation.

This has already been offered by the Democrats informally, signaling their intentions not to filibuster Griffith or Boyle, and by offering no objections to the three Michigan nominees. Likewise, it has been reported that Senator REID has privately told Republicans he does not intend to block votes on any Supreme Court nominee except in extreme cases. A public statement of confirmation with an amplification on what constitutes "extreme case" could go a long way to diffusing the situation.

Senator SCHUMER praised White House Counsel Gonzales during his confirmation hearings for times in which now-Attorney General Gonzales consulted with Senator SCHUMER on President Bush's judicial nominees affecting the State of New York. On April 11 of this year, a nominee pushed by Senator SCHUMER, Paul Crotty, was confirmed for the federal court in New York. Both New Jersey Senators, Senators TORRICELLI and CORZINE, approved all five district court nominations for their State in the 107th Congress. And in that Congress, Florida's Democratic Senators, BOB GRAHAM and BILL NELSON, appointed representatives to a commission which recommended federal judges to President Bush. President Bush recently nominated Minority Leader HARRY REID's pick for the District Court for the District of Nevada.

So there have been some significant signs of consultation and conciliation by the Republicans on choices by Democratic Senators.

I have reason to believe the President is considering consultation with the Michigan Senators on some federal judicial vacancies in their state and perhaps beyond.

One good turn deserves another. If one side realistically and sincerely takes the high ground, there will be tremendous pressure on the other side to follow suit. So far, the offers by both sides have been public relations maneuvers to appear reasonable to avoid blame and place it elsewhere. Meanwhile, the far left and far right are urging each side to shun compromise. "Pull the trigger," one side says. "Filibuster forever," the other side retorts. Their approaches would lead to extreme judges at each end of the political spectrum as control of the Senate inevitably shifts from one party to another.

The Senate today stands on the edge of an abyss. Institutions such as our Senate are immortal but not invulnerable. If we fail to step back from the abyss, we will descend into a dark protracted era of divided partisanship. But if we cease this aimless and endless game of political chicken, we could restore the Senate to its rightful place as the world's greatest deliberative body. That will require courage, courage from each Senator, courage to think and act with independence.

Our immortal Senate is depending on that courage. Now the question remains as to whether we have it.

Since the United States and the Union of Soviet Socialist Republics avoided the nuclear confrontation in the Cold War by concessions and confidence-building measures, why couldn't Senators do the same by crossing the aisle in the spirit of compromise?

As a result of the time constraints, I have abbreviated the oral presentation of this statement. I ask unanimous consent the full text be printed at the conclusion of this statement, including my statement which I now make that the text is necessarily repeated to a substantial extent of what I have delivered orally, but it is included so that a full text may be printed in the RECORD.

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

Mr. SPECTER. Mr. President, I seek recognition to urge my colleagues to explore ways to avoid a Senate vote on the nuclear or constitutional option. It is anticipated that we may vote this week or this month to reduce from 60 to 51 the number of votes required to invoke cloture or cut off debate on judicial nominations. If the Senate roll is called on that vote, it will be one of the most important in the history of this institution.

The fact is that all, or almost all, Senators want to avoid the crisis. I have had many conversations with my Democratic colleagues about the filibuster of judicial nominees. Many of them have told me that they do not personally believe it is a good idea to filibuster President Bush's judicial nominees. They believe that this unprecedented use of the filibuster does damage to this institution and to the prerogatives of the President. Yet despite their concerns, they

gave in to party loyalty and voted repeatedly to filibuster Federal judges in the last Congress.

Likewise, there are many Republicans in this body who question the wisdom of the constitutional or nuclear option. They recognize that such a step would be a serious blow to the rights of the minority that have always distinguished this body from the House of Representatives. Knowing that the Senate is a body that depends upon collegiality and compromise to pass even the smallest resolution, they worry that the rule change will impair the ability of the institution to function.

I have repeatedly heard colleagues on both sides of the aisle say it is really a matter of saving "face"; but, as yet, we have not found the formula to do so. I suggest the way to work through the current impasse is to proceed to bring to the floor circuit nominees one by one for up or down votes. There are at least five and perhaps as many as seven pending circuit nominees who could be confirmed; or, at least voted up or down. If the straightjacket of party loyalty were removed, even more might be confirmed.

For the past 4 months since becoming Chairman of the Judiciary Committee, my first priority has been to process the nominees through committee to bring them to the floor. As a starting point, it is important to acknowledge that both sides, Democrats and Republicans, have been at fault. Both sides claim that they are the victims and that their party's nominees have been treated worse than the other's. Both sides cite endless statistics. I have heard so many numbers spun so many different ways that my head is spinning. I think even Benjamin Disraeli, the man who coined the phrase, "there are lies, damned lies and statistics," would be amazed at the creativity employed by both sides in contriving numbers in this debate.

In 1987, upon gaining control of the Senate and the Judiciary Committee, the Democrats denied hearings to seven of President Reagan's circuit court nominees and denied floor votes to two additional circuit court nominees. As a result, the confirmation rate for Reagan's circuit nominees fell from 89 percent prior to the Democratic takeover to 65 percent afterwards. While the confirmation rate decreased, the length of time it took to confirm judges increased. From the Carter administration through the first 6 years of the Reagan administration, the length of the confirmation process for both district and circuit court seats consistently hovered at approximately 50 days. For Reagan's final Congress, however, the number doubled to an average of 120 days for these nominees to be confirmed.

The pattern of delay and denial continued through 4 years of President George H.W. Bush's administration. President Bush's lower court nominees waited, on average, 100 days to be confirmed, which was about twice as long as had historically been the case. The Democrats also denied committee hearings for more nominees. President Carter had 10 nominees who did not receive hearings. For President Reagan, the number was 30. In the Bush Sr. administration the number jumped to 58.

When we Republicans won the 1994 election and gained the Senate majority, we exacerbated the pattern of delaying and blocking nominees. Over the course of President Clinton's presidency, the average number of days for the Senate to confirm judicial nominees increased even further to 192 days for district court nominees and 262 days for circuit court nominees. Through blue slips and holds, 60 of President Clinton's nominees were blocked. When it became clear that the Republican-controlled Senate would not allow the nominations to move forward, President Clinton

withdrew 12 of those nominations and chose not to re-nominate 16.

After the 2002 elections, with control of the Senate returning to Republicans, the Democrats resorted to the filibuster on ten circuit court nominations, which was the most extensive use of the tactic in the Nation's history. The filibuster started with Miguel Estrada, one of the most talented and competent appellate lawyers in the country. The Democrats followed with filibusters against nine other circuit court nominees. During the 108th Congress, there were 20 cloture motions on 10 nominations. All 20 failed.

To this unprecedented move, President Bush responded by making, for the first time in the Nation's history, two recess appointments of nominees who had been successfully filibustered by the Democrats. That impasse was broken when President Bush agreed to refrain from further recess appointments.

Against this background of bitter and angry recriminations, with each party serially trumping the other party to "get even" or, really, to dominate, the Senate now faces dual threats, one called the filibuster and the other the constitutional or nuclear option, which rival the US/USSR confrontation of mutually assured destruction. Both situations are accurately described by the acronym "MAD."

We Republicans are threatening to employ the constitutional or nuclear option to require only a majority vote to end filibusters. The Democrats are threatening to retaliate by obstructing the Senate on a host of matters. Each ascribes to the other the responsibility for "blowing the place up."

The gridlock occurs at a time when we expect a United States Supreme Court vacancy within the next few months. If a filibuster would leave an 8 person court, we could expect many 4 to 4 votes since the Court now often decides cases with 5 to 4 votes. A Supreme Court tie vote would render the Court dysfunctional, leaving in effect the circuit court decision with many splits among the circuits, so the rule of law would be suspended on many major issues.

In moving in the Judiciary Committee to select nominees for floor action, I first selected William Myers because two Democrats had voted in the 108th Congress not to filibuster him, and one candidate for the Senate in 2004, since elected, made a campaign statement that he would vote to end the Myers filibuster and to confirm him. Adding those three votes to 55 Republicans, we were within striking distance to reach 60 or more. I carefully examined Myers' record. Noting that he had opposition from some groups such as Friends of the Earth and the Sierra Club, it was my conclusion that his environmental record was satisfactory, or at least not a disqualifier, as detailed in my statement at the Judiciary Committee Executive Session on March 17, 2005. To be sure, critics could pick at his record as they could at any Senator's record; but overall Mr. Myers was worthy of confirmation.

I then set out to solicit others' views on Myers, including the ranchers, loggers, miners, and farmers. In those quarters, where I found significant enthusiasm for the Myers confirmation, I urged them to have their members contact Senators who might be swing votes. I then followed up with personal talks to many of those Senators and found several prospects to vote for cloture. Then the screws of party loyalty were applied and tightened, and the prospects for obtaining the additional few votes to secure cloture vanished. I am confident that if party pressure had not been applied, the Myers filibuster would have ended and he would have been confirmed. That result could still be obtained if the straitjacket of party loyalty were removed on the Myers nomination.

Informally, but authoritatively, I have been told that the Democrats will not filibuster Thomas Griffith or Judge Terrence Boyle. Griffith is on the Senate calendar awaiting floor action, and Boyle is on the next agenda for committee action. Both could be confirmed by mid-May.

There are no objections to three nominees from the State of Michigan for the Sixth Circuit: Richard Griffin, David McKeague and Susan Bakke Neilson; but their confirmations are held up because of objections to a fourth nominee. I urge my Democratic colleagues to confirm the three uncontested Michigan Sixth Circuit nominees and fight out the Fourth Circuit vacancy and Michigan district court vacancies on another day. The Michigan Senators make a valid point on the need for consultation on the other Michigan vacancies and that can be accommodated.

In the exchange of offers and counteroffers between Sen. FRIST, majority leader and Sen. HARRY REID, the Democrat leader, Democrats have made an offer to avoid a vote on the nuclear or constitutional option by confirming one of the four filibustered judges: Priscilla Owen, Janice Rogers Brown, William Pryor, or William Myers with the choice to be selected by Republicans.

An offer to confirm any one of the those four nominees is an explicit concession that each is qualified for the court and that they are being held hostage as pawns in a convoluted chess game which has spiraled out of control. If the Democrats really believe each is unqualified, a "deal" for confirmation for anyone of them is repugnant to the basic democratic principle of individual, fair, and equitable treatment and violates Senators' oaths on the constitutional confirmation process. Such "deal-making" confirms public cynicism about what goes on behind Washington's closed doors.

Instead, let the Senate consider each of the four without the constraints of party line voting. Let us revert to the tried and tested method of evaluating each nominee individually. By memorandum dated April 7, 2005, I circulated an analysis of Texas Supreme Court Justice Priscilla Owen's record demonstrating she was not hostile to Roe vs. Wade and that her decisions were based on solid judicial precedent. No one has challenged that legal analysis.

By memorandum dated January 12, 2005, I distributed an analysis of decisions by Judge William Pryor that shows his concern to protect the rights of those often overlooked in the legal system. Similarly, no one has refuted that analysis. California Supreme Court Justice Janice Rogers Brown has been pilloried for her speeches. If political or judicial officials were rejected by provocative/extreme ideas in speeches, none of us would hold public office.

The fact is that the harm to the Republic, at worst, by the confirmation of all pending circuit court nominees is infinitesimal compared to the harm to the Senate, whichever way the vote would turn out, on the nuclear or constitutional option. None of these circuit judges could make new law because all are bound, and each one agreed on the record, to follow U.S. Supreme Court decisions. While it is frequently argued that circuit court opinions are in many cases final because the Supreme Court grants certiorari in so few cases, circuit courts sit in panels of three so that no one of these nominees can unilaterally render an unjust decision since at least one other circuit judge on the panel must concur.

While it would be naïve to deny that the "quid pro quo" and "logrolling" are not frequent congressional practices, those approaches are not the best way to formulate public policy or make governmental deci-

sions. The Senate has a roadmap to avoid "nuclear winter" in a principled way. Five of the controversial judges can be brought up for up-or-down votes on this state of the record. The others are entitled to individualized treatment on the filibuster issue.

It may be that the opponents of one or more of these judges may persuade a majority of Senators that confirmation should be rejected. A group of Republican moderates has, with some frequency, joined Democrats to defeat a party line vote. The President has been explicit in seeking up-or-down votes as opposed to commitments on confirmations.

The Senate has arrived at this "confrontation by exacerbation" as each side ratcheted up the ante in delaying and denying confirmation to the other party's Presidential nominees. A policy of conciliation/consultation could diffuse the situation. This has already been offered by the Democrats, informally signaling their intentions not to filibuster Griffith or Boyle. Likewise, it has been reported that Senator REID has privately told Republicans that he doesn't intend to block votes on any Supreme Court nominees, except in extreme cases. A public statement with an amplification of what constitutes an "extreme case" could go a long way.

Sen. SCHUMER praised White House Counsel Gonzales's consultation with him on President Bush's judicial nominees. On April 11, 2005, the President's nominee for the U.S. District Court for the Southern District of New York, Paul Crotty, supported by Senator SCHUMER, was confirmed. Both New Jersey Senators, Bob Torricelli and Jon Corzine, approved all five district court nominations for their state in the 107th Congress. In the 107th Congress, Florida's Democratic Senators, BOB GRAHAM and BILL NELSON, appointed representatives to a commission which recommended Federal judges to President Bush.

President Bush recently nominated Minority Leader HARRY REID's pick for the U.S. District Court for the District of Nevada. I have reason to believe the President is considering consultation with the Michigan Senators on some Federal judicial vacancies in their State and perhaps beyond.

One good turn deserves another. If one side realistically and sincerely takes the high ground, there will be tremendous pressure on the other side to follow suit. So far, the offers by both sides have been public relations maneuvers to appear reasonable to avoid blame and place it elsewhere.

Meanwhile, the far left and the far right are urging each side to shun compromise: pull the trigger; filibuster forever. Their approaches would lead to extreme judges at each end of the political spectrum as control of the Senate inevitably shifts from one party to the other.

The Senate today stands on the edge of the abyss. Institutions like the Senate are immortal but not invulnerable. If we fail to step back from the abyss, we will descend into a dark, protracted era of divisive partisanship. But if we cease this aimless game of political chicken, we can restore the Senate to its rightful place as the world's greatest deliberative body. That will require courage. Courage from each senator. Courage to think and act with independence. Our immortal Senate is depending on our courage. Do we have it?

Since the U.S. and USSR avoided a nuclear confrontation in the Cold War by concessions and confidence-building measures, why couldn't Senators do the same by crossing the aisle in the spirit of compromise.

Mr. SPECTER. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. NELSON of Florida. I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT NO. 518, WITHDRAWN

Mr. NELSON of Florida. Mr. President, on behalf of Senator SALAZAR, I ask unanimous consent that amendment No. 581 be withdrawn.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Florida is recognized.

(The remarks of Mr. NELSON of Florida pertaining to the introduction of S. 980 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. NELSON of Florida. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

AMENDMENT NO. 600 TO AMENDMENT NO. 567

Mr. TALENT. Mr. President, I have an amendment at the desk.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri [Mr. TALENT], for himself, and Mr. DODD, proposes an amendment numbered 600 to amendment No. 567.

Mr. TALENT. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require notice regarding the criteria for small business concerns to participate in Federally funded projects)

At the end of subtitle H of title I, add the following:

SEC. 18 . . . NOTICE REGARDING PARTICIPATION OF SMALL BUSINESS CONCERNS.

The Secretary of Transportation shall notify each State or political subdivision of a State to which the Secretary of Transportation awards a grant or other Federal funds of the criteria for participation by a small business concern in any program or project that is funded, in whole or in part, by the Federal Government under section 155 of the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (15 U.S.C. 567g).

The ACTING PRESIDENT pro tempore. The Senator from Missouri is recognized.

Mr. TALENT. Mr. President, I wish to take a few minutes to discuss this amendment which I am offering with Senator DODD. It has been accepted by the managers on both sides, and I am grateful for that.

The amendment is the next step in lifting a very significant burden off minority contractors around the country who want to do business with the Government. Very simply, it would direct the Secretary of Transportation to in-

form State and local governments that receive Federal dollars through the highway bill of a new law, a law that provides that minority contractors who have already been certified as 8(a) contractors under Federal law are automatically certified under State law as minority contractors on any contract that is funded in whole or in part by Federal dollars. Let me explain the background.

As Senators know, the 8(a) Program is one of the programs that small businesses use to get certified as a minority contractor in doing business with the Federal Government. State and local governments have similar certifications for doing business as a minority contractor with their governments. This has presented a serious obstacle for minority small businesses that want to do business or take advantage of goals or setaside programs because they have in the past been required to get additional certifications at both the State and local levels after already having been certified under the Federal Government's 8(a) Program. As a result, countless small minority-owned businesses have spent thousands and thousands of dollars and countless hours getting certified at the State and local levels just to learn that the contracting opportunity they originally sought was, by the time they were certified, no longer open.

In short, getting multiple certifications at the State and local levels after you have already done it at the Federal level is a time-consuming, expensive, and unnecessary process that in the past has left many highly qualified minority small business contractors shut out from the competition of Government contracts. So last year, I added an amendment on the JOBS bill that provides that section 8(a) contractors, those who have already been certified on the Federal level, are automatically certified as minority contractors in any State or local program funded in whole or in part by Federal dollars.

I have already heard from small businesses from Missouri and around the country. I am pleased to report this provision is saving minority small business people thousands of dollars and many hours and a lot of headaches. In many cases, it is making it possible for them to participate in programs and projects that they would not have been able to participate in in the past without maneuvering through the obstacles of getting additional State or local certifications. Now we need to get the word out about the new law.

So today, the amendment of Senator DODD and myself directs the Secretary of Transportation to inform State and local governments of the new law that prohibits them from requiring federally certified 8(a) minority firms from obtaining State and local certifications on any State or local project that receives Federal funding.

This amendment is the natural followup to last year's law. It should not

cost money. It has the support of minority small business associations around the country. I am pleased that it has majority and minority support on the Senate floor, and I am very pleased that the handlers on both sides of the aisle have accepted the amendment.

I thank the National Black Chamber of Commerce, the United States Hispanic Chamber of Commerce, as well as the Hispanic Chamber of Greater Kansas City, the Minority Business Council of St. Louis, and the Hispanic Chamber of Metropolitan St. Louis for their continued support in providing 8(a) contractors equal access to all projects receiving Federal funding.

I also want to thank the Senator from Connecticut for his work and effort on behalf of the amendment and his continued leadership on behalf of small business issues. I urge the Senate to adopt the amendment. I understand that the handlers are desirous of a roll-call vote so I ask for the yeas and nays on the amendment.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The ACTING PRESIDENT pro tempore. The minority leader.

Mr. REID. Mr. President, what was the request?

The ACTING PRESIDENT pro tempore. Ordering the yeas and nays.

Mr. TALENT. My understanding was that the handlers wanted the yeas and nays on the amendment. I will withdraw the request if that is not the case.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. INHOFE. I ask unanimous consent that at 5:30 this evening the Senate proceed to a vote in relation to the Talent amendment, with the time equally divided until the vote and no second-degree amendments in order to the amendment prior to the vote.

The ACTING PRESIDENT pro tempore. Is there an objection?

Mr. REID. Reserving the right to object.

The ACTING PRESIDENT pro tempore. The minority leader.

Mr. REID. I have no problem voting on this Talent amendment. I am disappointed that we have not been able to clear a resolution expressing support for the withdrawal of troops from Georgia. The President is there today. I am so glad he is visiting Georgia. I was there with a bipartisan congressional delegation a few weeks ago, and I repeat I am disappointed we could not do this while he is in country.

The leaders of Georgia would be so ecstatic if we could do this. In Georgia, there are leftovers from the Soviet Union military bases that are controlled by Russians, that are staffed by Russians. They will not leave that little country of Georgia. We have to do what we can in exerting influence to get Russia to pull their troops out of this little country. I hope the majority will look this resolution over and that

it can be approved in the immediate future. It would have tremendous significance with our President being there at this present time.

So I have no objection to the request by my friend from Oklahoma.

The ACTING PRESIDENT pro tempore. The minority leader withdraws his reservation.

Without objection, the unanimous consent request is agreed to.

The Senator from Missouri.

Mr. BOND. Mr. President, I rise to express my support for the effort that my colleague from Missouri is making. When the Senator from Missouri was in the House, he was chairman of the House Small Business Committee when I was chairman of the Senate Small Business Committee. We took great pride in the tremendous contribution that small business made to our State, both in terms of the jobs they produced as well as the tremendous boost that the small businesses were able to provide to our productive sector.

Again, I commend the Senator from Missouri for the action he took last year to make sure that these minority small business contractors could be qualified. This will go a long way toward easing the procedure to make sure that minority small business operations have a chance to get in on the work of the highway bill. It is very important that we move forward with our highway construction, and having the minority small businesses providing jobs in their community and representing the communities that will be served is a very worthy goal.

This small measure would have a big impact. So I urge the adoption of this amendment.

I thank the Chair and yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. INHOFE. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

All time has expired. The question is on agreeing to the amendment. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), the Senator from Mississippi (Mr. COCHRAN), the Senator from Wyoming (Mr. ENZI), the Senator from Arizona (Mr. KYL), the Senator from Arizona (Mr. MCCAIN), and the Senator from Alaska (Ms. MURKOWSKI).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Minnesota (Mr. DAYTON), the Senator from North Dakota (Mr. DORGAN), the Senator from Iowa

(Mr. HARKIN), and the Senator from Maryland (Mr. SARBANES) are necessarily absent.

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

The result was announced—yeas 89, nays 0, as follows:

[Rollcall Vote No. 116 Leg.]

YEAS—89

Akaka	Dole	McConnell
Allard	Domenici	Mikulski
Allen	Durbin	Murray
Baucus	Ensign	Nelson (FL)
Bayh	Feingold	Nelson (NE)
Bennett	Feinstein	Obama
Bingaman	Frist	Pryor
Bond	Graham	Reed
Boxer	Grassley	Reid
Brownback	Gregg	Roberts
Bunning	Hagel	Rockefeller
Burns	Hatch	Salazar
Burr	Hutchison	Santorum
Byrd	Inhofe	Schumer
Cantwell	Inouye	Sessions
Carper	Isakson	Shelby
Chafee	Jeffords	Smith
Chambliss	Johnson	Snowe
Clinton	Kennedy	Specter
Coburn	Kerry	Stabenow
Coleman	Kohl	Stevens
Collins	Landrieu	Sununu
Conrad	Lautenberg	Talent
Cornyn	Leahy	Thomas
Corzine	Levin	Thune
Craig	Lieberman	Vitter
Crapo	Lincoln	Voinovich
DeMint	Lott	Warner
DeWine	Lugar	Wyden
Dodd	Martinez	

NOT VOTING—11

Alexander	Dorgan	McCain
Biden	Enzi	Murkowski
Cochran	Harkin	Sarbanes
Dayton	Kyl	

The amendment (No. 600) was agreed to.

The PRESIDING OFFICER. The Senator from Ohio.

MORNING BUSINESS

Mr. DEWINE. Mr. President, I ask unanimous consent that there now be a period of morning business.

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

60TH ANNIVERSARY OF END OF WWII IN EUROPE

Mr. DEWINE. Mr. President, yesterday was the 60th anniversary of the end of World War II in Europe. It was also, of course, Mother's Day. My speechwriter Ann O'Donnell shared a letter with me her grandfather wrote that is a fitting remembrance of both occasions. It is a letter from a young Army private, 12th Armored Division, named Glenn H. Waltner. Stationed in Germany at the time, he wrote to his mother, Mrs. J. J. Waltner in Freeman, SD.

The letter is postmarked 60 years ago today, May 9, 1945, though it was written, actually, on May 3, 1945. It reads as follows:

Dearest Mother,
Mother's Day is only a short time away again. Since we cannot be together, I'm taking this opportunity to thank you for being my mother. You've always been all that any son could ever ask a mother to be—kind, pa-

tient, loving, considerate, and forgiving. Though Mother's Day comes but once yearly, don't think you're not appreciated the other [days of the year]. I thank God daily for the privilege of having been your son.

[I] am well—have been moving so swiftly and far that mail still hasn't reached us, nor can we mail letters often. Shaved today for the first time in a long while and haven't had my hair cut for months, I guess. Hear peace rumors daily, but apparently, the Germans don't know a thing about it.

Happy Mother's Day—Love from your son, Glenn.

Mr. President, I imagine that many hundreds of letters just like this went out 60 years ago to mothers all across our country. Letters went out as they waited patiently, praying for the safe return of their dear, beloved sons serving overseas during the war. Fortunately, just a few short days after this particular letter was written, the rumors about peace did become a reality as Hitler's Germany surrendered to Allied forces, bringing to an end almost 6 years of brutal, bloody battle and an unparalleled threat to mankind in the Nazi's attempt to destroy the Jewish race.

When I think about all those who served during World War II, I am reminded of a famous speech in William Shakespeare's play "Henry V." The title character attempts to rally his men with a St. Crispin Day speech, a moving appeal to soldiers facing a vastly superior French force. Shakespeare's Henry assures his men of their place in history, creating the bond that links them all. An excerpt from that speech reads as follows:

And Crispin Crispian shall ne'er go by,
From this day to the ending of the world,
But we in it shall be remember'd;
We few, we happy few, we band of brothers.

Stephen Ambrose, of course, in his book, "Band of Brothers," also wrote about this fraternal bond that connects all warriors to one another. Ambrose documented the journey of the men of Easy Company, E Company, 506th Regiment, 101st Airborne Division, through their journey through World War II. While the men of the 506th seem at times lost in the confusion and tragedy of war, Ambrose ends his book with a poignant reflection on what they encountered during the war. He wrote as follows:

They found combat to be ugliness, destruction, and death, and hated it. Anything was better than the blood and carnage, the grime and filth, the impossible demands made on the body—anything, that is, except letting down their buddies. They also found in combat the closest brotherhood they ever knew. They found selflessness. They found they could love the other guy in their foxhole more than themselves. They found that in war, men who love life would give their lives for them.

Over the last couple of years, my staff and I have had the great privilege of getting to know a group of World War II veterans who, like the men of Easy Company, are, indeed, a band of brothers. They are a band of selfless, patriotic, quiet heroes who to this day, 60 years after the end of the war, remain in close contact, staying in touch